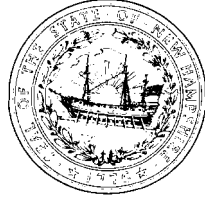


STATE OF NEW HAMPSHIRE

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AND SECRETARY
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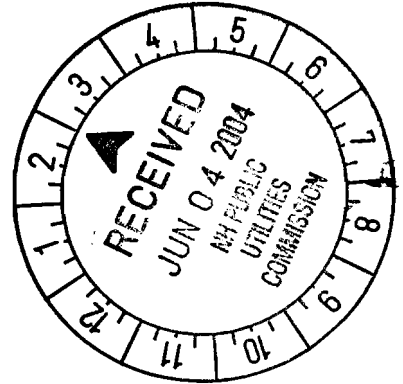


PUBLIC UTILITIES COMMISSION
8 Old Suncook Road
Concord, N.H. 03301-7319

TDD Access: Relay NH
1-800-735-2964
Tel. (603) 271-2431
FAX No. 271-3878
Website:
www.puc.state.nh.us

June 3, 2004

Debra Howland
Executive Director and Secretary
N.H. Public Utilities Commission
8 Old Suncook Road
Concord, NH 03301



Re: DW 04-100 Merrimack Valley Regional Water District
Staff Review and Recommendations Concerning Charter

Dear Ms. Howland:

The Commission received the Merrimack Valley Regional Water District (District) Charter on May 5, 2004. Staff is aware the Commission is obliged to review the Charter pursuant to RSA 53-A:5.¹ RSA 53-A:5 states the Commission shall review the Charter in the same manner as the attorney general. Namely, that the Commission shall detail in writing the specific respects in which the proposed agreement substantially fails to meet the requirements of the law. RSA 53-A:3, V.

Staff has reviewed the Charter and believes the Charter does not substantially fail to meet the requirements of the Commission. Having said that, Staff does, however, believe the Charter could be made clearer on some points. Staff has identified the below-described issues which it believes may arise or may need to be addressed in subsequent proceedings before the Commission:

1. Article 4 of the Charter states the boundary of the District is consistent with the collective “non-contiguous boundaries of the member municipalities.” Article 3 defines the franchise area as “those areas within and outside the District where a Water Company has been authorized to conduct business or provide service by the N.H. Public Utilities Commission.” Article 3 further defines Water Company as “any private or public company (including the Water

¹ **Approval by State Officers.** 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:5.

District) that supplies water to persons or entities within or without the District.” It is unclear from the juxtaposition of these definitions whether the franchise area is intended to mirror the geographic boundary of the municipality with respect to “areas within” the District. With respect to the Town of Bedford, the City of Manchester is not a member of the District and the Commission has previously approved its franchise extending to portions of Bedford. The Charter language does not make clear whether the District intends to carve out of the District boundary existing municipal franchises, such as Manchester’s. Furthermore, Manchester’s assets are not subject to RSA 38 takings proceedings. This issue will arise when the District files for Commission approval pursuant to RSA 374:22.

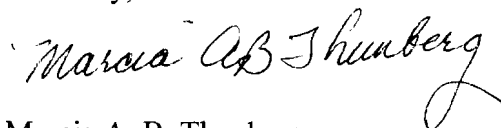
2. When the Commission approves rates, fares, and charges for regulated public utilities, the Commission excludes from rates all costs of construction work in progress, pursuant to RSA 378:30-a. Similarly, contributions in aid of construction are not eligible for inclusion in customer rates of regulated utilities. The Commission also employs the generally accepted principle that rates be cost based. Articles 10 and 12 of the Charter appear to authorize rates that may be based on non-cost based methods and may include contributions in aid of construction. New Hampshire RSA 362:4,VI (b) authorizes the Commission to review regional water District rates during the initial 4 years of operation if the water District seeks to alter rates other than in a manner that uniformly impacts all customers. The Commission is obligated to review the rate increase to ensure it is cost-based. The different methods for determining cost- or non-cost based rates may be an issue in a RSA 362:4,VI (b) proceeding.

3. Article 15 of the Charter creates an office of consumer affairs which shall act on behalf of consumer interests with respect to rates, water quality, quality of service, and supply. Staff notes that pursuant to RSA 362:4,VI (c), a regional water District is required to adopt and enforce quality of water service standards consistent with the Commission’s administrative rules. The Charter does not expressly identify water quality or quality of service standards, nor does it expressly provide for enforcement of standards. Staff notes that N.H. Code Admin.R. Chapter Puc 600 and Chapter Puc 1200 are both relevant to the District’s obligations under RSA 362:4,VI (c).

4. Article 4 states the members of the District may be non-contiguous. If members remain non-contiguous and the District does not own assets connecting the members, a special contract for acquisition and/or transmission of supply with a regulated utility may trigger Commission review under RSA 378:18. The Commission reviews contracts for water service that, due to special circumstances, may require a departure from a regulated utility’s general schedules. Commission approval of such contracts requires a finding that the departure is just and consistent with the public interest. The Commission has reviewed wholesale water contracts involving regulated utilities and municipalities in the past, and Staff surmises a similar situation may arise involving the District where it obtains wholesale water supplies via contracts with regulated utilities.

Staff hopes these comments will be useful to the District. If the District has any questions concerning these and other issues, Staff is willing to meet with the District. They should contact Mark Naylor, Director of the Gas & Water Division. Lastly, Staff believes the Charter substantially meets the requirements of the laws and regulations under the Commission's jurisdiction.

Sincerely,

A handwritten signature in cursive script that reads "Marcia A. B. Thunberg". The signature is written in black ink and is positioned to the right of the typed name.

Marcia A. B. Thunberg
Staff Attorney

cc: Service List