

DW 05-132

**PITTSFIELD AQUEDUCT COMPANY, INC., CONSOLIDATED WATER COMPANY,
INC. AND CENTRAL WATER COMPANY, INC.**

Joint Petition for Approval of the Transfer of Assets and Franchise Rights

Order Approving Stipulation Agreement

ORDER NO. 24,606

March 24, 2006

APPEARANCES: Dwyer, Donovan & Pendleton, P.A. by John T. Pendleton, Esq., on behalf of Pittsfield Aqueduct Company, Inc.; Mitchell & Bates P.A. by Laura Spector, Esq. on behalf of the Town of Pittsfield; Mary Ellen Goggin, Esq. on behalf of Consolidated & Central Water Companies; Jonathan Tripp, on behalf of Locke Lake Colony Association; Kirk Smith, on behalf of Birch Hill Association; Rorie Hollenberg, Esq., on behalf of the Office of the Consumer Advocate, and Marcia A.B. Thunberg, Esq. on behalf of Staff of the New Hampshire Public Utilities Commission.

I. PROCEDURAL HISTORY AND BACKGROUND

Pittsfield Aqueduct Company, Inc. (PAC), Consolidated Water Company, Inc. (Consolidated), and Central Water Company, Inc. (Central) are regulated public water utilities pursuant to RSA 362:2 and 362:4 and are subject to the jurisdiction of the New Hampshire Public Utilities Commission (Commission). PAC currently provides water service to approximately 642 customers in the Town of Pittsfield and is a wholly owned subsidiary of Pennichuck Corporation. Consolidated provides water service to 207 customers in Birch Hill in the Town of Conway, and 83 customers in Sunrise Estates in the Town of Middleton. Central provides water service to approximately 755 customers in Locke Lake Colony in the Town of Barnstead.

On August 12, 2005, PAC, Consolidated, and Central filed a joint petition with the Commission seeking approval: 1) for the sale of Birch Hill, Sunrise Estate, and Locke Lake Colony to PAC pursuant to RSA 374:30; 2) for Consolidated and Central to cease operations as

public utilities pursuant to RSA 374:28; 3) for PAC to extend its water utility business by acquiring the three water systems pursuant to RSA 374:22, *et seq.* and serve the customers in those franchise areas; and 4) for PAC to provide service to the existing customers under the terms and conditions of its existing tariff pursuant to RSA 378. The Joint Petition was accompanied by the prefiled testimony of Stephen J. Densberger, Executive Vice President of PAC, and Donald L. Ware, Senior Vice President – Operations and Chief Engineer of PAC.

Attached to the testimony of Mr. Densberger are Agreements executed between PAC and Consolidated (Consolidated Agreement) and between PAC and Central (Central Agreement). Under the Consolidated Agreement, PAC agreed to pay Consolidated \$100,000 for the assets of Birch Hill and Sunrise Estates, conditioned on the Commission's determination that the rate base for the two systems is \$100,000 upon their acquisition by PAC. Under the Central Agreement, PAC agreed to pay Central \$650,000 for the assets of the water system at Locke Lake, conditioned on the Commission's determination that the rate base for this system is \$650,000 upon its acquisition by PAC. Pursuant to the Central and Consolidated Agreements, Consolidated and Central propose to transfer to PAC as part of the water supply and distribution system facilities, underground piping, all pump house buildings or other structures, related real property, including easement rights and in some cases warranty deeds to parcels of land, storage tanks and related equipment and franchises, all as described in the two Agreements.

On August 22, 2005, the Office of the Consumer Advocate (OCA) notified the Commission that it would participate in this proceeding. On September 13, 2005, the Commission issued an Order of Notice establishing a prehearing conference on October 13, 2005. The Commission received intervention requests from The Town of Pittsfield (Pittsfield),

Stephen P. St. Cyr & Associates, Birch Hill Water District (BHWD), and Locke Lake Colony Association (LLCA).

On October 7, and 11, 2005, the Commission received written public comments from Jerri Waitt and Susan Bradley, customers in Sunrise Estates. Ms. Waitt and Ms. Bradley stated that Sunrise Estates used to be mostly seasonal residents, but is now mostly full time residents. Ms. Waitt and Ms. Bradley expressed concern that the present unmetered rate encourages wasteful use of water. They urged the Commission to approve the asset transfer and requested that meters be installed.

