

NEW YORK STATE
PUBLIC SERVICE COMMISSION

At a session of the Public Service
Commission held in the City of
Albany on July 18, 2013

COMMISSIONERS PRESENT:

Garry A. Brown, Chairman
Patricia L. Acampora
James L. Larocca
Gregg C. Sayre
Diane X. Burman

CASE 11-W-0640 - Proceeding on Motion of the Commission as to
the Acts, Practices and Adequacy of Service
Provided by Painted Apron Water Company, Inc.

ORDER APPOINTING A TEMPORARY OPERATOR AND
APPROVING A RATE INCREASE AND SURCHARGE

(Issued and Effective July 22, 2013)

BY THE COMMISSION:

INTRODUCTION

On June 14, 2013, the Painted Apron Water Committee (Committee) submitted a petition requesting that the Commission appoint the Committee as the temporary operator of the Painted Apron Water Company, Inc. (Painted Apron or Company) water system. The three-member Committee has effectively operated the Company on a voluntary basis since October 2011, following abandonment of the Company by its owner on July 15, 2011.

The Company provides metered water service to 32 residential customers in a subdivision known as Painted Apron Village located in the Town of Deerpark (Town), Orange County. Public fire protection service is not provided.

In this Order, we determine that the Painted Apron water system satisfies the statutory criteria necessary for appointment of a temporary operator. Painted Apron is an abandoned system; it failed to provide safe and adequate service; and it lacked the technical, financial and managerial ability to operate a water system (Public Service Law (PSL) §112-a). We determine that the three-member Committee qualifies as a temporary operator of the water system, because its members possess the technical, financial, and managerial qualifications necessary to operate and manage the system and have demonstrated their management ability during their effective operation of the Company since October 2011. The Committee's appointment as the temporary operator of the Painted Apron system serves the public interest because it will assist in the provision of safe and adequate water service to Painted Apron residents. In order to provide safe and adequate service, comply with statutory and regulatory standards and pay for improvements, we authorize a rate increase, billing method change and separate surcharge.

PUBLIC NOTICE

In accordance with State Administrative Procedure Act §202(1), a Notice of Proposed Rulemaking was published in the State Register on November 29, 2011. The Secretary to the Commission received no comments by the expiration of the comment period, which occurred on January 23, 2012. On June 19, 2013, the U.S. Environmental Protection Agency (EPA) submitted comments in support of the appointment of the Committee.¹

¹ Although the EPA letter was received after the deadline for submission of comments, we will take them into consideration because they advance the record in this proceeding.

PETITION

Each of the Committee's three members expresses willingness to serve and demonstrates expertise to operate and manage the system: Kim Springer, a business person; Wayne Little, a certified operator; and Robert Schneider, a general contractor.² Ms. Springer has more than 30 years of managerial experience as an office director, bookkeeper, and customer service representative and is prepared to assume the financial and managerial tasks necessary to perform the duties required of a temporary operator. Ms. Springer works with the other Committee members to coordinate the upkeep and daily operations of the system, and, in this capacity, bills customers, collects payments, and acts as the contact person for vendors hired to repair the system and provide necessary parts for its daily operation. She provides information to customers regarding scheduled water shut-offs and repairs to the system.

Mr. Little has more than 35 years of technical experience; as part of the Committee, he is responsible for the electrical, electronic, mechanical, operational, record-keeping, sampling, training and supervisory needs and requirements of the water system. He would continue to perform these technical functions as a temporary operator. Mr. Little worked as an assistant water operator at the Painted Apron water system from 1999 to 2004. He was not affiliated with the system in any way from August 2004 to October 2011. Mr. Little states that, with the help of the Committee and other community members, the system was restored to normal operating conditions, and chlorination resumed in January of 2012. Mr. Little completed the Grade C water operator training course in the spring of 2012 in preparation for the Committee's appointment as temporary

² The petition submitted by the Committee includes resumes for Ms. Springer, Mr. Little and Mr. Schneider.

operator and, on May 30, 2013, received his New York State (NYS) Department of Health (DOH) certification. He was previously certified from 2004 to 2007. Mr. Little stated that he would begin keeping monthly operation reports on June 1, 2013, which is a daily task.

