

DW 99-023

STATE LINE PLAZA WATER COMPANY

**Petition for Approval to Purchase Stock and
Authority to Operate as a Public Utility**

**Order NISI Approving Stock Purchase and
Granting Permission to Operate as a Public Utility**

O R D E R N O. 23,295

August 31, 1999

I. PROCEDURAL HISTORY AND BACKGROUND

The Petitioner, State Line Plaza Water Company (State Line), on February 12, 1999, filed with the New Hampshire Public Utilities Commission (the Commission) a request for the approval of a transfer of stock. In the petition, State Line Equity Partners, LLC (Equity Partners), requested that the Commission approve Equity Partners' purchase of State Line stock from the Pappalardo family. The sale of stock, however, had already transpired prior to the petition being submitted.

In late 1998, the Commission's Finance Department became aware that State Line had been sold to Equity Partners on April 1, 1997.¹ During the remainder of 1998, Staff attempted to work with representatives of State Line and Mr. Stephen St. Cyr, State Line's accountant, regarding the need for Commission approval of the transfer of the water utility. Little progress was made and by a letter dated January 13,

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Records filed with the Secretary of State show Equity Partners' incorporation date as March 10, 1997.

1999, Staff notified Mr. Kambiz Shahbazi, President of Equity Partners, that the company was required, per RSA 374:22, to petition the New Hampshire Public Utilities Commission for approval to do business as a public utility. The January 13, 1999 letter informed Mr. Shahbazi that the new company, Equity Partners, was not authorized to conduct business as a public utility in the State of New Hampshire. The letter also stated that a petition relative to the sale/transfer had to be filed within thirty days, or Staff would request that a Show Cause Order be issued.

Equity Partners, through Mr. St. Cyr, filed its petition on February 12, 1999. In its petition, the Company contends that approval should be granted for various reasons. Specifically, Equity Partners purchased all of the outstanding and issued shares of stock from the Pappalardo family, the original shareholders of State Line Plaza Water Company, on April 1, 1997. Additionally, Equity Partners notes that it continues to operate the water Company in the same manner as did the Pappalardos, that is, it purchases water from the City of Haverhill and resells it to its 13 New Hampshire customers according to the rates authorized by this Commission.

Equity Partners also professes that it has the managerial, technical, and financial ability to continue providing water service to its customers. Equity Partners owns several shopping centers throughout the northeast, including

two others in New Hampshire. Everest Partners, LLC, the management company for Equity Partners, manages all of the financial aspects and day-to-day operations of all the shopping centers, including emergencies that may arise with regard to the water company.

II. COMMISSION ANALYSIS

A. Statutory Violations

The facts of this case are disquieting. For almost two years, State Line Equity Partners continued to operate a water utility after the stock transfer from the Pappalardos' when it had never before operated as a utility in this state. Pursuant to RSA 374:30, a "public utility may transfer ... its franchise, works or system,... when the commission finds that it will be for the public good." Thus, the Commission's permission is required under this provision if the transfer involves a surrender of control of operation. *New Hampshire v. New Hampshire Gas & Elec. Co.*, 86 N.H. 16 (1932); *Re Telephone and Data Systems, Inc.*, 73 NH PUC 166, 172 (1988). Here, there was such a surrender of control, yet neither party came forward at the appropriate time.

Additionally, RSA 374:22, states that "No person or business entity shall commence business as a public utility within this state, or shall engage in such business,...without first having obtained the permission and approval of the

commission." Equity Partners, a domestic corporation, never sought the Commission's permission as required.

This Commission may only allow an entity to engage in business as a public utility where it finds that the exercise of the right, privilege, or franchise is in the public good. See RSA 374:26. This determination has never been made. As such, upon investigation of the facts, and by the company's own admission, we find that State Line Equity Partners, LLC, has been and continues to operate in violation of these statutes.

B. Remedies

When such a stock transfer is attempted without the Commission's approval, RSA 374:31 calls for the avoidance of the transfer. Moreover, pursuant to RSA 365:41, such an unapproved transfer could result in a finding that the public utility is guilty of a felony and subject to a civil penalty, not to exceed \$25,000. Likewise, if there is a finding that any agent or officer of a public utility willfully violated any provisions of Title 34, Public Utilities, such person could be found guilty of a misdemeanor and be subject to a civil penalty not to exceed \$10,000 for each violation, or for each day of a continuing violation.

Notwithstanding Mr. St. Cyr's contention that this petition should be approved because of the factors mentioned above, we feel compelled to clearly make known the Commission's

dismay that a public utility would violate the statutes cited above. Neither the size of a utility, nor any resale agreement it might have, nor the affect of a transaction upon its franchise, rates, assets, finances, or operations is reason enough to ignore the statutes to which any and all public utilities are required to adhere when doing business in this state.

It is only because we do not wish to unduly impose a great financial hardship on the new owners that we will not assess the penalties available to us. However, State Line Equity Partners, LLC should recognize that any further abuses of the statutes governing public utilities may result in penalties. We expect the company, therefore, to be in full and complete compliance with all statutory and regulatory provisions, including all filing requirements.

Based upon the foregoing, it is hereby

ORDERED NISI, that, pursuant to RSA 374:30, the sale and transfer of State Line Plaza Water Company to State Line Equity Partners, LLC is approved effective April 1, 1997 and it is

FURTHER ORDERED, that, pursuant to RSA 374:22, State Line Equity Partners, LLC is granted permission and approval to operate as a public utility; and it is

FURTHER ORDERED, that, based on the responses to data requests which Staff propounded on the company, State Line Equity Partners, LLC develop a work order system and that it also construct continuing property records within ninety days of the date of this order; and it is

FURTHER ORDERED, that the Petitioner shall cause a copy of this Order Nisi to be published once in a statewide newspaper of general circulation or of circulation in those portions of the state where operations are conducted, such publication to be no later than September 7, 1999 and to be documented by affidavit filed with this office on or before September 17, 1999; and it is

FURTHER ORDERED, that all persons interested in responding to this petition be notified that they may submit their comments or file a written request for a hearing on this matter before the Commission no later than September 17, 1999;

and it is

FURTHER ORDERED,

responding to such comments or request for hearing shall do so no later than September 21, 1999; and it is

that this Order Nisi

effective September 30, 1999, unless the Commission provides otherwise in a supplemental order issued prior to the effective

FURTHER ORDERED, that the Petitioner shall file a

30, 1999, in accordance with N.H. Admin. Rules, Puc 1603.02(b).

By order of the Public Utilities Commission of New

Douglas L. Patch
Chairman

Susan S. Geiger
Commissioner

Attested by:

Executive Director and Secretary