On October 14, 2005, Staff, on behalf of itself and the parties, submitted a proposed procedural schedule, which was approved by secretarial letter on October 20, 2005. On December 5, 2005, the Commission held a public comment hearing in North Conway for the customers of Birch Hill and on January 5, 2006, the Commission held a similar public comment hearing in Barnstead for the customers of Locke Lake and Sunrise Estates. On January 25, 2006, Staff filed with the Commission a Stipulation entered in to by PAC, Central, Consolidated, OCA, BHWD, LLCA, and Staff.

On January 26, 2006, Pittsfield filed with the Commission the prefiled testimony of George E. Sansoucy. On February 2, 2006, PAC filed with the Commission a *Motion in Limine* requesting the Commission strictly limit the Direct Testimony of George E. Sansoucy. The Commission allowed the testimony of Mr. Sansoucy, but excluded an oral summary.

On February 2, 2006, the Commission held a duly noticed hearing on the merits and received testimony and other evidence relating to the Stipulation filed by Staff and other parties. On February 22, 2006, Locke Lake Colony Association filed with the Commission a letter of support for the Stipulation from the Board of Directors.

On March 14, 2006, Staff filed a letter informing the Commission that the Town of Conway had performed work in Birch Hill in connection with a leak and had billed Consolidated \$1,105.19.

II. TERMS OF THE STIPULATION

Staff, OCA, PAC, Central, Consolidated, BHWD, and LLCA entered into a Stipulation agreeing to the following terms:

A. Sale of System Assets

1. Staff and the parties agree that it is in the public interest for PAC to acquire Locke Lake, Birch Hill, and Sunrise Estates.

2. Staff and the parties agree that PAC has the technical, financial and managerial expertise to operate the Locke Lake, Birch Hill, and Sunrise Estates water systems especially in light of PAC's relationship with Pennichuck Corporation and its related resources.

3. Staff and the parties agree that the assets should be sold at net book calculated in the following manner: [Gross Plant in Service] minus [Accumulated Depreciation] minus [Contributions in Aid of Construction] plus [Accumulated Amortization of Contributions in Aid of Construction]. According to the Stipulation, this formula results in: PAC paying, subject to adjustment at closing:

a. For Central's Locke Lake system: \$524,359. This figure represents \$479,408 in net book value as of December 31, 2004 plus \$44,951 in 2005 capital additions;

b. For Consolidated's Birch Hill and Sunrise Estates systems: \$181,572.31. This figure represents \$166,381 in net book value as of December 31, 2004 plus \$15,191.31 in 2005 capital additions.

4. PAC agrees to, immediately after closing, notify all customers of the change in ownership and provide instructions on contacting the company for routine matters as well as in the event of emergencies. PAC's notice to customers will also advise Locke Lake, Birch Hill, and Sunrise Estates customers of the change to PAC's current tariff rate for service.

B. Rates

1. Staff and the parties agree that it is in the public interest for PAC to charge its existing PAC tariff rate to customers in Locke Lake, Birch Hill, and Sunrise Estates. Central agrees to read customer meters at Locke Lake the day of scheduled closing and will provide that data to PAC. PAC agrees to implement its current tariff rate to Locke Lake customers immediately after closing. PAC agrees to install water meters for Birch Hill and Sunrise Estates

customers within 12 to 18 months of closing. Until such time, Birch Hill and Sunrise Estates customers will continue to be billed the existing rate approved for that system. Staff and the parties agree that the PAC tariff rate will provide PAC with adequate revenues to fully recover its cost of service in the Birch Hill system, which will include planned capital expenditures for meters and a storage tank in Birch Hill.

2. PAC agrees to track revenues, expenses, and capital investments on an individual system basis until its next rate case. Staff and the parties state the purpose of this tracking is to provide a basis for analysis of the potential rate impact on each system from the consolidation of the newly acquired systems with the existing PAC system in the Town of Pittsfield, as well as any subsequent capital investments in any of the four systems. PAC agrees to consider the potential rate impacts on each system individually as a result of capital investments made elsewhere to consider separate tariff rates for one or more of the systems if undue subsidies are created.

C. Accumulated Outstanding Debts

1. Central and Consolidated agree that, with the proceeds from the sale of the water systems in this docket, they will retire outstanding debts by paying amounts owed to third parties prior to payment of any inter-company and affiliate notes payable and accounts payable.

2. Staff and the parties agree that in exchange for payment of third party debt prior to inter-company debt, that it is in the public interest for the Commission to take no further action with respect to Central's compliance in DW 00-167. Staff and the parties recommend the Commission close DW 03-144 with respect to the Commission's investigation into the quality of service at the Birch Hill system without further findings.

