

DW 06-023

RIVERSIDE WATER WORKS, INC.

**Joint Petition for Approval of Transfer of Water System Assets to
Canaan Fire District No. 1 and for Exemption from Further Commission Regulation**

Order Approving Transfer

ORDER NO. 24,713

December 15, 2006

APPEARANCES: McKee, Guiliani and Cleveland, P.C. by J. Paul Giuliani, Esq., on behalf of Riverside Water Works and Canaan Fire District No. 1; Wiggin & Nourie, P.A. by Sheliah M. Kaufold, Esq. on behalf of Riverside Village District; and F. Anne Ross, Esq. on behalf of Staff of the New Hampshire Public Utilities Commission.

I. PROCEDURAL HISTORY

On February 8, 2006, Riverside Water Works, Inc. (Riverside) and Canaan Fire District No. 1 (the Fire District) filed a Joint Petition (the Petition) seeking authorization to transfer Riverside's water utility assets and franchise to the Fire District. Riverside and the Fire District further requested exemption of the Riverside system from Commission regulation, following the transfer. Riverside and the Fire District filed a similar request for approval with the Vermont Public Service Board (VPSB) and on September 13, 2006, the VPSB approved the transfer.

Riverside is a regulated public utility serving 106 customers in that part of Canaan, Vermont known as Beecher Falls, as well as a portion of Stewartstown, New Hampshire. Thirty-six Riverside customers reside in Stewartstown. The Fire District is a municipality under Vermont law and presently owns and operates a separate water system in Canaan that serves approximately 175 customers. Riverside's existing water system would not be interconnected in any way with the Canaan water system.

Riverside was first authorized to conduct utility business in New Hampshire through Commission Order No. 23,519. *See Riverside Water Works, Inc.*, 85 NH PUC 472 (2000). Riverside is owned by Ethan Allen Interiors of Danbury, Connecticut. The Riverside system's water comes from a well and pump station in Vermont, while the system's storage tank and a small booster station are located in New Hampshire.

According to an asset purchase agreement, dated January 25, 2006, and submitted with the Petition, Riverside seeks to transfer to the Fire District all real estate, water system facilities, easements and rights of way. According to the petition and information adduced by the Staff of the Commission, the Fire District intends to provide the same quality and quantity of water service on both sides of the state line, and intends to maintain the same rates for both Vermont and New Hampshire customers. Also, the Fire District commits to undertake any necessary improvements to the Riverside system to maintain compliance with the standards of the Vermont Agency of Natural Resources and the New Hampshire Department of Environmental Services.

On July 28, 2006, Staff of the Commission (Staff) filed a letter recommending that the Commission approve the requests in this docket. According to Staff, Riverside provided an individual notice to all New Hampshire customers indicating that customers could contact Commission Staff if they had concerns or wanted more information. No customers have contacted Staff. Staff also noted that as a result of meetings held in the Beecher Falls-Stewartstown area over the last two years regarding water supply issues, customers had notice of efforts to deal with these issues. Finally, Staff's letter reported that the New Hampshire Department of Environmental Services (DES) had issued a letter regarding the availability and suitability of water at Riverside's system, pursuant to RSA 374:22, III.

On September 26, 2006, the Commission issued an order of notice setting a prehearing conference for October 12, 2006. At the prehearing conference, conducted by the Commission's general counsel, the Fire District, Riverside and Commission Staff appeared. In addition, Riverside Village District (Village District), an entity representing the 36 Riverside water system users located in New Hampshire, moved to intervene in the docket. Following the October 12, 2006 prehearing conference and prior to any Commission ruling on the Village District's oral motion for intervention, counsel for the Village District learned that the Village District had dissolved on April 11, 2006, by electoral approval pursuant to RSA 52:21. On November 13, 2006, counsel for the Village District filed a motion to withdraw its request for intervention with the Commission. No party objected to the withdrawal of the Village District's intervention request and the motion was granted.

On November 1, 2006, the Fire District, Riverside, the Village District and Staff filed a Stipulation with the Commission concerning the joint petition in this docket. On November 2, 2006, the signatories requested that the Commission postpone the hearing scheduled for November 8, 2006, and the Commission postponed the hearing until November 28, 2006. On November 22, 2006, the Fire District, Riverside, and Commission Staff filed an amended stipulation and on November 28, 2006, the Commission held a hearing on the more recent agreement.

II. TERMS OF AMENDED STIPULATION

Notwithstanding the nominal purchase price of \$1 contained in the purchase and sale agreement, the signatories to the settlement agreement agreed that the transferred assets would retain their current regulatory net book value of approximately \$89,000. Any regulatory reporting by the Fire District following the transfer would begin with this

amount, which would be adjusted as appropriate based upon subsequent ownership and operation by the Fire District. The signatories believe this exception to traditional regulatory asset valuation is appropriate based on the expectation that the Fire District, as a municipal entity, will not be seeking to earn a return on invested capital in the Riverside system except that needed for debt service.

Following the transfer, the Fire District would assume responsibility for delivering water to all existing customers of Riverside in New Hampshire and Vermont, with the Fire District assuming the status of a public utility within the meaning of New Hampshire law, holding the franchise to serve the customers located in Stewartstown.

The Fire District agreed to keep water rates for the Riverside customers at current levels until such time as adjustments are needed to cover the costs of planned capital improvements. The Fire District agreed to file any proposed rate changes with the Commission for review and approval.

The Fire District agreed to charge the same rates to Riverside users whether they reside in Vermont or New Hampshire. The Fire District further agreed to offer the same quality of service to all Riverside water system users whether they take service in Vermont or New Hampshire. The Fire District agreed that after the transfer it would file an annual report with the Commission by March 31st. In addition to its annual report, and particularly in light of known improvements needed to the Riverside system, the Fire District agreed to file a summary of its completed capital improvements as well as planned capital improvements by June 30th of each year.

