

Public Service Commission of West Virginia

201 Brooks Street, P.O. Box 812
Charleston, West Virginia 25323



Phone: (304) 340-0300
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June 19, 2018

Robert and Janet Deal
494 Valley View Road
Davis, WV 26260

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

Case No. 18-0745-WS-C
Robert and Janet Deal
v.
Timberline Four Seasons Utilities, Inc.

Case No. 18-0762-WS-C
Karen Henson-Bibbee
v.
Timberline Four Seasons Utilities, Inc.

RE: Case No. 18-0781-WS-C
Quentin T. Rayhart
v.
Timberline Four Seasons Utilities, Inc.

Case No. 18-0793-WS-C
Robert J. Gilchrist
v.
Timberline Four Seasons Utilities, Inc.

Case No. 18-0811-WS-C
Stephen Callender Schimpff
v.
Timberline Four Seasons Utilities, Inc.

Dear Mr. and Mrs. Deal:

Pursuant to Rule 4.3.c of the Commission's Rules of Practice and Procedure, we are enclosing a copy of the Staff memorandum in this matter. Any responses must be submitted to the Executive Secretary's Office in writing within 10 days of this date, unless directed otherwise. All other parties of record will receive this filing via electronic docket notification.

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.

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.

Case No. 18-0674-WS-P; et.al.
June 19, 2018
Page Two

When you provide an email address, you will automatically receive 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. If you have not provided your email address, please send an email to caseinfo@psc.state.wv.us and state the case number in the email subject field.

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

Sincerely,


Ingrid Ferrell, Director
Executive Secretary Division

IF/tg
Enc. Memo

to intervene into the general investigation. Staff recommends that the complaint cases listed above be moved into and processed within the general investigation. The Complainants should be given the option to participate as intervenors or to just be kept informed of the proceeding (e.g. by being left on the service list).

Background

The Petition for a GI

On May 15, 2018, Staff filed a Petition to the Commission to Order a General Investigation of Timberline Four Seasons Utilities, Inc. Staff recommended that the Commission initiate a general investigation of whether it is appropriate to seek to place Timberline Utilities in receivership pursuant to W. Va. Code §24-2-7(b) because from January 2015 through February 28, 2018, Timberline Utilities has:

- Failed to collect payment on water and sewer services provided to affiliates, in light of a Commission order to do so, with arrearages increasing to \$168,078,
- Encumbered utility revenues and facilities to secure debt to the benefit of an affiliate, both historically and currently,
- Failed to collect the ordered repayment for improper affiliate transfers of cash, while increasing the amount transferred from Timberline Utilities to affiliate entities since January 2015 to \$257,182, and
- Participated in a distribution in excess of retained earnings to shareholders.

Staff provided details to support its request in the petition. Staff requested that the Commission institute the General Investigation, name Timberline Utilities as a Respondent to the General Investigation and direct Timberline Utilities to file a response to the General Investigation within twenty (20) days of the General Investigation being instituted. Staff further requested that the Commission set a reasonable procedural schedule which allows for a timely evidentiary hearing if needed and which leads to the appointment of a receiver for the system.

On June 4, 2018, Canaan Valley Public Service District (District) filed a Response and a Motion to Intervene into the petition for a general investigation proceeding. The District explained that it treats the wastewater generated by Timberline Utilities' customers. The District noted that in addition to charges imposed by Timberline Utilities on its customers for providing water service and for the collection and transmission of wastewater, Timberline Utilities collects a monthly charge of \$65 per equivalent dwelling unit (this \$65 charge is the District's monthly charge to Timberline Utilities for the treatment of wastewater). As of June 4, 2018, the EDU revenue collected by Timberline Utilities exceeds \$27,000 per month. The revenue received from Timberline Utilities is a

substantial portion of the income the District receives from all of its customers. Thus, the District expressed concern that if Timberline Utilities' management and financial viability are at risk, then there could be an immediate and direct impact on the income stream and operations of the District.

The District also noted that prior to construction of its facilities it entered into a contract with Timberline Utilities which required, among other things, that Timberline Utilities "operate its collection facilities to prevent inflow and infiltration of storm water and ground water into the wastewater it delivers to the DISTRICT." Response at p. 3. The District asserted that "[d]ue to failures and deficiencies in the water system and/or wastewater collection system of [Timberline Utilities], there have been longstanding and recurrent problems with inflow and infiltration of storm water and/or ground water from [Timberline Utilities'] facilities into the wastewater it delivers to [the District]." Response at p. 3. The District's treatment system uses biomass technology to treat the wastewater it receives from Timberline Utilities. "[A]ny excessive inflow and infiltration of storm water and/or groundwater (1) lowers the temperature of the wastewater treated by [the District] and (2) it dilutes the concentration of the wastewater to be treated by the biomass." Response at p. 3. Due to this excessive inflow and infiltration of storm water and/or groundwater, the District has to add organic material to its wastewater to feed the biomass. Additionally, the District has to substantially increase the temperature of the wastewater within its plant. The addition of organic material and the substantial increase in temperature increase the District's operational cost. The District has requested Timberline Utilities to take actions to resolve the problem of inflow and infiltration, but little or nothing has been done.