D. Locke Lake Water Quality

PAC agrees to attend Locke Lake's annual meeting in 2006 to present to Locke Lake an update on plans for repairs and upgrades of the system and alternative funding sources available. PAC agrees to provide Locke Lake with the results of its customer survey to be conducted in the immediate future, to provide a complaint summary each year, and to provide Locke Lake with a copy of its annual report for each year, to include a summary of planned capital improvements and upgrades for the system, including planned funding sources for the proposed upgrades. PAC agrees to use its best efforts to ensure all customers are metered and as otherwise referenced herein, to maintain separate accounting records for the Locke Lake system.

III. COMMISSION ANALYSIS

The transfer of water utility assets and franchises is governed by RSA 374:22 and RSA 374:30. Pursuant to RSA 374:22, I, "[n]o person or business entity shall commence business as a public utility within this state ... or shall exercise any right or privilege under any

franchise not theretofore actually exercised in such town, without first having obtained the permission and approval of the commission.” The Commission shall grant requests for franchise authority and allow an entity to engage in the business of a public utility when it finds, after due hearing, that the exercise of the right, privilege, or franchise is in the public good. See RSA 374:26. Pursuant to RSA 374:30 “[a]ny public utility may transfer or lease its franchise, works or system, or any part of such franchise, works or system, exercised or located in this state...when the commission shall find that it will be for the public good and shall make an order assenting thereto, but not otherwise.” In determining whether a proposed franchise or franchise transfer is in the public good, the Commission assesses, among other things, the managerial, financial, and technical expertise of the petitioners. See, *Lower Bartlett Water Precinct*, 85 NH PUC 635, 641 (2000).

In determining whether the proposed transfer in the instant docket is in the public good, we make the general observation that the transaction essentially involves transferring water systems from entities that have had a history of compliance issues to an entity that the Commission has previously found to possess the requisite managerial, financial, and technical expertise to operate water systems.¹ Central’s compliance history is more fully set forth in Docket No. DW 00-167, wherein we ordered Central to commence quarterly financial reporting, make certain system improvements at Locke Lake, and seek grants and loans to minimize future rate impacts. *Central Water Company*, 86 NH PUC 337 (2001). These requirements were largely not complied with. Consolidated’s recent history of water quality and water quantity problems at Birch Hill is set forth in Docket No. DW 03-144. Consolidated was unable to

¹ *Pennichuck Corporation*, 83 N.H. P.U.C. 44 (1998).

comply with Order No. 24,266, *Consolidated Water Company*, 89 NH PUC 42 (2004) because it could not obtain financing to undertake the system improvements.

Conversely, PAC has the ability to obtain favorable financing.² As part of its acquisition plan, PAC proposes to make certain capital improvements to the systems including plans to construct a water tank in Birch Hill. This capital improvement is expected to alleviate some of the water supply concerns. PAC also plans to install meters for Birch Hill and Sunrise Estates customers who are presently on a flat rate. Installing meters is an important step toward complying with N.H. Code Admin. R. Puc 603.03. Puc 603.03 requires all water sold by a utility to be billed on the basis of metered volume sales unless a waiver is granted by the Commission. The Commission promotes metered water service in order to provide an incentive to conserve water. In *Investigation into Water Conservation*, 88 NH PUC 603 (2003), the Commission supported efforts to promote water conservation but recognized some conservation rate structures would be of limited value if customers were not billed according to metered usage. *Id.* at 605. We find that transferring Birch Hill, Sunrise Estate, and Locke Lake Colony to PAC so that capital improvements can be completed would be consistent with the public interest. We further find that based on the evidence in the record that this transfer would improve customers' ability to obtain safe and adequate water service in the future, as required in RSA 374:1.

We next turn to the issue of rates. Pursuant to RSA 378:5 and RSA 378:7, the Commission is authorized to investigate whether rates, fares, charges or prices a utility proposes to put into force are just and reasonable. Presently, Central's customers in Locke Lake Colony, which is metered, are charged \$22.07 per month plus a volumetric rate of \$4.95 per thousand

² See, for example, *Pittsfield Aqueduct Company, Inc.*, 83 N.H. P.U.C. 667 (1998) (Order approving stipulation under which PAC reduced its rates to reflect cost savings associated with refinancing long-term debt through Pennichuck Corporation.)

