

STATE OF NEW YORK
PUBLIC SERVICE COMMISSION

At a session of the Public Service
Commission held in the City of
New York on February 23, 2016

COMMISSIONERS PRESENT:

Audrey Zibelman, Chair
Patricia L. Acampora
Gregg C. Sayre
Diane X. Burman, concurring

CASE 16-W-0079 - Proceeding on Motion of the Commission as to
the Acts and Practices and Adequacy of Service
Provided by Corbin Hill Water Corp.

ORDER COMMENCING PROCEEDING AND
REQUIRING EMERGENCY ACTION

(Issued and Effective February 23, 2016)

BY THE COMMISSION:

INTRODUCTION

Corbin Hill Water Corp. (Corbin Hill or the Company) provides metered water service to 69 customers in a real estate development known as Corbin Hills in the Town of Highlands (Town), Orange County. Fire protection service is not provided. On February 3, 2016, a group of Corbin Hill ratepayers (Homeowners) commenced an action¹ in New York State Supreme Court for Orange County alleging that the water provided by the Company is contaminated with uranium, and requesting various

¹ Corbin Hills Homeowners-Association, Inc. v. Corbin Hill Water Corp., No. 2016-000770 (Sup. Ct. Orange Cty.) (Complaint). The filing names the Company, the developer of Corbin Hills, the owners of both companies. The New York State Department of Health (DOH), the Orange County Department of Health (OCDOH), and the Public Service Commission (Commission) are named as nominal defendants.

forms of relief including metering of all customers, investigation of Corbin Hill surcharges and connection to Town water service.

Under Public Service Law (PSL) §89-b, the Commission is required to ensure regulated utilities provide safe and adequate service at just and reasonable rates. Under PSL §89-c(2), the Commission has the power to "examine and investigate the methods employed by water-works corporations in delivering and supplying water and furnishing equipment."

It appears from the Complaint and Department of Public Service Staff's (Staff) investigation that the Homeowners raise a variety of matters within Commission primary jurisdiction over the safety, adequacy and reasonableness of the Company's rates. In this Order, the Company is ordered to take immediate action to replace its current primary uranium water filters, file plans to secure a new permanent water source and complete installation of water meters in all ratepayers' homes.

BACKGROUND

The Commission established initial rates for Corbin Hill in 2005.² In that case, the Commission noted that the Company intended to transfer the system to the Town in the near future. However, because an arrangement for the transfer was not completed in a timely manner, the Commission determined that rates should be established that would ensure the Company's long-term financial viability assuming the Company continued to operate the system for the long term. The mechanism for such viability was the creation of an escrow account for extraordinary repairs and plant replacement. The Company was

² Case 04-W-0115, Corbin Hill Water Corp. - Rates, Order Setting Rates, Charges, Rules and Regulations for Corbin Water Service (issued November 29, 2005) (Rate Order).

also required by tariff to charge all customers a metered rate for water service, which necessitated the installation of customer meters.

In 2008 the federal Safe Drinking Water Act regulations,³ were modified to establish maximum safe levels of certain additional contaminants, including nucleotides such as uranium. Subsequent water testing at Corbin Hill identified uranium in the source water above the newly established federal requirements and in 2009 the Company was directed by the OCDOH to begin filtering its water for uranium. To comply with the OCDOH directive, the Company appropriately used funds collected through the escrow account authorized in the Rate Order to install a water treatment system capable of reducing the amount of uranium in the source water to safe levels for distribution and consumption. The Company's installed treatment system consists of eight ion exchange uranium filtration units that operate in four parallel trains each consisting of one primary filter unit and one secondary filter unit connected in series.

To ensure continued compliance with the updated federal standards, OCDOH requires quarterly testing of Corbin Hill's water supply. On April 6, 2015, OCDOH sent a letter to Corbin Hill informing the Company that the latest test results indicated that, while the finished water entering the distribution system meet OCDOH standards for consumption, some uranium was being detected between the primary and secondary filters (the first filters were beginning to reach saturation levels). The letter recommended contacting the Town of Highlands to explore the possibility of connecting to the municipal system. The letter alternatively recommended, depending on the results of the next sampling data outcomes then

³ See 40 CFR 141.66.

due to be conducted by June 30, 2015, to remove and replace the first set of primary filters, with the current secondary filters and installing brand new filters as the new secondary filters. After noting several other system issues and findings the OCDOH letter concluded by requesting that the Company respond with an action plan by June 30, 2015.

When Corbin Hill failed to respond, OCDOH sent a second letter to the Company dated December 18, 2015, which required a response by January 15, 2016 that would address two options: connection to the Town water system or replacement of filters. The Company did not respond.

