

DW 02-155

NORTHERN SHORES WATER COMPANY

**Joint Petition for Permission to Transfer
Franchise and Assets to Frank Holland**

**Order Rejecting Petition for Permission to Transfer
Franchise and Assets To Frank Holland**

O R D E R N O. 24,290

March 5, 2004

I. PROCEDURAL HISTORY AND BACKGROUND

On August 16, 2002, Northern Shores Water Company (Northern Shores), a public utility regulated by the New Hampshire Public Utilities Commission (Commission) pursuant to RSA 362:2 and RSA 362:4, and Frank Holland filed with the Commission a Joint Petition to transfer Northern Shores' franchise rights and assets to Frank Holland. Northern Shores has been operating under a temporary franchise since 1990, pursuant to Order No. 19,908 (August 8, 1990). The temporary franchise was extended in 1996, pursuant to Order No. 22,158 (May 20, 1996). Northern Shores' water supply and distribution system currently services approximately 30 customers in a limited area of the Town of Tilton.

Albert Sprague, the principal of Northern Shores, wishes to sell the water utility to Frank Holland. Mr. Holland owns and operates Village Pump and Irrigation Co. and provides Northern Shores with maintenance services. According to the Petition, Northern Shores and Frank Holland assert "that it will

be for the public good for Frank Holland to render water service as a public water utility in the Franchise Area, and that the public good does not require the further continuance of service by Northern Shores."

On August 29, 2002, the Commission issued an Order of Notice and set a Prehearing Conference and Technical Session for September 30, 2002 to consider the joint petition. At the Prehearing Conference, Staff noted Northern Shores' failure to file a 2001 Annual Report and that the instant filing was deficient for other reasons. The Commission instructed Commission Staff (Staff) to assist Northern Shores and Mr. Holland in remedying the deficiencies and report back to the Commission.

On September 24, 2002, Frank Holland informed the Commission he planned to build a new building, upgrade electrical service, and would charge the current rate until the upgrades were completed. On December 20, 2002, Staff filed a report with the Commission and noted it was still working with Mr. Holland to acquire information before making a recommendation as to the transfer. On September 30, 2003, Staff responded to a status inquiry by Mr. Sprague and informed him that Staff was unable to make a recommendation to the Commission until Mr. Holland provided information relative to the books and records of Northern Shores.

In a memorandum dated January 28, 2004, Staff recommended the Commission reject the filing as insufficient, close the docket, and deem the transfer void pursuant to RSA 374:31. In support of their recommendation, Staff stated they had repeatedly contacted Mr. Holland and attempted to obtain the 2001 Annual Report, as well as other information necessary for their review of the filing. Staff stated they contacted Mr. Sprague and Mr. Holland on February 3, 2003 requesting information. Staff stated they solicited this information from Mr. Holland, Northern Shores or both on July 11, 2003, July 14, 2003; September 30, 2003; October 21, 2003; October 27, 2003; and November 4, 2003, and placed numerous phone calls seeking the information. These efforts were all unsuccessful. Staff stated Mr. Holland agreed to provide the necessary records to his accountant, Ms. DeSousa, by November 10, 2003, however, on November 25, 2003 when Staff contacted Ms. DeSousa to review the records, they learned she had not received any information from Mr. Holland.

In further support of their recommendation, Staff cited to deficiencies contained in various New Hampshire Department of Environmental Services (DES) letters of deficiency or violation sent to Mr. Holland on behalf of Northern Shores Water Company. DES's letter dated October 24, 2003 states:

"The most recent renewal deadline for Northern Shores Water Company was March 17, 2003. A sampling waiver renewal application was mailed to you on January 14, 2003 that was not returned. Even after several reminders and phone conversations the Water Supply Engineering Bureau has still not received the renewal application."

The lack of waiver from DES now requires Northern Shores to conduct synthetic organic compounds and volatile organic compounds tests annually, rather than every three years.

Staff noted other DES correspondence showed that in the past 12 months alone Northern Shores failed to file an Emergency Plan, failed to file a Consumer Confidence Report, failed to submit lead and copper samples, failed to provide public notice of a monitoring violation, and failed to obtain a Permit to Operate. Staff stated it also learned that Northern Shores failed to correct an identified significant water system deficiency, or in the alternative failed to notify DES that the deficiency had been corrected, and failed to pay DES lab fees of over \$600 dating back to 2002. While some of these deficiencies were ultimately cured, Staff stated the overall pattern of consistently delayed compliance left Staff with few assurances that Mr. Holland could effectively own and operate a water utility.

With respect to the validity of the transfer, Staff stated that Mr. Sprague and Mr. Holland executed an agreement on September 17, 2000 to sell the utility effective December 1,

2000. Staff learned of the transfer when it inquired as to the whereabouts of Northern's 2001 Annual Report. Staff stated Mr. Holland has been billing customers and has been operating and maintaining the utility since the transfer. Staff also stated that Mr. Holland has paid \$1,000 of the \$6,000 purchase price. Staff recommended the transaction be deemed void pursuant to RSA 374:31. The September 17, 2000 agreement to transfer the utility has never been approved by the Commission and RSA 374:31 states "[a]ny such attempted transfer, lease or contract shall be void unless the same shall have been approved by the [C]ommission."

