

**STATE OF CONNECTICUT
DEPARTMENT OF PUBLIC HEALTH
JOINT PROCEEDING WITH
PUBLIC UTILITIES REGULATORY AUTHORITY**

In Re: Joint Investigation by DPH and PURA
Regarding Indian Fields Homeowners
Association's Request to Cease Operations

July 17, 2013
Docket No. 13-02-04

MEMORANDUM OF DECISION

PROCEDURAL BACKGROUND

By letter dated January 31, 2013, the Indian Fields Homeowners Association ("Indian Fields") requested the consent of the Department of Public Health ("the DPH") and the Department of Energy and Environmental Protection's Public Utilities Regulatory Authority ("the PURA"), formerly the Department of Public Utility Control, (jointly, "the Departments") pursuant to § 16-46(a) of the General Statutes of Connecticut (*Conn. Gen. Stat.*) to cease operations as a water company. Record Exhibit ("Rec. Exh.") 1. On March 7, 2013, the Commissioner of the DPH issued a Notice of Hearing ("the Notice"), pursuant to *Conn. Gen. Stat.* § 16-46(a), stating that the Departments intended to conduct a joint investigation into the actions that Indian Fields shall take to ensure a continuous supply of potable water at adequate volume and pressures, in accordance with the procedures and criteria set forth in *Conn. Gen. Stat.* §§ 16-262n to 16-262q, inclusive. Rec. Exh. 2.

Notice of the hearing was published in the Danbury News-Times on March 14, 2013. Rec. Exh. 8.

The Notice designated Indian Fields and Aquarion Water Company of Connecticut ("Aquarion") as parties to the proceeding. Rec. Exh. 2. The Office of Consumer Counsel ("the OCC") was also designated a party pursuant to *Conn. Gen. Stat.* § 16-2a. *Id.*

The administrative hearings were held on April 2, 2013, in Brookfield, Connecticut and on April 11, 2013, in Hartford, Connecticut in accordance with *Conn. Gen. Stat.* §§ 4-176e, 4-177, 4-177c, and 4-180. The hearings were jointly conducted, pursuant to *Conn. Gen. Stat.* §§ 16-2(c), 16-8(a), and 19a-2a, by Kathryn Keenan, Esq., on behalf of the DPH, and by Thomas Caruso, Esq., on behalf of the PURA. *Id.*

At the hearings, Attorney Daniel P. Venora represented Indian Fields, Attorney Frederic L. Klein represented Aquarion, and David Thompson represented the OCC.

On June 13, 2013, the Departments issued a Draft Memorandum of Decision in this matter. On June 24, 2013, Indian Fields and Aquarion filed letters in lieu of written exceptions in support of the Draft Memorandum of Decision.¹

This Memorandum of Decision is based entirely on the record and sets forth the Hearing Officers' proposed findings of fact, conclusions of law, and orders. To the extent that the findings of fact actually represent conclusions of law they should be so considered, and vice versa. *SAS Inst., Inc. v. S & H. Computer Systems, Inc.*, 605 F. Supp. 816 (M.D. Tenn. 1985).

FINDINGS OF FACT

A. Indian Fields

1. Indian Fields owns and operates a water company, as defined by *Conn. Gen. Stat.* § 16-262n², in Brookfield, Connecticut. It provides water service to 55 residential customers. Indian Fields Exhibits ("Ind. Fields Exhs.") 21 and 22.
2. Indian Fields is a tax district formed in accordance with *Conn. Gen. Stat.* § 7-324 et seq. for the sole purpose to plan, lay out, acquire, construct, maintain, operate and regulate the

¹ The Draft Memorandum of Decision was entered into the record as Hearing Officers' Exhibit 1. Indian Field's and Aquarion's letters in lieu of written exceptions were entered into the record as Hearing Officers' Exhibits 2 and 3, respectively.

² *Conn. Gen. Stat.* § 16-262n defines a "water company" to include any "corporation, company, association, ... or other entity owning, ... maintaining, operating, managing or controlling any ... well or distributing plant or system employed for the purpose of supplying water to not less than two service connections or twenty-five persons."

use of the water system and associated real properties and equipment, receive funds for the operation of the water system, provide a properly authorized body for the receipt and allocation of capital funds to be used for improving the water system as necessary, and lay and collect taxes. Ind. Fields Exh. 1, pp. 1 and 2.

