

STATE OF NEW HAMPSHIRE

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ORIGINAL

N.H.P.U.C. Case No. DW 04-100

Exhibit No. #18

Witness Panel #2

DO NOT REMOVE FROM FILE

June 4, 2004

Mr. Stephen J. Judge, Esq.  
Wadleigh, Starr & Peters, P.L.L.C.  
95 Market Street  
Manchester, NH 03101

Re: DW 04-100 Merrimack Valley Regional Water District  
Commission Review of Charter Pursuant to RSA 53-A:5

Dear Mr. Judge:

The Commission is in receipt of the Merrimack Valley Regional Water District (District) Charter filed on May 5, 2004. The Commission has reviewed the Charter pursuant to RSA 53-A:5, which states:

"In the event that an agreement made pursuant to this chapter shall deal in whole or in part with the provision of services or facilities with regard to which an officer or agency of the state government has constitutional or statutory powers of control, the agreement shall, as a condition precedent to its entry into force, be submitted to the state officer or agency having such power of control and shall be approved or disapproved by him or it as to all matters within his or its jurisdiction in the same manner and subject to the same requirements governing the action of the attorney general pursuant to RSA 53-A:3, V. This requirement of submission and approval shall be in addition to and not in substitution for the requirement of submission to and approval by the attorney general."

RSA 53-A:3,V states in part that "[t]he attorney general shall approve any agreement submitted to him hereunder unless he shall find that it does not in substance meet the conditions set forth herein and shall detail in writing addressed to the governing bodies of the public agencies concerned the specific respects in which the proposed agreement substantially fails to meet the requirements of the law."

In accordance with these statutory guidelines, we find that the District's Charter does not patently conflict with the constitutional or statutory powers of control of the Public Utilities Commission. We do note, however, that issues may arise with, for example, Articles 10, 12, 14,

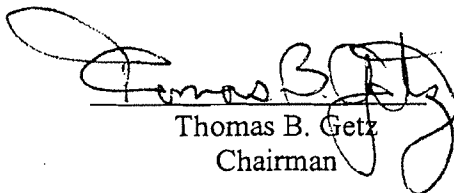
15, and 18, depending on how the District seeks to implement the Charter. Those issues are speculative at this time and are not ripe for consideration. Any potential issues in this regard will, of course, ultimately be addressed in the normal course of the Commission's exercise of its jurisdictional authority.

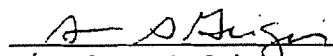
Staff has identified some areas of potential dispute in a letter filed with the Commission on June 4, 2004. A copy of Staff's letter is attached hereto. We do not deem Staff's comments to embody the universe of issues that could arise under the Commission's jurisdiction with respect to the Charter.

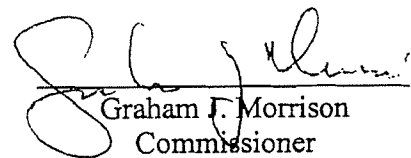
As written, the Charter poses no inherent conflict with the matters under the Commission's jurisdiction and we hereby approve it. Approval of the Charter, however, does not constitute approval of the District's financial, managerial or technical capabilities, or approval of any franchise boundaries, all of which must be obtained from the Commission prior to operation. *See* RSA 362:4, III-a, (b). Our approval is with the understanding that the District will comply with its responsibilities under all pertinent statutes, including RSA 362:4, VI(c) and RSA 374:22.

We encourage the District to contact the Commission's Water Division to discuss any questions it might have with respect to matters within the Commission's jurisdiction.

Sincerely,

  
Thomas B. Getz  
Chairman

  
Susan S. Geiger  
Commissioner

  
Graham J. Morrison  
Commissioner

Cc: attachment