

DW 01-001

VALLEYFIELD WATER, INC.

Joint Petition of Valleyfield Water, Inc. and Pennichuck
Water Works, Inc. for Approval of the Transfer of the
Valleyfield Water System to Pennichuck Water Works

Order Nisi Approving the Transfer of the
Valleyfield Water, Inc. Water Utility Business and
Operations to Pennichuck Water Works, Inc.

O R D E R N O. 23,752

July 30, 2001

I. BACKGROUND AND PROCEDURAL HISTORY

Valleyfield Water, Inc. (Valleyfield) was granted an exemption to certain regulation under RSA 362:4 in 1990¹ by the New Hampshire Public Utilities Commission (Commission). Subsequently, in Docket DW 00-143, the Commission determined that the exemption pursuant to RSA 362:4 should be discontinued and, on November 8, 2000, ordered the Company to petition for a franchise and submit rate schedules (Order No. 23,587).

On January 4, 2001, Valleyfield filed a Petition with the Commission for authority to engage in business as a water utility pursuant to RSA 374:22 and Commission Rules Puc 600, to provide service to the Northland Condominiums, the Valleyfield Townhouse Apartments, and the Northland Mall

¹ Docket No. DW 90-089, *Re Valleyfield/Northland Water System*, 75 NH PUC 492 (1990).

located in Plaistow, New Hampshire, and to Victory Fuel, Inc., in Newton, New Hampshire.

On February 21, 2001, the Commission held a Prehearing Conference, after notice issued on January 29, 2001. There were no requests for intervention at the hearing. A Technical Session followed the hearing to determine a procedural schedule for this docket. However, information gleaned at the Technical Session significantly altered the original and usual course this docket would take.

During the Technical Session, Valleyfield informed Staff that it had recently reached a verbal agreement with Pennichuck Water Works, Inc. (Pennichuck) to sell to Pennichuck the business and operations of Valleyfield. The Companies agreed to file a joint petition formally requesting that Valleyfield's original petition be stayed pending approval of the asset transfer.

On April 30, 2001, the Companies jointly petitioned the Commission for authority to transfer Valleyfield's water utility business, properties and operations to Pennichuck, stating that they had reached an agreement as to the details of the sale and have entered into a Standard Agreement dated April 13, 2001.

In their petition, the Companies requested that: 1)

Valleyfield be granted authority to transfer its water utility business, properties and operations to Pennichuck; 2) following the transfer, Valleyfield be allowed to cease operations as a public utility; 3) Pennichuck be granted authority to provide service to Valleyfield customers utilizing Pennichuck's Core Rates, following which it will provide appropriate compliance tariff revisions; and 4) approval be granted to Pennichuck for limited franchise rights within the Town of Newton to include service to Victory Fuel. On June 21, 2001, Pennichuck modified its franchise request in Newton to consist solely of the Victory Fuel parcel itself (Tax Map 14, Block 1, Lot 26).

II. COMMISSION ANALYSIS

We have reviewed the joint petition of the Companies. Pursuant to RSA 374:30, a "public utility may transfer ... its franchise, works or system ... when the commission finds that it will be for the public good." Thus, the Commission's permission is required under this provision if the transfer involves a surrender of control of operation. *Re Great Bay Water Company, Inc.*, 83 NH PUC 575 (1998). Further, RSA 374:22, I, states that "No person or business entity shall commence business as a public utility within this state, or shall engage in such business ... without first

having obtained the permission and approval of the commission." The Commission may only allow an entity to engage in business as a public utility where it finds that the exercise of the right, privilege, or franchise is in the public good. See RSA 374:26. Under the public interest or public good standard to be applied by the Commission where an individual or entity seeks to acquire a jurisdictional utility, the Commission must determine that the proposed transaction will not harm ratepayers. *Id.* at 577. The public good standard requires the petitioning utility to demonstrate, *inter alia*, the legal, technical, managerial, and financial expertise to operate a public water utility. *Re Pennichuck Water Works, Inc.*, 73 NH PUC 279 (1988).

Based on this standard, we find that the acquisition of the Valleyfield system by Pennichuck will be beneficial to ratepayers and not harm them. Valleyfield customers will be served by a large water utility with proven reliability. Pennichuck serves over 20,000 customers in its Nashua core system and various stand-alone systems and has a history of competent and reliable service. The Commission finds that Pennichuck has the operational, managerial, and technical expertise to operate water utilities. Therefore, we will approve the acquisition of the Valleyfield business and

operations by Pennichuck.

Additionally, we will approve the expansion of the limited franchise area within the Town of Newton to provide service to Victory Fuel.

We will require, as a condition to approval, that Pennichuck obtain all the necessary easement interests from the owners of properties served by the water supply and distribution system and submit proof of same to the Commission.

We also find the rates to be charged Valleyfield customers under the proposed transfer just and reasonable.

Finally, the Commission grants permission to Valleyfield to discontinue operations as a public utility on or following the actual transfer of operations, with no unreasonable inconvenience or disruptions of service to the customers of Valleyfield.

Based upon the foregoing, it is hereby

ORDERED NISI, that the proposed transfer of the Valleyfield business, properties and operations to Pennichuck is in the public good pursuant to RSA 374:22 and RSA 374:26 and is approved; and it is

FURTHER ORDERED, that Pennichuck's franchise area be expanded to include Victory Fuel (Tax Map 14, Block 1, Lot 26)

in Newton, New Hampshire; and it is

FURTHER ORDERED, that Pennichuck must obtain all necessary easement interests from property owners served by the water supply and distribution system and submit proof of such easements to the Commission; and it is

FURTHER ORDERED, that Pennichuck is granted authority, pursuant to RSA 378, to charge its core rates in the Valleyfield franchise area; and it is

FURTHER ORDERED, that Valleyfield is granted permission to cease operations as a public utility; and it is

FURTHER ORDERED, that pursuant to Puc 1605.03, Pennichuck shall cause a copy of this Order Nisi to be published once in a statewide newspaper of general circulation or of circulation in the Valleyfield franchise area, and shall send a copy of same to the Town Clerks in each town included within the Valleyfield franchise area and to each Valleyfield customer, by first class mail, such actions to be no later than August 6, 2001, and to be documented by affidavit filed with this office on or before August 13, 2001; and it is

FURTHER ORDERED, that all persons interested in responding to this petition be notified that they may submit their comments or file a written request for a hearing on this matter before the Commission no later than August 16, 2001; and it is

FURTHER ORDERED, that any party interested in responding to such comments or requests for hearing shall do so no later than August 21, 2001; and it is

FURTHER ORDERED, that this Order Nisi shall be effective August 29, 2001, unless the Commission provides otherwise in a supplemental order issued prior to the effective date; and it is

FURTHER ORDERED, that Pennichuck shall file a compliance tariff with the Commission on or before August 14, 2001, in accordance with N.H. Admin. Rules, Puc 1603.02(b).

By order of the Public Utilities Commission of New Hampshire this thirtieth day of July, 2001.

Douglas L. Patch
Chairman

Susan S. Geiger
Commissioner

Nancy Brockway
Commissioner

Attested by:

Thomas B. Getz
Executive Director and Secretary