Mr. Schneider has more than 34 years of extensive experience in all aspects of construction and related fields including, but not limited to, blueprints, surveys, framing, masonry, roofing, electrical, plumbing, drywall, insulation, painting, and finish work. As such, he is prepared to perform the structural maintenance duties required of a temporary operator.

COMMENTS

The EPA supports the Committee's petition for appointment as temporary operator. Over the past year, the EPA and the Office of the U.S. Attorney for the Southern District of New York (USAO SDNY) worked with the Committee to resolve the system's long-term noncompliance with the Safe Drinking Water Act (SDWA) and NYS water quality regulations.

The EPA's efforts included significant research and outreach in the community and provision of assistance to the Committee for over a year to ensure that safe drinking water is available to the members of the community. The EPA affirms that the Committee's efforts to date demonstrate that the Committee is a capable, responsible body able to operate and manage the water system. These efforts include performing repairs to the system to ensure adequate chlorination and system integrity, collecting water usage fees, and certification of a Committee member as a certified operator.

The EPA letter states that the staffs of the EPA, USAO SDNY and Department of Public Service (DPS) met in April 2013 and decided that the appointment of a temporary operator for

Painted Apron offered the most effective administrative solution to the inadequacy of service provided to the Company's customers.³ The EPA asserts that the appointment would allow the water system to operate in compliance with the SDWA and establish a foundation for the long-term sustainability of the system.

BACKGROUND

History of Non-Compliance

Painted Apron has a history of NYS Sanitary Code (10 NYCRR Part 5, Subpart 5-1) violations. According to OCDOH records, OCDOH cited the Company numerous times for failure to exercise due care and diligence in the operation and maintenance of the treatment plant, distribution system and appurtenances. On March 3, 2010, the Company was ordered to pay \$3,500 plus costs, disbursements and interest, related to its failure to comply with an Orange County Health Commissioner's Order dated January 5, 2009. The fine remains unpaid.

Painted Apron Abandonment

In a letter dated July 15, 2011 and notarized, the owner of Painted Apron stated that he was relinquishing his responsibilities relating to Company's operation to the OCDOH. He attached to his letter a foreclosure sale notice for the property issued by Orange County for failure to pay taxes.⁴ He

³ The EPA expressed its gratitude to the DPS Staff for working with the EPA to resolve the unique challenges presented by abandoned water systems and ensure that the systems are operated properly so that consumers receive safe, reliable drinking water.

⁴ Real property taxes amounted to about \$6,200 for the period 2009 to 2011. The County decided to pursue other remedies available under the Real Property Tax Law; and the deed remains in the name of the Company.

enclosed a list of customers and meter readings, stating that he left the keys to the water house above the door.

EPA Administrative Order

On July 19, 2011, the DOH referred Painted Apron to the EPA for action. On August 12, 2011, the EPA issued an administrative order stating that Painted Apron failed to comply with National Primary Drinking Water Regulations (40 C.F.R. Part 141) and the NYS Sanitary Code. These regulations establish requirements relating to a variety of contaminants detected in drinking water, including monitoring, testing and reporting the results. The EPA directed the Company to comply with the requirements and stated that the Company is subject to certain administrative and civil penalties for failure to comply.

Town of Deerpark

On August 8, 2011, the Town requested that OCDOH temporarily take over operation of the water system until another water company, individual, or a homeowners association is established. The Town stated that it is not in any financial position to operate a public water system and no member of its staff is a certified water system operator.⁵

Department of Public Service Letter

In a letter dated September 6, 2011, the DPS Staff informed the Company's owner that his July 15, 2011 letter does not constitute a valid transfer of ownership, that he remains legally responsible for the operation of the Company and the provision of safe and adequate service, and that Commission approval is required for transfer or abandonment of the water system. The letter advised the Company's owner that it was

⁵ In January 2009, a number of Painted Apron customers requested that the Town assume operation of the water system. The Town was unable to grant their request, due to lack of resources and expertise.

imperative to restore chlorination immediately and fix the Black Rock main leak. DPS Staff also offered to assist the owner in developing a compensatory rate to provide for the recovery of reasonable costs of operating and maintaining the system and a surcharge for emergency repairs.

