

BEFORE THE NEW HAMPSHIRE  
PUBLIC UTILITIES COMMISSION

*Abenaki Water Co., Inc.  
Tioga River Water Company, Inc.*

*Petition to Transfer Utility Assets and Franchise and for Related Approvals*

*Docket No. DW 18 – \_\_\_\_*

Abenaki Water Co., Inc. (“Abenaki”), by its counsel Upton & Hatfield, LLP and Tioga River Water Company, Inc. (“Tioga River”), by its counsel Wescott Law, P.A., and, as set forth herein, petition the Commission for approval to: (1) transfer Tioga River’s water utility assets and franchises to Abenaki as set forth in Asset Purchase Agreement, submitted herewith, pursuant to RSA 374:22 & 30; (2) discontinue Tioga River’s operation as a public water utility following the transfer pursuant RSA 374:28; (3) allow Abenaki to assume Tioga River’s existing SRF loan obligations pursuant to RSA 369:1 & 2; and (4) authorize Abenaki to modify Tioga River’s existing tariff to provide for monthly billing pursuant to RSA 378:3. In support of this Petition, Abenaki and Tioga River state as follows:

**I. PARTIES**

**A. Abenaki.**

Abenaki is a New Hampshire corporation authorized to operate as a public water utility and a public sewer utility in the State of New Hampshire. Abenaki owns and operates three water utilities in New Hampshire: (1) the former White Rock system serving 95 water utility customers in Bow; (2) the former Lakeland system serving 158 water utility customers and 156 sewer utility customers in Belmont; and (3) the former Rosebrook system serving 410 water utility customers in Carroll. Abenaki is a subsidiary of New England Service Company, Inc.

("NESC") and is headquartered at 37 Northwest Drive, Plainville, CT 06062. NESC owns and operates five public utility subsidiaries in New England: Valley Water Systems provides water service to 6,700 customers in Plainville, Farmington and Southington, Connecticut; Colonial Water Company provides water service to 600 customers in Dover, Massachusetts; Plymouth Water Company provides water service to 825 customers in Plymouth, Massachusetts; Mountain Water Systems provides water service to 500 customers in Sheffield, Massachusetts; and Abenaki Water Company in New Hampshire.

**B. Tioga River.**

Tioga River is a New Hampshire corporation and a regulated public water utility that provides water service to approximately 22 water utility customers in Belmont and 38 water utility customers in Gilford, New Hampshire. Tioga River's mailing address is 1440 Lake Shore Road, Gilford, N.H. 03249.

**II. TRANSFER OF UTILITY ASSETS AND FRANCHISE**

RSA 374:22 requires approval by the Commission to engage in the business of a public utility as follows:

**374:22 Other Public Utilities. –**

I. No person or business entity ... shall commence business as a public utility within this state, or shall engage in such business, ... 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.

RSA 374:30 requires approval for the transfer of the franchise, works, or system of an existing public utility as follows:

**374:30 Other Public Utility Leases, Etc. –**

I. Any 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, but not otherwise ....

The Supreme Court has stated that RSA 374:30 requires that “all sales or transfers of regulated public utility property must be approved by the PUC after a finding that the sales are for the public good.” *Appeal of Verizon New Eng., Inc.*, 153 N.H. 50, 62 (2005) citing *Appeal of Public Serv. Co. of N.H.*, 124 N.H. 479, 483 (1984). In evaluating whether a proposed transfer is in the public good, the Commission will “consider all the interests involved and all the circumstances in determining what is reasonable.” *Pennichuck Water Works, Order No. 25,292* (November 23, 2011) citing *Grafton County Electric Light and Power Co. v. State*, 77 N.H. 539, 540 (1915); *Parker-Young Co. v. State*, 83 N.H. 551, 561-562 (1929); *Appeal of Pinetree Power*, 152 N.H. 92, 97 (2005). In so doing, the Commission “has a longstanding practice of evaluating the managerial, financial, and technical ability of the proposed transferee to operate a public utility.” *Eastman Sewer Company, Order No. 25,634* (March 11, 2014).