The stipulation would obligate the Fire District to provide potable water, meeting all Vermont Agency of Natural Resources Water Supply Division and New Hampshire

Department of Environmental Services standards, in amounts sufficient to serve all users currently served by the Riverside water system in Stewartstown.

Water monitoring and testing of the Riverside water system would be conducted by the Fire District in accordance with all applicable federal and state laws and regulations. The Fire District accepted responsibility for filing with each supervisory governmental agency all required reports related to the Riverside water system, and also responsibility for initiating and prosecuting such requests, applications and petitions as may be required for the operation of Riverside water system.

III. COMMISSION ANALYSIS

The parties request that we approve a transfer of Riverside's water system assets and its franchise to an out-of-state municipal entity, Canaan Fire District No. 1. In considering this request we are guided by several statutes. RSA 374:22 provides that "[n]o person or business entity shall . . . exercise any right or privilege under any franchise . . . without first having obtained the permission and approval of the commission." In determining whether a proposed franchise or franchise transfer is consistent with the public good, the Commission assesses, among other things, the financial, managerial, and technical expertise of the petitioners. *See Lower Bartlett Water Precinct*, 85 NH PUC 635, 641 (2000). RSA 374:30 states that "[a]ny public utility may transfer or lease its franchise, works or system . . . when the commission shall find that it will be for the public good . . ." RSA 374:24 provides in part, "[b]usiness entities which are public utilities organized under the laws of another state and which furnish utility service in towns outside the state may furnish utility service to New Hampshire towns adjacent to state boundaries when the public utilities commission finds this service to be in the public interest."

A review of the petition, the amended stipulation and the testimony at hearing reveals that the Fire District already owns and operates a water system in Canaan, Vermont and thus has experience in operating a utility. The amended stipulation provides that the Fire District will charge the same rates to the Vermont Riverside customers as it will to the New Hampshire Riverside customers and will serve all customers in the Riverside water system with the same quality and quantity of water. The Fire District agreed to comply with the requirements of the Vermont Agency of Natural Resources and U.S. Environmental Protection Agency. Finally, the amended stipulation as well as testimony at hearing demonstrates that the Fire District has access to low-cost loans and grant funds.

Based upon this evidence we find that the Fire District possesses the managerial, financial, and technical expertise to operate the Riverside water system. Further we note that the Department of Environmental Services has provided a letter regarding the availability and suitability of water at the Riverside system. We therefore find that the proposed transfer meets the public good standard set out in both RSA 374:22 and RSA 374:30, as well as the public interest standard set out in RSA 374:24. Therefore, we approve the transfer of the Riverside franchise and water system assets to The Fire District.

Finally, we discuss the extent of our regulation of the Fire District as a public utility, after its purchase of the Riverside water system. The Petition requested exemption from public utility regulation.

RSA 362:4, III-b provides that the Commission “may exempt a municipal corporation from any and all provisions of this title except the franchise application requirements of RSA 374, and may authorize a municipal corporation to charge new customers outside its municipal boundaries a rate higher than 15 percent above that charged to its municipal customers, if after

notice and hearing, the commission finds such exemption and authorization to be consistent with the public good.” This case poses the highly unusual facts of a Vermont municipality (the Fire District) taking ownership of a privately-owned, public utility (Riverside) serving customers in both Vermont and New Hampshire. In addition, the municipality intends to charge the new customers (the former Riverside customers in Vermont and New Hampshire) the same rates, but those rates will be more than 15 percent higher than rates in the original Fire District (which is not physically interconnected with the Riverside system), but those rates will be the current Riverside rates.

Applying RSA 362:4, III-b to these facts, it is reasonable to conclude, with respect to the thirty-six customers in West Stewartstown, that a municipal corporation, albeit a Vermont municipality, is charging new customers “a rate higher than 15 percent above that charged to its municipal customers.” Furthermore, inasmuch as the Fire District has agreed to keep rates at current levels, charge the same rates in Vermont and New Hampshire to its Riverside customers, and file any proposed rate changes with the commission for review and approval, it is reasonable to conclude that it is consistent with the public good to exempt the Fire District from regulation and authorize it to charge the current Riverside rates. We note that this exemption is subject to reconsideration in the case of changed circumstances.

Based upon the foregoing, it is hereby

ORDERED, that Riverside Water Works is authorized to transfer its franchise, works and system to Canaan Fire District No. 1; and it is

FURTHER ORDERED, that Canaan Fire District No. 1 shall be exempt from regulation by this Commission as to its New Hampshire customers, except as noted herein, and shall report to the Commission annually as provided in the Amended Stipulation; and it is

FURTHER ORDERED, that Riverside Water Works and Canaan Fire District No. 1 shall cause a copy of this Order, together with contact information for customer service and billing issues, to be delivered to each New Hampshire customer of Riverside Water Works and to the Stewartstown town clerk; and it is

FURTHER ORDERED, that Riverside Water Works and Canaan Fire District No. 1 shall file with the Commission, within 30 days of execution, copies of all executed deeds, assignments, and bills of sale consummating the transfer between Riverside Water Works and Canaan Fire District No. 1; and it is

FURTHER ORDERED, that Canaan Fire District No. 1 shall file with the Commission, within 30 days of closing, a copy of its tariff applicable to the Riverside system.

By order of the Public Utilities Commission of New Hampshire this fifteenth day of December, 2006.

Thomas B. Getz
Chairman

Graham J. Morrison
Commissioner

Clifton C. Below
Commissioner

Attested by:

Debra A. Howland
Executive Director & Secretary