Order to Show Cause

On January 19, 2012, the Commission issued an order to show cause why the Commission should not appoint a temporary operator for the Company and institute a penalty action. In the Order, the Commission concluded that the Company provided unsafe and inadequate service for several years, due to ineffective management and lack of funds to improve the system.

OCDOH Report

On January 9, 2013, the OCDOH submitted a report on field visits it conducted on November 14, 2012, December 10, 2012 and January 4, 2013 (OCDOH Report). OCDOH reports that the boil water advisory for the Company's water system, initiated on July 13, 2011, continues in effect until a certified Grade C water operator has been designated as the operator in responsible charge that makes decisions about the daily operations of the system that will directly impact the quality and/or quantity of the drinking water. The OCDOH Report notes the need for Painted Apron to submit monthly reports and required chemical test results, and lists a number of needed improvements to the water system, including repair of an inoperable transfer pump, relocation of a buried fuel storage tank, installation of a safety railing and addition of interior ceiling and wall coverings.

The OCDOH Report commends the Committee for resuming chlorination in January 2012, stating that the Company's two chlorinators are working and free chlorine residual is maintained in the distribution system. The Report notes a

number of improvements that the Committee accomplished during 2012. These include replacement of a broken transfer pump; repair of a distribution leak on Black Rock Trail; repairs to the emergency power generator, so that it is operable; replacement of the air pressure reducing station on the electric control panel; cleaning the probes of the hydro-pneumatic tank, resulting in improved operation of the system; cleaning of the production meter mechanism; provision of a new door and lock for the treatment building; removal of debris inside and outside of the building; resolution of some roof issues; and, placement of a visitation log on a calendar inside of the treatment building. In addition to the items noted in the OCHD report, the DPS Staff reports that the Committee purchased a second replacement transfer pump and made subsequent repairs to the distribution leak on Black Rock Trail.

Rate Plan

The tariff rate, established as an initial rate effective May 1, 1987, consists of a \$75 quarterly service charge plus a metered rate of \$2.25 per thousand gallons.⁶ The Company has not filed a request for a rate increase since these initial rates were established, approximately 25 years ago.

The Commission authorized sufficient initial rates to provide an opportunity to earn a revenue requirement of \$27,750 based upon the expectation that the Company would provide service to 49 homes. It was anticipated that the Company would recover \$567 annually from an average customer using approximately 119,000 gallons per year. In fact, only 39 of the building lots were developed. The system serves 32 residences because seven customers drilled wells.

⁶ Painted Apron Water Company, Inc. - Initial Tariff Filing, Untitled Order, issued May 1, 1987.

DISCUSSION

Painted Apron satisfies the criteria for appointment of a temporary operator (PSL §112-a(a)). It is a Company that failed to provide safe and adequate service, incurred substantial number of citations and penalties for failure to comply with safe drinking water requirements, displayed an inability to successfully manage finances, neglected the maintenance and improvements needed for effective operation of the water system, and effectively abandoned its operation and management of the water system.

Given the financial, managerial, and technical ability of the Committee members and their ongoing, voluntary commitment to undertake the operation and maintenance work at Painted Apron to continue water service and preserve the public health and safety, the Committee satisfies the PSL §112-a criteria for appointment as a temporary operator of the Painted Apron water system. The OCDOH commended the Committee for restoring the water system to normal operating conditions, with the resumption of chlorination in January 2012. One of the Committee members obtained his Grace C water operator certification; and, upon appointment of the Committee as a temporary operator, OCDOH may lift its boil water restriction. We note that Town does not possess the financial resources or expertise to operate and manage the system; and, the EPA and USAO SDNY support the appointment of the Committee as a temporary operator, after consideration of a number of options to resolve the difficulties involved in Painted Apron's operation.

We, therefore, appoint the Committee as the temporary operator of the Painted Apron water system, effective on the date of the issuance of this Order. As a temporary operator of the Painted Apron water system, the Committee is allowed to operate and manage the water system, consistent with the

approved tariff, Public Service Law and Commission rules. Thus, the Committee is authorized, consistent with the law and rules, to enter and remain on property as necessary to maintain and operate the water system and its appurtenances; bill and collect charges for water service that are established in the tariff as just and reasonable; collect past due amounts; discontinue service for non-payment;⁷ and, take any other action required to operate and manage the system. The OCDOH conducts regular field inspections and issues reports on small water systems, including Painted Apron. The DPS Staff is able to monitor the Committee's management through these reports. Additionally, DPS Staff has the authority to inspect Committee's books and records at any time it deems necessary to do so.

