

DW 04-044

HAMPSTEAD AREA WATER COMPANY, INC.

Petition to Construct Wells Outside an Existing Franchise Area

Order Nisi Approving Petition

ORDER NO. 24,396

November 5, 2004

I. BACKGROUND

On March 18, 2004, Hampstead Area Water Company, Inc. (Hampstead) filed with the New Hampshire Public Utilities Commission (Commission) a Petition to Drill and Operate Well Outside of Franchise Area for Supplying Customers Within Franchise Area. Hampstead is a regulated public utility serving approximately 2,500 customers in various communities in southern New Hampshire. This petition involves the construction of a new well in the Town of Sandown for the purpose of enhancing the water supply to customers in the Kent Farm franchise in Hampstead. The number of customers in the Kent Farm franchise is expected to increase as a result of the expansion of the Granite Village Retirement Community, Inc.

The petition was accompanied by supporting documentation as well as prefiled testimony of Oliver Poirier, a water works engineer with Lewis Builders Development, Inc. and prefiled testimony of Charles Ashford, on behalf of H & C Ashford, L.L.C., owner of Granite Village Retirement Community, Inc. The Granite Village Retirement Community, Inc. is comprised of 99 privately-owned manufactured homes on land owned by H & C Ashford, L.L.C. and is located within Hampstead's existing Kent Farm franchise. H & C Ashford, L.L.C. has requested Hampstead supply water service to 38 new homes. H & C Ashford has received local approval to add these new homes. The Kent Farm franchise is presently not connected to the

Hampstead “core” system, however, completion of a storage tank project previously approved by this Commission in Docket No. DW 04-132, by Commission Order No. 24,386 (October 22, 2004) will eventually connect Kent Farm with the Hampstead “core” system.

In order to meet the demands of these additional units, Hampstead wishes to construct a new well or wells in the Town of Sandown on land abutting the Kent Farm franchise area. According to the prefiled testimony of Oliver Poirier, the Sandown well is needed to allow the Kent Farm franchise to meet capacity requirements of the N.H. Department of Environmental Services (DES). Hampstead attached to its Petition a DES New Small Production Wells Preliminary Report (Report) showing the existing water system does not have enough capacity to serve the additional 38 homes but that, if the system is supplemented by the estimated capacity from the Sandown well, the system will meet DES criteria. Hampstead states it will perform an actual two-day pump test to determine how much water Hampstead will be able to pump from the well after it receives approval from the Commission.

The subject parcel is shown as a portion of Sandown Tax Map 3, Lot 40-2; Map 3, Lot 40; and Map 3, Lot 40-1. The specific metes and bounds are more fully described in the filing. H & C Ashford, L.L.C. owns the land on which Hampstead intends to construct the new well or wells and one well presently exists on the parcel. H & C Ashford, L.L.C. intends to contribute the well to Hampstead and provide Hampstead with the necessary easements to assure Hampstead’s future access to the well and appurtenances. Hampstead states that it possesses the requisite technical and managerial skills to operate the new well as part of its Kent Farm franchise area. Petition at 3. Prefiled testimony of Charles Ashford indicates park tenants are pleased with the water service and have not complained about the water quality, except when Hampstead adopts

water conservation measures. Mr. Ashford stated he was not aware of any billing or customer service complaints.

Hampstead intends to utilize Lewis Builders Development, Inc. (Lewis Builders), a related party to Hampstead, for all construction work associated with this project. Hampstead does not seek, at this time, Commission approval for the cost Lewis Builders will charge Hampstead. Hampstead instead states it will seek Commission approval of those charges when it files for financing approval. Lastly, Hampstead intends to charge the new Granite Village residents the same rates as existing under the Kent Farm tariff. Petition at 3.

On October 15, 2004, Commission Staff (Staff) filed a letter recommending the Commission approve Hampstead's petition. Staff indicated that it had reviewed Hampstead's petition as well as RSA 374:22, I for its applicability to Hampstead's instant request. Staff stated it believed RSA 374:22 governed the request and that Commission approval is required for the installation of the well or wells in Sandown. Staff attached to its recommendation a letter from the Town of Sandown confirming that Hampstead informed it of the well project as well as the Town of Sandown's February 2004 Planning Board Minutes. The minutes indicate the Town of Sandown did not require a hearing on the Sandown well project. The minutes also indicate the Town requested that copies of plans and all permits be submitted to the Planning Board Office so that they would be on record. Staff also averred that RSA 374:22, III did not require Hampstead to supply a suitability and availability letter from DES for this construction project.

On October 27, 2004, Staff filed with the Commission Hampstead's responses to Staff Data Requests propounded by Staff's pursuant to N.H. Admin. Rules, Puc 204.04.

