

COMMONWEALTH OF VIRGINIA
STATE CORPORATION COMMISSION

AT RICHMOND, JUNE 17, 2010

CLERK'S OFFICE

2010 JUN 17 P 2:54

COMMONWEALTH OF VIRGINIA, *ex rel.*

STATE CORPORATION COMMISSION

PROBATION CONTROL

v.

CASE NO. PUE-2010-00062

CAPTAIN'S COVE UTILITY COMPANY, INC.

ORDER AND RULE TO SHOW CAUSE

Captain's Cove Utility Company, Inc. ("CCUC" or the "Company") currently provides water service to approximately 820 customers and wastewater service to approximately 280 customers in the Captain's Cove development in Accomack County. The Company's rates, terms and conditions of service are regulated by the State Corporation Commission ("Commission") pursuant to Title 56 of the Code of Virginia ("Code").¹ Rates for the Company were established by the Commission in 1994 in Case No. PUE-1992-00080, and the Company has not requested a modification of its rates since that time. According to correspondence from the Company's counsel to Commission Staff, dated June 15, 2010, the Company has been experiencing significant financial difficulty for some time.²

Specifically, the Company reports that:

[t]he strained finances of the Utility Company are seriously hampering the Utility Company's ability to provide water and sewer services to the residents. To date, the Utility Company has fully complied with all aspects of Virginia Law and the requirements of its respective permits for the provision of water and sewer services. However, the Virginia Department of Health ("VDH") and Department of Environmental Quality ("DEQ") have

¹ CCUC is regulated by the Commission under the authority of the Small Water or Sewer Public Utility Act, Chapter 10.2:1 (§ 56-265.13:1 *et seq.*) of Title 56 of the Code.

² See attached Affidavit of Marc Tufaro, Senior Utilities Analyst, State Corporation Commission.

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communicated concerns to the Utility Company regarding the services being provided. . . .

Accordingly, Management has come to the conclusion that it must, in the exercise of appropriate caution, cease operation of the water and sewer service. It is Management's goal to accomplish the cessation of services in an orderly manner so as to avoid the additional inconvenience and risk of a sudden expected stoppage.

In its letter to Staff, VDH and DEQ, the Company expressed an intention to cease water service at noon on June 18, 2010, with collection of sewage to cease on or about June 21, 2010.

Section 56-265.13:4 of the Code provides that all small water or sewer utilities are "required to furnish reasonably adequate service and facilities, subject to regulation by the Commission." Thus, this statute effectively prohibits small water or sewer utilities from unilaterally abandoning service.

This is not to say that a utility must operate at a financial loss. For example, under Va. Code § 56-245, in an emergency, the Commission is empowered to enter a temporary order fixing a temporary schedule of rates, to remain in effect for a period not to exceed nine months.

NOW THE COMMISSION, upon consideration hereof, finds that (i) the Company should be enjoined from ceasing service, and (ii) this Rule to Show Cause should be issued pursuant to 5 VAC 5-20-90 of the Commission's Rules of Practice and Procedure. The Company shall appear and show cause why the Company has failed to secure adequate financial resources to operate and maintain its facilities.

(1) This matter is hereby docketed and assigned Case No. PUE-2010-00062.

(2) A public hearing shall be convened on June 18, 2010, at 11:00 a.m., in the Commission's Courtroom, Second Floor, Tyler Building, 1300 East Main Street, Richmond, Virginia, to receive evidence in this matter.

(3) The Company is directed to continue providing adequate service to its customers, and shall not cease or reduce water or wastewater service pending further orders of the Commission.

(4) This case is continued.

AN ATTESTED COPY hereof shall be sent by the Clerk of the Commission to the registered agent for the Company, Douglas E. Kahle, Esquire, Pender & Coward, 222 Central Park Avenue, Suite 400, Virginia Beach, Virginia 23462; and copies shall also be sent via electronic mail to: Douglas E. Kahle, Esquire, and Mark R. Baumgartner, Esquire, Pender & Coward, 222 Central Park Avenue, Suite 400, Virginia Beach, Virginia 23462; Dr. Karen Remley, Commissioner of Health, Virginia Department of Health, P.O. Box 2448, Richmond, Virginia 23218-2448; David K. Paylor, Director, Virginia Department of Environmental Quality, 629 East Main Street, P.O. Box 1105, Richmond, Virginia 23218; Wilbur Bowden, President, Captain's Cove Golf and Yacht Club, 3370 Captains Corridor, Greenbackville, Virginia 23356; Michael Inman, Esquire, and Elizabeth M. Dietzmann, Esquire, Inman & Strickler, P.L.C., 575 Lynnhaven Parkway, Suite 200, Virginia Beach, Virginia 23452-7350; C. Meade Browder, Jr., Senior Assistant Attorney General, Division of Consumer Counsel, Office of Attorney General, 900 East Main Street, 2nd Floor, Richmond, Virginia 23219; and a copy shall be delivered to the Commission's Office of General Counsel.

