

THE STATE OF NEW HAMPSHIRE

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May 19, 2010



Debra A. Howland
Executive Director & Secretary
New Hampshire Public Utilities Commission
21 S. Fruit Street, Suite 10
Concord, NH 03301

Re: DW 10-097
Freedom Village Condominium Association & North Country Water Supply, Inc.
Transfer of Assets and Exemption from Regulation
Staff recommendation for Approval

Dear Ms. Howland:

The purpose of this letter is to review the joint petition of Freedom Village Condominium Association (Association) and North Country Water Supply, Inc. (North Country) (collectively, petitioners) in the above-referenced docket and to offer Staff's recommendation. The Association seeks to acquire the assets of North Country, and to be exempt from Commission regulation following the transfer. Based on Staff's review as detailed below, Staff supports granting of the petition.

On April 9, 2010, the petitioners filed their petition. The Association proposes to acquire the existing water system from North Country in accordance with an Asset Purchase Agreement (Agreement) dated April 5, 2010 and attached to the filing. The system provides all of the water to the Association's 66 condominium units, which are residential in nature. The units are located in eleven six-unit buildings on Washington and Jefferson Streets in the town of Freedom. An updated page 2 of the Agreement was provided in response to data requests proposed by Staff on April 26, 2010 (see Staff 1-3). The responses are attached hereto. The assets to be transferred consist of the tanks, pumps, wells, piping and other items comprising the system, as listed in Exhibit A to the Agreement. According to the petition, North Country has provided water service to the units since 1988. All 66 unit owners are members of the Association. North Country does not, and the Association will not, serve any other customers. North Country was exempted from Commission regulation in 1995. See *North Country Water Supply, Inc.*, Docket No. DE 93-197, Order 21,709, 80 NHPUC 380 (1995). The Association proposes to acquire the assets for \$20,000, and to hire a licensed operator to run the system.

The petition seeks exemption from regulation following the transfer pursuant to RSA 362:4, VII, which was enacted in 2007. Conditions for exemption specific to the statute are that:

- 1) The service is furnished only to members of the association or the occupants of their residential units; and
- 2) The association is organized on a not-for-profit basis and is democratically controlled by the owners of the residential units and not the developer or subdivider thereof.

The petition indicates the Association meets these conditions, and the response to Staff 1-1 specifically reaffirms the non-profit status of the Association.

Prior to filing of the petition, the Commission received a complaint from the Association concerning a rate increase instituted by North Country in 2008. Although Commission authorization was not required for the increase, the complaint resulted in opening of docket DW 09-204 to investigate the complaint, and that docket remains open. Approval of the transfer would appear to resolve the issues in DW 09-204 and allow the docket to be closed, however, Staff recommends the Association file something with the Commission which affirmatively states the concerns it raised in its complaint are resolved. Mr. Stanley Oliver, the current owner of North Country, also owns the regulated water utility of Bow Lake Estates, but regulation of the latter would be unaffected by the proposed transfer.

The Department of Environmental Services has two outstanding enforcement actions against North Country. One is an Administrative Order (AO) issued November 24, 2009. The remaining unfulfilled requirement under the AO is filing of an application for a permit to operate and the associated \$300 fee for the coming year. The second enforcement action is a Letter of Deficiency (LOD) issued April 21, 2010. The LOD requires followup sampling and public notification in relation to a recent exceedance relating to the lead and copper requirements under Env-Ws 381. Copies of both documents are attached. Data response Staff 1-2 indicates the Association will ensure the enforcement actions are remedied once a transfer is approved.

The response to Staff 1-4 indicates the Association plans to charge rates and address maintenance and improvements needs under its normal internal budgeting process following the transfer.

Based on Staff's review of the petition and discovery responses, the proposed transfer appears to be in the public good and the conditions of exemption in RSA 362:4, VII appear to be satisfied. For these reasons, Staff concurs with the transfer as proposed and recommends the Commission approve the petition. If you have any questions regarding this matter, please feel free to contact me.

Sincerely,



Douglas W. Brogan
Utility Engineer

Attachments: Data Responses, Set 1
Administrative Order No. 09-093 WD
Letter of Deficiency #DWGB 10-062

cc: Service list

LAW OFFICES OF
SANFORD ROBERTS, PA

Admitted NH & ME

117 Bow Street
PO Box 4608
Portsmouth, NH 03802-4608
Tel: (603) 431-0992
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sroberts@riverfrontlawyer.com

May 10, 2010

Marcia A.B. Thunberg, Esq.
Staff Attorney
Public Utilities Commission
21 S. Fruit Street, Suite 10
Concord, N.H. 03301-2429

Re: North Country Water Supply, Inc. sale to Freedom Village Condominium
Association - DW 10-097

Dear Attorney Thunberg,

This letter is in response to your letter of April 26 and the Staff Data Request.