gallons. Consolidated's customers in Birch Hill and Sunrise Estates are not metered. Birch Hill customers pay an annual rate of \$260.17; Sunrise Estates customers pay an annual rate of \$397.12. PAC proposes to impose its present rate consisting of a monthly charge of \$10.57 for 5/8 inch service, plus a volumetric charge of \$3.30 per 100 cu. ft. on both Birch Hill and Sunrise Estates. PAC testified at hearing that it based its decision to use the PAC tariff rates upon calculations of anticipated expenses and revenues of each of the three systems. The expenses and revenues most closely matched the PAC rate. February 2, 2006 Hearing Transcript (2/2/06 Tr.) at 19, lines 16-22. According to the Stipulation, an average residential customer at Locke Lake Colony, consuming 8,800 cu. ft. of water annually, would see a decrease of approximately \$177 to their annual water bill once the system is converted to PAC's tariff rate. Customers of Sunrise Estates, once converted to PAC's tariff metered rate, would see an increase of approximately \$17 to their annual water bill. Customers in Birch Hill, once converted to PAC's existing tariff rate, would see an increase of approximately \$154 to their annual water bill. We find that these rate increases would be reasonable, given the capital improvements each system will receive. We also acknowledge that the existing Consolidated and Central rates may be artificially low. At hearing, Staff testified that Consolidated had been losing money in past years and that Central had reported losses in 2003 and 2004. 2/2/06 Tr. at 42 lines 19-24 and at 43 lines 3-6.

Pittsfield filed testimony objecting to the use of the PAC rate for Locke Lake Colony, Birch Hill, and Sunrise Estates. Pittsfield averred that utilization of the PAC would result in Pittsfield customers subsidizing the acquisition of the Central and Consolidated systems. Exh. 8 at 2. Pittsfield argued that Pennichuck East Utility, Inc. (PEU) and not PAC should be the

acquiring entity and that PAC's calculation of the inter-divisional management fee places costs disproportionately on Pittsfield customers.

The evidence presented at hearing does not demonstrate that Pittsfield customers will be harmed by PAC acquiring Locke Lake Colony, Birch Hill, and Sunrise Estates. At hearing, Staff and the parties testified that PAC agrees, pursuant to the Stipulation, to track revenues, expenses, and capital investments on an individual system basis to determine if undue subsidization occurs. Exh. 3 at 4. 2/2/06 Tr. at 46 lines 14-19. We agree that this information will provide a basis for analysis at the time of PAC's next rate case of whether it is appropriate to keep one tariff or separate tariffs. PAC witness Donald Ware testified that PAC currently employs an employee part time to serve PAC and that with the addition of Locke Lake Colony, Birch Hill, and Sunrise Estates "will create enough customer density to allow [PAC] to place full-time employees in the Pittsfield/Barnstead/Conway area." 2/2/06 Tr. at 20 lines 22-24 and at 21 line 1. Mr. Ware also testified that PAC was chosen as the corporate entity to acquire Consolidated and Central given Barnstead's proximity to Pittsfield. 2/2/06 Tr. at 19 lines 13-16. While physical location of personnel in relation to a system is not always dispositive, in general, all things being equal, the proximity of personnel to the systems they operate can be a benefit.

With respect to the inter-divisional management fee, Staff testified that appropriate allocation of the management fee is the kind of issue best considered in the context of a rate case and that Staff would closely review the issue in PAC's next rate case. *Id.* at 49 lines 7-18. We are not persuaded by Pittsfield's argument that allocation of the inter-divisional management fee should be scrutinized and finally determined in this proceeding. Review of specific expenses is best done in the context of a rate case wherein the Commission can review all expenses, revenues, and rate design. Spreading the inter-divisional management fee over a

larger customer base may actually benefit existing customers. In fact, Pittsfield's witness testified at hearing that the management fee per customer for PAC as currently operated is about \$216 per customer, while the average management fee per customer for PAC after combining with Central and Consolidated would be about \$106 to \$116 per customer. These figures are consistent with the pro forma income statements provided on page 57 of Exhibit 1. We believe PAC's commitment in the Stipulation to separately track revenues, expenses, and capital investments on an individual system basis adequately protects Pittsfield customers until the matter can be reviewed in PAC's next rate case. Accordingly, we find PAC's proposed rates to be just and reasonable as applied to customers of Locke Lake Colony, Birch Hill, and Sunrise Estates.

