

**STATE OF NEW HAMPSHIRE  
PUBLIC UTILITIES COMMISSION**

**DW 18-108**

**ABENAKI WATER COMPANY, INC.  
TIOGA RIVER WATER COMPANY, INC.**

**Petition to Transfer Utility Assets and Franchise**

**Order Approving Transfer of Utility Assets and Franchise**

**ORDER NO. 26,231**

**March 28, 2019**

In this order, the Commission grants Abenaki Water Company, Inc., authority to acquire the assets and utility franchise of Tioga Water Company, Inc., pursuant to RSA 374:22 and RSA 374:30. After the transfer, Tioga Water Company, Inc., will cease to be a regulated utility.

**I. PROCEDURAL HISTORY**

Abenaki Water Company, Inc. (Abenaki), is a public water utility that currently serves 663 customers in Bow, Belmont, and Carroll. Tioga Water Company, Inc., (Tioga), is a New Hampshire corporation and a regulated public water utility that provides water service to 22 customers in Belmont (Belmont Division) and 38 customers in Gilford (Gilford Village Division).

On July 26, 2018, Abenaki and Tioga submitted a joint petition (Joint Petition) for approval to: (1) transfer Tioga's water utility assets and franchise to Abenaki pursuant to RSA 374:22 and RSA 374:30; (2) discontinue Tioga's operation as a public water utility following the transfer pursuant to RSA 374:28; (3) authorize Abenaki to assume Tioga's existing State Revolving Fund (SRF) loans; and (4) authorize Abenaki to modify Tioga's existing tariff to

allow Abenaki to convert customers to monthly billing (measured in gallons) using existing rates, pursuant to RSA 378:3.

On August 21, 2018, the Commission issued an Order of Notice scheduling a Prehearing Conference and technical session which was held on September 26, 2018. Abenaki, Tioga, and Commission Staff (Staff) attended. No petitions to intervene were received. Staff filed a proposed procedural schedule which was approved by the Commission on October 2, 2018.

On November 14, 2018, Staff, Abenaki, and Tioga met in a technical session at which the parties agreed to enter into a settlement agreement (Settlement), conditioned on Abenaki and Tioga obtaining approval from the Town of Gilford to replace the town-owned water meters installed by the Gilford Sewer Department. On December 18, Abenaki obtained approval from Gilford to replace its meters. On February 4, 2019, Abenaki, Tioga, and Staff filed the Settlement, along with an Assented to Motion to Approve Settlement Agreement, without hearing, for Commission approval.

The Joint Petition and subsequent docket filings, other than any information for which confidential treatment is requested of or granted by the Commission, are posted to the Commission's website at <http://www.puc.nh.gov/Regulatory/Docketbk/2018/18-108.html>.

## **II. SETTLEMENT AGREEMENT**

Abenaki, Tioga, and Staff (the Settling Parties) agreed to the following terms of the Settlement and urged the Commission to approve it.

### **A. Sale of Assets and Authority to Operate**

The Settling Parties agreed that the sale by Tioga to Abenaki is for the public good pursuant to RSA 374:30. Abenaki has the requisite managerial, technical, and financial expertise to provide service to Tioga's customers. Abenaki is owned by New England Service Company

(NESC), which owns water systems in Connecticut, Massachusetts, and New Hampshire. Through those systems, NESC's water utilities serve approximately 9,400 customers. NESC brings Tioga customers the benefit of greater economy of scale. NESC employs 23 experienced staff members, affording it greater technical resources than Tioga. Abenaki, through NESC, will be able to finance future projects at a lower capital cost than Tioga. Finally, the New Hampshire Department of Environmental Services (DES), along with the Governor and the Executive Council, determined that Abenaki has the managerial and financial expertise to assume Tioga's outstanding long-term SRF loan.

#### **B. Discontinuance of Service**

The Settling Parties agree that, once the transfer to Abenaki has been completed, Tioga should discontinue its service as a public utility because the public good does not require the continuance of such service. As the successor, Abenaki has the requisite managerial, technical, and financial capability to operate a regulated utility. Thus, Tioga's discontinuation of service will be for the public good.

#### **C. Assumption of Existing Long-Term Debt**

The Settling Parties agree that Abenaki's proposal to assume Tioga's existing DES-administered long-term SRF loan is consistent with the public good. The Commission should approve Abenaki's assumption of the debt pursuant to RSA 369:1 and RSA 369:2. As the loan was previously approved by the Commission in Order No. 24,988, the Settling Parties agree that the transfer can be conducted without further determination whether the financing is consistent with the public good.