After we spoke on the phone, I contacted DES as well as Mr. Oliver of North Country Water Company regarding the well radius to be sure that our response with respect to the well radius was accurate.

Attached are the Staff questions and our responses. If you need any additional information, please let me know.

This letter and the responses are being sent electronically and by US mail.

Very Truly Yours,

Sanford Roberts

SR/dd
cc: Freedom Village Board

Freedom Village Condominium Association
North Country Water Supply, Inc.
DW 10-097
Staff Data Requests – Set 1

Staff 1-1

Please provide Bylaws, Articles of Agreement or other documentation confirming the Association's not-for-profit status.

Freedom Village is an unincorporated association of owners pursuant to RSA 356-B:35, I.

Staff 1-2

How do the parties envision the following will be resolved under the proposed transfer (copies of the documents are attached):

- a) Administrative Order 09-093 WD issued by the Department of Environmental Services on November 24, 2009 (see para. E.2. regarding 2011 permit to operate);

The Association will submit the necessary application to DES as required.

- b) Letter of Deficiency issued by the Department of Environmental Services on April 21, 2010 (lead & copper exceedance)?

The operator of the system, expected to be F. X. LYONS, INC. WATER & PUMP SERVICE, will do the necessary sampling.

Staff 1-3

Page 2 of the Asset Purchase Agreement signed by Mr. Oliver contains a sentence at the end of para. 4 not contained in the version signed by the Association. Please provide a revised page or pages containing identical language and signed by each party.

Signed Agreement attached.

Staff 1-4

Please confirm the Association will own or control the well protective radii following the transfer.

The Freedom Village Condominium Association owns all of the land within the well radius and nothing will change as a result of the transfer of ownership of the system.

Staff 1-5

Please comment generally on the status of each of the items below following the transfer:

a) What rates would be charged and how they would be collected;

The owners will be charged based upon the cost to run the system. Those costs will be included in the annual budget approved by the owners at each annual meeting.

b) Who customers would call regarding service or billing problems;

The system operator, currently expected to be F X Lyons, Inc. would be called regarding service problems and the Association Treasurer would be contacted regarding billing.

c) The availability of funds for future repairs and improvements; and

Annual maintenance would be included in the Association's operating budget. Major repairs, replacements and improvements would be paid for out of the Association's reserve for replacement fund. This reserve account is funded annually, also as part of the budgeting process. Modification to the amount contributed to the reserve fund related to the water system will be based upon recommendations from the operator of the system who, presumably, has the expertise to advise the Association on expected future expenditures.

d) Whether the Association contemplates customer metering at any point in the future.

Individual metering is not contemplated at this time primarily due to cost.

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May 10, 2010

Marcia A.B. Thunberg, Esq.
Staff Attorney
Public Utilities Commission
21 S. Fruit Street, Suite 10
Concord, N.H. 03301-2429

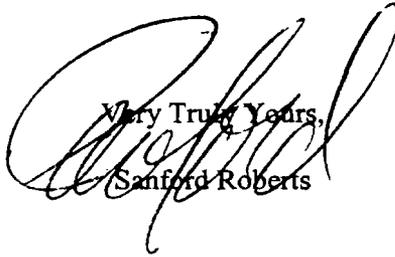
Re: North Country Water Supply, Inc. sale to Freedom Village Condominium
Association - DW 10-097

Dear Attorney Thunberg,

This letter will supplement the electronic filing of the Staff Data Request # 1 that I forwarded to you today.

Attached is page 2 of the sales agreement between the Association and the Water Company signed by the Association President with additional language in §4 in *italics*, which makes the two signed pages consistent.

Thank you.

Very Truly Yours,

Sanford Roberts

SR/dd
cc: Freedom Village Board

3 SELLER'S REPRESENTATIONS AND WARRANTIES:

a. SELLER represents that all of the equipment utilized in the operation of the water SYSTEM is in good working order, has been regularly maintained, and SELLER knows of no repairs needed to any of the tangible ASSETS except:

Recommend drainage system reconfiguration to connection to septic system.

b. SELLER warrants that any licenses, permits, easements or other approvals necessary for operation of the SYSTEM are current and valid. SELLER makes no representations as to whether BUYER needs to obtain any license or permits in order to operate the SYSTEM after transfer of the ASSETS.

