



INDIAN ACRES CLUB OF THORNBURG, INC.

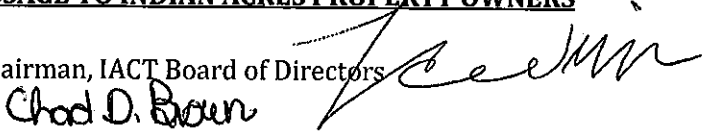
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April 11, 2011

IMPORTANT MESSAGE TO INDIAN ACRES PROPERTY OWNERS

FROM: Lillian Cooper-Wiggins, Chairman, IACT Board of Directors
Chad D. Brown, President 

SUBJ: FINAL ORDER-Virginia State Corporation Commission

REF: PO River Water & Sewer Company's Proposed Revised Rates, Rules & Regulations
Case No. PUE 2009-00136

This past Saturday, April 8, 2011, we received from our lawyer, Kenneth Lion, by fax, a copy of the Final Order concerning Case No. PUE 2009-00136 RE: PO River Water & Sewer Company's proposed revised rates, rules and regulations.

Many of you have been inquiring about this case, but the only thing we could tell you was that we were awaiting the decision of the Virginia State Corporation Commission. In our recent letter to all IACT Property Owners, we brought you up-to-date as to where we were at that time.

On April 4th, the Virginia State Corporation Commission issued a Final Order in the rate case filed by PO River Water & Sewer Company, Case No. PUE 2009-00136. PO River's application asked the Commission to approve water and sewer rates designed to increase its annual revenues by \$426,025. The Commission approved an increase in rates amounting to an increase in annual revenues of \$336,001. IACT's witnesses provided testimony advocating an additional reduction in the annual revenues of \$110,538.

Among other things, the Commission directed PO River to file an application for approval of the charges imposed upon PO River for management, accounting services and other services provided to PO River by its owner (The Carlyle Group, Inc.) and other affiliated entities. The Commission further directed PO River to track the actual time spent by Carlyle off-site personnel in performing services on behalf of PO River. These issues were addressed by IACT in the proceeding. The examination and resolution of these issues could impact PO River's revenue requirement.

IACT's attorney is examining the evidentiary record in the proceeding and will petition the Commission for reconsideration of a number of its findings in the Final Order including the amount of PO River's revenue requirement if approved by the IACT Board of Directors.

Enclosed is a copy of the Final Order and we call to your attention pages 6 & 7 number 1 - 17 (especially items 8, 9 & 10) which indicates the following: New rates for individual water service per lot, per quarter is \$32.15 from the proposed rate of \$37.98. The owners of lots with water & sewer will now pay \$61.42, per quarter from the proposed rate of \$70.96. The Association under the approved rate will now pay \$101,286, per quarter. The rate we are now paying is \$117,003, which is a difference of \$15,717.

Should the Board decide to take the recommendation of its attorney to go for reconsideration of a number of the Commission's findings in the Final Order including the amount of PO River's revenue requirement, you will be advised.

LCW-CDB/tfg

COMMONWEALTH OF VIRGINIA
STATE CORPORATION COMMISSION

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AT RICHMOND, APRIL 4, 2011

CLERK'S OFFICE

2011 APR -4 AM 11:22

COMMONWEALTH OF VIRGINIA, *ex rel.*

DOCUMENT CONTROL

STATE CORPORATION COMMISSION

CASE NO. PUE-2009-00136

In re: Po River Water and Sewer Company's
proposed revised rates, rules, and regulations

FINAL ORDER

On March 25, 2010, the State Corporation Commission ("Commission"), pursuant to the Small Water or Sewer Public Utility Act, § 56-265.13:1 *et seq.* of the Code of Virginia ("Code"), entered an Order for Notice and Hearing which, among other things, found that a hearing should be scheduled on the revisions to rates, rules, and regulations that Po River Water and Sewer Company ("Po River" or "Company") proposed to implement for water and sewer service customers effective May 1, 2010.¹ The Order for Notice and Hearing also set forth a procedural schedule providing opportunities for interested persons to participate in the proceeding; allowed the Company to implement its proposed rates, fees, charges, and revisions to its rules and regulations for services rendered on and after May 1, 2010; and directed Po River to hold in escrow the funds resulting from the increase in rates, fees, and charges until the Commission has rendered its decision in this proceeding.²

¹ On December 15, 2009, Po River notified its customers and the Commission of its intent to increase rates and revise portions of the Company's rules and regulations on file with the Commission, effective for services rendered on or after February 1, 2010. On January 29, 2010, Po River sent a second notice to customers advising of its intent to implement the rate increase, effective for services rendered on and after May 1, 2010.

