

COMMONWEALTH OF VIRGINIA  
STATE CORPORATION COMMISSION  
AT RICHMOND, SEPTEMBER 9, 2015

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STATE CORPORATION COMMISSION  
SEP 11 - 9 AM '15

PETITION OF

VIRGINIA AMERICAN WATER COMPANY,  
AQUA VIRGINIA, INC., AND  
MASSANUTTEN PUBLIC SERVICE CORPORATION

CASE NO. PUE-2014-00066

For Rulemaking to establish a Water and  
Wastewater Infrastructure Service Charge

ORDER

On June 27, 2014, Virginia American Water Company, Aqua Virginia, Inc., and Massanutten Public Service Corporation (collectively, "Petitioners") filed a Petition for Rulemaking ("Petition") requesting that the State Corporation Commission ("Commission") initiate a rulemaking to establish rules allowing water and wastewater companies in Virginia to apply to the Commission for the establishment of a Water and Wastewater Infrastructure Service Charge ("WWISC") including a plan for investing in eligible infrastructure ("WWISC Plan") and for the recovery of the costs of such a program ("Proposed Rules"). Through the WWISC Plan, utilities would be permitted to replace aging infrastructure and address primary and secondary water quality systematically and to prioritize the highest risk facilities and replace these on an accelerated basis. As part of the WWISC Plan, each utility would develop and implement a WWISC Rider that would allow for the timely recovery of the costs of these non-revenue producing investments.

On August 19, 2014, the Commission issued an Order Establishing Proceeding that, among other things, directed that notice of the Proposed Rules be provided to the public and that interested persons be provided an opportunity to file written comments on, propose modifications or supplements to, or request a hearing on the Proposed Rules. In addition, the

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Commission directed any person commenting on the Proposed Rules to address in such comments the authority of the Commission to issue the Proposed Rules and, assuming the Commission has such authority, whether it is appropriate for the Commission to exercise such authority absent specific direction from the General Assembly.

On December 5, 2014, the Commission issued an Order for Notice and Hearing that, among other things, set an evidentiary hearing for March 10, 2015, and assigned the case to a Hearing Examiner.

Notices of participation were filed in this proceeding by: (i) Caroline County, Virginia ("Caroline County"); (ii) Great Eastern Resort Corporation and Great Eastern Resort Management, Inc. (collectively, "Massanutten Resort"); (iii) the Blacksburg Country Club, Inc., the Blacksburg Country Club Estates Homeowners' Association, Mr. Robert A. S. Wright, and Dr. William G. Foster; (iv) the Office of the Attorney General's Division of Consumer Counsel ("Consumer Counsel"); (v) City of Alexandria, Virginia ("City of Alexandria"); (vi) Board of Supervisors of Frederick County, Virginia ("Frederick County"); (vii) Concerned Ratepayers in the Eastern District ("CRED")<sup>1</sup>; and (viii) the Massanutten Property Association, Inc. ("Association"). The Lake Monticello Owners Association ("Lake Monticello Owners") became Respondents during the public hearing held on March 10, 2015.

During the course of this proceeding, the Commission received written comments from five state legislators, 11 local governments and organizations, and 413 individuals not otherwise participating as respondents.

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<sup>1</sup> The members of CRED are as follows: the counties of Westmoreland, Northumberland, and Lancaster, and the following entities: Ebb Tide Beach Community Association, Church Point Property Owners Association, Cabin Point Civic Association, Glebe Harbor Civic Association, Potomac-Westmoreland Shores Civic Corporation, Stratford Harbour Property Owners Association, Corrotoman by the Bay Association, and Sherwood Forest Association.

The public hearing in this matter was convened as scheduled on March 10, 2015. The Petitioners, Caroline County, CRED, the Association, Massanutten Resort, Frederick County, City of Alexandria, Lake Monticello Owners, Consumer Counsel and the Commission Staff ("Staff") appeared at the hearing, by counsel. At the evidentiary hearing, testimony and exhibits of the parties and the Staff were introduced and submitted into the record.

On June 8, 2015, Senior Hearing Examiner Alexander F. Skirpan, Jr., filed his report on the Petitioners' Application ("Hearing Examiner's Report"), which contained his findings and recommendations. In his Report, the Senior Hearing Examiner found that the Petitioners "failed to provide sufficient need for the Proposed Rules"<sup>2</sup> and recommended that the Commission deny the Petition. In the event that the Commission elected to implement the Proposed Rules, the Senior Hearing Examiner recommended that most of the modifications to the Proposed Rules recommended by the Staff be adopted.<sup>3</sup>

Comments on the Hearing Examiner's Report were filed by the Petitioners, Caroline County, CRED, the Association, Massanutten Resort, Frederick County, City of Alexandria, Consumer Counsel and the Staff. The Petitioners, Consumer Counsel and Staff agreed with the Hearing Examiner that the Commission has authority to issue the Proposed Rules, while Caroline County, CRED, the Association, Massanutten Resort, Frederick County, and the City of Alexandria argued that the Commission lacked such jurisdiction. The Petitioners and Staff disagreed with the Hearing Examiner's recommendation that the Petition be denied because the Petitioners failed to prove the rules were needed. Caroline County, CRED, the Association, Massanutten Resort, Frederick County, City of Alexandria and Consumer Counsel agreed with

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<sup>2</sup> Hearing Examiner's Report at 51.