The OCDOH also directly communicated its findings to the Corbin Hill customers in late December 2015. In response, the Homeowners commenced legal action against Corbin Hill and other parties seeking, among other things, to compel the Company to abandon its current water supply and connect to the Town's water system. The Homeowners also complained about the handling of the surcharge account and failure to meter some of the Homeowners.

COMPLAINT

The Homeowners filed an order to show cause for a temporary restraining order and preliminary injunction to: provide temporary potable water; replace the filters as recommended by OCDOH; require Corbin Hill to pay for water testing at Homeowners' home taps, replace "blue brute" plastic mains with ductile iron and install eight fire hydrants (requirements to join the Town's water system), and pay for costs associated with hooking up to the Town system; and allow ratepayers to pay quarterly water bills into an escrow account established by Homeowners' attorney.

The Complaint lists 15 causes of action (CA), 10 of which fall within the Commission' jurisdiction over the rates, charges, adequacy of services and practices of the Company.⁴ The Homeowners request a declaratory order that Corbin Hill is liable for the cost of hooking up to the Town water system (CA 2). They seek a mandatory injunction requiring the Company to: replace water filters under the supervision of an independent contractor chosen by Homeowners (CA 4), replace "blue brute" plastic mains with ductile iron and install eight additional fire hydrants (CA 6), pay for the costs of hooking up to the Town water system (CA 7), allow ratepayers to make water payments to an escrow account maintained by Homeowners' attorney (CA 8), and freeze the funds in the Commission-authorized escrow account (CA 9). Homeowners also allege that some ratepayers do not have water meters and are therefore charged arbitrary rates. They further allege failure to use the escrow account established by the Rate Order for Homeowners' benefit and request damages to be determined at trial on theories of conversion (CA 12) and unjust enrichment (CA 13 and CA 15).

EMERGENCY ADOPTION

This Order is issued on an emergency basis pursuant to State Administrative Procedure Act (SAPA) §202(6) because the Commission finds that potential for contamination of the Corbin Hill water supply, as detailed in this Order, jeopardizes the public health and safety such that it would be contrary to the public interest to comply with the requirements of SAPA §202(1). This Order is issued under the authority of PSL §89-b, which requires the Commission to ensure safe and adequate service by

⁴ This Order does not address causes of action, which are not within the Commission's jurisdiction.

jurisdictional water utilities and §89-c(2), which authorizes the Commission to investigate the operations of jurisdictional water utilities. This notice shall constitute notice of proposed rulemaking in accordance with SAPA §202(1). This notice does not constitute a notice for revised rulemaking for the purposes of SAPA §202(4)(a). This emergency rulemaking shall take effect on February 23, 2016, and shall expire on May 23, 2016. This Order constitutes the full text of this rulemaking. Interested parties may contact Joseph Dowling at 3 Empire State Plaza, Albany, New York, 12223 or (518) 474-0071 for additional information on this rule.

DISCUSSION

The Complaint raises several issues related to the service and practices of Corbin Hill. Some, such as the alleged improper billing practices, require further investigation by Staff before action is taken. The question of potential contamination of the water supply with uranium, however, is a matter that requires immediate action on an emergency basis under SAPA.

OCDOH test results show that the filtered and treated water being supplied remains within OCDOH safety standards, and this Order does not question OCDOH authority to make that determination or take enforcement action if OCDOH deems the water unsafe. The Commission's priority is to use its authority over the adequacy of Corbin Hill's service and its rates to ensure that steps are taken proactively such that the water supply remains safe going forward, and that consumers of the water can be confident that their safety remains a priority. The Company's failure to respond to OCDOH's two letters indicates that Commission-mandated action is required to provide for

reconfiguration of Corbin Hill's filtering system to be funded from the escrow account established for such purposes.

While Homeowners' remedies that lie outside Commission authority are presumably within the purview of OCDOH (provision of potable water outside the Corbin Hill system, and testing at each Homeowners' home), this Order's immediate focus is to ensure a continued safe water supply by requiring compliance with the OCDOH's recommendation of replacing the primary filters and otherwise reconfiguring the filters to restore the treatment system to its design standards. The Commission understands that the estimate for work to meet the OCDOH recommendation relating to the filtration system is approximately \$42,000. Upon verification, the Commission will authorize, within 90 days of the date of this Order, an increase of the Company's current surcharge mechanism to recover the costs for this work in a timely manner.⁵

It is also apparent that it is in the best interest of all involved that Corbin Hill secure a new source of water. To that end, Corbin Hills is required to submit a plan for securing a new source of water. If the Company chooses an alternative, other than connection to the Town system,⁶ which was contemplated when the development was initially built, it shall include an

⁵ The freezing of the escrow account sought by the Homeowners is within Commission authority, but it would be counter-productive, given that the surcharge will be used to pay for reconfiguration of the filters. In any event, Staff has reviewed the annual filings for Corbin Hill's escrow account and reports that the Company's use of the account is consistent with its intended use.

