

STATE OF NEW YORK
PUBLIC SERVICE COMMISSION

At a session of the Public Service
Commission held in the City of
Albany on September 21, 1999

COMMISSIONER PRESENT:

Maureen O. Helmer, Chairman

CASE 99-W-1267 - Proceeding on Motion of the Commission as to
the Acts and Practices and Adequacy of
Service Provided by the Concord Associates,
LP.

ORDER TO SHOW CAUSE

(Issued and Effective September 21, 1999)

BACKGROUND

On January 29, 1999, Concord Associates, L.P. ("Concord Associates") acquired ownership of the properties of Kiamesha Concord, Inc. ("Kiamesha Concord") as a result of a bankruptcy court proceeding. Kiamesha Concord formerly owned and operated the Concord Resort Hotel and premises ("Concord Hotel") located at Kiamesha Lake, Town of Thompson, Sullivan County.

Kiamesha Artesian Spring Water Co., Inc. ("Kiamesha Water" or "the water company") has continued to supply water service to the Concord Hotel both prior to and subsequent to Concord Associates obtaining the Concord Hotel.

A dispute arose between Concord Associates and the water company over the rate that Kiamesha Water charged for service to the Concord Hotel properties. Concord Associates refused to pay the tariff rate for water service; Kiamesha Water in turn issued a notice of termination of water service ("termination notice") effective May 3, 1999.^{1/} Concord Associates obtained a preliminary injunction that same day, enjoining Kiamesha Water from terminating water service to the Concord Hotel properties pending a final determination on the

^{1/} The termination notice stated termination was based on the non-payment of \$52,047.68 for past water service.

complaint.^{1/} It is Staff's understanding that the proceeding was discontinued on stipulation of the parties.

Preceding the application for an injunction, on April 22, 1999, Concord Associates filed a complaint with the Department of Public Service, Office of Consumer Services (OCS), claiming that the then-current flat rate for their water service^{2/} was inappropriate because the Concord Hotel water usage was less than the usage under the property's prior owner.^{3/} In June, the Commission issued an Order in a separate proceeding, setting a temporary flat rate of \$13,000 per month, effective July 1, 1999, for water service to the Concord Hotel property, or parts thereof, until such time as all other services to the Concord Hotel are discontinued, or metering is installed to measure service to the Club House.^{4/} The order, however, did not address the issue of arrears that Concord Associates may owe for prior service.

In a meeting with representatives of Concord Associates in June of 1999, Department of Public Service Staff ("Staff") learned that there are two private residences located wholly within the confines of the Concord Hotel property and are supplied water service from the Concord Hotel.^{5/} By letter dated

^{1/} Concord Associates, LP v. Kiamesha Artesian Spring Water Co., Inc., Index No. 821/99 (Sup. Ct., Sullivan Co.). Concord Associates asserted in support of its request for an injunction that, although the hotel is currently not opened for regular business, six offices are opened for business and five to six hotel rooms are being used as well as the Monster Club Hotel (Club House). Concord Associates argued that if water service were terminated, there would be no water for drinking or bathroom purposes, causing irreparable damage.

^{2/} The Service Classification (S.C.) 3 tariff, established a flat rate of \$22,388 per month for water service.

^{3/} Complaint #972156.

^{4/} Case 99-W-0032, Kiamesha Artesian Spring Water Co., Inc. - Tariff Filing, Untitled Order (issued June 24, 1999).

^{5/} The private properties appear to have been part of the Concord

June 29, 1999, and at a subsequent meeting in July 1999, Staff advised Concord Associates that it may be a water-works corporation under the jurisdiction of the Public Service Commission ("Commission"). At the July meeting, Counsel for Concord Associates replied that his client did not intend to purchase a water-works corporation when it bought the hotel and that he does not believe it is a water-works corporation since the two private residences are not charged for water service. Staff requested that Concord Associates provide copies of the abstract of title or title insurance policy (with attachments) that was prepared for/or as a result of the bankruptcy proceeding and subsequent real property transfer. Staff reports that the requested materials have not been provided.

Concord Associates recently failed to make its August 1999 payment for water service and had a past due balance of \$54,504.73.^{1/} As a result, the water company issued a termination notice to Concord Associates on September 9, 1999, advising that water service will be terminated effective September 27, 1999. Staff reports that Concord Associates made a subsequent payment of \$13,000. However, a substantial outstanding balance still exists^{2/} and the termination notice remains in effect.

