

THE STATE OF NEW HAMPSHIRE

CHAIRMAN
Thomas B. Getz

COMMISSIONERS
Clifton C. Below
Amy L. Ignatius

EXECUTIVE DIRECTOR
AND SECRETARY
Debra A. Howland



PUBLIC UTILITIES COMMISSION
21 S. Fruit Street, Suite 10
Concord, N.H. 03301-2429

Tel. (603) 271-2431

FAX (603) 271-3878

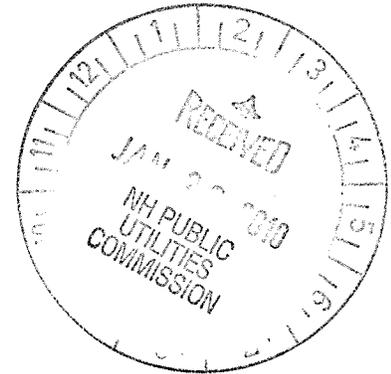
TDD Access: Relay NH
1-800-735-2964

Website:
www.puc.nh.gov

January 29, 2010

Warner Village Water District
P.O. Box 252
55 West Joppa Road
Warner, NH 03278

Re: DW 08-095, Warner Village Water District
Petition to Discontinue Water Service and
Modification of Franchise Boundaries
Staff's Recommendation



Dear Commissioners:

As you know, on July 23, 2008, the District filed a request to discontinue service to four customers outside its boundaries. These customers are: Kenneth and Connie Benward, Deborah Buckley/James VonVett, Richard Fisher, and Peter and Rhonda St. James. The request was a result of Order 24,649 in Docket DW 06-001 (July 18, 2006), in which the Commission determined it had jurisdiction over service to the customers and prohibited their disconnection by the District without prior Commission approval. The four are the only customers served by a portion of main dating from the late 1800's which formerly provided the District's water supply from Silver Lake Reservoir. The District now obtains its supply from wells inside the District, such that water in the main flows in the opposite direction for 2,000 feet to reach the four customers. Reasons cited for the District's request in its July 23rd letter and the earlier docket include the need to waste a significant amount of water to keep the line potable and the high cost of its maintenance or replacement. The District proposed to install private wells at each residence at its own expense. The letter requested the Commission's disposition on the request so the District could plan accordingly.

By secretarial letter dated September 3, 2008, the Commission indicated it would approve discontinuation of service "when the customers have accepted the wells and the wells are in compliance with RSA 485-A:29 and RSA 485-A:30-b." The letter also directed the District to make a filing at that time regarding its request and modification of its franchise boundaries.

On September 24, 2009, the District filed copies of well acceptance letters received from each of the four customers, and stated that the wells were in compliance with RSA 485-A:29 and 30-b. The Commission responded by secretarial letter dated October 14, 2009 requesting evidence of compliance with the two statutes and a description or map detailing the revised franchise boundaries sought.

On November 12, 2009, the District filed copies of Well Completion Reports for Benward, Buckley, Fisher, and St. James as evidence of compliance with RSA 485-A, and a map showing current District boundaries.

Staff has reviewed these filings and has had discussions with Staff of the Department of Environmental Services (DES). Staff is of the opinion that the Commission should deny the District's request to discontinue service to the four customers, and deny the request to revise the franchise boundaries, both without prejudice. The reason for Staff's recommendation is that there is insufficient evidence in the record to document that the four customers' lots comply with RSA 485-A:29 and 30-b. Staff believes this evidence may take some time to obtain, which would make holding the instant docket open cumbersome. Specifically, the Well Completion Reports provided by the District fail to affirm compliance. It is unclear whether the well on the Benward property is conforming or non-conforming. The wells for Buckley, Fisher, and St. James are specifically noted as non-conforming. A denial of the District's request to cease service to these customers would maintain the District's current franchise boundary, consistent with RSA 362:4, IV, until such time as compliance with RSA 485-A:29 and 30-b can be established.

By way of further explanation, Staff concludes that only one of the four lots complies with RSA 485-A:29 and the regulation of sewage disposal systems. This is the Fisher lot. Staff learned that this lot has no state approved septic system because the residence pre-dates RSA 485-A:29. Thus, Mr. Fisher's lot is in compliance with RSA 485-A:29. See Attachment A page 3. With respect to RSA 485-A:30-b and the regulation of protective well radii, Staff learned that DES Staff investigated the circumstances surrounding the Fisher lot due to a complaint filed by Mr. Fisher. The NH Water Well Board found the well installed on Mr. Fisher's lot, and in particular its non-conforming well location, was done with proper judgment and in accordance with standards that protect the quality of the water. But according to DES this still does not mean that Mr. Fisher's lot complies with RSA 485-A:30-b.