⁶ Staff reports that the Town is willing to acquire the Corbin Hill system once the required improvements are made. The Company should investigate the possibility of a low, or interest-free, loan from the Environmental Facilities Corporation (EFC) as a way of addressing the Town's concerns.

explanation of why its alternative is preferable to the municipal system with respect to addressing 1) Homeowner complaints about uranium in the water and 2) the long-term viability and needs of the system.

Finally, there are allegations that some ratepayers are unmetered and not being charged the tariffed, metered rates. While further Staff investigation will be required before the Commission can decide the claims of improper billing, the Company is here ordered to submit, within 30 days of the date of this Order, a plan and timetable to complete installation of meters to all ratepayers' residences.

CONCLUSION

While OCDOH concludes that the water provided by Corbin Hill remains safe, the Company's failure to respond to the OCDOH's letters requires immediate Commission action to make sure that the water remains safe. In addition, the Commission will work with the Company and other stakeholders to identify a permanent long-term solution to the potential contamination and other water supply needs for this development and to ensure ratepayers are billed in compliance with the Company's tariff.

The Commission orders:

1. A proceeding is instituted to review Corbin Hill Water Corp.'s quality of service.
2. Corbin Hill Water Corp. shall, within seven days of the issuance of this Order, begin work to comply with the recommendations contained in the April 6, 2015 letter from the Orange County Department of Health regarding the removal of the saturated uranium filter and the reconfiguring of the remaining and replacement filters.

3. Corbin Hill Water Corp. shall file, within seven days of the issuance of this Order, a detailed estimate of the cost and schedule to effect the above noted work.

4. Corbin Hill Water Corp. shall submit in writing, within 90 days of the issuance of this Order to the Secretary to the Commission, a report on its talks with the Town of Highlands regarding access to the Town's water supply.

5. Corbin Hill Water Corp. shall to submit in writing, within 30 days of the issuance of this Order to the Secretary to the Commission, a plan to install water meters in all ratepayers' residences that are currently unmetered as detailed in the body of this Order.

6. The Secretary in her sole discretion may extend the deadlines set forth in this order. Any request for an extension must be in writing, must include a justification for the extension, and must be filed at least one day prior to the affected deadline.

7. This order is adopted on an emergency basis under §202(6) of the State Administrative Procedure Act.

8. This proceeding is continued.

By the Commission,

(SIGNED)

KATHLEEN H. BURGESS
Secretary

Commissioner Diane X. Burman, concurring:

As reflected in my comments made at the February 23, 2016 session I concur on this item. Under Public Service Law Section 89-b the Commission is required to ensure regulated utilities provide safe and adequate service at just and reasonable rates. Further under Public Service Law Section 89-c(2) the Commission has power to "examine and investigate the methods employed by water-works corporations in delivering and supplying water and furnishing equipment". Here, it has been brought to our attention that we need to address concerns with whether safe and adequate service is being provided.

I am cognizant that on August 8, 1994, in Case 93-W-0962, the New York State Public Service Commission issued a Statement of Policy on Acquisition Incentive Mechanisms for Small Water Companies. This Policy was to encourage the acquisition of smaller troubled water systems by larger systems and included a number of options to provide incentives for such acquisitions. The stated Policy of consolidating, where appropriate, the industry had the goal of thereby achieving safe, adequate and reasonably priced water service for the long term. On December 17, 2015, this Commission commenced a proceeding in Case 15-W-0562 to review this Policy and look at the landscape of what is happening in this area. That generic proceeding is ongoing. The final decision we make in that generic proceeding can have a significant impact on how we address small water companies and can provide consistency in addressing any concerns with safe and adequate service with our actual water systems.

Normally, I would not want to decide this type of specific small water system while we are still examining our policy in the ongoing generic proceeding. However, I am cognizant that here we are concerned with ensuring safe and adequate service.

Accordingly we must act now. Thus, I support approving this item at this time which will take immediate steps to ensure safe and adequate service is being provided and to keep us informed on ongoing issues. I also look forward to the resolution of the ongoing generic proceeding.