The Painted Apron 1987 initial tariff authorizes the Company to charge a \$300 annual rate, plus a metered rate of \$2.25 per thousand gallons. The rates are based upon the expectation of 49 residential customers, instead of the 32 actual customers served by the water system. Based on DPS Staff's review of actual expenses incurred by the Committee in 2012 and 2013, the 1987 rates would not produce sufficient revenues to allow Painted Apron to pay for ongoing daily operation and maintenance expenses, assure compliance with applicable statutory and regulatory standards, and provide safe and adequate service. Staff's analysis indicates that a revenue requirement of \$22,139 is needed for the forecast level of annual expenses based on actual costs incurred by the Committee and Staff's recommended allowances for salaries, power expenses, transportation, repairs and maintenance, water testing expenses,

⁷ The Commission's rules establish requirements relating to notices of discontinuance (16 NYCRR Part 533).

and property taxes.⁸ Projected revenues do not include any allowance for depreciation, return on rate base, and net income because the Company is managed under the direction of a temporary operator. The Company does not charge the authorized \$2.25 metered usage charge, because its meters are inoperable. Recognizing the impracticality of the meter charge, we authorize the Company to discontinue the charge and substitute a flat monthly charge billed in advance. To recover \$22,139 in revenues, Painted Apron would bill its customers \$57.66 per month, resulting in a 22% increase in base rates.

As recommended in the OCDOH Report, repairs to the Painted Apron water system are required to improve water quality and the system's reliability. Thus, we authorize the Committee to open and maintain an interest-bearing escrow account with a maximum balance of \$15,000, not including account interest, funded by a monthly surcharge of \$13.02 per customer. The Committee is authorized only to use the reserve funds to make plant improvements and extraordinary repairs, and pay for unforeseen expenses not covered in rates.

We determine that a rate increase and change in billing is needed in order for the Committee to pay for daily operation and maintenance and comply with applicable statutory and regulatory water quality standards. The Committee is authorized to file amendments to the Painted Apron Water Company Inc.'s tariff that would allow it to collect \$22,139 in revenues and issue total monthly bills of \$70.68, consisting of a monthly flat rate of \$57.66 and a monthly surcharge of \$13.02. This rate increase and surcharge would result in an annual bill of \$848, which is a 50% increase over the \$567 annual bill under the current rates. Administrative details of the tariff filings

⁸ An explanation of these adjustments is contained in Appendix B to this Order.

and Staff's recommended income statement and summary of adjustments are contained in Appendices A and B, respectively, to this Order.

CONCLUSION

The appointment of the Committee as the temporary operator of the Painted Apron water system will result in the provision of safe and adequate service to customers; and, thus, it is in the public interest. We appoint the Committee as the temporary operator of the Painted Apron water system effective upon the date that this Order is issued, with the authority to operate and manage the water system, in compliance with the Company's tariff, statutory provisions and regulatory requirements. We determine that an increase in the revenues of the Painted Apron Water Company, Inc. is required in order to pay for daily operation and maintenance expenses and comply with statutory and regulatory requirements for drinking water quality, and that a surcharge is necessary to make necessary improvements to the water system to improve its reliability.

The Commission Orders:

1. The Painted Apron Water Committee is appointed temporary operator of the Painted Apron Water Company, Inc. supplying water service to the Painted Apron Village real estate subdivision in the Town of Deerpark, Orange County, effective upon the date that this Order is issued.

2. As a temporary operator, the Painted Apron Water Committee is authorized to operate and manage the Painted Apron Water Company, Inc., in compliance with Painted Apron Company, Inc.'s tariff approved and on file with the Commission and with statutory and regulatory requirements, in accordance with the discussion in the body of this Order.

3. The Painted Apron Water Committee is authorized to file a supplement cancelling the Painted Apron Water Company, Inc.'s tariff amendments contained in Appendix A, on not less than one day's notice to become effective on August 1, 2013.