² The Commission's Division of Energy Regulation received over 250 comments and requests for hearing on the Company's proposed rate increase and revised rules and regulations. Pursuant to § 56-265.13:6 of the Code, the Commission is to hold a hearing if requested "by at least 25 percent of all customers affected by a rate change or by 250 affected customers, whichever number is lesser"

Po River is certificated by the Commission to provide water and sewer services to the Indian Acres campground ("Indian Acres") in Spotsylvania, Virginia. Po River's customers are the owners of individual lots at the campground who elect to take water and/or sewer service and the campground's property owners' association, Indian Acres Club of Thornburg, Inc. ("IACT"). Po River is owned by The Carlyle Group, Inc. ("Carlyle"), a California corporation.

In accordance with the Order for Notice and Hearing, Po River filed on April 9, 2010, its direct testimony and exhibits in support of its proposed increase in water and sewer rates. In its prefiled testimony, Po River stated that it has been fifteen (15) years since the Company's last rate increase, and its present revenues are insufficient to cover the costs of providing water and sewer service, resulting in a net loss of \$282,597 in the 2008 test year.³ The Company asserted that the proposed increase in rates is needed because of increasing costs, including rising electricity costs; the cost of complying with state and federal requirements for drinking water and treatment of wastewater; and the cost of maintaining and upgrading the aging facilities.⁴

According to Po River, Indian Acres is a recreational vehicle campground located on approximately 800 acres, consisting of over 6,000 individually owned lots.⁵ Po River stated that most of the active use of Indian Acres occurs in the spring through fall because the covenants associated with the lots restrict their use to camping and prohibit the lots being used as permanent residences.⁶ Po River also stated that IACT owns the common area facilities and amenities of the campground, which include three swimming pools, a clubhouse and restaurant, recreation and administrative center, a laundry facility, carwash, golf course, thirty-nine (39)

³ Ex. 8 (Vogel direct) at 4, 6-10.

⁴ *Id.* at 6-10.

⁵ Ex. 7 (Raynor direct) at 2.

⁶ *Id.*

comfort stations and sewer "dump stations" at each comfort station.⁷ Po River asserted that not every lot owner is required to purchase water or sewer service from Po River. Instead, Po River's individual customers are only those lot owners that choose to have water service (or, in the case of 89 customers, water and sewer services), which was approximately 2,100 of the more than 6,000 lots as of June 2009.⁸

Po River asked the Commission to approve a total increase in rates of \$426,025, consisting of an increase in sewer rates of \$144,865 and an increase in water rates of \$281,160, to produce a total annual revenue requirement of \$799,634.⁹ The proposed increase in revenue would be produced by increasing the quarterly rate for water service for individual lot owners from \$22.69 to \$37.98. The Company also established a new quarterly rate of \$70.96 for those individual lot owners taking both water and sewer services. Previously, these customers had paid the same quarterly rate of \$22.69 paid by all other lot owners. Finally, the Company proposed to increase the quarterly rate for water and sewer services to IACT from \$45,345 to \$117,003.¹⁰

On June 3, 2010, IACT, the only respondent in this proceeding, filed the testimony of Wanda Cushman and Elaine Farmer ("Farmer"). IACT's witnesses focused on concerns about Company documents Po River presented in support of its proposed increases; such concerns included questions regarding certain general ledger entries and expense allocations to Po River from its parent company, Carlyle.¹¹

⁷ *Id.* at 3.

⁸ *Id.* at 2-4.

⁹ Ex. 5 (Dooley direct) at 2-3.

¹⁰ *Id.* at 8.