3. Indian Fields is overseen by a voluntary board composed entirely of residents of Indian Fields, all of whom are served by Indian Fields. *See* Ind. Fields Exh. 1, p. 2.
4. On October 11, 2012, a majority of the homeowners voted at a special meeting for the adoption of two resolutions. The first resolution authorized Indian Fields to sell the water system to Aquarion. The second resolution authorized Jeff Papsin, president of Indian Fields, to execute and deliver to Aquarion a purchase and sale agreement based on the terms of the transaction presented at the special meeting, and to execute and deliver all such other instruments, documents and agreements necessary or desirable to consummate the transaction and to effect the sale of the water system. *Id.* at p. 25.
5. On November 20, 2012, Indian Fields and Aquarion entered into an asset purchase agreement whereby Indian Fields agreed to sell, and Aquarion agreed to purchase for \$38,500, certain land and easements, together with appurtenances thereon, owned by Indian Fields. Aquarion Exhibit ("Aquarion Exh.") 1. Indian Fields and Aquarion negotiated for and mutually agreed to the purchase price. Aquarion Exh. 11.
6. On November 30, 2012, Indian Fields notified the DPH pursuant to *Conn. Gen. Stat. § 25-33f* of their intention to sell their water supply sources. Ind. Fields Exh. 8, p. 2. The DPH acknowledged that notification on April 2, 2013. *Id.* at p. 4.
7. On January 31, 2013, Indian Fields requested the consent of the Departments to cease operations as a water company. Rec. Exh. 1.
8. Indian Fields' water system consists of six active wells, Wells Numbered 1, 2, 3, 4, 5 and 6, a pump house, two atmospheric storage tanks with a capacity of 18,000 and 20,000 gallons, respectively, a 2,000 gallon pressurized storage tank, a chlorine feed system, and a distribution network (collectively, "Indian Fields Water System"). Ind. Fields Exhs. 7, p. 55, and 14, pp. 1-2; Tr. 04/11/2013, pp. 13, 29.
9. Wells Numbered 1, 4 and 5 are located on land owned in fee by Indian Fields in Brookfield, Connecticut. Ind. Fields Exh. 7, pp. 6-10, 52, 55, 72; Late Filed Exhibit ("LFE") 4.
10. Wells Numbered 2, 3 and 6 are located on privately-owned property in Brookfield, Connecticut. Ind. Fields Exh. 7, pp. 6-10, 55, 72, 81; LFE 4. Indian Fields will assign to Aquarion the easement it has with respect to Well Number 2 and will convey to Aquarion the rights it has with respect to Wells Numbered 3 and 6. Ind. Fields Exh. 7, pp. 6-10, 53, 72, 74-76; LFE 4; Tr. 04/11/2013, pp. 24, 50-54.

11. On February 28, 2013, the DPH issued to Indian Fields Water Company Land Permit Number WCL2012-39 authorizing Indian Fields to sell to Aquarion its Class I water company land located at 79 Obtuse Road South in Brookfield, Connecticut, which consists of 0.94 acres underlying Wells Numbered 4 and 5, and at 4A Apache Drive, in Brookfield, Connecticut, which consists of 0.22 acres underlying Well Number 1. Ind. Fields Exh. 7, pp. 83-84.
12. None of the Indian Fields Water System customers is metered. Ind. Fields Exh. 23.
13. The Indian Fields Water System customers are charged an annual flat rate that is based on the Indian Fields annual budget (July 1 to June 30). Indian Fields charged customers an annual flat rate of \$400 in 2003, \$450 in 2004, \$500 in 2005 through 2009, \$600 in 2010, \$700 in 2011, and \$475 in 2012. Ind. Fields Exh. 21; Tr. 04/11/2013, pp. 55-56.
14. The Brookfield Fire Department provides fire protection to the homes that are a part of Indian Fields. Indian Fields does not incur a cost for fire protection. Ind. Fields Exh. 24; Tr. 04/11/2013, p. 62.
15. Indian Fields does not have the technical, managerial or financial resources to operate the Indian Fields Water System. *See* Ind. Fields Exh. 7, p. 77; Tr. 04/11/2013, pp. 16-17, 39.