As explained in the testimony of Abenaki President Pauline M. Doucette, transfer of Tioga River’s utility franchise and assets is in the public good and will provide significant benefits to customers. As part of NESCE, Abenaki has significant technical expertise operating water utilities in New Hampshire and New England. Abenaki expects to improve operational performance and service to customers by integrating operations of the Tioga River systems with others owned by Abenaki and affiliates of NESCE. Abenaki also has access to lower cost capital which will help finance future improvements to the Tioga River water system at lower costs. As a result, transfer of Tioga River’s utility assets and franchise to Abenaki is in the public good and consistent with the provisions of RSA 374:22 & 30.

### **III. PETITION TO DISCONTINUE OPERATION AS A PUBLIC UTILITY**

RSA 374:28 provides for Tioga River, as an existing utility, to discontinue operations “whenever it shall appear that the public good does not require the further continuance of such service.” The Asset Purchase Agreement provides for Tioga River to transfer all of its utility assets and franchise to Abenaki. Once transfer to Abenaki has been completed, there is no reason to “require the further continuance of [Tioga River’s] service” as a public utility. *See e.g. Eastman Sewer, Order No. 25,634, Pages 19 to 21.* As a result, Abenaki and Tioga River petition the Commission to authorize Tioga River to discontinue operation as a public utility following the transfer of its assets and franchise as provided by the Asset Purchase Agreement.

### **IV. FINANCING**

Under the proposed Asset Purchase Agreement, Abenaki will assume liability for Tioga River’s existing, approved SRF loans from the state of New Hampshire and no “new” financing approvals are required. However, Abenaki and Tioga request that the Commission approve Abenaki’s assumption of Tioga’s remaining SRF loan obligations pursuant to RSA 369:1 & 2.

### **V. REQUEST TO MODIFY TARIFF TO ALLOW MONTHLY BILLING**

Abenaki requests that the Commission authorize Abenaki to modify Tioga River’s existing tariff to provide for monthly billing, effective on the transfer of Tioga River’s franchise and utility assets to Abenaki, as provided by RSA 378:3. As the Commission observed, monthly billing is favorable to both a utility and its customers. *See Abenaki Water Company, Inc., Order No. 25,613 (December 23, 2014) citing Hampstead Area Water Company, Order No. 25,000 (August 4, 2009) (monthly billing “will send more accurate price signals to customers and reduce [the utility’s] cash working capital requirements”); Pittsfield Aqueduct Company, Inc., Order No. 23,117 (January 26, 1999) (change from quarterly billing to monthly billing is in the*

public interest); *North Country Water Supply, Inc., Order No. 20,957* (September 9, 1993) (Commission's "favor[s] more frequent billing, thereby reducing uncollectible revenues and disconnect notices").

The changes to Tioga River's existing tariff to implement monthly billing are described in the testimony of Abenaki President Pauline Doucette. Abenaki requests that the Commission authorize Abenaki to revise Tioga River's existing tariff in order to implement monthly billing pursuant to RSA 378:3.

WHEREFORE Abenaki and Tioga River respectfully request that the Commission:

- (1) Approve the transfer Tioga River's water utility assets and franchise to Abenaki as set forth in Asset Purchase Agreement pursuant to RSA 374:22 & 30;
- (2) Authorize Tioga River to discontinue operation as a public water utility following the transfer pursuant RSA 374:28;
- (3) Authorize Abenaki to assume Tioga River's existing SRF loan obligations pursuant to RSA 369:1 & 2;
- (4) Authorize Abenaki to modify Tioga River's existing tariff to provide for monthly billing pursuant to RSA 378:3; and
- (5) Grant such other relief as justice may require.

Respectfully submitted,

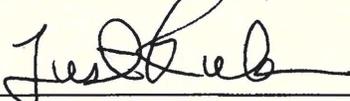
Abenaki Water Co., Inc.

By Its Counsel,

UPTON & HATEFIELD, LLP

Date: July 25, 2018

By:



Justin C. Richardson

NHBA #12148

159 Middle Street

Portsmouth, New Hampshire 03801

(603) 436-7046

[jrichardson@uptonhatfield.com](mailto:jrichardson@uptonhatfield.com)

Tioga River Water Company, Inc.

By Its Counsel,

WESCOTT LAW, PA

Date: July 24, 2018

By:



Edmund S. Hibbard

NHBA #1148

28 Bowman Street

Laconia, New Hampshire 03246

(603)524-2166

[EHibbard@WescottLawNH.com](mailto:EHibbard@WescottLawNH.com)