¹¹ Ex. 9 (Cushman direct) and Ex. 13 (Farmer direct)

On June 25, 2010, the Staff of the Commission ("Staff") filed its testimony and exhibits in which it made several adjustments resulting in a lower revenue requirement than that proposed by Po River.¹² The Staff recommended that the Commission allow Po River to increase rates by \$332,171, to produce a total revenue requirement of \$705,781.¹³ The Staff did not recommend a specific rate for individual lot owners but rather provided a range of calculations using different billing determinants to reflect the falling number of customers that the Company has experienced over approximately the past fifteen (15) years.¹⁴ The Staff recommended that the quarterly rate for IACT for combined water and sewer services be set at \$103,270 since this rate is not dependent on the customer count.¹⁵

On September 3, 2010, the Company and Staff filed a Joint Motion to Accept Stipulation in which they represented that an agreement had been reached between them on all of the issues arising in this case with the exception of the number of billing determinants to be used to establish the water rates for individual lot owners.¹⁶ Among other things, the Stipulation sets forth the Staff adjustments to which Po River and Staff agree; a revised revenue requirement; the agreement of Po River to file for approval of any affiliate arrangements under § 56-76 *et seq.* of the Code within thirty (30) days of a final order in this proceeding; and a range for use in determining the billing determinants to be used to establish water service rates.¹⁷ Specifically, the Stipulation provided that the Staff and Company would recommend that Po River's annual

¹² Ex. 22 (Handley direct).

¹³ *Id.* at 32.

¹⁴ *Id.* at 11-13; Ex. 23 (Tufaro direct) at 8 and Statement MAT-1.

¹⁵ Ex. 23 (Tufaro direct) at 8.

¹⁶ IACT did not join in the Stipulation.

¹⁷ Ex. 3, Stipulation.

revenue requirement be set at \$711,293. This would result in a quarterly rate for IACT for water and sewer services of \$101,527 based on an annual revenue requirement of \$406,106, a quarterly rate for sewer service of \$29.34 for individual lot owners based on an annual revenue requirement of \$8,802, and a quarterly water service rate for individual lot owners based on an annual revenue requirement of \$296,385 and based on a number of lots between 2,049 and 2,550, to be determined by the Commission.¹⁸

The hearing on Po River's proposed rate increase was reconvened on September 16, 2010.¹⁹ Hearing Examiner A. Ann Berkebile presided over the two-day hearing and, on November 3, 2010, she issued her Hearing Examiner's Report ("Hearing Examiner's Report" or "Report") summarizing the testimony and exhibits of the Company, IACT, the Staff, and the public witnesses.²⁰

The Hearing Examiner found that while IACT was not a signatory to the Stipulation, neither did it take issue with, or present evidence in opposition to, most aspects of the Stipulation. Instead, the Hearing Examiner noted that IACT focused its evidence almost exclusively on its assessment of an appropriate annual revenue requirement for Po River.²¹ At the hearing, IACT witness Farmer recommended that Po River's operating expenses be reduced by \$92,750, asserting that certain functions performed by Carlyle personnel for Po River are unnecessary for the small water and sewer company. IACT also asserted that rent allocation and computer expenses be reduced by \$16,996. With these adjustments, IACT recommended that

¹⁸ *Id.* at 1-2.

¹⁹ The evidentiary hearing originally scheduled for July 28, 2010, was rescheduled twice at the request of counsel for IACT. However, the July 28, 2010, hearing date was retained solely for receipt of public witness testimony as noticed in the Commission's Order for Notice and Hearing.

²⁰ Hearing Examiner's Report at 4-21.

²¹ *Id.* at 21.

the Commission set Po River's annual revenue requirement at \$609,865, as opposed to the \$799,634 initially sought by the Company and the \$711,293 recommended in the Stipulation. The Hearing Examiner noted that in response to certain recommendations in Farmer's testimony, Po River agreed to an additional reduction during the hearing, resulting in a lower revenue requirement of \$709,611.²²

Upon consideration of the evidence received and the Stipulation, the Hearing Examiner made the following findings:

1. The Stipulation, as modified herein, offers a fair and reasonable disposition of this case;
2. A customer count of 2,300 should be used in setting the Company's individual rates for water service;
3. The stipulated 10.9% return on rate base is reasonable;
4. Staff's ratemaking adjustments, as modified by the Stipulation and as further modified by agreed upon adjustments during the hearing are reasonable;
5. The total annual revenue requirement of \$709,611 recommended in this Report, resulting in an increase of \$336,001 in the Company's gross annual revenues, is reasonable and should be considered by the Commission;
6. Allowing for a margin above operating expenses, based on a 10.9% return on rate base, the test year as properly adjusted would provide net income to the Company in the amount of \$20,390, based upon a recommended revenue requirement of \$709,611, as determined in accordance with the attached Statement 1;
7. The Company's class cost of service study provides for a reasonable allocation of the cost of service among the classes of customers and should be used to establish rates in this case;
8. A quarterly rate of \$32.15 for the individual lots that receive water service, based upon a customer count of 2,300 and designed to recover an annual revenue requirement of \$295,669 associated with water service, is just and reasonable;

²² *Id.* at 22-23.

