

THE STATE OF NEW HAMPSHIRE



PUBLIC UTILITIES COMMISSION

21 S. Fruit Street, Suite 10

Concord, N.H. 03301-2429

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May 16, 2013

Douglas Brown
Sarah Brown
West Swanzey Water Company
P.O. Box 10
West Swanzey, NH 03469

Re: DW 13-136, West Swanzey Water Company
Complaint of Zaremba Program Development, LLC

Dear Mr. Brown:

On May 6, 2013, the enclosed complaint was filed with the Public Utilities Commission against West Swanzey Water Company. The Commission is treating this matter as a complaint pursuant to RSA 365:1 and :2 and will require that West Swanzey Water Company respond to the allegation that it is refusing to provide private fire protection as set out in its Tariff #2 to a proposed retail store on NH Route 10 in the Town of Swanzey. Pursuant to Puc 204.02 (b) your response is due on or before May 30, 2013.

Docket No. DW 13-136 has been assigned for future filings in this matter.

Sincerely,

A handwritten signature in blue ink that reads "Debra A. Howland".

Debra A. Howland
Executive Director

Encl.

cc: Docket File
Silas Little, Fernald, Taft, Falby & Little

DW13-136

FERNALD, TAFT, FALBY & LITTLE
PROFESSIONAL ASSOCIATION
ATTORNEYS AT LAW
14 GROVE STREET
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PETERBOROUGH, NEW HAMPSHIRE 03458-0270

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RICHARD R. FERNALD
SILAS LITTLE
MARK D. FERNALD

OF COUNSEL:
ROBERT TAFT
J. RODERICK FALBY, JR.

FAX: 603-924-4277

May 2, 2013

Debra A. Howland, Executive Director
NH Public Utilities Commission
21 South Fruit Street Suite 10
Concord, NH 03301-2429



RE: West Swanzey Water Company, Inc.

Dear Ms. Howland:

Enclosed please find for filing with you as Executive Director of the Public Utilities Commission pursuant your Rule PUC 204, the original and six (6) copies of a Complaint against West Swanzey Water Company, Inc., a New Hampshire utility.

I understand there is no filing fee. If there is additional information required in connection with this original Complaint, I would be happy to provide it. If you wish copies of the underlying documentation referenced in the Complaint, I would be happy to provide that also.

Very truly yours,
Fernald, Taft, Falby & Little
Professional Association

By:

Silas Little

Direct Line: 603-924-3364 Ext. 14

sl/djh

enc.

cc: Zaremba Program Development, LLC (w/enc.)

STATE OF NEW HAMPSHIRE
PUBLIC UTILITIES

In the Matter of West Swanzey Water Company, Inc.

Tariff #2 Succeeding Tariff #1 Issued June 25, 2003
Amendment issued March 25, 2011
Effective January 1, 2011

COMPLAINT

Zaremba Program Development, LLC complains against the West Swanzey Water Company, Inc. under the provisions of New Hampshire Public Utilities Commission Regulation PUC 204.01.

1. Zaremba Program Development, LLC submitted to the Town of Swanzey Planning Board a site plan application for a retail store on NH Route 10 on May 2, 2012.
2. The site plan application sought approval from the Town of Swanzey Planning Board for a 9,100 square foot retail store on the easterly side of NH Route 10 near the intersection of Cobble Hill Road. The property to be developed is identified as Tax Map 72, Lot 51 of the Town of Swanzey tax maps. Concurrent with the site plan application was a subdivision application to divide Tax Map 72, Lot 51 into two (2) lots, each serviced by sewer and water mains.
3. The West Swanzey Water Company, Inc. provides water to the subject property.
4. To meet fire safety issues, Zaremba Program Development, LLC proposed a sprinkler system for the 9,100 square foot retail store using the West Swanzey Water Company, Inc. utility as the source of water.
5. West Swanzey Water Company, Inc. filed with the New Hampshire Public Utilities Commission in 2003, updated in 2011, its Tariff #2 stating that private fire protection was available.