4. BILL OF SALE OR ASSIGNMENT.

SELLER shall convey title to the ASSETS and all items of personal property including permits, licenses, plans, test data and water quality reports by bill of sale or appropriate assignment, and by duly executed quitclaim deed if a deed is necessary, conveying good and clear title free from all encumbrances. All equipment is being sold as is where is with no warranties of any kind other than as set forth in this Agreement.

5. NOTICES.

Whenever it shall be necessary or appropriate under the provision of this Agreement that notice be given by one party to the other, such notice shall be given in writing at the address listed at the beginning of this Agreement.

6. SPECIFIC PERFORMANCE

In the event that after signing this Agreement and approval by the PUC, Seller fails or refuses to convey the Assets as agreed, BUYER shall have the right to enforce this Agreement by a decree of Specific Performance.

7. PUC APPROVAL

~~The New Hampshire Public Utilities Commission has indicated that its approval of the sale is required.~~ A draft Petition for Approval of this sale to the PUC has been provided to Seller by Buyer's counsel. Within 5 working days of the Seller signing this Agreement and the Petition, Buyer's counsel shall submit the Petition to the PUC.

In the event that the PUC shall not approve the sale, either party may give written notice to the other party of its intent to terminate this Agreement, and in that event, neither party shall be under any obligation to perform any of the obligations set forth herein.

In witness whereof the parties have signed this Agreement on the dates set forth below.

North Country Water Supply, Inc.

By: _____
Stanley Oliver, President Date

Freedom Village Condominium Association

By: Thomas Thibault PFUCA
Thomas Thibault, President Date

April 28, 2010



The State of New Hampshire
DEPARTMENT OF ENVIRONMENTAL SERVICES



Thomas S. Burack, Commissioner

North Country Water Supply, Inc.
Attn: Stanley Oliver, President
Post Office Box 180
Barrington, NH 03825

Re: Freedom Village Condominiums Water System
Washington Road, Freedom, NH
EPA # 0862030

ADMINISTRATIVE ORDER
NO. 09-093 WD

November 24, 2009

A. INTRODUCTION

This Administrative Order is issued by the Department of Environmental Services, Water Division, to North Country Water Supply, Inc., pursuant to RSA 485:58. This Administrative Order is effective upon issuance.

B. PARTIES

1. The Department of Environmental Services, Water Division ("DES"), is a duly-constituted administrative agency of the State of New Hampshire, having its principal office at 29 Hazen Drive in Concord, New Hampshire.
2. North Country Water Supply, Inc. ("North Country") is a New Hampshire corporation, having a mailing address of P.O. Box 180, Barrington, NH 03825. Stanley Oliver is the president of North Country.

C. STATEMENTS OF FACTS AND LAW

1. Pursuant to RSA 485, DES regulates public water supplies. Pursuant to RSA 485:3, the Commissioner of DES has adopted NH CODE ADMIN. RULES Env-Ws 300 ("Drinking Water Rules") to implement this program. Beginning in 2007 the Drinking Water Rules are being redesignated as "Env-Dw," as each chapter is readopted.
2. Env-Ws 302.10 defines "community water system" to mean "a public water system which serves at least 15 service connections used by year-round residents or regularly serves at least 25 year-round residents."
3. North Country is the owner of a public water system known as Freedom Village Condominiums that serves water to 66 year-round condominiums, with a population of approximately 165 people, located on Washington Road in the community of Freedom, New Hampshire (the "Water System"). Stanley Oliver is the designated representative of North Country for water supply issues.
4. The Water System is a community water system as defined in Env-Ws 302.10.