We next address the issue of Consolidated and Central's outstanding debt and compliance with findings in Docket Nos. DW 00-167 and DW 03-144. According to information provided in response to Staff Data Requests, Central lists \$89,095.51 in third party debt; \$130,797.24 in inter-company and affiliate notes payable and accounts payable; and another \$495,479.70 in mixed short and long term liabilities. Exh. 7. Consolidated lists \$52,967.82 in third party debt; \$50,915.84 in inter-company and affiliate notes payable and accounts payable; and a minimum of \$1,822.82 in tax liens. Exh. 5 at 18. Recently, Staff alerted the Commission to additional debt incurred by Consolidated, in the amount of \$1,105.19, involving leak repair work performed by the Town of Conway. According to the Stipulation, Central will receive \$524,359 for its system and Consolidated will receive \$181,572.31. These sums will allow Central and Consolidated to pay their third party debts. At hearing, Staff informed the Commission that intervenor Stephen P. St. Cyr & Associates supported the Stipulation. We understand Mr. St. Cyr is a third party creditor and thus will be paid prior to

inter-company debts. 2/2/Tr. at 56 lines 17-19. Central is likely not to have enough to fully pay the inter-company debt; Consolidated is likely to realize a small profit.

It is difficult to state with certainty the extent to which inter-company debt will be satisfied. This stems from the lack of documentation of the legitimacy of the inter-company notes. In *Central Water Company*, 86 NH PUC 337 (2001), the Commission ordered Central to cease making inter-company loans and advances and stated that these activities reflected poorly on company management, as Central was subject to tax liens for nonpayment of property taxes. Consolidated also has inter-company debt, tax liens, and reporting deficiencies, which make verification difficult. In light of Central and Consolidated's financial history, we find that the Stipulation is reasonable and we will approve it. Disbursement of sale proceeds to Central and Consolidated's third-party debtors prior to inter-company debtors is important and is required under the Stipulation.

Upon conveyance of these systems, Central and Consolidated will no longer own any water systems. Thus, the provision of safe and adequate water to Locke Lake Colony, Birch Hill, and Sunrise Estates customers will not involve Central and Consolidated. Central and Consolidated will also have little cash left to satisfy outstanding stipulated penalties. Once the water systems are conveyed to PAC, nothing will be gained by keeping these dockets open and we find it is reasonable to close Docket Nos. DW 00-167 and DW 03-144. The penalties previously imposed are hereby vacated.

At the February 2, 2006 hearing, certain customers of Locke Lake Colony commented that the Board of Directors of the Locke Lake Colony Association had not voted to approve the Stipulation and that Jonathan Tripp's representations that Locke Lake Colony supported the Stipulation were not valid. On February 22, 2006, however, the Commission

received a letter signed by the Board of Directors of Locke Lake Colony Association indicating its support of the Stipulation. In light of this letter, we accept Mr. Tripp's statement that the Board of Directors supports the Stipulation though our decision today does not turn on the validity of the reported position of the Board.

The customers also asked that the Commission postpone ruling in this docket to allow the Town of Barnstead time to investigate acquiring the water system or, alternatively, allow the Locke Lake Colony system to be offered for sale on the public market. 2/2/06 Tr. at 135 lines 20-24; at 136 lines 3-12; and at 143 Lines 15-18. The requested extension will be denied. The Town of Barnstead received notification of this docket in September of 2005 and took no steps to participate. We do not find it reasonable to suspend consideration of PAC's proposed purchase of these water systems on the possibility that a municipality may be interested in becoming involved.

In conclusion, based upon our review of the record and testimony at the hearing, we find that the proposed transfer of the water systems and the associated franchise rights from Central and Consolidated to PAC is in the public good. We find the terms of the Stipulation, including the proposed rates and payment of debt, are just and reasonable and we will approve it.

Based upon the foregoing, it is hereby

ORDERED, that the Stipulation entered in to between Staff, the Office of Consumer Advocate, Pittsfield Aqueduct Company Inc., Central Water Company, Inc., Consolidated Water Company, Inc., Birch Hill Water District, and Locke Lake Colony Association, is hereby approved; and it is

FURTHER ORDERED, that Consolidated and Central will cease operations as public utilities pursuant to RSA 374:28; 3, effective as of the date of the closing between Pittsfield Aqueduct Company and Central and Consolidated; and it is

FURTHER ORDERED, that the penalties against Central Water Company, Inc. and Consolidated Water Company, Inc. imposed in Docket Nos. DW 00-167 and DW 03-144 are hereby vacated; and it is

FURTHER ORDERED, that Pittsfield Aqueduct Company Inc. shall mail by first class mail a display ad, developed in consultation with the Commission's Consumer Affairs Division, to all customers of Locke Lake Colony, Sunrise Estates, and Birch Hill to notify them of the approved transfer of the franchises and of the new approved rates.

By order of the Public Utilities Commission of New Hampshire this twenty-fourth day of March, 2006.

Thomas B. Getz
Chairman

Graham J. Morrison
Commissioner

Clifton C. Below
Commissioner

Attested by:

Debra A. Howland
Executive Director & Secretary