9. A combined quarterly rate of \$101,286 for water and sewer service received by IACT, designed to recover an annual revenue requirement of \$405,146, is just and reasonable;
10. A quarterly sewer rate component of \$29.27 for the individual lots that receive sewer service, designed to recover an annual revenue requirement of \$8,781 and resulting in a total quarterly rate of \$61.42 for individual lots receiving both water and sewer service from the Company, is just and reasonable;
11. As agreed in the Stipulation, the Company should cease depreciating pre-1977 vintages on its books as recommended by Staff;
12. As agreed in the Stipulation, the Company should make a ratemaking adjustment to decrease plant in service by \$46,717 and a corresponding adjustment to decrease accumulated depreciation by an equivalent amount as recommended by Staff;
13. As agreed in the Stipulation, the Company should include accumulated depreciation on the test year software implementation that Staff recommended to be capitalized, and should adjust the December 2009 balance of accumulated depreciation to \$1,387,238;
14. As agreed in the Stipulation, the Company should retire all [Contributions in Aid of Construction] CIAC and the accumulated amortization of CIAC from its books as recommended by Staff;
15. The Company's proposed changes to its rules and regulations are reasonable and should be approved by the Commission;
16. Upon reaching \$500,000 in annual revenues, the Company shall become subject to the requirements of § 56-265.13:3 of the Code and, in accordance with the Stipulation, shall file for approval of any affiliate arrangements within thirty (30) days of the Commission's issuance of a final order in this proceeding; and
17. The Company should be required to promptly refund, with interest, all revenues collected under its interim rates in excess of the amount found reasonable herein.²³

The Hearing Examiner recommended that the Commission adopt her Report, approve Po River's water and sewer rates as set forth in the Report, and order the Company to make

²³ *Id.* at 25-27.

appropriate refunds for excessive rates collected during the period the interim rates were in effect.²⁴

Both IACT and Po River filed comments on the Hearing Examiner's Report. IACT urged the Commission to reduce, by \$110,538, the amount of the rate increase that the Hearing Examiner recommended that Po River be authorized to make permanent.²⁵ Po River asked the Commission to adopt the Hearing Examiner's Report in all matters except the issue related to billing determinants used to set quarterly water rates for individual lot owners.²⁶ Concerning billing determinants, Po River asked that the Commission use the actual number of customers presently with Po River (2,116) to establish the authorized quarterly water rates for the Company. Po River asserted that using this lower number, instead of 2,300 as the Hearing Examiner recommended, would allow the Company an opportunity to realize the revenue requirement established in this case.²⁷ Po River also agreed to the Hearing Examiner's recommendation that it begin tracking the time Carlyle personnel spend on Po River activities and noted that time tracking would begin as of January 1, 2011.²⁸

NOW THE COMMISSION, upon consideration of this matter and the applicable law, is of the opinion and finds that the findings and recommendations of the Hearing Examiner should be adopted. We find that the Stipulation as revised represents a fair and reasonable resolution of the issues addressed therein. Since Po River placed its proposed rates into effect on an interim

²⁴ *Id.* at 27.

²⁵ IACT Comments at 2.

²⁶ Po River Comments at 5-6.

²⁷ *Id.* at 2-4.

²⁸ *Id.* at 4-5.

basis effective May 1, 2010, and since we are approving rates that are less than those interim rates, a refund will be ordered.

In regard to LACT's concerns about the level of expenses attributed to Po River by Carlyle, we note that in response to the Hearing Examiner's Report, Po River has agreed, as of January 1, 2011, to commence tracking the time spent by Carlyle employees on Po River activities. Our Order will require the continuation of such time tracking and the maintenance of time tracking records for use in future proceedings before this Commission.

