

**STATE OF NEW HAMPSHIRE
PUBLIC UTILITIES COMMISSION**

DW 13-236

**WHITE ROCK WATER COMPANY, INC. and
LAKELAND MANAGEMENT COMPANY, INC.**

Petition for Approval of Sales and for Other Relief

Order Approving Settlement Agreement

ORDER NO. 25,621

January 14, 2014

APPEARANCES: McLane, Graf, Raulerson & Middleton, PA, by Carol J. Holahan, Esq. and Steven V. Camerino, Esq., for Abenaki Water Co., Inc.; David William Jordan, Esq. for White Rock Water Company, Inc. and Lakeland Management Company, Inc.; and Marcia Brown, Esq. and Michael Sheehan, Esq., of the Staff of the Public Utilities Commission.

I. PROCEDURAL HISTORY AND BACKGROUND

On August 9, 2013, White Rock Water Company, Inc. (White Rock), Lakeland Management Company, Inc. (Lakeland), and Abenaki Water Co., Inc. (Abenaki) (together, the Joint Petitioners), filed a petition with the New Hampshire Public Utilities Commission (Commission) seeking: (1) approval of Abenaki's purchase of White Rock, a water utility that serves 95 customers in Bow; (2) approval of Abenaki's purchase of Lakeland, a water and sewer utility that serves about 150 customers in Belmont; (3) permission for Abenaki to engage in business as a public utility; (4) authority for White Rock and Lakeland to cease operating as public utilities; and (5) approval for Abenaki to issue long term debt of up to \$300,000.

Abenaki, a New Hampshire corporation created to acquire and operate White Rock and Lakeland, is a wholly-owned subsidiary of New England Service Company, Inc. (NE Service), a publicly traded corporation. Transcript of December 2, 2013 public hearing (Tr.) at 11; Pre-filed testimony of Donald J.E. Vaughan, Exhibit 2, at 3. NE Service operates water utilities through

other wholly-owned subsidiaries in Connecticut and Massachusetts and provides unregulated services to the water industry. Tr. at 26; Exhibit 2 at 2-4. NE Service is not a party to this docket.

Through similar Asset Purchase Agreements, Abenaki agreed to buy the assets and liabilities of White Rock and Lakeland. Tr. at 20; Exhibit 2 at 5, Attachment to Exhibit 2 at 14-16 and 98-100; Exhibit 6. White Rock and Lakeland are currently operated by C&C Water Services, Inc. (C&C). Tr. at 11-12; Exhibit 2 at 6. Mr. Vaughan testified that NE Service plans to acquire C&C and fold its operations and personnel into NE Service. Tr. at 11-12, 27. Two C&C employees will work for NE Service on the former White Rock and Lakeland systems, and NE Service intends to employ a principal of C&C as a vice president of NE Service with responsibility for the former White Rock and Lakeland systems. Tr. at 12; Exhibit 2 at 6-8. Abenaki will continue to operate a maintenance office in Gilford. Tr. at 42; Exhibit 2 at 7.

The purchase price is the combined rate base for both companies, Tr. at 21, Exhibit 2 at 5, which Abenaki estimated to be about \$444,000, Pre-filed Testimony of Deborah O. Carson, Exhibit 1, at 7. Abenaki plans to finance the transactions with approximately \$260,000 in equity capital and \$260,000 in debt for a total of \$520,000, which will leave \$76,000 available for working capital. Exhibit 1 at 5, 7. As part of this docket Abenaki seeks approval to borrow up to \$300,000 in long term debt from CoBank. The proposed loan is for 10 years at an interest rate of 3.0 percent. Tr. at 16. Abenaki will own and operate both companies, although they will be treated separately for accounting purposes. Tr. at 24; Exhibit 1 at 6. The Joint Petitioners do not seek any changes in rates. Tr. at 58-59; Exhibit 2 at 9.

Although there were no requests to intervene, Village Shores Estates Association (Association), a neighborhood served by White Rock, made informal data requests to which the

Joint Petitioners responded. Tr. at 50; Exhibit 5. One question involved the status of an easement the Association granted to White Rock in 1987 requiring White Rock to make annual payments, which payments have not been made in recent years. Exhibit 5; *see* Attachment to Exhibit 2 at 49. The Joint Petitioners resolved the issue through separate agreements for the Association to release any claim for payments under the easement, for the Association and White Rock to terminate the easement, and through an amendment to the Asset Purchase Agreement that excludes the easement from the assets to be transferred, which amendment was filed after the hearing as Exhibit 6. Tr. 17, 72-73. These agreements did not change any material terms of the proposed transaction. Tr. at 67, 69.

