

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 MOBILE HOMES, INC.) PSC DOCKET NO. 15-0859
IS UNLAWFULLY OPERATING AS A PUBLIC)
UTILITY)
(OPENED MARCH 11, 2015))

ORDER NO. 9133

AND NOW, this 17th day of October, 2017, the Delaware Public Service Commission ("Commission") determines and orders the following:

WHEREAS, in 2014, the Staff of the Delaware Public Service Commission ("Staff") was contacted by a property owner in the Holiday Pines development in Sussex County, questioning the validity of the company serving water in the community and the charges being assessed by that company; and

WHEREAS, Staff determined that the owner and operator of the water system within the development was E.A. Timmons Mobile Homes, Inc. ("Timmons" or the "Company"), which did not and does not have a Certificate of Public Convenience and Necessity ("CPCN") to operate a water utility; and

WHEREAS, Staff has determined that Timmons operated and continues to operate a water system meeting the definition of a public utility as defined in 26 Del. C. § 102, without a CPCN, in violation of Delaware law; and

WHEREAS, the State of Delaware granted Tidewater Utilities, Inc. ("Tidewater") a CPCN to serve the area that includes the Holiday Pines development; and

WHEREAS, the Delaware Public Service Commission ("Commission") issued Order No. 8723 on April 7, 2015 opening this docket, directing Staff to investigate the matter, and requesting Timmons to respond to certain questions; and

WHEREAS, Timmons did not respond to the Commission's questions; and

WHEREAS, on November 3, 2015, the Commission issued Order No. 8812, directing Staff to propose solutions, as well as any proposed penalties against Timmons for its violation of Delaware law; and

WHEREAS, proposed solutions were evaluated, including the feasibility of installing individual wells for each of the development's homes, which, due to the size of the lots and the proximity of septic systems, proved not to be a viable solution; and

WHEREAS, the only viable solution is for Tidewater, the holder of the CPCN for the area, to install a new water system in the Holiday Pines development; and

WHEREAS, under current Commission regulations, this solution will require the Holiday Pines landowners to make a significant Contribution In Aid of Construction ("CIAC"); and

WHEREAS, many of the homeowners in the Holiday Pines development cannot afford to make such a CIAC; and

WHEREAS, Staff concluded that for the proposed solution to be viable, the Commission's CIAC regulations should be waived; and

WHEREAS, Staff, Timmons, and Tidewater have entered into a proposed settlement and agree that waiving the Commission rules in this specific case is in the public interest and will result in the best outcome; and

WHEREAS, Staff recommends that the Commission grant such waiver, but that such waiver should be viewed as an exception based on the unique circumstances of this case, and should not be considered precedent for future waiver requests; and

WHEREAS, Staff recommends that Tidewater, the holder of the CPCN for the area, install the infrastructure necessary to serve the community and be allowed to include the necessary and reasonably incurred construction costs and carrying costs in rate base in its next base rate proceeding; and

WHEREAS, because Timmons has cooperated in this proceeding, Staff recommends that the Commission impose no fine or penalty on Timmons; and

WHEREAS, Staff, Timmons and Tidewater have reached the Proposed Settlement attached as **Exhibit 1**, which provides that:

1. Tidewater, subject to Commission approval, will install a complete water system (including fire protection), with all costs, including construction and carrying costs, recoverable in future rate proceedings whereby Holiday Pines shall pay rates in accordance with Tidewater's published tariff;
2. Timmons will release any rights it may have to provide water to the Holiday Pines development;

3. Timmons agrees to execute and file with the Sussex County Recorder of Deeds any required easements that Tidewater may need;
4. Timmons will continue to operate and maintain the existing water system until Tidewater has installed its new water system in the development;
5. Timmons will legally abandon its wells and water system in accordance with State and federal laws and regulations once Tidewater is providing water service to the Holiday Pines development; and
6. Staff will not request the Commission to impose penalties against Timmons for operating a water system without Commission approval.

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

1. The Commission hereby waives the requirements of its CIAC regulations in this particular case based on the unique circumstances of the case as set forth above. This waiver applies only to this specific case and shall not be precedent in any future case. The Commission agrees that Tidewater's necessary and reasonable construction costs and carrying costs related to supplying water, including fire protection, to Holiday Pines shall be recoverable in future rate proceedings.