4. The Painted Apron Water Committee is authorized to file the Painted Apron Water Company, Inc.'s electronic tariff schedule P.S.C. No. 2 - Water, containing Staff's recommended rates as shown in Appendix C, on not less than one day's notice to become effective on August 1, 2013.

5. The Painted Apron Water Committee is authorized to file Surcharge Statement No. 1 to the Painted Apron Water Company, Inc.'s electronic tariff schedule P.S.C. No. 2 - Water containing Staff's recommended surcharge as shown in Appendix D, on not less than one day's notice to become effective on August 1, 2013.

6. The Painted Apron Water Committee shall notify each customer of the Painted Apron Water Company, Inc. in writing through direct mail or by means of a bill insert, no later than August 31, 2013, of the Commission's decision and file a copy of the notification with the Secretary to the Commission by September 30, 2013.

7. The Painted Apron Water Committee is authorized to put into effect the Painted Apron Water Company tariff revisions in compliance with this Order prior to the end of the 30 day notice period and without compliance with the statutory and regulatory requirements for completion of newspaper publication once a week for four weeks (Public Service Law § 89-c(10) and 16 NYCRR § 720-8.1).

8. The Secretary to the Commission may extend deadlines set forth in the Ordering Clauses.

9. This proceeding is continued.

By the Commission,

(SIGNED)

JEFFREY C. COHEN
Acting Secretary

Administrative Details

SUBJECT: PAINTED APRON WATER COMPANY, INC. is directed to file the following:

Cancellation of P.S.C. No. 1 - Water
P.S.C. No. 2 - Water, Original Leaves 1 - 12
P.S.C. No. 2 - Water - Escrow Account Statement No. 1

NATURE OF FILING: New electronic tariff leaves and escrow account statement.

SAPA: 11-W-0640SP1 - State Register - November 29, 2011

NEWSPAPER PUBLICATION: Waived

CUSTOMER NOTIFICATION: By direct mail or by means of a bill insert no later than August 31, 2013.

NUMBER OF CUSTOMERS: 32

TERRITORY SERVED: Painted Apron Village
Town of Deerpark, Orange County

SUMMARY OF TARIFF CHANGES

Returned Check Charge:

The Company may charge the fee from the bank plus \$5.00, not to exceed the maximum allowed under Section 5-328 of the General Obligations Law.

Restoration of Service Charge:

\$50 during normal business hours (Monday thru Friday)
\$75 outside of normal business hours (Monday thru Friday)
\$100 on weekends or holidays

Terms of Payment:

Bills shall be rendered monthly in advance and are due and payable upon receipt. Bills not paid within 23 days of mailing are delinquent and the late payment charge becomes applicable and service may be discontinued after proper notice as required by law.

Late Payment Charge:

A late payment charge to be computed at the rate of 1½ percent per month, compounded monthly, may be applied to all balances left unpaid 23 days following mailing of the bill.

Term:

Terminable by the customer upon 10 days written notice to the Company.

Painted Apron Water Company, Inc.
2013 Projected Income Statement

Revenues:	\$22,139	
Operating Expenses:		
Manager's Salary	3000	1
Operator & Helper's Salary	5300	2
Materials and Supplies	325	3
Office Expenses	534	3
Power Expenses	3550	4
Purification Chemicals	350	3
Transportation	285	5
Repairs & Maintenance	5000	6
Water Testing Expenses	1057	7
Miscellaneous	<u>600</u>	8
Total Operating Expenses	\$20,001	
Other Deductions		
Property Taxes	<u>\$2,139</u>	9
Total	\$22,139	
<u>Customer Surcharge</u>		
\$156 per customer annual surcharge for reserve account for unforeseen expenses not covered in rates, extraordinary repairs, and/or plant improvements	\$5,000	
Total Annual Bill With Reserve Account	\$848	

Painted Apron Water Company, Inc.