B. Aquarion

16. Aquarion owns and operates 79 public water systems serving customers in 47 cities and towns throughout Connecticut. Aquarion Exh. 3.
17. Aquarion has knowledge of, experience with and access to financial markets, which presents financing opportunities. Aquarion Exh. 4.
18. Aquarion has experience acquiring and operating water systems. *Id.*; Aquarion Exh. 5.
19. Aquarion's Brookfield main system in Brookfield, Connecticut is in the immediate vicinity of the Indian Fields Water System. Aquarion Exh. 3; Tr. 04/11/2013, pp. 41-42, 62.
20. Indian Fields is located within Aquarion's exclusive service area ("ESA") for Brookfield, Connecticut. Ind. Fields Exh. 13; Tr. 04/11/2013, p. 25.
21. Aquarion will record the value of the transaction based upon the cash paid. Tr. 04/11/2013, p. 67. The accounting entries to record the purchase are as follows:

	Debit	Credit
101 Utility Plant Assets	38,500	
131 Cash		\$38,500

Aquarion Exh. 11.

22. Aquarion will operate the Indian Fields Water System as a satellite system. Tr. 04/11/2013, p. 62.
23. Aquarion proposes to charge the Indian Fields Water System customers Aquarion's existing flat rate for its Eastern Division customers of \$42.63 per month. Aquarion Exhs. 6 and 11, p. 2; Tr. 04/11/2013, pp. 60-61, 74-76. Aquarion also proposes to impose on the Indian Fields Water System customers its existing schedule of miscellaneous service fees, its Water Infrastructure and Conservation Adjustment (WICA) surcharges or credits, and its rules and regulations. Aquarion Exh. 10; Tr. 04/11/2013, p. 61.
24. Aquarion will evaluate the timing and funding to meter the Indian Fields Water System customers after taking over the system. Aquarion Exh. 8; Tr. 04/11/2013, p. 60.
25. In the event that large expenditures for capital improvements are required, Aquarion would not likely request a surcharge. Aquarion does not anticipate having to make any large capital improvements and will include any capital improvement expenditures in its capital budget. Aquarion Exh. 9; Tr. 04/11/2013, pp. 40-41, 62-63.

DISCUSSION AND CONCLUSIONS OF LAW

The Departments commenced these proceedings pursuant to *Conn. Gen. Stat.* § 16-46(a) upon receipt of Indian Fields' request to cease operations as a water company. Pursuant to *Conn. Gen. Stat.* § 16-46(a), a water company may not cease operations without the consent of the Departments. *Conn. Gen. Stat.* § 16-46(a) requires the Departments, upon receipt of a request to cease operations, to hold a hearing and issue a final decision setting forth the actions that the water company shall take to ensure a continuous supply of potable water at adequate volume and pressures, in accordance with the procedures and criteria set forth in *Conn. Gen. Stat.* §§ 16-262n to 16-262q, inclusive.

Conn. Gen. Stat. § 16-262n(c) requires the Departments, whenever a request from a water company is filed pursuant to *Conn. Gen. Stat.* § 16-46(a), to determine the actions that may be taken and the expenditures that may be required, including acquisition of the water company by a suitable public or private entity, to assure the availability and potability of water at adequate volume and pressure to the persons served by the water company at a reasonable cost.

Once a proceeding has been conducted pursuant to *Conn. Gen. Stat.* § 16-262n, upon a determination that the costs of improvements to and the acquisition of a water company are necessary and reasonable, *Conn. Gen. Stat.* § 16-262o authorizes the Departments to order the acquisition of the water company by the most suitable public or private entity.

In making such determination, the PURA, in consultation with the DPH, is required under *Conn. Gen. Stat.* § 16-262o to consider: (1) the geographical proximity of the plant of the acquiring entity to the water company, (2) whether the acquiring entity has the financial, managerial and technical resources to operate the water company in a reliable and efficient manner and to provide continuous, adequate service to the persons served by the company, (3) the current rates that the acquiring entity charges its customers, and (4) any other factors the PURA deems relevant.

The Departments, therefore, must determine the actions that must be taken and the expenditures that may be required, including approval of the acquisition of the Indian Fields Water System by Aquarion, to assure the availability and potability of water and the provision of water at adequate volume and pressure to the persons served by the Indian Fields Water System at a reasonable cost.

For the reasons discussed in greater detail below, the Departments have determined, based on the factors set forth in *Conn. Gen. Stat.* §16-262o, and based on evidence submitted in this proceeding, that the action that must be taken in the current proceeding is the approval of the acquisition of the Indian Fields Water System by Aquarion. Once Aquarion acquires the Indian Fields Water System, Indian Fields will cease to exist as a water company. The Indian Fields Water System customers will then become customers of Aquarion and be billed at Aquarion's Eastern Division's flat rate for service, which is \$42.63 per month.

