

**STATE OF NEW HAMPSHIRE  
PUBLIC UTILITIES COMMISSION**

**DW 07-136**

**MOUNTAIN LAKES DISTRICT**

**Investigation into Service Provided Outside Corporate Boundaries in the Town of Bath**

**Order Modifying Order No. 24,880**

**ORDER NO. 25,004**

**August 12, 2009**

**I. BACKGROUND**

Mountain Lakes District (MLD) is a village district that provides, among other services, water service in the towns of Haverhill and Bath. Customers in Bath are not residents of the MLD and, therefore, MLD serves customers outside its municipal boundaries. On July 28, 2008, the Commission issued Order No. 24,880, which approved MLD's continued exemption from regulation based upon a rate-setting formula recommended by Staff and MLD for Bath customers. This formula takes into account the fact that certain portions of MLD's water department budget are collected through the district tax to residents, and establishes a sharing of those costs with the Bath customers based on a weighting of property values within and without the district.

On April 16, 2009, the Commission received a copy of a letter written by Mr. Robert Duquette, a non-resident water customer of MLD, directed to the Commissioners of MLD. Mr. Duquette expressed concern that the MLD was not following Commission Order No. 24,880. Mr. Duquette stated that MLD was required to provide notice to Bath customers each year so that they would be made aware of, and have an opportunity to participate in, MLD's budget meetings concerning the water department budget. Mr. Duquette stated that he was not notified

of the scheduled meetings and had not received a copy of the proposed budget, or of the final budget. Mr. Duquette also questioned the formula MLD used to allocate costs to the Bath customers. Mr. Duquette stated that he was unable to reconcile the value of the 16 properties served in Bath with the value used by MLD for allocating costs. He requested that MLD provide him with copies of the records used to determine the property values, and also requested that the Commission intercede and permit Bath customers to withhold payment of their water bills until the matter of the property values was resolved.

On May 5, 2009, Staff filed a letter indicating that it had investigated Mr. Duquette's concerns. Staff stated that it had contacted MLD concerning the two issues raised by Mr. Duquette. With respect to the issue of adequate notice, Staff stated that MLD had provided notice in compliance with applicable state law regarding budget meetings, but the notice did not reach Bath customers as contemplated by Order No. 24,880. Staff stated that MLD had represented to the Commission that it would provide the Bath customers with a copy of the MLD proposed budget as well as the final budget approved by the MLD voters. Staff stated that Mr. Duquette was not notified of the scheduled budget meetings and did not receive a copy of the proposed budget or the final approved budget. Staff stated that MLD will now send individual letters to the Bath customers each year, notifying them of the dates of the budget meetings and will indicate how copies of the voluminous proposed budget can be obtained. Staff stated that it believed this more specific notice would enable Bath customers to meaningfully participate in the budget discussions that ultimately impact the water rates they will pay.

With respect to Mr. Duquette's concern relating to the formula, Staff stated that there was a misunderstanding within the recommendation of Staff and MLD previously adopted by the

Commission. At the time, Staff believed that the value of the Bath property used in the formula was for the 16 lots currently being served; while MLD understood the property value to include both the 16 customer lots as well as the remaining undeveloped lots in Bath that were within the original franchise recognized in 1986. *See Mountain Springs Water Company, Inc.*, 71 NH PUC 194 (1986). Staff also stated that the Bath property valuation figure of \$2,170,100 for 2008 included in Staff and MLD's joint recommendation included the undeveloped Bath lots, unbeknownst to Staff. Staff stated that it had reviewed the issue with MLD and concluded that MLD's interpretation of the formula was not inappropriate. Noting the fact that the undeveloped Bath lots remain within the MLD franchise area, and the fact that undeveloped lots within the MLD in Haverhill are included as part of the weighting of costs for allocation between the two towns, Staff stated that including the value of the undeveloped lots in Bath will not alter the equivalency of the rates charged inside and outside MLD.

On May 28, 2009, Mr. Duquette filed a letter responding to Staff's recommendation. Mr. Duquette agreed with Staff's recommendation concerning notice but requested that MLD also provide supplemental worksheets so that costs, percent of costs allocated, and the property valuations used in the formula could be verified. Mr. Duquette objected to Staff's recommendation concerning the use of property values in the formula. He stated that, notwithstanding Staff and MLD's differing interpretations of the formula, allowing MLD to continue to include the value of the undeveloped lots in Bath is inappropriate. Mr. Duquette objected to the use of undeveloped values in the formula because, while lot owners within MLD pay water-related costs through their MLD tax regardless of whether they take service or not, owners of undeveloped lots in Bath do not and thus there is an unfair shifting of costs to Bath

customers actually taking service. Mr. Duquette also objected to Staff's position that owners of undeveloped lots in Bath may request water service in the future. He stated that these same owners also have a right to drill their own well and never take service from MLD.

