



STATE OF DELAWARE
THE PUBLIC SERVICE COMMISSION
861 SILVER LAKE BOULEVARD
CANNON BUILDING, SUITE 100
DOVER, DELAWARE 19904

TELEPHONE: (302) 736-7500
FAX: (302) 739-4849

April 29, 2015

MEMORANDUM

TO: The Chair and Members of the Commission

FROM: Kevin Neilson, Regulatory Policy Administrator *KSN*

SUBJECT: IN THE MATTER OF THE APPLICATION OF THE COMMISSION'S INVESTIGATION INTO WHETHER ERNEST P. TIMMONS MOBILE HOMES, INC. IS UNLAWFULLY OPERATING AS A PUBLIC UTILITY (OPENED MARCH 11, 2015) - PSC COMPLAINT DOCKET NO. 15-0859

On April 7, 2015, the Delaware Public Service Commission ("Commission") Staff ("Staff") asked the Commission to consider opening a docket to determine if Mr. Ernest P. Timmons ("Mr. Timmons") and E. A. Timmons Mobile Homes, Inc. ("E. A. Timmons") (collectively, "Timmons") was operating a water system that is subject to the Commission's jurisdiction. Staff's request was based on two separate complaints and communications with residents and landowners in the Holiday Pines development, discussions with other State agencies, an inspection of the water system operations, and its belief that the water operations were subject to Commission jurisdiction. The Commission considered Staff's request at its regularly scheduled meeting and signed PSC Order No. 8723.

The Order opened PSC Complaint Docket No. 15-0859 to investigate and determine answers to the following questions:

- a. Under 26 *Del. C.* §§ 102(2) and 201, is E. A. Timmons a public utility subject to the regulatory authority of this Commission?
- b. Has Mr. Timmons, E. A. Timmons, or both violated 26 *Del. C.* §203A(c) by having begun the business of a water utility (i.e., a public utility) without having first

obtained from the Commission a certificate that the present or future public convenience and necessity requires, or will be served by, the operation of such business?

- c. Has Mr. Timmons, E. A. Timmons, or both violated 26 *Del. C.* §218(a) by knowingly performing, committing, or doing, or participating in performing, committing, or doing, or knowingly causing, participating, or joining with others in causing any public utility to do, perform, or commit, or advise, solicit, persuades, or knowingly instruct, direct, or orders any officer, agent, or employee of any public utility to perform, commit, or do any act or thing forbidden or prohibited by Title 26, Subchapters I and II?

The Commission ordered Mr. Timmons and E. A. Timmons to file answers to the questions on or before April 27, 2015 with both the Commission and the Division of the Public Advocate ("DPA"). The Order stated that in its answers, Mr. Timmons and E. A. Timmons shall set forth all facts and arguments to support any contention that E. A. Timmons is not a "public utility," that Mr. Timmons and E. A. Timmons have not begun the business of a water utility, and that neither party has violated 26 *Del. C.* §218(a).

Upon conclusion of the April 7, 2015 Commission meeting, Secretary Donna Nickerson provided notice and copy of the Order to Mr. Timmons and E. A. Timmons as directed by the Commission's Order.

The Order directed Staff to report to the Commission, at its regularly-scheduled meeting on May 5, 2-015, on whether answers have been timely filed by Mr. Timmons and E. A. Timmons. This memo is Staff's report to the Commission as directed.

As of the date of this memo, the Commission has not received answers to the questions from either Mr. Timmons or E. A. Timmons.

On April 14, 2015, the Division of the Public Advocate exercised its statutory right to intervene in the Docket. In addition, on April 14, 2015, Tidewater Utilities, Inc. ("Tidewater") petitioned the Commission for leave to intervene as a party in this matter. In support of its petition, Tidewater pointed out that it holds the Certificate of Public Convenience and Necessity ("CPCN") 87-WR-04 for the development known as Holiday Pines in which Timmons may be unlawfully operating as a public utility. Tidewater further states that its interests are not adequately represented by any of the other parties to this proceeding and that it seeks to protect its interest as the lawful holder of the CPCN and seeks to ensure its current customers are not affected by this proceeding. However, Staff understands that the attorney who filed Tidewater's petition for leave to intervene on behalf of Tidewater (Mr. Kooper) is not a licensed Delaware attorney and the petition cannot be considered until Mr. Kooper has requested and been granted a *pro hac vice*.

In an effort to move this docket along in a cooperative manner, Tidewater has agreed to attempt to contact Timmons to initiate discussions about how this docket might be resolved amicably. Therefore, I recommend that the Commission appoint a hearing examiner for this

docket to rule on intervention petitions, conduct hearings and public comment sessions and to conduct other proceedings as needed in order to develop a record in this Docket, but direct that the hearing examiner take no action on this docket until after June 5, 2015. This will allow Tidewater time to contact the owners of E. A. Timmons Mobile Homes, Inc. so that an agreeable solution might be reached in this docket. In addition, I recommend that if no solution can be reached by June 5, 2015, then the hearing examiner should move forward with noticing and scheduling a formal evidentiary hearing in this matter.