The District noted that after its complaint case, Case No. 16-0631-S-C, Timberline Utilities was timely in making monthly payments to the District from the Fall of 2016 until the April 2018 payment. The April 2018 payment was tendered to the bank and was not honored due to insufficient funds, but when the check was retendered to the bank, it was honored. Because the bill became delinquent, the District has added a delinquency charge. Timberline Utilities' failed to pay its May bill from the District on time. (The Staff Attorney notes that the District's attorney informed her that the May bill was finally paid albeit late.)

The District shared emails it received, copies that were purportedly issued by Craig Cobb, District Engineer for the Department of Health at the Fairmont office, discussing the management of Timberline Utilities.

The District asserted it has a substantial interest in the outcome of any general investigation into the management of Timberline Utilities and requested that its petition to intervene be granted.

The Complaints

On May 25, 2018, Robert and Janet Deal (Mr. and Mrs. Deal) filed a verified formal complaint against Timberline Four Seasons Utilities, Inc. (Timberline Utilities). Mr. and Mrs. Deal assert that Timberline Utilities are not paying their employees and are not repairing leaking water lines. They further asserted that Timberline Utilities does not have people available in its offices. Timberline Utilities has not checked the lines in homes for pressure or proper operations in over ten years. Mr. and Mrs. Deal requested that the Commission take the utility away from its current owner and make it a public owned system.

On May 30, 2018, Karen Henson-Bibbee (Ms. Henson-Bibbee) filed a verified formal complaint against Timberline Utilities. Ms. Henson-Bibbee asserted that Timberline Utilities was not covering its payroll obligations. Ms. Henson-Bibbee further alleged that Timberline Utilities are giving thirty-day notice due to non-payment of wages. She believes the water service leak detection system is not operational. Furthermore, she finds the Utility rates to be extremely high (she says the minimum bill is \$117.32 per month). Ms. Henson-Bibbee requested that Timberline Utilities be placed into receivership. She requested that the utility rates be re-examined and that the leak detection system be repaired. She also requested that that the utility lines be maintained.

On May 31, 2018, Quentin T. Rayhart (Mr. Rayhart) filed a verified formal complaint against Timberline Utilities. Mr. Rayhart asserted that Timberline Utilities has not inspected utility lines within ten years. He stated that there are two leaks: one on Mountainside Ridge Road and the other at the lower pump house on Mountainside Road (the valves are leaking and believes when the valves go all customers will lose water service). Mr. Rayhart alleged that employee paychecks have bounced three times in a row. The utility office is locked and no one is answering the phone. Mr. Rayhart requested that the Canaan Valley Public Service District take complete control over this utility.

On June 4, 2018, Robert J. Gilchrist (Mr. Gilchrist) filed a verified formal complaint against Timberline Utilities. Mr. Gilchrist requested that the Commission ensure that Timberline Utilities repair, replace and test equipment as required by law. He also requested that Timberline Utilities be required to operate its business in accordance with State law.

On June 6, 2018, Stephen Callender Schimpff (Mr. Schimpff) filed a verified formal complaint against Timberline Utilities. Mr. Schimpff asserted that Timberline Utilities' business office is locked and unstaffed during normal business hours. Furthermore, employees are not working because their paychecks have bounced. Mr. Schimpff stated there are frequent service interruptions and the utility facilities are

inadequately maintained. Mr. Schimpff requested assurance that clean, safe water will be continuously available.

Timberline Utilities filed essentially the same answer to each of the above complaints. Timberline Utilities asserted that the Complainants fail to state a claim upon which relief may be granted. Timberline Utilities generally denied all matters set forth in the complaint. Timberline Utilities requested that the complaint be dismissed.

Staff Recommendation

Tara Gilkey, Utilities Analyst II in the Commission's Utilities Division, has reviewed additional financial information provided by Timberline Utilities to Staff on June 11, 2018, including bank records for the period ending May 31, 2018. Ms. Gilkey informed the Staff Attorney that the additional financial records do not show any improvement in the financial situation from what she reported in the May 2018 memorandum that was filed with the petition for a general investigation (Case No. 18-0674-WS-P). Timberline Utilities is continuing to make transfers of revenue to affiliates in excess of the management fee found in agreements that the Commission granted consent and approval for Timberline Utilities and the affiliate to operate under. These excess transfers occurred in violation of the prior agreement as well and the new management agreement that the Commission granted consent and approval to Timberline Utilities to enter into in Case No. 18-0007-WS-PC. See Commission order entered April 13, 2018. The issues are ongoing. While the amounts Staff is recommending that the affiliates be required to repay to Timberline Utilities continue to increase, Ms. Gilkey stated there did not appear to be any new extraordinary transfers of revenue to affiliates beyond the type of transfers she previously noted in her May 2018 report filed with the petition for a general investigation.