## II. COMMISSION ANALYSIS

RSA 378:7 provides the Commission with the general authority to fix rates for public utilities after a hearing upon determining that the rates, fares, and charges are just and reasonable. Pursuant to RSA 362:4, III-a (b) and (d), the Commission may approve different rates for existing customers located outside a municipal corporation's boundary so long as such rates are consistent with the public good. Prior to the 2003 changes to RSA 362:4, the Commission approved exemptions from regulation when a municipal corporation could demonstrate that it provided customers located outside its municipal boundaries with a quantity and quality of water, or level of water service, equal to that served to customers within the municipality and at equal rates. *See, Plymouth Village Water and Sewer District*, Order No. 22,527, 82 NH PUC 283 (1997). We apply these principles to the case at hand.

In Order No. 24,880, the Commission approved a joint recommendation of Staff and MLD, which provided a method for establishing a water rate for MLD's customers located outside the district in Bath such that the total cost for water service charged within MLD would be equivalent to the rate charged to Bath customers. A portion of the allocation method used property values as a weighting factor to allocate water-related costs that, within MLD, are recovered through the district tax. We now understand that the joint recommendation of Staff and MLD was ambiguous as to the inclusion of values for undeveloped property within Bath as part of the allocation formula. MLD subsequently included all Bath properties that were in the

original franchise approval in its value weighting for the calculation of its 2009 rates. Mr. Duquette, a Bath customer of MLD contends that the inclusion in the formula of undeveloped lots in Bath unfairly disadvantages current Bath customers since those customers end up paying a greater share of allocable costs based on inclusion of the undeveloped lots in its formula, which pay nothing, whereas the owners of undeveloped lots in Haverhill are reached through MLD's taxing authority.

Having reviewed the filings made since Order No. 24,880, we find that it is just and reasonable and consistent with the public interest to modify the formula as recommended by Mr. Duquette. Although it may not be inappropriate to include all Bath and all Haverhill properties that were in the original franchise request in the formula, we note that the district was not fully incorporated in Bath as originally planned. Since the district only exists in Haverhill, it does not have taxing authority over the properties in Bath. Instead, MLD reaches the Bath properties only by virtue of the fact that select properties receive water service from MLD. We find this distinction sufficient to approve use of a formula structured in the way Staff originally understood the formula to be; that is, the total property value used for allocation of certain administrative and debt service costs to Bath customers should include only those properties in Bath that receive water service from MLD, while the total property value for Haverhill should continue to include that of both MLD customers and undeveloped lot owners subject to MLD property taxes for those costs. At the same time, we find that MLD's interpretation of the rate formula was not unreasonable nor did it produce unreasonable rates. Accordingly, we will not require a retroactive adjustment of rates.

We find that the refinement and clarification of the formula better reflects the intent of the Commission's prior order and will produce just and reasonable rates. Therefore, we will require MLD to institute this change in formula on a prospective basis to coincide with its next budget cycle. In Order No. 24,880, we found that the formula produced rates that were equivalent to rates charged within the district through both the water rate and the district tax. We continue to find this to be the case. Accordingly, we find it consistent with the public interest to exempt MLD from regulation so long as MLD continues to provide to Bath customers a quantity and quality of water or level of water service, equal to that served to customers within the district and at equivalent rates based upon the formula as modified by this Order.

**Based upon the foregoing, it is hereby**

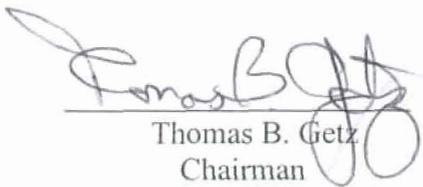
**ORDERED**, that Mountain Lakes District is authorized to charge an annual rate outside its district boundaries in accordance with the method approved in Order No. 24,880 and as modified herein; and it is

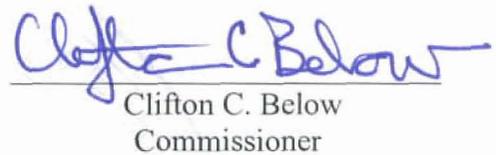
**FURTHER ORDERED**, that Mountain Lakes District shall notify Bath customers by first class mail of its budget meetings and shall provide Bath customers with an opportunity to obtain a complete copy of the proposed budget as well as any supplemental worksheets that exist that may aid the Bath customers in their understanding of the budget and, in particular, the allocation of costs to Bath customers; and it is

**FURTHER ORDERED**, that Mountain Lakes District's provision of water service to customers in the Town of Bath, within the franchise area previously granted, is exempt from Commission regulation consistent with the public good; and it is

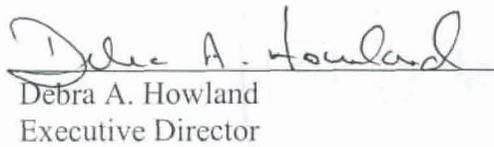
**FURTHER ORDERED**, that future annual rates to be charged outside Mountain Lakes District's corporate boundaries shall be established in accordance with the method as recommended by Staff and MLD and as modified by this order, and that any material alterations of that method shall be submitted to the Commission for review.

By order of the Public Utilities Commission of New Hampshire this twelfth day of August, 2009.

  
Thomas B. Getz  
Chairman

  
Clifton C. Below  
Commissioner

Attested by:

  
Debra A. Howland  
Executive Director