II. THE SETTLEMENT AGREEMENT

On November 21, 2013, Staff filed a Settlement Agreement (Agreement) signed by Staff and the Joint Petitioners, Exhibit 3, which has five substantive provisions. First, Staff and the Joint Petitioners agreed that Abenaki's purchases of White Rock and Lakeland pursuant to the terms of the respective Asset Purchase Agreements are for the public good pursuant to RSA 374:30. Exhibit 3 at 3; Tr. at 14, 17. Second, they agreed that Abenaki demonstrated it has the managerial, financial, and technical ability to provide service to White Rock and Lakeland customers, meeting the public good standard of RSA 374:22 and :26. Exhibit 3 at 4; Exhibit 2 at 10-11; Tr. at 25. Third, the Joint Petitioners agreed that discontinuation of service by White Rock and Lakeland, upon Abenaki's obtaining such authority, is for the public good as required by RSA 374:28. Exhibit 3 at 4. Fourth, they agreed that the terms and conditions of Abenaki's proposed financing, under which Abenaki may borrow up to \$300,000 from CoBank, are consistent with the public interest as required by RSA 369. Exhibit 3 at 4; *see* Exhibit 1 at 7. Finally, the Agreement provides that Abenaki will file a revised sewer tariff for its customers in

Belmont (Staff found that the existing sewer tariff needs a “more comprehensive set of terms and conditions,” Tr. at 28), and will attempt to formalize its agreement with the City of Laconia for its treatment of Lakeland’s sewage (Lakeland sends its sewage to Laconia’s treatment plant by pipe and pays Laconia its volumetric rate pursuant to a longstanding but unwritten arrangement, Tr. at 47, 72). Exhibit 3 at 5. The terms of the Agreement are conditioned upon Commission approval. *Id.*

The Commission held a public hearing on December 2, 2013 to consider the parties’ request to approve the Agreement. Tr. at 4, 8.

III. POSITIONS OF THE JOINT PETITIONERS AND STAFF

The Joint Petitioners and Staff support the Agreement. Through the testimony of Ms. Carson and Mr. Vaughan and supporting exhibits, the Joint Petitioners stated they have satisfied the requirements for Abenaki’s purchase of White Rock and Lakeland and the associated relief they seek in this docket.

Mr. Vaughan and Ms. Carson described Abenaki’s managerial and technical abilities. White Rock and Lakeland customers will join the larger NE Service family with its established and more extensive administrative infrastructure for billing, customer service, financial reporting, access to capital, and regulatory experience. Tr. at 28-30. For example, Abenaki office staff will be available through a toll free number and Abenaki can offer online and credit card payments. Tr. at 41, 42. Abenaki will likely be able to offer these increased services at a lower cost given economies of scale. Tr. at 36. On the technical side, Abenaki intends to acquire C&C, retain two C&C employees and a C&C principal, and thus benefit from continuity of service and C&C’s knowledge of the systems. Tr. at 12; Exhibit 2 at 7. Abenaki will add other licensed operators to back up the current C&C staff, Tr. at 30-31, and Abenaki has

substantial knowledge through NE Service's experienced management and board members, Tr. at 12. The other water systems under the NE Service corporate umbrella are in compliance with their respective drinking water standards. Tr. at 63. Abenaki will develop five-year capital improvement plans and related budgets for the Lakeland and White Rock systems as NE Service has done with its other utilities. Tr. at 32-33. Abenaki will also benefit from the non-regulated services available through NE Service.

Financially, Abenaki testified that the proposed transfer will provide better access to capital, as demonstrated by the proposed financing in this docket, Tr. at 28, which will result in a capital structure equally divided between debt and equity, the preferred ratio, Tr. at 37-38.

Staff testified that it conducted discovery, reviewed the Joint Petitioners' filings and testimony, and concluded that the Joint Petitioners have met their burdens under the respective statutes to show the proposed sales and related relief sought are for the public good. Staff thus supported approval of the Agreement. Tr. at 79-82.

IV. COMMISSION ANALYSIS

The Commission shall approve the disposition of any contested case by settlement "if it determines that the result is just and reasonable and serves the public interest." N.H. Code of Admin. Rules Puc 203.20(b); *see* RSA 541-A:31, V(a) ("Unless precluded by law, informal disposition may be made of any contested case ... by stipulation [or] agreed settlement"). Nonetheless, the Commission cannot approve a settlement agreement, even when all parties agree, "without independently determining that the result comports with applicable standards." *Unitil Energy System, Inc.* Order No. 24,677, 91 NH PUC 416, 425-26 (2006) (citation omitted). We will thus consider each section of the Agreement.

The Agreement first asks the Commission to approve Abenaki's purchase of White Rock and Lakeland. The Commission will approve the sales if the transfers are for the "public good." See RSA 374:30. In deciding whether a particular transfer is for the public good the Commission "has a longstanding practice of evaluating the managerial, financial, and technical ability of the proposed transferee to operate a public utility." *Hampstead Area Water Company*, Order No. 24,803 (Nov. 2, 2007); see *Bedford Three Corners Waste Corp.*, Order No. 21,453 (Dec. 6, 1994).

Since Abenaki is the proposed transferee of the White Rock and Lakeland systems, we must determine whether Abenaki has the managerial, financial, and technical ability to operate those utilities. Although Abenaki is a newly formed corporation, it is a subsidiary of NE Service, an established company providing service to thousands of customers. Abenaki will benefit from the experience of NE Service staff, its systems, and its financial soundness. Abenaki will also retain the current operator of the White Rock and Lakeland systems through NE Service's expected acquisition of C&C and Abenaki will support the current C&C staff with other NE Service employees. We thus find that Abenaki has the managerial, financial, and technical ability to operate the public utilities now known as White Rock and Lakeland and approve both sales.