A. Indian Fields Water System

Indian Fields lacks the financial, managerial and technical resources to own and operate the Indian Fields Water System, and no longer wishes to do so. FF 15. In addition, on November 11, 2012, Indian Fields and Aquarion entered into an asset purchase agreement whereby Indian Fields agreed to sell, and Aquarion agreed to purchase for \$38,500, the Indian Fields Water System, including certain land and easements, together with appurtenances thereon, owned by

Indian Fields. FF 5. Accordingly, the acquisition of the Indian Fields Water System is necessary and reasonable.

B. Suitability to Acquire the Indian Fields Water System

1. Geographic Proximity

The first criteria the Departments are required to consider in determining whether an entity is a suitable entity to acquire the Indian Fields Water System is geographic proximity. Aquarion's Brookfield main system in Brookfield, Connecticut is in the immediate vicinity of the Indian Fields Water System. FF 19. In addition, the Indian Fields Water System is located within Aquarion's ESA. FF 20. Accordingly, Aquarion's plant is located within close geographical proximity of the Indian Fields Water System.

2. Financial, Managerial and Technical Resources

The second criteria is whether the potential acquiring entity has the financial, managerial and technical resources to operate the Indian Fields Water System in a reliable and efficient manner and to provide continuous, adequate service to the persons served by the Indian Fields Water System. Aquarion owns and operates 79 public water systems serving customers in 47 cities and towns throughout Connecticut. FF 16. Additionally, Aquarion has extensive experience acquiring and operating small water companies in Connecticut. FF 18. Aquarion also has the knowledge of, experience with and access to financial markets to fund improvements to the Indian Fields Water System. FF 17. Accordingly, Aquarion possesses the financial, managerial and technical resources to take the actions necessary to assure the availability and potability of water and the provision of water at adequate volume and pressure to the persons served by the Indian Fields Water System, including addressing deficiencies, if any, with respect to the Indian Fields Water System.

3. Proposed Rates

Indian Fields consists of 55 homes, FF 1, which are not metered, FF 12. Customers were charged a flat annual rate of \$475 for water service in 2012. FF 13. This rate is based on the Indian Fields annual water budget for its fiscal year from July 1, 2012 to June 30, 2013. *See Id.* Fire protection is provided to the Indian Fields homes by the Brookfield Fire Department. FF 14.

Aquarion proposed to charge the Indian Fields customers its existing flat rate of \$42.63 per month from its Eastern Division's approved rate schedule (\$127.89 per quarter / 3 months = \$42.63) until Aquarion meters the individual homes. FF 23. Aquarion will evaluate the timing and funding to meter the Indian Fields Water System customers after taking over the system. FF 24. In addition to the water rates, customers' water bills will be subject to Aquarion's miscellaneous service charges, its rules and regulations and the WICA surcharges or credits. *Id.*

Aquarion proposed to continue to operate the Indian Fields Water System as a satellite system, FF 22, and is not proposing any surcharge to the Indian Fields homeowners. FF 25. Aquarion stated that the water system did not need any major overhauls, only minor modifications and stated that the Indian Fields customer revenues would cover the capital expenditures. *Id.*

4. Proposed Purchase Price

Indian Fields and Aquarion entered into an asset purchase agreement whereby Indian Fields agreed to sell, and Aquarion agreed to purchase for \$38,500, certain land and easements, together with appurtenances thereon, owned by Indian Fields. FF 5. The price of \$38,500 was negotiated and mutually agreed to by both Indian Fields and Aquarion. *Id.* In terms of accounting, Aquarion intends to record the value of the transaction based upon the cash paid. FF 21. The proposed accounting entries to record the purchase are as follows:

	Debit	Credit
101 Utility Plant Assets	38,500	
131 Cash		\$38,500

Id.

CONCLUSION

Based on the close geographical proximity of Aquarion's Brookfield main system to the Indian Fields Water System, Aquarion's technical, financial, and managerial capacity, and the reasonableness of the rate Aquarion will charge the customers of the Indian Fields Water System for water service, the Departments determine that Aquarion is a suitable entity to acquire the Indian Fields Water System. Accordingly, pursuant to *Conn. Gen. Stat.* § 16-46(a), the Departments hereby consent to the cessation of Indian Fields as a water company and Aquarion's acquisition of the Indian Fields Water System, subject to the Conditions and Orders below.