With respect to the three remaining customers, Staff obtained copies of the Non-Conforming Well Location Forms for two of these properties¹ from DES (see Attachment B), but understands from DES that the filing of these forms does not necessarily satisfy DES's requirements without additional investigation including on-site review and preparation of site plans. Thus, it cannot be said that these three wells satisfy the requirements of RSA 485-A:29 and 485-A:30-b as required by RSA 362:4, IV. DES Staff has indicated that it does not

¹ Staff was not able to acquire a copy of this form for the Benward property, and the Well Completion Report did not indicate whether or not one was required.

generally, without a specific request for further investigation, certify compliance with these applicable statutes; rather, the burden is on the customers seeking to remove themselves from a public water system. According to DES, this is usually done by the customer hiring a licensed septic installer to evaluate the property to determine if the lot is large enough to accommodate both an on lot well and septic system and/or filing for an amended subdivision approval from DES, if applicable.

One additional issue Staff has concerns with is the form signed by the customers accepting the wells installed on their properties. The form prepared by the District states the customers "hereby relinquish any and all further claims upon the District." In light of the obligation that the lots comply with RSA 362:4, IV and RSA 485-A:29 and 30-b prior to termination of water service, this contract language relieving the District of that obligation may be ineffective.

Due to the lack of evidence demonstrating compliance and the time it may take the District to obtain such compliance, Staff will be recommending the Commission reject the District's request to discontinue service and revise its franchise boundaries to eliminate the four subject properties and close the docket. If at any time the customers' lots comply with the statutes, the District could renew its request for modification of its franchise boundaries with the Commission.

If you have any questions regarding Staff's review of the District's filing, please feel free to call me or Marcia Thunberg, Staff Attorney, at (603) 271-2431.

Sincerely,



Mark A. Naylor
Director, Gas & Water Division

Attachments

cc: Service List
Debra A. Howland, Executive Director, NH PUC
Rick Schofield, Water Division, NH DES

KENNETH & CONNIE BENWARD
3 WALDRON HILL RD
WARNER NH 03278

DEBORAH BUCKLEY
92 NORTH VILLAGE RD
WARNER NH 03278

RICHARD FISHER
84 NORTH VILLAGE RD
WARNER NH 03278

PETER E NEWMAN
WARNER VILLAGE WATER DISTRICT
55 WEST JOPPA ROAD
PO BOX 252
WARNER NH 03278

LYNN PERKINS
WARNER VILLAGE WATER DISTRICT
55 WEST JOPPA ROAD
PO BOX 252
WARNER NH 03278

PETER A SAVLEN
WARNER VILLAGE WATER DISTRICT
PO BOX 252
WARNER NH 03278

PETER & RHONDA ST JAMES
69 NORTH VILLAGE RD
WARNER NH 03278

Docket #: 08-095 Printed: January 29, 2010

**FILING INSTRUCTIONS: PURSUANT TO N.H. ADMIN RULE PUC 203.02(a),
WITH THE EXCEPTION OF DISCOVERY, FILE 7 COPIES (INCLUDING COVER LETTER) TO:**
DEBRA A HOWLAND
EXEC DIRECTOR & SECRETARY
NHPUC
21 SOUTH FRUIT STREET, SUITE 10
CONCORD NH 03301-2429

PURSUANT TO N.H. ADMIN RULE 203.09 (d), FILE DISCOVERY

DIRECTLY WITH THE FOLLOWING STAFF

RATHER THAN WITH THE EXECUTIVE DIRECTOR

LIBRARIAN
NHPUC
21 SOUTH FRUIT ST, SUITE 10
CONCORD NH 03301-2429

BULK MATERIALS:

Upon request, Staff may waive receipt of some of its multiple copies of bulk materials filed as data responses. Staff cannot waive other parties' right to receive bulk materials.

MARK NAYLOR
NHPUC
21 SOUTH FRUIT ST, SUITE 10
CONCORD NH 03301-2429

MARCIA THUNBERG
NHPUC
21 SOUTH FRUIT ST, SUITE 10
CONCORD NH 03301-2429

AMANDA NOONAN
CONSUMER AFFAIRS DIRECTOR
NHPUC
21 SOUTH FRUIT ST, SUITE 10
CONCORD NH 03301-2429