A True Copy
Teste:


Clerk of the
State Corporation Commission

COMMONWEALTH OF VIRGINIA
STATE CORPORATION COMMISSION

CAPTAIN'S COVE UTILITY
COMPANY, INC.

CASE NO. PUE-2010-00062

AFFIDAVIT

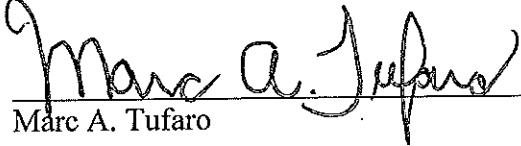
Commonwealth of Virginia
City of Richmond

I, Marc A. Tufaro, Senior Utilities Analyst in the Division of Energy Regulation ("Division"), State Corporation Commission ("SCC"), being first duly sworn, affirms:

1. This affidavit has been prepared to summarize recent communications concerning Captain's Cove Utility Company, Inc. ("CCUC"), including a letter dated June 15, 2010, from CCUC's counsel, Mark Baumgartner, Esq., to J. Wesley Kleen, Ph.D, PE (Virginia Department of Health); Maria Nold (Virginia Department of Environmental Quality), and me in regards to CCUC. A copy of the letter is attached hereto as Exhibit 1.
2. Mr. Baumgartner states in his June 15, 2010, letter that CCUC intends to cease water service at noon on June 18, 2010. He goes on to state that it is anticipated that CCUC would cease collection of sewage on or about June 21, 2010.
3. Additionally, on June 17, 2010, I received a copy of an e-mail from Wilbur Bowden, President of CCGYC, Inc. addressed to "Cove Members" and advising residents of Captain's Cove that "the Captain's Cove Utility

Company has officially informed the State of Virginia, the County of Accomack and the Cove Board of Directors of their intention to begin shutting down water and sewer utility services at noon on Friday, June 18." Upon information and belief, CCGYC is the acronym for "Captain's Cove Golf and Yacht Club," a homeowners association comprised of and representing the residents of the Captain's Cove residential community. A copy of this e-mail is attached hereto as Exhibit 2.

I affirm under the penalties of perjury that the foregoing statements are true and correct to the best of my knowledge.



Marc A. Tufaro

Commonwealth of Virginia
City of Richmond

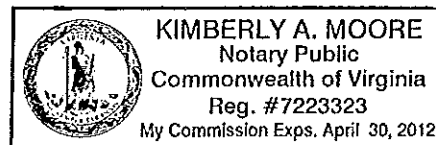
Given under my hand this 17th day of June, 2010.



Notary Public

My Commission Expires:

April 30, 2012



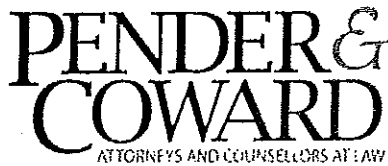


Exhibit 1

222 Central Park Avenue, Suite 400
Virginia Beach, VA 23462-3026
757-490-3000
Fax: 757-497-1914
www.pendercoward.com

June 15, 2010

MARK R. BAUMGARTNER
(757) 490-6276
mbaumgar@pendercoward.com

Via regular mail and email: marc.tufaro@scc.virginia.gov
Marc Tufaro
Senior Utilities Analyst
Virginia State Corporation Commission
P.O. Box 1197
Richmond, Virginia 23218

Via regular mail and email: wes.kleene@vdh.state.va.us
J. Wesley Kleene, Ph.D., PE, Director
109 Governor Street, 6th Floor
Richmond, VA 23219

Via regular mail and email: Maria.Nold@deq.virginia.gov
Maria Nold
Regional Deputy Director
Tidewater Regional Office
Virginia Department of Environmental Quality
5636 Southern Blvd.
Virginia Beach, VA 23462

RE: Captain's Cove Utility Company, Inc.

Dear Lady and Gentlemen:

As you are aware, and as we have discussed numerous times over the past several months, Captain's Cove Utility Company, Inc. ("Utility Company") has been experiencing significant financial difficulty for some time.

The strained finances of the Utility Company are seriously hampering the Utility Company's ability to provide water and sewer services to the residents. To date, the Utility Company has fully complied with all aspects of Virginia Law and the requirements of its respective permits for the provision of water and sewer services. However, the Virginia Department of Health ("VDH") and Department of Environmental Quality ("DEQ") have communicated concerns to the Utility Company regarding the services being provided.