In the attached Initial Internal Memorandum, Jonathan Fowler, P.E., in the Commission's Engineering Division, explained that he spoke with one of the system's operators who confirmed that he is continuing to work and operate the system as best as he can with limited resources. The system's operator informed Mr. Fowler that a few of his paychecks have "bounced" when first submitted for payment. Mr. Fowler noted that the system lacks any type of heavy equipment and presently relies upon local contractors in the event there is a line break and to conduct other heavy maintenance. Mr. Fowler was also informed that electric service to the utility office was terminated for lack of payment several months ago. When the office is staffed it relies on a portable generator for power.

Mr. Fowler noted that in the previous complaint cases, Timberline Utilities was ordered to file quarterly operational and engineering information. The last such report was filed on January 31, 2018. See Recommended Decision entered March 13, 2017, and

final April 2, 2018 in Case No. 16-0623-W-C *et al.* The Staff Attorney notes that another quarterly report was due in April 2018 that was not filed and the next quarterly report would be due in July 2018. The Staff Attorney also notes that Timberline Utilities has been submitting monthly financial information to Staff as required (this information is not being filed in the cases as it may contain personal information involving persons unrelated to the complaints (e.g. bank and check information)).

Mr. Fowler stated that ordinarily he does not make a recommendation at this stage of his review. But, based on his discussions with Timberline Utilities' staff and with the engineering staff at the Bureau of Public Health, Mr. Fowler is concerned that

this small utility is operating at a bare minimum level and suffers from a lack of readily available O&M resources. Accordingly, we are concerned that an abnormal event (such as a line break or equipment failure—even though such are not uncommon) could result in a long term loss of service to many customers and could potentially precipitate a public health crisis due to lack of safe, potable water.

Attached memorandum at p. 2. Mr. Fowler recommended that Timberline Utilities be immediately required to provide details regarding the current status of their utility operations including:

1. Current utility staffing. Listed by name and job title along with their status (i.e. contract, full time, part time, etc.)
2. List of utility owned equipment and vehicles.
3. List of maintenance tools and supplies maintained at or near the utility operations.
4. The names, WV Contractors License numbers, contact information and availability (i.e. annual contract, force account, on-call, hourly rate, etc.) of all outside maintenance contractors available to the utility. Include the estimated average response time of such contractors under emergency circumstances (major line break, pump failure, etc.).
5. Provide a list of key maintenance and operations suppliers including chemical suppliers, pump repair firms, general utility supplies, etc. and provide the current status (i.e. open account, COD, etc.) and the maximum credit limit and available credit for each such vendor or supplier.

Attached memorandum at p. 3.

Staff continues to recommend as it recommended in its petition for general investigation filed on May 15, 2018, in Case No. 18-0674-WS-P that the Commission initiate a general investigation of whether it is appropriate to seek to place Timberline Utilities in receivership pursuant to W. Va. Code §24-2-7(b) because Timberline Utilities has:

- Failed to collect payment on water and sewer services provided to affiliates, in light of a Commission order to do so, with arrearages increasing to \$168,078,
- Encumbered utility revenues and facilities to secure debt to the benefit of an affiliate, both historically and currently,
- Failed to collect the ordered repayment for improper affiliate transfers of cash, while increasing the amount transferred from Timberline Utilities to affiliate entities since January 2015 to \$257,182, and
- Participated in a distribution in excess of retained earnings to shareholders.

Legal Staff notes that the Commission's Engineering Division now has concerns about Timberline Utilities' ability to function from an operational perspective. Legal Staff will send a data request to Timberline Utilities asking for the information Mr. Fowler requested, but recommends the Commission when instituting the General Investigation direct Timberline Utilities to provide the information requested by Mr. Fowler as part of its response to the petition for a general investigation.

In summary, Legal Staff recommends that the Commission institute the General Investigation, name Timberline Utilities as a Respondent to the General Investigation and direct Timberline Utilities to file a response to the General Investigation within twenty (20) days of the General Investigation being instituted. Staff further requests that the Commission set a reasonable procedural schedule which allows for a timely evidentiary hearing if needed and which leads to the appointment of a receiver for the system. Lastly, Legal Staff recommends that the complaint cases listed above be moved into and processed within the general investigation. The Complainants should be given the option to participate as intervenors or to just be kept informed of the proceeding (e.g. by being left on the service list).