DISCUSSION AND CONCLUSION

Concord Associates' failure to pay for water service presents an imminent, although indirect, threat to the continuation of water service to the two private residences that it serves and presents a threat to the health and safety of the occupants of the residences. Moreover, it appears, based on the

Hotel property and subsequently transferred to hotel employees. Staff believes that the residents may also be receiving electric service from the hotel.

^{1/} This amount did not include disputed charges of about \$9,000 per month from January 29, 1999 to June 30, 1999.

^{2/} The outstanding balance is approximately \$42,500.

information provided, that Concord Associates is a water-works corporation subject to the Commission's jurisdiction. Section 2(27) of the PSL defines a water-works corporation as including:

[E]very corporation, company, association, joint stock association, partnership and person, their lessees, trustees or receivers, appointed by any court whatsoever, owning, operating or managing any water plant or water-works, except where water is distributed solely on or through private property solely for the use of the distributor or its tenants and not for sale to others.

Although Concord Associates may be distributing water to the private residences solely on or through private property and not selling it to others, the distribution is for the use of private property owners other than the distributor or its tenants. It would be untenable to conclude, as Concord Associates suggests, that Commission oversight and regulation may be avoided simply by a water-works corporation not charging for service. In fact, the Commission's authority and responsibility to establish rates is designed to ensure the economic viability of a water company^{1/} and to reject proposed tariff and contract rates for water service.^{2/} The Commission's jurisdiction and supervision extends to the furnishing or distribution of water for domestic, commercial or public uses and to the water systems and to the persons or entities owning, leasing, or operating the systems.^{3/}

And, having assumed and undertaken the obligation to provide water service to its customers, Concord Associates cannot abandon service without the Commission's approval.^{4/}

^{1/} PSL '89-e(2).

^{2/} PSL '89-b(2) and (3). See also, Case 97-W-0249, Hampton News Development Corporation, Untitled Order (issued May 21, 1997). (The Commission rejected a proposed \$0 rate for water service).

^{3/} PSL '5(1)(f), 89-c(1).

^{4/} Spring Brook Water Co., v. Village of Hudson Falls, 269 A.D. 515, app. den. 269 A.D. 913 (3rd Dept. 1945).

Therefore, Concord Associates shall be directed to show cause, in writing, within 10 days of this order, why the Commission should not determine that Concord Associates is a water-works corporation under the Commission's jurisdiction and why the Commission should not institute a proceeding against Concord Associates for its actions or omissions in failing to pay for its service, thereby threatening the provision of safe and adequate service to its customers. In addition, Concord Associates is directed to provide within 10 days: a map identifying the location of all mains and service lines from the Concord Hotel to the private residences; a copy of the most recent abstract of title or title insurance policy referencing the Concord Hotel property and identifying any and all deeds or easements regarding the water service interconnection^{1/} to the private residences; and, a plan for stating how future service to the private residences will be ensured. Concord Associates is advised that should it fail to abide by the terms of this order that its officers, agents, and employees may be subject to penalties as provided by the PSL.^{2/}

It is ordered:

1. Concord Associates, L.P. is directed to show cause

^{1/} Concord Associates should also provide similar information concerning its electric service interconnection with the private residences.

^{2/} PSL '25(2) provides:

Any public utility company, corporation or person in the office or agents and employees thereof that knowingly fails or neglects to obey or comply with the provision of this chapter or an order, adopted under authority of this chapter, so long as the same shall be in effect, shall forfeit to the people of the State of New York a sum not exceeding \$100,000 constituting a civil penalty for each and every offense, and in the case of a continuing violation, each day shall be deemed a separate and distinct offense.

in writing within 10 days, why the Commission should not determine that it is a water-works corporation under the jurisdiction of the Commission and why the Commission should not institute a proceeding against Concord Associates, as described in the body of this Order, for its actions or omissions in failing to pay for its water service from Kiamesha Water and thereby threatening service to the private property owners.

2. Concord Associates is directed to submit to Staff of the Department of Public Service within 10 days, maps identifying the location of the mains and service lines between the Concord Hotel residences and all private properties located within the confines of the Concord Hotel property; the abstract of title and/or title insurance policy, with all attachments, prepared in conjunction with the conveyance of the Concord Hotel property as a result or part of the bankruptcy proceeding.

3. This proceeding is continued.

Commissioner