**D. Purchase Price and Closing Date**

As of November 8, 2018, the purchase price was estimated to be \$55,348, based on the net book value of Tioga's plant in service, less contributions in aid of construction net of amortization, less the SRF loans assumed by Abenaki; with additional adjustments for materials and supplies, deferred costs in rate base, and property taxes. *See Settlement Agreement, Attachment 2.* The final price will not be determined until the date of the acquisition closing. The Settling Parties agree that the purchase price does not include an acquisition premium, and that an acquisition premium will not be allowed for recovery in a future rate case.

The Settling Parties agree that the acquisition closing date will not occur until after the Commission approves the Settlement. Abenaki will forward an executed copy of the acquisition closing agreement to the Commission within 30 days after the acquisition closing date.

**E. Billing Changes**

The Settling Parties recommend the conversion of Tioga's billing cycle from quarterly to monthly, while preserving Tioga's existing rates. There are numerous benefits of monthly billing: (1) water charges are more manageable and predictable; (2) leaks can be identified more quickly, eliminating water loss and reducing costs; (3) customer can monitor their usage on a monthly basis, which may improve water conservation efforts; and (4) billing delinquencies can be minimized.

The Settling Parties recommend the conversion of Tioga's unit of water measurement on customer bills from cubic feet to gallons with resulting rates based on Tioga's existing rates. The conversion results in a more customer-friendly bill because it adopts a more recognizable and understandable unit of measurement.

## **F. Meter Replacement**

The water meters in Tioga's Belmont Division are the property of Tioga and are more than 10 years old. The current estimated cost for the replacement is \$6,600, contingent on the absence of unusual installation or removal impediments. The targeted date for water meter replacement completion is June 30, 2019.

The water meters in Tioga's Gilford Village Division are currently owned by the Town of Gilford and most of those meters are at least 10 years old. Abenaki is concerned that, from a regulatory and operational standpoint, meters owned by a third-party are problematic because the calibration and accuracy of the meters are unknown. Further, Abenaki maintains that the existing Gilford Village Division meters are made by a different manufacturer and are incompatible with their data collection equipment and software. Abenaki is also concerned that control of the meters and consumption information is not available, except through the Town of Gilford.

The Town of Gilford has agreed to Abenaki's request to change out all the water meters in the Gilford Village Division. Settlement Agreement of February 4, 2019, Attachment 5 at 1. The Settling Parties agree that Abenaki will replace the existing meters at an estimated cost of \$11,400, contingent on there being no unusual installation or removal impediments. The targeted date for water meter replacement completion is June 30, 2019.

The Settling Parties agree that Abenaki will replace all the Tioga water meters as follows:

- (1) Abenaki will submit the proposed customer notice of meter replacement to the Commission's Consumer Services and External Affairs Division (Consumer Services) for review and approval;
- (2) once approved by Consumer Services, the notice will be sent to Tioga's customers after the acquisition closing date; and
- (3) beginning 30 days after the date the notice is mailed, Abenaki

will contact each customer to schedule a date and time at the customer's convenience for meter replacement.

#### **G. Tariff Revisions and Customer Notice**

The Settling Parties agree that Abenaki may modify Tioga's existing tariffs to reflect Abenaki as the owner of the franchise immediately subsequent to the acquisition of Tioga's assets and franchise. This initial set of modified tariffs will still reflect Tioga's current billing cycle (quarterly), current unit of measurement (cubic feet), and existing rates. Abenaki will file revised tariffs for Tioga's two divisions with the Commission within 30 days of the acquisition closing date.

Abenaki will then submit to Consumer Services, for review and approval, proposed customer notices regarding the change in (1) billing frequency and (2) unit of measurement. Upon approval by Consumer Services, and after the meter replacements are completed in the respective divisions, the customer notices will be mailed at least 30 days prior to the date the actual billing changes become effective. Abenaki may submit the customer notices for review by Consumer Services separately for the two divisions, depending on the actual completion date of the meter replacement. This second set of tariff revisions will be filed with the Commission for review and approval subsequent to the mailing of the customer notice of billing changes. These tariff changes will become effective no sooner than 30 days after the customer notice of billing changes is mailed to customers.

#### **H. Accounting Treatment and Reporting Requirements**

The Settling Parties agree that Abenaki will record its acquisition costs as a deferred asset in its accounting records. It is anticipated that Abenaki will request rate recovery of these acquisition costs via an amortization mechanism in its next rate proceeding. Inclusion of

acquisition costs in customer rates will be subject to review and approval by the Commission as provided by law.