Explanation of Allowances

1	Manager's Salary	To reflect Staff's recommended allowance of 12.5 hours/month at \$20/hr. per US Department of Labor (DOL) 2012 rates for Bookkeeping, Accounting, and Auditing Clerks, adjusted for inflation
2	Operator and Helper's Salary	To reflect Staff's recommended allowance of 15 hours/month at \$25/hr. per DOL 2012 rates for Water and Liquid Waste Treatment Plant & System Operators, plus 4 hours/month at \$15/hr. for Helpers - Pipelayers, Plumbers, Pipefitters, and Steamfitters, adjusted for inflation
3	Materials and Supplies; Office Expenses; Purification Chemicals	To reflect the actual annualized costs incurred by the Committee in 2012-2013
4	Power Expenses	To reflect the actual average annual power expense from 2009-2013
5	Transportation	To reflect Staff's recommended allowance to transport monthly water samples to lab in Bloomingburg, NY at 56.5 cents per mile (2013 mileage rate)
6	Repairs and Maintenance	To reflect Staff's recommended allowance for the average of two largest plant & road repair expenses incurred by the Committee in 2011-2013
7	Water Testing Expenses	To reflect Orange County Health Department's projected annual average water testing expense
8	Miscellaneous	To reflect the actual annualized snowplowing & groundskeeping costs incurred by the Committee in 2012-2013
9	Property Taxes	To reflect the actual annual property taxes from orangecountygov.com

PSC NO: 2 - WATER
COMPANY: PAINTED APRON WATER COMPANY, INC.
INITIAL EFFECTIVE DATE: AUGUST 1, 2013

LEAF: 12
REVISION: 0
SUPERSEDING REVISION:

GENERAL INFORMATION

Applicable to use of Service for:

Metered residential, small commercial, and general use.

Character of Service

Continuous.

Rate:

Flat rate of \$57.66 per month

Minimum Charge:

Flat rate of \$57.66 per month

Terms of Payment

Bills shall be rendered monthly in advance and are due and payable upon receipt. Bills not paid within 23 days of mailing are delinquent, the late payment charge becomes applicable, and service may be discontinued after proper notice as required by law.

Late Payment Charge

A late payment charge to be computed at the rate of 1½ percent per month, compounded monthly, may be applied to all balances left unpaid 23 days following mailing of the bill.

Term

Terminable by the customer upon 10 days written notice to the company.

Issued By: Painted Apron Water Committee c/o Kim Springer 10 Black Rock Trail Port Jervis, NY 12771
(Appointed Temporary Operator Pursuant to Commission Order in C. 11-W-0640
issued and effective July 22, 2013)

PSC NO: 2 - WATER
COMPANY: PAINTED APRON WATER COMPANY, INC.
INITIAL EFFECTIVE DATE: AUGUST 1, 2013,

STATEMENT TYPE: ESCROW
STATEMENT NO: 1

ESCROW ACCOUNT
STATEMENT NO. 1

The company is authorized to open and maintain an interest-bearing escrow account with a maximum balance of \$15,000, not including account interest, for the purpose of unforeseen expenses not covered in rates, extraordinary repairs, and/or plant improvements. The account will be subject to the following conditions:

1. The account will be funded by means of a monthly customer surcharge of \$13.02.
2. The account will be maintained in a separate bank account and will be under the control of the company.
3. The company will have access to the funds in this account solely for the purposes noted above and any taxes associated with the account.
4. Once the account has reached the maximum balance of \$15,000, not including account interest, the company shall stop collecting the monthly customer surcharge. However, if the company withdraws funds for the purposes noted above and the balance in the account falls below the \$15,000 approved level, the company will be permitted to surcharge the customers a pro-rata amount not to exceed \$13.02 per month in order to restore the account to the \$15,000 maximum approved level.
5. This account shall bear interest and such interest shall remain in the account and be used to cover expenses or reduce payments by customers when needed to replenish the account to its approved level.
6. A customer terminating service will not be entitled to a refund of payments made to the account.
7. The company must submit copies of all bank statements and a complete accounting of the revenues and expenses for the account by January 30 of each year. All information should be sent to the Chief of Tariffs, Electric Supply & Small Utility Rates, Office of Electric, Gas & Water, Department of Public Service, Three Empire State Plaza, Albany, NY 12223-1350.

Issued By: Painted Apron Water Committee c/o Kim Springer 10 Black Rock Trail Port Jervis, NY 12771
(Appointed Temporary Operator Pursuant to Commission Order in C. 11-W-0640
issued and effective July 22, 2013)