2. The Commission hereby accepts and approves the Proposed Settlement attached as **Exhibit 1**.

3. 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:

Chair

Commissioner

Commissioner

Commissioner

Commissioner

ATTEST:

Secretary

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 MOBILE HOMES, INC.
IS UNLAWFULLY OPERATING AS A
PUBLIC UTILITY

PSC DOCKET NO. 15-0859

AGREEMENT

WHEREAS, in 2014, the Staff of the Delaware Public Service Commission ("Staff") was contacted by a property owner in the Holiday Pines development in Sussex County, questioning the validity of the company serving water in the community and the charges being assessed by that company; and

WHEREAS, Staff conducted a limited investigation and determined that the owner and operator of the water system within Holiday Pines was E.A. Timmons Mobile Homes, Inc. ("Timmons" or the "Company"); and

WHEREAS, Timmons did not and does not have a water operator's license, nor did it apply for or receive a Certificate of Public Convenience and Necessity ("CPCN") to serve the Holiday Pines development; and

WHEREAS, the State of Delaware granted Tidewater Utilities, Inc. ("Tidewater") a CPCN to provide water service to an area that includes the Holiday Pines development; and

WHEREAS, Staff determined that Timmons operated and continues to operate a water system meeting the definition of a public utility as defined in 26 *Del. C.* § 102, without a CPCN from the Commission authorizing it to do so, in violation of Delaware law; and

WHEREAS, there are approximately 70 residents in the Holiday Pines development; and

WHEREAS, pursuant to Commission regulations, construction of a water system meeting state requirements will require those customers to provide significant Contributions in Aid of Construction ("CIAC"), which many of those customers are not able to afford; and

WHEREAS, the Commission issued Order No. 8723 on April 7, 2015, opening this docket and directing Staff to investigate the matter; and

WHEREAS, on November 3, 2015, the Commission issued Order No. 8812, in which it further directed Staff to propose solutions for the Holiday Pines customers, as well as any proposed penalties against Timmons for its violation of Delaware law;

NOW, THEREFORE, the signatories below agree as follows:

1. Tidewater, which holds the CPCN to serve the Holiday Pines development, will install the infrastructure necessary to serve the development (including fire protection), and shall be permitted to recover such costs, including construction and carrying costs, in its future rates. Until such time as Tidewater is able to install the new water system, Timmons shall maintain the water system and continue to provide water service to the Holiday Pines customers.
2. Timmons shall release any and all rights it may have to provide water service to the Holiday Pines development and shall execute and file with the Sussex County Register of Deeds all easements that Tidewater, in its sole judgment, indicates it will need to install and maintain the new water system.
3. Timmons shall legally abandon its wells and water system in accordance with State and federal laws and regulations and shall convey clear title to Tidewater of any and all

assets owned by Timmons that will be used by Tidewater in the provision of water service to Holiday Pines once Tidewater is providing water service to the Holiday Pines development. Tidewater assumes no ownership, obligation or other liability of any kind associated with any assets abandoned by Timmons that are not used in Tidewater's provision of water service to Holiday Pines.

4. The signatories will recommend and support the Commission's waiver of its regulations governing Contributions in Aid of Construction ("CIAC") to ensure that Holiday Pines residents will not be required to provide a CIAC. This waiver is an exception to the Commission's regulations based on the unique public interest circumstances of this case, and shall not be considered as precedent for future waiver requests by any regulated public utility.

5. Because of Timmons' cooperation in resolving this matter, Staff will recommend that penalties not be imposed against Timmons for operating a water system without Commission approval.

Connie S. McJouree
For the Staff of the Commission
Senior Regulatory Policy
Administrator

Carla E. Richards
E.A. Timmons Mobile Homes,
Inc.

Edward J. Cozart
Tidewater Utilities, Inc.

August 3, 2017
Notary for Carla E. Richards
Brenda L. Richards

BRENDA L. RICHARDS
NOTARY PUBLIC
STATE OF DELAWARE
My Commission Expires on June 15, 2019

September 6, 2017
Notary for Ernest Timmons
Karrie Nicole Herrman

Karrie Nicole Herrman
Notary Public-State of Delaware
My Commission Expires 03-23-2018