

**STATE OF NEW HAMPSHIRE
PUBLIC UTILITIES COMMISSION**

DW 07-030

TOWN OF CARROLL

Request for Franchise in Bethlehem

Order *Nisi* Granting Request

ORDER NO. 24,761

June 15, 2007

I. BACKGROUND

On March 14, 2007, the Town of Carroll (Carroll) filed a request for franchise approval pursuant to RSA 374 to provide water service in the neighboring town of Bethlehem along Little River Road. In support of its request, Carroll states that it has been providing water to this area since approximately 1912. According to the municipality, the line was upgraded in 1994 to replace the pipe with ductile eight inch iron pipe up to Little River Road to the Bethlehem town line and then plastic line was installed from that point up to a water storage tank located in Bethlehem. Carroll included with its petition a copy of a letter from the Bethlehem Board of Selectmen expressing support for the franchise. Carroll also included a copy of a letter from the Department of Environmental Services confirming Carroll meets the suitability and availability requirements of RSA 374:22, III.

On June 8, 2007, Staff filed a letter recommending the Commission approve Carroll's franchise request. Staff stated that it had reviewed the petition and conducted discovery. Staff attached copies of Carroll's discovery responses to its recommendation letter. In discovery, Carroll stated that it provides water service to approximately 430 customers in the Town of Carroll and to four customers in Bethlehem. Carroll provided a map of the area. The four

customers on Little River Road are served off the line that connects Carroll's water storage tank in Bethlehem to the rest of the system in Carroll. According to Carroll, there is only one water system in Bethlehem, located approximately eight miles away from the four customers on Little River Road. Carroll does not anticipate adding any other Bethlehem customers to its system. As for management, Carroll's water system is overseen by the Carroll Water Works and is governed by the Carroll Board of Selectmen. The Carroll Water Works is financially self-sufficient through its user fees although the Town of Carroll has covered financial deficits in the past. Carroll presently bills on an annual basis a fixed rate for residential and commercial service of \$150, plus specific charges applicable to individual household fixtures, ranging from \$3.75 for certain faucets to \$34.38 for a swimming pool and \$74.25 for an ice machine if used by a business to serve customers.

Carroll stated that it will provide customers in Carroll and Bethlehem with the same quality and quantity of water and level of service pursuant to RSA 362:4, III-a(a)(1). Carroll applies its tariff, rules, and regulations to all customers and makes no distinction between customers residing within Carroll or Bethlehem. Carroll stated that it had not received any service complaints from Bethlehem customers and that the system has no known pressure or quality of service concerns. Carroll provided Staff with a copy of its 2007 water quality report which confirmed that Carroll is in compliance with applicable water quality requirements. Lastly, Carroll stated it has supplied all customers with a phone number to call twenty-four hours per day, seven days per week in the event of an emergency or service disruption.

In its recommendation letter, Staff noted that Carroll's petition was silent on whether Carroll wished to remain exempt from Commission regulation following approval of the instant

franchise. In response to a query from Staff, Carroll indicated that it desired to remain exempt. After reviewing evidence that Carroll plans to charge all customers the same tariff rates and provide the same level of service to all its customers, Staff stated it supported continued exemption for Carroll's water system.

II. COMMISSION ANALYSIS

Franchise expansions are governed by RSA 374:22, I, which states that “[n]o person or business entity shall commence business as a public utility within this state . . . or shall exercise any right or privilege under any franchise not theretofore actually exercised in such town, without first having obtained the permission and approval of the commission.” The Commission grants requests for franchise authority and allows an entity to engage in the business of a public utility when it finds, after due hearing, that the exercise of the right, privilege, or franchise is for the public good. RSA 374:26. In determining whether a proposed franchise is for the public good, the Commission assesses, among other things, the managerial, financial, and technical expertise of the petitioners. *See Lower Bartlett Water Precinct*, 85 NH PUC 635, 641 (2000).

Pursuant to RSA 362:4, III-a (a)(1), a municipal corporation serving customers outside its corporate limits, is not considered a public utility if the municipality provides a quantity and quality of water to outside customers that is equal to that provided within its corporate boundaries, charging a rate that is no higher than 15 percent above that charged to its municipal customers. With respect to Carroll's franchise request, the filing and Staff's submission demonstrate that Carroll has the requisite managerial, financial, and technical expertise. In particular, Carroll has a rate structure in place to adequately support capital improvements. Carroll bills customers and has staff available to respond to the needs of the water system.

Carroll's water quality report indicates it has maintained compliance with applicable water quality regulations. Lastly, in the event customers need to report an emergency or service disruption, Carroll has provided customers with contact information.

We also consider the proximity of the proposed service territory to nearby franchises, an issue that is important when different entities hold franchises within the same municipality. We authorize expansion of water franchises that are consistent with the orderly development of the region. *See Pennichuck Water Works*, 72 NH PUC 589, 593 (1987). According to Carroll, the nearest public water service is approximately eight miles away. Also, the Bethlehem Board of Selectmen has written a letter of support for Carroll's franchise expansion. This supports a finding that the granting of the requested franchise authority will be consistent with the orderly development of the region. Therefore, upon our review of the information on file concerning Carroll's ability to provide water service, we find granting Carroll a franchise to serve the four customers along Little River Road in Bethlehem to be for the public good.

Carroll does not propose to charge its Bethlehem customers rates any higher than what Carroll residents are charged for water service. Carroll intends to provide customers in Carroll and Bethlehem with the same quality and quantity of water and level of service. Based on these representations, we find that pursuant to RSA 362:4, III-a Carroll is not considered a public utility and thus is not subject to regulation except with regard to franchise requirements.

RSA 374:26 authorizes us to grant requests for franchise authority without a hearing "when all interested parties are in agreement." The towns of Carroll and Bethlehem are in agreement with this franchise request. We approve Carroll's petition on a *nisi* basis in order to ensure that any other interested parties have an opportunity to request a hearing.

Based upon the foregoing, it is hereby

ORDERED *NISI*, that subject to the effective date below, the Town of Carroll is granted permission pursuant to RSA 374:22 and 26 to provide service in a limited area of Bethlehem along Little River Road, as shown on a map on file with the Commission; and it is

FURTHER ORDERED, that the Town of Carroll's provision of water service in Bethlehem is not subject to Commission regulation pursuant to RSA 362:4,III-a; and it is

FURTHER ORDERED, that the Town of Carroll shall cause a copy of this Order *Nisi* to be published once in a statewide newspaper of general circulation or of circulation in those portions of the state where operations are conducted, and shall send a copy of same to the Carroll and Bethlehem town clerks by first class mail, such actions to occur no later than June 25, 2007 and to be documented by affidavit filed with this office on or before July 16, 2007; and it is

FURTHER ORDERED, that all persons interested in responding to this Order *Nisi* be notified that they may submit their comments or file a written request for a hearing which states the reason and basis for a hearing no later than July 2, 2007 for the Commission's consideration; and it is

FURTHER ORDERED, that any party interested in responding to such comments or request for hearing shall do so no later than July 9, 2007; and it is

FURTHER ORDERED, that this Order *Nisi* shall be effective July 16, 2007, unless the Town of Carroll fails to satisfy the publication obligation set forth above or the Commission provides otherwise in a supplemental order issued prior to the effective date.

By order of the Public Utilities Commission of New Hampshire this fifteenth day of June,
2007.

Thomas B. Getz
Chairman

Graham J. Morrison
Commissioner

Clifton C. Below
Commissioner

Attested by:

Kimberly Nolin Smith
Assistant Secretary