Abenaki will continue reporting separately for the Belmont and Gilford Village Divisions following the acquisition. This includes, but is not limited to, separate reporting in Abenaki's Annual Report to the Commission, and all other reports required by the Commission.

### **III. COMMISSION ANALYSIS**

Unless precluded by law, informal disposition by stipulation may be made of any contested case at any time prior to the entry of a final decision or order. RSA 541-A:31, V(a). Pursuant to N.H. Code Admin. Rules Puc 203.20(b), the Commission shall approve the disposition of any contested case by stipulation "if it determines that the result is just and reasonable and serves the public interest." The Commission encourages parties to settle disagreements through negotiation and compromise because it is an opportunity for creative problem solving, allows parties to reach a result in line with their expectations, and is often a better alternative to litigation. *Pennichuck East Utility, Inc.*, Order No. 26,179 at 13 (October 4, 2018). Nonetheless, the Commission cannot approve a settlement, even when all parties agree, without independently determining that the result comports with applicable standards. *Id.* at 13-14.

#### **A. Sale of Assets and Authority to Operate**

In order to approve a transfer of utility assets and franchise, the Commission must determine that the transfer is consistent with the public good. RSA 374:22; RSA 374:30. A transfer requires a Commission finding that Abenaki has the expertise needed to operate a public utility. Further, provided that all interested parties are in agreement, RSA 374:26 does not require that the Commission conduct a hearing to determine whether granting a franchise under

RSA 374:22 is consistent with the public good. In this case, the Commission held a duly noticed Prehearing Conference on September 26, 2018. All parties appearing at the Prehearing Conference have joined in the Settlement and support the transfer of Tioga's assets and franchise to Abenaki. Accordingly, we find that all "interested parties" are in agreement and that no further hearings are required. RSA 374:26.

We have previously found that Abenaki possesses the managerial, technical, and financial expertise to operate a New Hampshire water utility. *See Abenaki Water Company, Inc., & Rosebrook Water Company, Inc.*, Order No. 25,934 at 7 (August 9, 2016) (finding Abenaki "demonstrated that it has the requisite financial, managerial, and technical skills required to take over and run the Rosebrook system"); *see White Rock Water Company, Inc., and Lakeland Management Company, Inc.*, Order No. 25,621 at 6 (January 14, 2014) (finding "that Abenaki has the managerial, financial, and technical ability to operate the public utilities now known as White Rock and Lakeland"). Abenaki currently operates water utilities in Bow, Belmont, and Carroll and serves more than 600 customers. Abenaki is owned by NESC, which owns multiple water systems and serves approximately 9,400 customers. NESC brings Tioga customers the benefit of greater economy of scale. NESC, with its experienced staff members, has greater technical expertise than Tioga. Abenaki, through NESC, will also be able to finance future projects at a lower capital cost than Tioga. DES, as well as the Governor and Executive Council, have also separately determined that Abenaki has the managerial and financial expertise to assume Tioga's outstanding long-term SRF loan.

Thus, we find that Abenaki possesses the requisite managerial, technical, and financial expertise, and that Abenaki's acquisition of the Tioga water systems is consistent with the public

good. We approve the acquisition of Tioga's utility assets and the transfer of the existing franchise to Abenaki pursuant to RSA 374:22 and RSA 374:30.

#### **B. Discontinuance of Service**

The Commission has found that discontinuing a franchise following the acquisition of that franchise by another utility is prudent based on a finding that the successor utility has the financial, managerial, and technical skills necessary to run the system. Order No. 25,934 at 7. Having found that Abenaki is qualified to acquire the Tioga system assets and to operate the water utility, we approve the discontinuance of Tioga's franchise following the completion of the acquisition. Given Abenaki's commitment to serve Tioga's customers in Belmont and Gilford, and as required by RSA 374:28, we find that discontinuance of Tioga's franchise following closing will "not unreasonably inconvenience the public."

#### **C. Assumption of Existing Long-Term Debt**

We grant Abenaki's request to assume Tioga's existing, long-term SRF loan, pursuant to RSA 369:1 and RSA 369:2. As stated above, the Commission previously approved this debt for system improvements by Tioga. *See Tioga River Water Company, Inc.*, Order No. 24,988 (July 23, 2009) (order approving underlying SRF loan). We have already found Abenaki competent to acquire and operate the Tioga systems and we note that DES requested and received approval from the Governor and Executive Council to have Abenaki assume the SRF loan. Thus, we find that Abenaki's assumption of the existing SRF loan is consistent with the public good.

