

**STATE OF NEW HAMPSHIRE
PUBLIC UTILITIES COMMISSION**

DW 10-097

**FREEDOM VILLAGE CONDOMINIUM ASSOCIATION
NORTH COUNTRY WATER SUPPLY, INC.**

Joint Petition to Transfer Water Utility Assets and for Exemption from Regulation

Order *Nisi* Granting Petition

ORDER NO. 25,128

July 7, 2010

I. BACKGROUND

On April 9, 2010, Freedom Village Condominium Association (Association) and North Country Water Supply, Inc. (North Country) (collectively, petitioners) filed a joint petition requesting approval to transfer utility assets from North Country to the Association. The Association also seeks a determination that it would not be a public utility pursuant to RSA 362:4, VII. This filing and subsequent docket filings may be found at:

<http://www.puc.nh.gov/Regulatory/Docketbk/2010/10-097.htm>. North Country provides water to the Association's 66 condominium units and has done so since the late 1980's. North Country serves no other customers and its service to the Association was exempted from Commission regulation in 1995. See *North Country Water Supply, Inc.*, Order No. 21,709, 80 NH PUC 380 (1995).

The condominiums are located in eleven six-unit residential buildings located on Washington and Jefferson Streets in the town of Freedom. All 66 unit owners are members of the Association. The Association proposes to acquire the existing water system from North

Country in accordance with an Asset Purchase Agreement dated April 5, 2010. The agreement lists the specific water system assets to be transferred and the Association plans to hire a licensed operator, F. X. Lyons, Inc., to operate the system and respond to service and billing problems.

On May 19, 2010, Staff filed a letter recommending the Commission grant the petition. Staff stated that it had reviewed the filing and conducted discovery, which it attached to its letter. Staff stated that Stanley Oliver, the owner of North Country, also owns the regulated water utility of Bow Lake Estates, but that the transfer would not affect Bow Lake Estates.

Staff's discovery affirmed that the Association is a not-for-profit entity. In response to Staff 1-2, the Association stated it plans to remedy two outstanding enforcement actions by the Department of Environmental Services: one requires the filing of an application for an annual permit to operate and paying the associated \$300 fee for the coming year; and the other requires conducting sampling and public notification regarding a recent exceedance of state lead and copper requirements. The Association stated it will charge rates based upon the cost to run the system and that it will address costs and maintenance issues in its annual budget approved by the owners at each annual meeting. The Association stated that it owns the property within the protective well radii and that this ownership will not change as a result of the transfer.

In 2008, the Commission received a complaint, docketed as DW 09-204, from the Association concerning a rate increase implemented by North Country. Staff stated that the transfer would likely resolve that complaint but that the Association should formally indicate its position in writing.

II. COMMISSION ANALYSIS

Pursuant to RSA 374:30, “[a]ny public utility may transfer or lease its franchise, works or system, or any part of such franchise, works or system, exercised or located in this state . . . when the commission shall find that it will be for the public good and shall make an order assenting thereto,” In determining the public good, the Commission typically considers the managerial, technical, and financial capabilities of the petitioner. Pursuant to RSA 374:28, the Commission may authorize a public utility to permanently discontinue service “whenever it shall appear that the public good does not require the further continuance of such service.”

Additionally, pursuant to RSA 362:4, VII, a homeowners association shall not be considered a public utility by virtue of providing water service if two conditions exist: 1) that the service is furnished only to members of the association or the occupants of their residential units; and 2) that the association is organized on a not-for-profit basis and is democratically controlled by the owners of the residential units and not the developer or subdivider thereof.

We have reviewed the petition, supporting attachments, and Staff’s recommendation and find that the Association has the requisite managerial, financial, and technical expertise to operate the water system. At the Association’s annual meeting, the Association members approve an operating budget that includes a reserve account to pay for future major repairs, replacements, and improvements. The Association plans to hire a licensed operator to manage the water system and to respond to service and billing issues. Accordingly, we find that the transfer of North Country’s utility assets to the Association, as described in the asset purchase agreement, is for the public good.

With respect to regulation of the Association, Staff has confirmed that the Association will provide water service to its members only, that it is a not-for-profit entity, and that it is democratically controlled. We thus find that the Association meets the prerequisites of RSA 362:4, VII and therefore is not a public utility subject to the Commission's regulation.

RSA 374:26 authorizes the Commission to grant requests for franchise authority without a hearing "when all interested parties are in agreement." Here, Staff, the Association, and North Country are in agreement that the Association should operate the water system. Notwithstanding this agreement, we will approve the petition on a *nisi* basis in order to ensure that all interested parties receive notice of the proposed transfer and have an opportunity to request a hearing.

Based upon the foregoing, it is hereby

ORDERED *NISI*, that subject to the effective date below, Freedom Village Condominium Association is authorized to acquire the assets of North Country Water Supply, Inc. and to own and operate said water system for the provision of service to its own members; and it is

FURTHER ORDERED, that North Country Water Supply, Inc. is authorized to discontinue the provision of water service in the Town of Freedom; and it is

FURTHER ORDERED, that the Association is not a public utility pursuant to RSA 362:4, VII; and it is

FURTHER ORDERED, that the Petitioners shall notify the Commission within 30 days of the date of the transfer that said transfer has been consummated; and it is

FURTHER ORDERED, that the Petitioners shall cause a copy of this Order *Nisi* to be sent by first class mail to all customers of the water system and to the Freedom Town Clerk, such

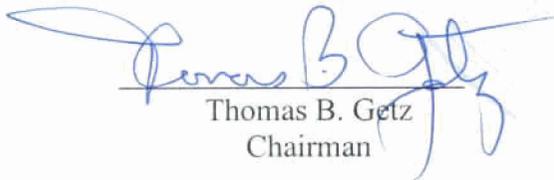
mailing to occur no later than July 16, 2010 and to be documented by affidavit filed with this office on or before August 6, 2010; and it is

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 23, 2010 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 30, 2010; and it is

FURTHER ORDERED, that this Order *Nisi* shall be effective August 6, 2010, unless the Petitioners fail to satisfy the mailing obligation set forth above or the Commission provides otherwise in a supplemental order issued prior to the effective date.

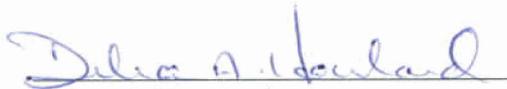
By order of the Public Utilities Commission of New Hampshire this seventh day of July, 2010.


Thomas B. Getz
Chairman


Clifton C. Below
Commissioner


Amy L. Ignatius
Commissioner

Attested by:


Debra A. Howland
Executive Director