5. Pursuant to Env-Dw 501 [formerly Env-Ws 303.03] each community water system is required to obtain from DES an annual permit to operate by submitting an updated application with payment of the applicable fee by June 30th each year. A permit to operate is valid for the state fiscal year period of July 1st through the following June 30th.
6. Env-Dw 501.05(b) [formerly Env-Ws 303.03(e)] establishes the permit to operate fee for community water systems to be the smaller of \$300 or \$10 per household or household equivalent per year. The permit to operate fee for the Water System is \$300, based upon the 66 condo units.
7. In May 2009, DES sent to Stanley Oliver a permit application for the fiscal year 2010 permit to operate, which noted the June 30, 2009 deadline for submission of the updated application and payment of the \$300 fee.
8. North Country failed to submit to DES an updated application and \$300 fee payment for the 2010 permit to operate by June 30, 2009.
9. On July 10, 2009, DES issued a Notice of Violation ("NOV") to Stanley Oliver for the failure of North Country to submit the updated application and fee payment for the 2010 permit to operate. In the NOV, DES requested submission of the updated permit application and \$300 fee within 14 days of the date of the NOV.
10. North Country failed to submit an updated application and \$300 fee payment for the 2010 permit to operate by July 24, 2009, as requested in the NOV.
11. On August 3, 2009, DES issued Letter of Deficiency ("LOD") No. DWGB 09-112 to Stanley Oliver for the failure of North Country to submit an updated application and fee payment for the 2010 permit to operate. In LOD No. DWGB 09-112, DES requested North Country to submit the updated application and \$300 fee payment by August 21, 2009. A permit application was enclosed to assist Mr. Oliver in complying with the permit to operate regulations.
12. North Country received LOD No. DWGB 09-112 on August 6, 2009, as evidenced by a postal receipt signed by "Stan" Oliver.
13. North Country failed to submit an updated permit application and \$300 fee payment for the 2010 permit to operate, as requested in LOD No. DWGB 09-112.
14. On August 28, 2009, DES sent a certified letter to Stanley Oliver reminding him of the requested action specified in LOD No. DWGB 09-112. In the letter, DES stated it was reviewing its enforcement action options to pursue against North Country for failing to comply with the Drinking Water Rules and that his response to the reminder letter would be factored into any decision.
15. North Country received the reminder letter on August 29, 2009, as evidenced by a postal receipt signed by Stanley Oliver.
16. To date, North Country has failed to submit an updated permit application and \$300 fee payment for the fiscal year 2010 permit to operate.

D. DETERMINATION OF VIOLATIONS

1. North Country violated Env-Dw 501 by failing to submit to DES by June 30, 2009, an updated application and \$300 fee payment for the fiscal year 2010 permit to operate.

E. ORDER

Based on the above findings, DES hereby orders North Country as follows:

1. **Within 21 days of the date of this Order**, North Country shall submit to DES an updated application and \$300 fee payment for the fiscal year 2010 permit to operate.
2. **Between May 15, 2010 and June 30, 2010**, if the Water System is an active community water system at that time, North Country shall submit to DES an updated permit application and appropriate fee payment for the fiscal year 2011 permit to operate.
3. North Country shall send all correspondence, data, reports, and other submissions made in connection with this Administrative Order, **other than appeals**, to DES as follows: **Alan Leach, DES Water Division, P.O. Box 95, Concord, NH 03302-0095 ~ Fax: (603) 271-5171 ~E-mail: alan.leach@des.nh.gov.**

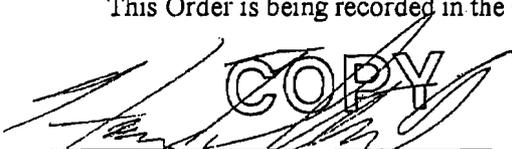
F. APPEAL

Any person aggrieved by this Order may appeal the Order to the Water Council by filing an appeal that meets the requirements specified in Env-WC 200 within 30 days of the date of this Order. Copies of the rule are available from the DES Public Information Center at 271-2975 or at <http://des.nh.gov/organization/commissioner/legal/rules/index.htm> (scroll to page end). Appealing the Order does not automatically relieve North Country of the obligation to comply with the Order.

G. OTHER PROVISIONS

Please note that RSA 485:58 provides for administrative fines, civil penalties, and criminal penalties for the violations noted in this Order, as well as for failing to comply with the Order itself. North Country Water Supply, Inc., remains obligated to comply with all applicable drinking water statutes and rules. DES will continue to monitor compliance with applicable requirements and will take appropriate action if additional violations are discovered.

This Order is being recorded in the Carroll County Registry of Deeds so as to run with the land.

COPY


Harry T. Stewart, P.E., Director
Water Division

COPY


Thomas S. Burack, Commissioner
Department of Environmental Services

cc: DES Legal Unit
ec: Public Information Officer, DES PIP Office
Select Board, Town of Freedom

K. Allen Brooks, Chief, AGO-Environmental Protection Bureau



The State of New Hampshire
DEPARTMENT OF ENVIRONMENTAL SERVICES

Thomas S. Burack, Commissioner

COPY



April 21, 2010

LETTER OF DEFICIENCY #DWGB-10-062
 Certified Mail #7007 3020 0000 5329 0820

Stanley Oliver
 North Country Water Supply Inc
 PO Box 180
 Barrington, NH 03825

Subject: Freedom - Public Water System: Freedom Village Condominiums (EPA #0862030)

Dear Mr. Oliver:

The records of the NH Department of Environmental Services ("DES") show that Freedom Village Condominiums is classified as a public water system ("PWS"), as defined by RSA 485:1-a. A PWS is defined as any water system supplying 15 or more services, or 25 or more people for 60 or more days per year. As such, the owner of the water system is required to comply with NH Administrative Rule Env-Ws 300, *New Hampshire Drinking Water Rules*.