LJA/cs
Attachment

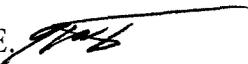
CWS 

PUBLIC SERVICE COMMISSION OF WEST VIRGINIA
ENGINEERING DIVISION

INITIAL INTERNAL MEMORANDUM

DATE: June 18, 2018.

TO: Leslie Anderson, Esq., Staff Attorney
Legal Division

FROM: Jonathan Fowler, P.E. 
Engineering Division

12:06 PM JUN 19 2018 EXEC SEC DIV

SUBJECT: Cases No. 18-0745-WS-C, 18-0762-WS-C, 18-0781-WS-C,
18-0793-WS-C and, 18-0811-WS-C (Complaints)
-and-
Case No. 18-0674-WS-P (Request for General Investigation)
Timberline Four Seasons Utilities

Initial Memo

Between May 25 and June 6, 2018 a total of six (6) Formal Complaint cases have been lodged by customers of Timberline Four Seasons Utility (TFSU). In summary these cases allege one or more of the following;

- Generally improper management of the utility.
- Financial difficulties leading to the resignation of system operators¹.
- Unstaffed office² and a lack of regular office hours.

¹ Staff spoke with one of the system operators who confirmed that he is continuing to work and operate the system as best he can with limited resources. However, a few of his paychecks have “bounced” upon first presentation for payment. Staff also notes that the system lacks any type of heavy equipment (excavators, etc.) since such was removed from the property months ago. The system presently relies upon local contractors in the event of a line break and to conduct other heavy maintenance.

² Based upon our conversations with utility personnel, electrical service to the utility office was terminated for lack of payment several months ago and the office, when it is staffed, is relying on a portable generator for power.

Cases No. 18-0745-WS-C, 18-0762-WS-C, 18-0781-WS-C,
18-0793-WS-C and,18-0811-WS-C (Complaints)

-and-

Case No. 18-0674-WS-P (Request for General Investigation)

June 18, 2018.

Page 2 of 3

- Difficulty in contacting the utility; phones not answered.
- Lack of proper maintenance including obvious and continuing leakage and a lack of staff and equipment.
- Alleged frequent interruption of utility service.
- Alleged violation of Health Department rules and regulations (Title 64 WV CSR).

Engineering Staff is reviewing these complaints and will conduct our investigations and provide substantive recommendations in accordance with customary processing deadlines. We note that Staff has previously filed a request for a General Investigation of this utility (Case No. 18-0674-WS-P) and further note that a host of complaint cases alleging similar issues and various other matters were previously litigated with TFSU in 2016. (See Cases No. 16-0623-W-C, 16-0631-S-C, 16-0691-WS-C, 16-0740-WS-C, 16-0871-WS-C and, 16-1228-WS-C)

Engineering Staff notes that TFSU is currently under an obligation to file periodic reports pursuant to a Recommended Decision which became a Final Order by action of law on April 2, 2017 in Case No. 16-0623-W-C, et.al. As of the date of this memorandum, TFSU appears to have ceased filing the required operational and engineering information with the last report having been filed on January 31, 2018. (See Commission Web Docket in Case No. 16-0623-W-C, et.al.).

Initial Recommendation

Ordinarily, Engineering Staff does not feel the need to make a recommendation at this stage of our work. However, based upon our discussions with utility staff and with engineering staff at the Bureau for Public Health, we are concerned that this small utility is operating at a bare minimum level and suffers from a lack of readily available O&M resources. Accordingly, we are concerned that any abnormal event (such as a line break or equipment failure – even though such are not uncommon) could result in a long term loss of service to many customers and could potentially precipitate a public health crisis due to lack of safe, potable water. Therefore, we are recommending that Timberline Four

Cases No. 18-0745-WS-C, 18-0762-WS-C, 18-0781-WS-C,
18-0793-WS-C and,18-0811-WS-C (Complaints)

-and-

Case No. 18-0674-WS-P (Request for General Investigation)

June 18, 2018.

Page 3 of 3

Seasons Utilities be required to immediately provide details regarding the current status of their utility operations including;

1. Current utility staffing. Listed by name and job title along with their status (i.e. contract, full time, part time, etc.)
2. List of utility owned equipment and vehicles.
3. List of maintenance tools and supplies maintained at or near the utility operations.
4. The names, WV Contractors License numbers, contact information and availability (i.e. annual contract, force account, on-call, hourly rate, etc.) of all outside maintenance contractors available to the utility. Include the estimated average response time of such contractors under emergency circumstances (major line break, pump failure, etc.).
5. Provide a list of key maintenance and operations suppliers including chemical suppliers, pump repair firms, general utility supplies, etc. and provide the current status (i.e. open account, COD, etc) and the maximum credit limit and available credit for each such vendor or supplier.