

**BEFORE THE PUBLIC SERVICE COMMISSION**  
**OF THE STATE OF DELAWARE**

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

**ORDER NO. 8723**

This 7<sup>th</sup> day of April, 2015, the Delaware Public Service Commission ("Commission") determines and orders the following:

**WHEREAS**, on February 17, 2014, Mr. Kevin S. Neilson ("Neilson"), Regulatory Policy Administrator and member of the Commission's staff ("Staff"), sent a letter to Mr. Ernest P. Timmons ("Mr. Timmons") and E. A. Timmons Mobile Homes, Inc. ("E. A. Timmons") (collectively, "Timmons") via regular U.S. Postal Service mail and also via United Parcel Service.<sup>1</sup> In this letter, Staff stated that the Commission had become aware Timmons was operating a water system in Sussex County, Delaware, for public use and also charging customers for water services. The letter further stated it appeared as though E. A. Timmons was engaged in the sale of a regulated commodity (water) to third parties and therefore the company could be subject to the Commission's jurisdiction; and

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<sup>1</sup> Staff's letter was addressed to both Mr. Ernest P. Timmons and E. A. Timmons Mobile Homes, Inc. The Delaware registered agent for E. A. Timmons Mobile Homes, Inc. is listed on the website of the Department of State, Division of Corporations, as Mr. Ernest P. Timmons, 33188 Woodland Court South, Lewes, Delaware 19958, which is the same person and address to whom Staff sent its correspondence in 2014.

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**WHEREAS**, Staff further stated in the letter that if E. A. Timmons were subject to the Commission's jurisdiction, the company would need to comply with Delaware law and the Commission's regulations. Staff then requested that Timmons contact it so that a meeting could be scheduled to discuss the water plant operations and also notified Timmons that it would move forward with any appropriate legal action to resolve any outstanding issues if Staff did not hear from Timmons by February 21, 2014; and

**WHEREAS**, after Timmons failed to respond, Staff contacted Mr. Frank Timmons via telephone and also conducted an on-site inspection on May 1, 2014 of Holiday Pines where the E. A. Timmons water business operations are located; and

**WHEREAS**, based on Staff's inspection of the water business operations of E. A. Timmons, Staff believes that E. A. Timmons is engaged in the business of a water utility (i.e., a public utility) without a legally-required CPCN and therefore in violation of Delaware law and the Commission's regulations; and

**WHEREAS**, on December 30, 2014, Staff again sent Timmons a letter via regular U.S. Postal Service mail and U.S. Postal Service certified mail, return receipt requested. In the letter, Staff advised E. A. Timmons to apply for water CPCN and to request Commission approval for the rates E. A. Timmons is charging its water customers. Timmons failed to respond to this second letter; and

**WHEREAS**, Staff reports that it believes E. A. Timmons is a public utility that has failed to obtain a CPCN before operating as a water company and is therefore in violation of Delaware laws and regulations; and

**WHEREAS**, pursuant to the provisions of Title 26, Subchapters I and II, including §§ 201, 203A, 206, 207, 209, 212, 217, and 218, the Commission has the authority to institute an investigation into this matter; and

**WHEREAS**, pursuant to 26 Del. C. §§217 and 218, the Commission may impose penalties, *inter alia*, for failure to comply with any of its orders and against anyone who knowingly performs, commits, or does, or participates in performing, and against anyone who knowingly performs, commits, or does, or participates in performing, committing or doing, or knowingly causes, participates or joins with others in causing any public utility to do, perform or commit, or advises, solicits, persuades, or knowingly instructs, directs or orders any public utility officer, agent or employee to perform, commit or do any act or thing forbidden or prohibited by Chapter 2 of Title 26;

**NOW, THEREFORE, IT IS ORDERED BY THE AFFIRMATIVE VOTE OF  
NOT FEWER THAN THREE COMMISSIONERS:**

1. For the reasons set forth in this Order, the Commission opens this proceeding 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?

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- 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?

2. The Commission begins this investigation by directing both Mr. Timmons and E. A. Timmons to file **on or before April 27, 2015**, answers to the questions set forth above. Mr. Timmons and E. A. Timmons shall also serve a copy of such answers on the Division of the Public Advocate by that same date, at the following address:

David Bonar, Public Advocate  
Division of the Public Advocate  
29 South State Street  
Dover, Delaware 19901

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).

3. The Commission Secretary shall serve a copy of this Order on Mr. Timmons and E. A. Timmons by regular and certified U.S. Postal Service mail return receipt requested. The

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Commission Secretary shall also serve a copy of this Order on the Public Advocate.

4. Staff shall report to the Commission, at its regularly-scheduled meeting on May 5, 2015, on whether answers have been timely filed by Mr. Timmons and E. A. Timmons.

5. After receipt of the answers from Mr. Timmons and E. A. Timmons, the Commission will determine the course of any further proceedings.

6. Mr. Timmons and E. A. Timmons have the right to be represented by counsel or to appear by other representative permitted under the Commission's Rules of Practice and Procedure. If the Commission later directs further fact-finding or a hearing, Mr. Timmons and E. A. Timmons shall be entitled to notice of such hearing and the right to present evidence. The Commission's final decision will be based upon the record evidence in this proceeding.

7. E. A. Timmons is hereby notified that it may be subject to fines and penalties under 26 *Del. C.* §§ 217 and 218.

8. E. A. Timmons is hereby notified that it will be assessed the costs of this proceeding under 26 *Del. C.* §114.

9. The Commission reserves the jurisdiction and authority to enter such further Orders in this matter as may be deemed necessary or proper.

**BY ORDER OF THE COMMISSION:**

/s/ Dallas Winslow  
Chair

/s/ Joann T. Conaway  
Commissioner

/s/ Harold B. Gray  
Commissioner

/s/ Jaymes B. Lester  
Commissioner

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Commissioner

ATTEST:

/s/ Donna Nickerson  
Secretary