The Agreement next asks us to grant Abenaki permission and approval to engage in business as a public utility. See RSA 374:22. RSA 374:26 authorizes the Commission to grant requests for franchise authority without a hearing "when all interested parties are in agreement." The parties and Staff agree that Abenaki should operate what is now White Rock's water system in Bow and what is now Lakeland's water and sewer system in Belmont. No one has objected. In light of this agreement, the Commission's finding above that Abenaki has the managerial,

financial, and technical ability to operate the public utilities now known as White Rock and Lakeland and the economies of scale and access to capital noted above, Abenaki meets the public good standard of RSA 374:30 as well as the franchise standard of RSA 374:22. We grant Abenaki “permission and approval” to “commence business as a public utility” in the territories now served by White Rock and Lakeland.

The Agreement next seeks our permission for White Rock and Lakeland to discontinue their service as public utilities. RSA 374:28 provides that the Commission “may authorize any public utility ... to discontinue [any part of its service] permanently ... whenever it shall appear that the public good does not require the further continuance of such service.” *See Boston & Maine Railroad v. State*, 102 N.H. 9 (1959). In this context public good not only includes the interest of the persons directly affected by cessation of service, but also the interests of the public at large and the welfare of the utility involved. *See Lakeview Water Company*, Order No. 25,078 (Feb. 26, 2010).

The transactions at issue in this docket will cause little impact on the customers or upon the public at large given the evidence of Abenaki’s abilities described above, and White Rock and Lakeland do not wish to continue as public utilities following the sale of substantially all of their assets to Abenaki. Accordingly, we find that allowing White Rock and Lakeland to discontinue their service as public utilities following the sale to Abenaki is consistent with the public good.

Finally, the Agreement seeks approval for Abenaki to issue long term debt of up to \$300,000 to finance the transactions and to provide working capital. Pursuant to RSA 369:1 public utilities may “issue ... evidences of indebtedness payable more than 12 months after the date thereof” only if the Commission finds the proposed debt to be “consistent with the public

good.” Analysis of the public good in this context requires us to look beyond the terms of the proposed financing to consider the intended use of the proceeds and the effect on rates. *See Appeal of Easton*, 125 N.H. 205, 211 (1984). As we have previously noted, “certain financing related circumstances are routine, calling for more limited Commission review of the purposes and impacts of the financing, while other requests may be at the opposite end of the spectrum, calling for vastly greater exploration of the intended uses and impacts of the proposed financing.” *Public Service Company of New Hampshire*, Order No. 25,050 (Dec. 8, 2009).

We find that a limited review of the proposed loan is appropriate in this case. The terms of Abenaki’s proposed loan are interest at 3.0 percent to be repaid over ten years. As stated above, Abenaki intends to use the loan proceeds to finance the purchase of White Rock and Lakeland so as to reach the optimal capital structure of 50 percent debt and 50 percent equity and also to provide working capital. Further, Abenaki does not request any changes in rates at this time. Given the intended use of the loan proceeds and no current impact on rates, we find the proposed borrowing of up to \$300,000 to be reasonable and consistent with the public good.

To conclude, we approve the Agreement and incorporate its terms and conditions into this order. To facilitate the efficient administration of the Agreement, we authorize the Joint Petitioners and Staff to modify the Agreement so long as any modification is mutually agreed upon and non-substantive, such as a clerical or ministerial amendment that involves timing or scheduling. The parties shall file any such modification with the Commission and provide a copy to all parties on the service list. The Commission will approve the request, if appropriate, via secretarial letter but will not require notice or hearing.

Based upon the foregoing, it is hereby

ORDERED, that the *Settlement Agreement*, Exhibit 2, is hereby APPROVED; and it is

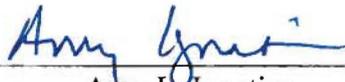
FURTHER ORDERED, that Abenaki's purchases of the assets and liabilities of White Rock and Lakeland are hereby APPROVED; and it is

FURTHER ORDERED, that Abenaki's request for permission to operate as a public utility within the franchise areas formerly held by White Rock and Lakeland is hereby GRANTED; and it is

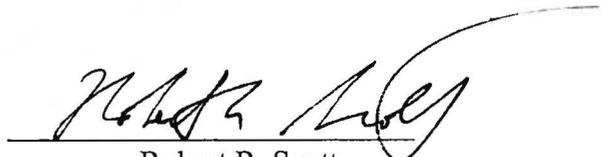
FURTHER ORDERED, that the requests of White Rock and Lakeland to cease operating as public utilities are hereby GRANTED upon consummation of the sales to Abenaki; and it is

FURTHER ORDERED, that Abenaki's request for authority to issue up to \$300,000 in long-term debt on the terms described above, for the purposes of financing the transactions and providing working capital, is hereby GRANTED.

By order of the Public Utilities Commission of New Hampshire this fourteenth day of January, 2014.



Amy L. Ignatius
Chairman



Robert R. Scott
Commissioner

Attested by:



Debra A. Howland
Executive Director