CONDITIONS AND ORDERS

Based upon the foregoing, the Departments order the following:

1. Within **thirty days** of the issuance of this Decision, Aquarion shall submit to the Departments, under Aquarion's own letterhead or official tariff designation, the approved rates and miscellaneous charges to be rendered to the Indian Field customers on or after the date of this Decision.
2. Within **thirty days** of the issuance of this Decision, Aquarion shall submit to the Departments, in writing, the names, mailing and email addresses, and telephone numbers, including emergency telephone numbers, of the administrator and certified operator of the Indian Fields Water System.
3. Within **sixty days** of the issuance of this Decision, Indian Fields shall transfer to Aquarion all of its water-related plant and assets, including, but not limited to, (a) title to all of its wells and the Class I land associated with such wells, and its mains, storage tanks, service connections, pumps and pump house, and all of its other water-related facilities, equipment and appurtenances; (b) any leases to, or other interests in, water-related real or personal property; (c) any easements granted to it; and (d) any other Class I land in its possession or under its control.
4. Within **thirty days** of the transfer of the Indian Fields Water System to Aquarion, Aquarion shall provide written notification to the former customers of the Indian Fields Water System that it has assumed ownership of the Indian Fields Water System. The notice shall include the following: (a) billing information pertaining to the rates the Indian Fields Water System's customers are to be charged; (b) a copy of Aquarion's current PURA-approved rate schedule; (c) telephone and address information for routine and emergency contacts, and (d) the location and times at which Aquarion's Rules and Regulations can be reviewed. Aquarion shall submit to the Departments a copy of the notice at least five days prior to its mailing.

5. Within **thirty days** of the transfer of the Indian Fields Water System to Aquarion, Aquarion shall submit to the Departments written verification that the transfer of the Indian Fields Water System has taken place in accordance with this Decision and Order 3, above, including journal entries used to record its acquisitions of these assets. The journal entries shall include an accounting of the legal and administrative costs incurred by Aquarion in connection with its acquisition of the Indian Fields Water System.
6. No later than **July 1, 2015**, Aquarion shall update Aquarion's Brookfield water supply plan to include the Indian Fields Water System and submit such update to the Departments.
7. All reports and other documents required to be filed in this matter pursuant to the above Orders shall be sent to:

**Michael Hage, Section Supervisor
Department of Public Health Drinking Water Division
410 Capitol Ave., MS# 51WAT
P.O. Box 340308
Hartford, Connecticut 06134-0308
(2 copies)**

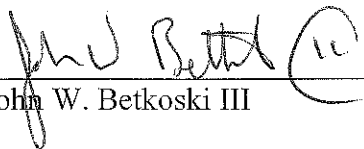
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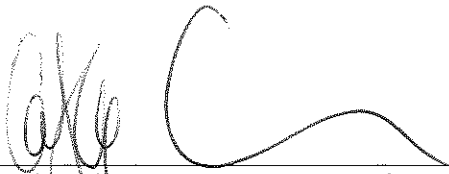
**Kimberley J. Santopietro, Executive Secretary
Department of Energy and Environmental Protection
Public Utilities Regulatory Authority
10 Franklin Square
New Britain, Connecticut 06051
(6 copies)**

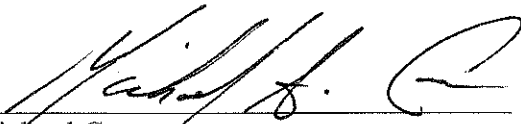
**DOCKET NO. 13-02-04: JOINT INVESTIGATION BY DPH AND PURA
REGARDING INDIAN FIELDS HOMEOWNERS
ASSOCIATION'S REQUEST TO CEASE OPERATIONS**

This Decision is adopted by the following Utility Commissioners and Commissioner:

For the Department of Energy and Environmental Protection, Public Utilities Regulatory Authority: For the Department of Public Health:


John W. Betkoski III

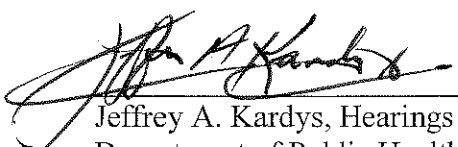

Jewel Mullen, MD, MPH, MPA by
Kathryn Keenan, Hearing Officer

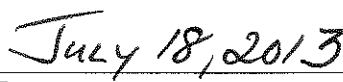

Michael Caron


Arthur H. House

CERTIFICATE OF SERVICE

The foregoing is a true and correct copy of the Memorandum of Decision issued by the Department of Public Health and the Department of Energy and Environmental Protection's Public Utilities Regulatory Authority in this proceeding, and was forwarded by Certified Mail to all parties of record on the date indicated below.


Jeffrey A. Kardys, Hearings Liaison
Department of Public Health


Date