<sup>3</sup> *Id.* at 29-49.

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the Hearing Examiner that the Petition should be denied. Caroline County, CRED, the Association, Massanutten Resort, Frederick County, City of Alexandria, Consumer Counsel and Staff generally supported the Hearing Examiner's recommendations regarding the modifications to the Proposed Rules suggested by Staff. The Petitioners supported some of Staff's proposed modifications, but opposed a number of the modifications.

NOW THE COMMISSION, having considered this matter, is of the opinion and finds as follows.

We agree with the Hearing Examiner's finding that the Proposed Rules need not, and should not, be implemented. Petitioners have neither asserted that the Commission is legally required to promulgate such rules, nor that the proposed rules are legally necessary in order for water and wastewater companies to have a reasonable opportunity to recover necessary infrastructure investment. While we recognize the problem of aging infrastructure for many water and wastewater companies and appreciate the Petitioners' desire to improve the quality and service of their systems, we find that the need for such investment, along with the appropriate recovery thereof, can be reasonably addressed on a case-by-case basis wherein the Commission and interested parties may consider the specific circumstances attendant to each utility. Indeed, as stated by the Hearing Examiner, "the absence of established rules would provide the water and wastewater companies, Commission, and participants a greater degree of flexibility to tailor the surcharge to the specific utility, facts, and circumstances."<sup>4</sup>

Further, we need not and do not rule herein on the appropriateness of various rate design mechanisms that may be utilized in association with new infrastructure investment.<sup>5</sup> Rather, we

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<sup>4</sup> Hearing Examiner's Report at 53.

<sup>5</sup> Likewise, as a result of our findings herein, we need not and do not address the legal questions raised in this proceeding regarding the Commission's authority to promulgate the Proposed Rules.

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conclude that the evidence and arguments in this record support the Commission's finding not to adopt a set of rules by which water and wastewater utilities may establish a rate surcharge designed to recover costs associated with infrastructure replacement. The Commission emphasizes, however, that this finding does not represent a rejection of infrastructure replacement, and these utilities may seek approval and recovery of such surcharges pursuant to relevant Virginia statutes.

Accordingly, IT IS ORDERED THAT the Petition is denied and this matter is dismissed, and the papers filed herein shall be placed in the file for ended causes.

JAGDMANN, Commissioner, Concurs:

I concur with the Commission's opinion but write separately to emphasize both the Commission's authority to promulgate the Proposed Rules, had we found them necessary or beneficial, as well as the Commission's authority to adopt a rider or surcharge to recover the cost of infrastructure replacement if it is in the public interest and meets the requirements of Chapter 10 of Title 56 of the Code.

In this regard, I agree with Hearing Examiner's discussion of the relevant statutes, including Article IX, § 2 of the Virginia Constitution as well as Virginia Code §§ 12.1-12, 56-35, 56-235, and 56-235.2.<sup>6</sup> In my view, there is no question that the Commission has jurisdiction to grant a surcharge such as that anticipated by the Proposed Rules.

Where a company is faced with large and/or important infrastructure replacements or other capital projects that may be potentially burdensome to ratepayers, surcharges may be an appropriate rate recovery mechanism when tailored to the project. Commission consideration of

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<sup>6</sup> Hearing Examiner's Report at 26-29. ("[Virginia Code §§ 12.1-12, 56-35, and 56-235] eliminate the need for specific enabling legislation containing an express grant to the Commission of jurisdiction to establish an infrastructure charge such as the WWISC." Hearing Examiner's Report at 27.)

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the appropriateness of surcharges would necessarily involve understanding the nature, goals, and costs of the project at issue as well as company specifics. In my view, such surcharges can be fashioned on a case-by-case basis and can be designed to comport with the requirements of Chapter 10 of the Code.

Commission consideration of such surcharges also would involve the monitoring of rates through vehicles at the Commission's disposal.<sup>7</sup> This Commission and its Staff are uniquely qualified to supervise such surcharges, to verify that such surcharges comply with applicable laws and conditions the Commission may impose, and to verify that companies using such surcharges do not over-earn. Base rate cases and annual informational filings are just a few of the tools we have available to ensure that just and reasonable rates are maintained when the Commission permits companies to use surcharges for necessary infrastructure replacement.<sup>8</sup>

In short, I believe that, under appropriate circumstances and with Commission oversight, surcharges are a viable mechanism to achieve infrastructure replacement or other high capital expenditures in a way that is manageable for ratepayers.

AN ATTESTED COPY hereof shall be sent by the Clerk of the Commission to all persons on the official Service List in this matter. The Service List is available from the Clerk of the Commission, c/o Document Control Center, 1300 East Main Street, First Floor, Tyler Building, Richmond, Virginia 23219. A copy also shall be delivered to the Commission's Office of General Counsel and Divisions of Energy Regulation and Utility Accounting and Finance.

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<sup>7</sup> See, e.g., Ex. 9 at 21-24, 27.

<sup>8</sup> See, e.g., Hearing Examiner's Report at 46-47.