One concern expressed by the regulators arose out of a very small leakage of sewage (a few gallons) precipitated by an abnormally high utilization of the utilities over the Memorial Day weekend. Although the efforts of the staff of the Utility Company were

successful in containing the leak to an amount far below the reporting threshold of the Utility Company's DEQ permit; these events have, nonetheless, caused the Utility Company to re-examine its ability to continue providing services. Management of the Utility Company is concerned that the lack of funds will prevent it from properly dealing with peak flows during upcoming summer holidays such as the July 4th weekend. The Captain's Cove community tends to experience generally higher occupancy during summer months, which is particularly evident during holiday periods. Management has determined that it has insufficient funds to continue normal operations, and in addition, is not willing to risk being unable to control incidents caused by over-utilization in the upcoming months. The Utility Company has received notices from vendors of various products and services threatening to cease providing necessary products and services to the Utility Company. If one or more of these vendors unexpectedly cutoff services, the results could impede the Utility Companies ability to provide safe and effective services to the community. This concern was punctuated by A&N's recent threat to cease electric service to the Utility Company. Although, A&N is precluded by statute from stopping service, other vendors may not have the same restrictions.

Accordingly, Management has come to the conclusion that it must, in the exercise of appropriate caution, cease operation of the water and sewer service. It is Management's goal to accomplish the cessation of services in an orderly manner so as to avoid the additional inconvenience and risk of a sudden unexpected stoppage.

I have spoken to Mr. Tufaro about the procedures involved in stopping service. He indicated to me that it was the State Corporation Commission's position that approval was required in order for the Utility Company to cease services. The statutory support for that position is not clear to me. In any case, to the extent that the Captain's Cove Utility Company is required to seek approval from the Commission for the cessation of services, this letter serves as Captain's Cove Utility Company's request for such approval. If this request must be made in any other particular form or fashion, please let me know immediately and I will endeavor to provide the requisite request ASAP.

I want to reiterate that the Utility Company views this as its last and only resort in order to safeguard the community and the environment from sudden and unexpected shutdowns. If the State Corporation Commission, or any other regulatory agency, has any other solutions to this situation, the Utility Company remains ready and willing to discuss them.

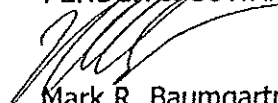
In the absence of any alternative, and barring any new developments, **the Utility Company intends to cease water service at noon on June 18, 2010.** Once the water service has been turned off, the Utility Company will take steps to evacuate and collect all sewage in the collection system and place it in the appropriate treatment lagoons, and thereafter, shut down the transfer stations. It is anticipated that this may take several days but that the **collection of sewage would cease on or about June 21, 2010.** Captain's Cove Utility Company will take all reasonable steps within its power to ensure that all sewage in the system as of June 21 be processed in accordance with State Law.

June 15, 2010
Page 3

If you would like to discuss this matter, please give me a call.

Sincerely,

PENDER & COWARD, P.C.



Mark R. Baumgartner

MRB/alb

Exhibit 2

From: Captain's Cove [mailto:captscove@gmail.com]
Sent: Thursday, June 17, 2010 9:19 AM
To: Captain's Cove
Subject: Important Water & Sewer Update

Dear Cove Members,

Despite the diligent efforts of the Board of Directors, the Captain's Cove Utility Company has officially informed the State of Virginia, the County of Accomack and the Cove Board of Directors of their intention to begin shutting down water and sewer utility services at noon on Friday, June 18. We will place the full text on the Cove website as soon as possible.

An excerpt from that notification:

In the absence of any alternative, and barring any new developments, the Utility Company intends to cease water service at noon on June 18, 2010.... Collection of sewage would cease on or about June 21, 2010.

The CCGYC was notified of the Utility's plans yesterday and immediately began engaging all appropriate authorities at all levels working to avert this shutdown. We will continue today all efforts in this regard. We will also be engaged in contingency planning for our community should this stoppage occur as planned. As events transpire, we will make additional information available to you. The Cove CERT Teams will also be activated to assist in disseminating information, and other tasks.

The CCGYC requests that you evaluate this information with respect to your personal situation and take whatever precautionary preparations you deem are appropriate. Should a shutdown occur, the CCGYC will be actively involved in providing assistance to our residents.

The CCGYC Board of Directors has been working with the Virginia State Corporation Commission, the Department of Health, and the Department of Environmental Quality, as well as our Legislative Representatives on the Cove Utility Issue for over a year. All parties are diligently working to prevent any interruption in service.

Sincerely,

Wilbur Bowden, President
CCGYC, Inc.