#### **D. Purchase Price**

The purchase price for this acquisition will be calculated based on the net book value of plant in service, less contributions in aid of construction net of amortization, less the SRF loans

assumed by Abenaki, with additional adjustments for materials and supplies, deferred costs in rate base, and property taxes. The Settling Parties have agreed that the purchase price will not include an acquisition premium. We approve the method of calculating the purchase price and instruct Staff to review Abenaki's post-closing report to insure that the purchase price is calculated based on Tioga's net book value and does not include an acquisition premium. On that basis, we find the purchase price reasonable and consistent with the public good.

RSA 374:30.

#### **E. Billing Changes and Meter Replacement**

We approve the proposed changes to Tioga customer bills as well as the planned meter replacements. We note, however, that the tariff changes will be subject to customer notice requirements as well as Commission review and acceptance as required by the terms of the settlement and existing law. RSA 378:3. Further, our approval of the inclusion of Abenaki's customer meter replacements in future rates will be predicated on our determination of whether the investment in meters is prudent, and whether those meters are used, and useful. RSA 378:28.

#### **F. Accounting Treatment and Reporting Requirements**

We approve the accounting treatment of acquisition costs by Abenaki provided in the Settlement. Those costs will be subject to review by the Commission's Audit Staff before final approval by the Commission in a subsequent rate case. The Settlement requires Abenaki to report financial data separately for the two divisions. We find this requirement reasonable and approve it.

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

**ORDERED**, that the terms of the Settlement Agreement are APPROVED as described in this order; and it is

**FURTHER ORDERED**, that the Assented to Motion to Approve Settlement, without hearing, is APPROVED; and it is

**FURTHER ORDERED**, that the transfer of Tioga's utility assets and franchise to Abenaki under the terms of the Settlement is APPROVED; and it is

**FURTHER ORDERED**, that Abenaki's assumption of Tioga's existing SRF loan is APPROVED; and it is

**FURTHER ORDERED**, that Tioga's request to discontinue its franchise and cease providing water service to its customers, following Abenaki's purchase of Tioga's utility assets and commencement of water service to the former Tioga customers, is APPROVED; and it is

**FURTHER ORDERED**, that Abenaki shall forward an executed copy of the acquisition closing agreement to the Commission within 30 days after the acquisition closing date: and it is

**FURTHER ORDERED**, that Abenaki shall file two individual tariffs, reflecting Abenaki's ownership of Tioga's Belmont Division and Tioga's Gilford Village Division, respectively, within 30 days of the acquisition closing; and it is

**FURTHER ORDERED**, that Abenaki will replace the meters in Tioga's Belmont Division and Tioga's Gilford Village Division, with approved customer notice, pursuant to the requirements noted in Part II, Section F of this order; and it is

**FURTHER ORDERED**, that the billing changes, from quarterly to monthly and from cubic feet to gallons, are APPROVED; and it is

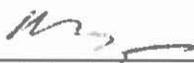
**FURTHER ORDERED**, that Abenaki will provide billing customer notice, in the respective divisions, pursuant to the requirements noted in Section II, Part G of this order; and it is

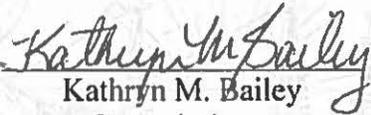
**FURTHER ORDERED**, that Abenaki will file two individual tariff revisions, for each division, reflective of the billing changes, pursuant to the requirements noted in Part II, Section G of this order; and it is

**FURTHER ORDERED**, that Abenaki shall record its acquisition costs as a deferred asset in its accounting records, such costs to be considered in a future rate case; and it is

**FURTHER ORDERED**, that Abenaki shall continue reporting Tioga's Belmont Division and Tioga's Gilford Village Division as separate divisions, in Abenaki's Annual Report to the Commission, and in all other Commission required reports.

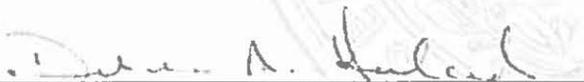
By order of the Public Utilities Commission of New Hampshire this twenty-eighth day of March, 2019.

  
\_\_\_\_\_  
Martin P. Honigberg  
Chairman

  
\_\_\_\_\_  
Kathryn M. Bailey  
Commissioner

  
\_\_\_\_\_  
Michael S. Giaimo  
Commissioner

Attested by:

  
\_\_\_\_\_  
Debra A. Howland  
Executive Director