6. Zaremba Program Development, LLC contracted with Covenant Fire Protection to conduct tests of the performance of the water supply provided by the West Swanzey Water Company, Inc. at the proposed site.
7. Covenant Fire Protection conducted a hydrant flow test on the project site; examined the Tariff filed with the New Hampshire Public Utilities Commission, Supplement #1 effective January 1, 2011; reviewed Zaremba Program Development, LLC's building design plans for ordinary hazard group II to retail stores with storage of Class I, IV commodities for a maximum storage height of 12' 0" AFF and Group A unexpanded or expanded carton plastics to a maximum storage height of 5' 0" AFF, and reviewed the fire protection water supply requirements of the New Hampshire State Building Code, New Hampshire State Fire Code, NFPA1, 13, 24 and 101.
8. Covenant Fire Protection determined, based upon its work outlined in the immediately preceding paragraph, that the water supply available to the subject project site from the West Swanzey Water Company, Inc. is adequate and in compliance with applicable codes and standards to provide complete automatic wet pipe, sprinkler protection for the subject property as outlined above.
9. West Swanzey Water Company, Inc. wrote to the Swanzey Planning Board that it would provide domestic water supply to the project site, but refused to provide private fire protection to the project site.
10. West Swanzey Water Company, Inc. refused to meet with representatives of Zaremba Program Development, LLC or its engineers to provide any written explanation as to why the West Swanzey Water Company, Inc. was refusing to provide private fire protection to the project site.

11. Despite attempts of Zaremba Program Development, LLC and more particularly its fire protection engineers, Covenant Fire Protection, no explanation was forthcoming from Water Swanze Water Company as to its position being at variance with the Tariff filed with the New Hampshire Public Utilities Commission effective January 1, 2011.
12. The Town of Swanze Planning Board refused site plan approval to Zaremba Program Development, LLC because of the written refusal of West Swanze Water Company, Inc. to provide private fire protection, which position is at variance to its approved Tariff and which position is not supported by the engineering testing of the West Swanze Water Company's capacity.
13. Zaremba Program Development, LLC makes this complaint to the New Hampshire Public Utilities Commission concerning the failure of the West Swanze Water Company, Inc. to provide the service as established in its Tariff and seeks an order from the New Hampshire Public Utilities Commission that West Swanze Water Company, Inc. is obligated under its Tariff to provide private fire protection to the proposed development.
14. Zaremba Program Development, LLC respectfully notes to the New Hampshire Public Utilities Commission that West Swanze Water Company, Inc. presently provides private fire protection to two (2) residential apartment complexes which have many more sprinkler heads and much more square footage to be covered by private fire protection than the proposed 9,100 square foot retail space. These projects in Swanze are identified as Haley Heights Apartments, wet system 245 sprinkler heads, and Evergreen Knoll, four (4) buildings, thirty (30) Town House units, two (2) handicap accessible flats, 382 sprinkler heads.
15. Zaremba Program Development, LLC states its design requirement would result in roughly 90 sprinkler heads, a substantially less demand on the West Swanze Water Company than

that for the projects which the West Swanzey Water Company is already providing private fire protection.

- 16. Zaremba Program Development, LLC respectfully requests the Public Utilities Commission take action on this Complaint and order West Swanzey Water Company, Inc. to provide the private fire protection set forth in its Tariff and to bring itself into compliance with its published Tariff.

Zaremba Program Development, LLC.

Date: 5/2/13

By: Matthew Casey
Matthew Casey, Development Manager

And Its Counsel
Fernald, Taft, Falby & Little, P.A.

Date: 3 May 2013

Silas Little
Silas Little
NHB #1495
14 Grove Street, P O Box 270
Peterborough, NH 03458-0270

I verify the matters set forth in this Complaint appear of record in filings before the Town of Swanzey Planning Board; the Cheshire County Superior Court, Zaremba Program Development, LLC v. Town of Swanzey, Docket Number 213-2012-CV-00270, and, the filings by West Swanzey Water Company, Inc. with the New Hampshire Department of Public Utilities Commission.

Silas Little
Silas Little

SERVICE LIST - EMAIL ADDRESSES - DOCKET RELATED

Pursuant to N.H. Admin Rule Puc 203.11 (a) (1): Serve an electronic copy on each person identified on the service list.

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Docket #: 13-136-1 Printed: May 16, 2013

FILING INSTRUCTIONS:

- a) Pursuant to N.H. Admin Rule Puc 203.02 (a), with the exception of Discovery, file 7 copies, as well as an electronic copy, of all documents including cover letter with: DEBRA A HOWLAND
EXEC DIRECTOR
NHPUC
21 S. FRUIT ST, SUITE 10
CONCORD NH 03301-2429
- b) Serve an electronic copy with each person identified on the Commission's service list and with the Office of Consumer Advocate.
- c) Serve a written copy on each person on the service list not able to receive electronic mail.