II. COMMISSION ANALYSIS

RSA 374:22 states that no person or business entity shall...begin the construction of a plant, line, main or other apparatus or appliance to be used therein, in any town in which it shall not already be engaged in such business...without first having obtained the permission and approval of the [C]ommission.” RSA 374:26 requires the Commission to make a finding that, in the instant case, the construction is in the public good before approving such requests. In determining what constitutes the public good, the Commission reviews: 1) the need for the service, and 2) the ability of the applicant to provide the service. *New Hampshire Yankee Electric Corporation*, 73 NH PUC 563, 566 (1985). These principles guide our review of Hampstead’s petition.

We have reviewed Hampstead’s petition, Staff’s recommendation, and other filings in this docket and conclude that Hampstead’s request to locate plant on the subject Sandown parcel is in the public good and that it should be approved. Hampstead asserted in its petition that the new well is necessary to augment its sources of supply in the Kent Farm franchise in order to satisfy DES requirements. Staff’s recommendation supported this assertion. Specifically, we note in the record that the DES New Small Production Wells Preliminary Report attached to Hampstead’s Petition states that “water use restrictions were necessary for two+ months during summers of 2001, 2002, and several prior years.” Petition at Tab 2. The Report also notes that the existing system has an estimated capacity of 459 gallons per minute (gpm) and that the expanded Granite Village system will require 472 to 475 gpm. The new well in Sandown is expected to produce approximately 40 gpm and thus will satisfy that minimum source capacity requirement. *Id.*

Hampstead will confirm this estimated capacity in a two-day pump test subsequent to our approval. We find this augmentation of the water system reasonable and in the public good.

Construction of the well or wells on the Sandown parcel was brought before the appropriate local governing bodies and it was publicly discussed by the Town of Sandown. The Town of Sandown issued a letter expressly recognizing that they had been informed of the project and the Town of Sandown did not object to the project. The Town of Sandown did not expressly condition their acceptance of the project upon receipt of certain documents, however, the Town of Sandown requested that all plans and permits be submitted to the Planning Board Office so that they may be on the record. We believe the Town of Sandown's request is reasonable and we will condition our approval of Hampstead's petition upon Hampstead ensuring the requested documents are provided to the Town of Sandown. We, therefore, instruct Hampstead to file a letter with the Commission verifying the documents were provided.

We note that we previously found Hampstead possessed the requisite managerial, technical, and financial expertise and legal ability to operate as a public utility in the Kent Farm franchise area. *Kent Farm Water Company*, 72 NH PUC 43 (1987) (franchise granted to water company whose principal officers are also those of Hampstead Area Water Company, Inc.); *Hampstead Area Water Company, Inc.*, 75 NH PUC 109 (1990) (sale of Kent Farm to Hampstead Area Water Company, Inc.). We take administrative notice of these findings to the extent RSA 374:22 requires our analysis with respect to the Sandown parcel. Hampstead's petition to locate plant on the Sandown parcel affirms Hampstead's proactive management of its source supply. Staff's discovery indicates that present customers within the Kent Farm franchise area do not have

complaints about the water service provided by Hampstead. Expanding the source of supply prior to customer complaints is wise.

For the foregoing reasons, we find Hampstead's proposal to construct a new well or wells in the Town of Sandown on land abutting its Kent Farm franchise area in the Town of Hampstead to be necessary and in the public good. We will approve Hampstead's petition, subject to the conditions identified above. By our approval, we are not approving costs that Lewis Builders Development, Inc. may charge Hampstead for this construction work.

We acknowledge that RSA 374:26 authorizes the Commission to grant requests under RSA 374:22 without a hearing when it is satisfied that all interested parties are in agreement. Notwithstanding this authority and evidence in the Record that the Town of Sandown does not object to the project, we believe it is reasonable to issue this order on a *nisi* basis. This will provide any interested party an opportunity to comment or to request a hearing on this matter prior to approval going into effect.

Based upon the foregoing, it is hereby

ORDERED *NISI*, that Hampstead Area Water Company, Inc.'s petition is **APPROVED**, subject to the conditions stated herein and subject to the effective date identified below, and it is

FURTHER ORDERED, that Hampstead Area Water Company, Inc. shall cause a copy of this Order *Nisi* to be published once in a statewide newspaper of general circulation or of circulation in those portions of the state where operations are conducted, such publication to be no later than November 15, 2004 and to be documented by affidavit filed with this office on or before November 29, 2004; 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 November 12, 2004; and it is

FURTHER ORDERED, that any party interested in responding to such comments or request for hearing shall do so no later than November 29, 2004; and it is

FURTHER ORDERED, that Hampstead Area Water Company, Inc. shall file with the Commission within 20 days, confirmation that the Town of Sandown Planning Board Office has received copies of all plans and permits requested concerning this construction project; and it is

FURTHER ORDERED, that this Order *Nisi* shall be effective December 6, 2004, unless Hampstead Area Water Company, Inc. fails to satisfy the publication obligation set forth above or the Commission provides otherwise in a supplemental order issued prior to the effective date.

By order of the Public Utilities Commission of New Hampshire this fifth day of November, 2004.

Thomas B. Getz
Chairman

Graham J. Morrison
Commissioner

Attested by:

Debra A. Howland
Executive Director & Secretary