We also note the Company's acknowledgement in the Stipulation that, upon reaching \$500,000 in annual revenues, Po River becomes subject to the requirements of the Affiliates Act, § 56-76 *et seq.* of the Code. The Stipulation contains a statement that, within thirty (30) days of the date of this Order, Po River will file for approval of any affiliate arrangements, such as the arrangement between Po River and Carlyle. Our Order will require this filing to be made. Such affiliate arrangements will be subject to and reviewed in accordance with the Commission's pricing standards for all affiliate contracts or arrangements, including the standard that goods and services provided by an unregulated affiliate to a regulated utility should be provided at the lower of cost (which may include a return component) or fair market value, or market price.²⁹

Accordingly, IT IS ORDERED THAT:

(1) The findings and recommendations of the November 3, 2010 Hearing Examiner's Report are hereby adopted.

²⁹ The lower of cost or market standard has been cited in numerous Commission decisions. *See, e.g., Application of Virginia Electric and Power Company and Dominion Resources Services, Inc., For approval of a revised services agreement under Chapter 4 of Title 56 of the Code of Virginia*, Case No. PUE-2010-00144, Doc. Con. Cen. No. 444722, Order Granting Approval (Mar. 9, 2011). *See also* the Division of Public Utility Accounting's Guidelines for Filing Applications under Title 56, Chapter 4 of the Code of Virginia (Affiliates Act), available at <http://www.scc.virginia.gov/pua/ch4ch5.aspx>.

(2) The Stipulation between Po River and Staff, as modified in the Hearing Examiner's Report, is hereby adopted and made a part of this Order.

(3) If Po River has not already done so, within thirty (30) days of the date of this Order, the Company shall commence tracking of actual time spent by Carlyle off-site personnel, including its utility director, in performing specific functions on behalf of Po River. These records shall be made available to Staff upon request.

(4) Within thirty (30) days of the date of this Order, Po River shall make filings for approval of all affiliate arrangements or contracts pursuant to the Affiliates Act, § 56-76 *et seq.* of the Code.

(5) Po River shall forthwith file revised tariffs and terms and conditions of service with the Commission's Division of Energy Regulation, in accordance with the findings made herein.

(6) Po River shall recalculate, using the rates and charges approved herein, each bill it rendered that used, in whole or in part, the rates and charges that took effect on an interim basis on and after May 1, 2010; and refund the difference with interest as set out below within ninety (90) days of the issuance of this Final Order.

(7) Interest upon the ordered refunds shall be computed from the date payments of monthly bills were due to the date each refund is made at the average prime rate for each calendar quarter, compounded quarterly. The average prime rate for each calendar quarter shall be the arithmetic mean, to the nearest one-hundredth of one percent, of the prime rate values published in the *Federal Reserve Bulletin* or in the Federal Reserve's Selected Interest Rates (Statistical Release H. 15) for the three months of the preceding calendar quarter.

(8) The refunds ordered herein may be credited to the current customers' accounts (each refund category shall be shown separately on each customer's bill). Refunds to former customers

shall be made by check mailed to the last known address of such customers when the refund amount is \$1 or more. Po River may offset the credit or refund to the extent of any undisputed outstanding balance for the current or former customer. No offset shall be permitted against any disputed portion of an outstanding balance. Po River may retain refunds to former customers when such refund is less than \$1. Po River shall maintain a record of former customers for which the refund is less than \$1, and such refunds shall be promptly made upon request. All unclaimed refunds shall be subject to § 55-210.6:2 of the Code.

(9) Po River shall bear all costs incurred in effecting the refund ordered herein.

(10) In accordance with § 56-265.13:6 of the Code, Po River may remove from escrow the funds resulting from the interim increase in rates to effect the refunds ordered above with the balance to be retained by the Company.

(11) There being nothing further to come before the Commission, this matter is dismissed from the Commission's active docket, and the papers filed herein shall be placed in the Commission's file for ended causes.

AN ATTESTED COPY hereof shall be sent by the Clerk of the Commission to:
Donald G. Owens, Esquire, Troutman Sanders LLP, Troutman Sanders Building, 1001 Haxall Point; P.O. Box 1122, Richmond, Virginia 23218; Kenworth E. Lion, Esquire, Lion Law Offices, 727 Burning Tree Circle, Salisbury, Maryland 21801; C. Meade Browder, Jr., Esquire, Senior Assistant Attorney General, Office of the Attorney General, Division of Consumer Counsel, 900 East Main Street, Second Floor, Richmond, Virginia 23219; and a copy shall be sent to the Commission's Office of General Counsel and Divisions of Energy Regulation and Public Utility Accounting.