To return the parties to a pre-transfer status, Staff recommended the Commission: 1) order Mr. Sprague to refund Mr. Holland the amount Mr. Holland has paid toward the purchase of the utility; 2) order Mr. Holland to provide the Commission with a full accounting of revenues received and expenses incurred during the period he had control of the utility; 3) order Mr. Holland to return control of the utility to Mr. Sprague; 4) order Mr. Holland to transfer to Mr. Sprague revenues received during the time Mr. Holland controlled the utility, less expenses incurred; 5) order Mr. Sprague to notify customers that payments should be made to Northern Shores Water Company, rather than Mr. Holland; and 6) order Mr. Sprague to provide customers with contact information such as a billing address and emergency phone number.

The record does not contain any response from either Mr. Sprague or Mr. Holland in response to Staff's recommendation.

II. COMMISSION ANALYSIS

Pursuant to RSA 374:22, "[n]o 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 [C]ommission." 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." These authorities guide the Commission's review of transfers of ownership such as has been presented in this docket.

The public good standard requires the petitioners to demonstrate, *inter alia*, the legal, technical, managerial, and financial expertise to operate a public water utility. See, *Pennichuck Water Works, Inc.*, 73 NH PUC 279 (1988). At the Prehearing Conference, the Commission specifically requested the Staff to assist the petitioners in submitting evidence that the transfer was in the public good and that Mr. Holland possessed the requisite legal, technical, managerial, and financial expertise to operate a public water utility. The record indicates Staff has attempted to assist Northern Shores and Mr. Holland in completing their filing. We believe Staff has more than satisfied our request to assist the petitioners. It is unfortunate that Staff's attempts have not been met with any

meaningful response. The record still lacks proof that Mr. Holland possesses the requisite legal, technical, managerial, and financial expertise to operate a public water utility. On the contrary, the evidence that does exist in the record establishes that the transfer of the utility to Mr. Holland is decidedly not in the public good. For these reasons, we find that the petitioners' filing is insufficient and we reject it.

We do not reject this filing lightly. The Commission is sympathetic that the owner of Northern Shores is retired and does not wish to operate the water system any more. RSA 374:22 and RSA 374:30, however, clearly require the Commission to assess whether the transfer is in the public good. When a record such as this is so devoid of information so as to render our analysis impossible, we must reject the filing.

Transfers made without Commission approval are subject to RSA 374:31 which states "any such attempted transfer, lease or contract shall be void unless the same shall have been approved by the [C]ommission." The instant transfer of Northern Shores to Mr. Holland has not previously been approved by this Commission.

Therefore, we find the September 17, 2000 agreement between Mr. Sprague and Mr. Holland to transfer the utility effective December 1, 2000 is void and is without legal effect.

We must now address returning the petitioners to their respective positions prior to the attempted transfer. RSA 362:4

states that "[e]very corporation, company...or person shall be deemed to be a public utility by reason of the ownership or operation of any water or sewage disposal system or part thereof." From December 1, 2000 to present, the record indicates Mr. Sprague owned Northern Shores and Mr. Holland operated it. Mr. Sprague maintained title to the utility by virtue of RSA 374:30 and his voided transfer under RSA 374:31. Mr. Holland performed all the billing and maintenance functions and collected revenues from the operation of Northern Shores. Accordingly, we find that both Mr. Sprague and Mr. Holland have performed the functions of a public utility and are therefore subject to the Commission's jurisdiction.

In its recommendation letter, Staff articulated numerous items which would need to be done to return the petitioners to their pre-petition status. We have reviewed Staff's recommendations and find them reasonable. We will therefore order Mr. Sprague and Mr. Holland to cease operating Northern Shores as if the transfer agreement had legal effect. We will also order Mr. Sprague and Mr. Holland to cooperate and assist in returning Northern Shores to its pre-transfer state.

Based upon the foregoing, it is hereby

ORDERED, that the Joint Petition to Transfer Northern Shores' Franchise Rights and Assets to Frank Holland is rejected; and it is

FURTHER ORDERED, that Mr. Albert Sprague shall refund to Mr. Frank Holland the \$1,000 paid by Mr. Holland for the purchase of Northern Shores Water Company and file proof of compliance with the Commission within 30 days of the date of this Order; and it is

FURTHER ORDERED, that within 30 days of the date of this Order, Mr. Frank Holland shall provide the Commission with a full accounting of revenues and expenses of the utility during the time Mr. Holland had control of the utility, that time being December 1, 2000 to present; and it is

FURTHER ORDERED, that Mr. Frank Holland shall return control of Northern Shores to Mr. Albert Sprague and shall file proof of compliance with the Commission within 30 days; and it is

FURTHER ORDERED, that Mr. Frank Holland shall, within 30 days, return to Mr. Albert Sprague all revenues collected during December 1, 2000 to present, less operation and maintenance expenses and provide evidence of compliance to the Commission; and it is

FURTHER ORDERED, that within 30 days of the date of this Order, Mr. Albert Sprague shall notify all customers by first class mail that all payments shall be made to Northern Shores rather than to Mr. Frank Holland; a copy of this letter shall be sent to the Commission; and it is

FURTHER ORDERED, that within 30 days of the date of this Order, Mr. Albert Sprague shall provide customers with contact information which at a minimum shall include a billing address and emergency phone number; and it is

By order of the Public Utilities Commission of New Hampshire this fifth day of March 2004.

Thomas B. Getz
Chairman

Susan S. Geiger
Commissioner

Graham J. Morrison
Commissioner

Attested by:

Debra A. Howland
Executive Director & Secretary