Env-Ws 381 requires community water systems to monitor for lead and copper and to undertake prescribed actions if the action level is exceeded for either contaminant.

DES records indicate that the results of the samples for the September 30 to December 31, 2009 Round 9 monitoring period exceeded the action level for lead. In response to this exceedance, DES sent a letter, dated December 1, 2009, requesting among other items, the following:

- o Collect 2 rounds of initial water quality ("WQ") samples and submit results to this office by February 28, 2010.
- o Collect one source lead and copper sample and submit results to this office by February 28, 2010.

To date, DES has not received the required items above. On March 8, 2010, DES issued the system a Notice of Violation ("NOV") for failing to provide results of Water Quality and source monitoring. The NOV also noted that, pursuant to Env-Ws 351, public notice of the violation was required to be performed within 30 days of the date of the NOV. This Letter of Deficiency shall also serve as formal notice of the violations for failure to submit initial water quality and source samples. This violation also requires public notice to be performed.

DES believes the violations can be corrected and future violations prevented by taking the following actions:

1. By **May 21, 2010**, collect two rounds of initial water quality samples (consisting of temperature, pH, alkalinity, calcium and specific conductance). Please use the analysis request form previously sent to you when submitting the samples to your laboratory; and

Letter of Deficiency #DWGB 10-062
Freedom Village Condominiums
Page 2 of 2

2. **By May 21, 2010**, collect one source lead and copper sample at an entry point to the distribution system during periods when water is representative of all sources being used. Please use the analysis request form previously sent to you when submitting the sample to your laboratory; and
3. **By May 21, 2010**, provide public notice to the consumers, and submit proof of public notice to this office following the guidelines on the enclosed public notice handout.

In the event compliance is not achieved within this period, DES may initiate formal action against you, including issuing an order requiring the deficiencies to be corrected, initiating an administrative fine proceeding, and/or referring the matter to the NH Department of Justice for imposition of appropriate penalties.

**All information as requested above should be addressed as follows
or faxed to (603) 271-5171:**

Leah McKenna
Department of Environmental Services
Drinking Water and Groundwater Bureau
29 Hazen Drive, PO Box 95
Concord, NH 03302-0095

For your information, a fact sheet on lead and copper is available at:
<http://des.nh.gov/organization/commissioner/pip/factsheets/dwgb/documents/dwgb-3-23.pdf>. It includes general information, monitoring requirements and corrosion control information. Please be reminded that proposed treatment alternatives should take into consideration all water quality parameters as well as current and future quantity needs.

In addition to your operator, assistance may be available to you through a variety of sources. DES staff member Richard Thayer may be able to answer questions concerning treatment for the aforementioned contaminant. He may be reached at (603) 271-2950 or via email at Richard.Thayer@des.nh.gov. If you have any questions regarding this letter, please contact Leah McKenna, at (603) 271-0655 or by email at leah.mckenna@des.nh.gov.

Sincerely,


Sarah Pillsbury, P.G., Administrator
Drinking Water and Groundwater Bureau

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cc w/ encl: Wendy Chase, Primary Contact

cc: DES Legal Unit
Douglas Brogan, PUC
Town of Freedom Health Officer

cc: EPA, Region I
Joan Fitzsimmons, NHDES
Richard Thayer, NHDES

SANFORD ROBERTS
LAW OFFICES OF SANFORD ROBERTS I
PO BOX 4608
PORTSMOUTH NH 03802-4608

Docket #: 10-097 Printed: May 19, 2010

FILING INSTRUCTIONS: PURSUANT TO N.H. ADMIN RULE PUC 203.02(a),
WITH THE EXCEPTION OF DISCOVERY, FILE 7 COPIES (INCLUDING COVER LETTER) TO:
DEBRA A HOWLAND
EXEC DIRECTOR & SECRETARY
NHPUC
21 SOUTH FRUIT STREET, SUITE 10
CONCORD NH 03301-2429

PURSUANT TO N.H. ADMIN RULE 203.09 (d), FILE DISCOVERY

DIRECTLY WITH THE FOLLOWING STAFF

RATHER THAN WITH THE EXECUTIVE DIRECTOR

LIBRARIAN
NHPUC
21 SOUTH FRUIT ST, SUITE 10
CONCORD NH 03301-2429

BULK MATERIALS:

Upon request, Staff may waive receipt of some of its multiple copies of bulk materials filed as data responses. Staff cannot waive other parties' right to receive bulk materials.

DOUG BROGAN
NHPUC
21 SOUTH FRUIT ST, SUITE 10
CONCORD NH 03301-2429

MARK NAYLOR
NHPUC
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