

**STATE OF NEW HAMPSHIRE
PUBLIC UTILITIES COMMISSION**

DW 16-448

**ABENAKI WATER CO., INC.
&
ROSEBROOK WATER COMPANY, INC.**

Petition to Transfer Utility Assets and Related Approvals

Order Approving Settlement Agreement

ORDER NO. 25,934

August 9, 2016

APPEARANCES: Justin C. Richardson, Esq., Upton & Hatfield, LLP, for Abenaki Water Co., Inc.; Harper R. Marshall, Esq., & Sultana Svirik, Esq. Devine Millimet, for Rosebrook Water Company, Inc.; Donald M. Kreis, Esq., Office of the Consumer Advocate, on behalf of residential ratepayers; and John S. Clifford, Esq., for Staff of the Public Utilities Commission.

The Commission approves a settlement agreement granting Abenaki Water Co., Inc., authority to acquire the assets and transfer the utility franchise of Rosebrook Water Company, Inc., pursuant to RSA 374:22 and RSA 374:30. After the closing of the transaction, Rosebrook Water Company, Inc., will cease to be a regulated utility in the State of New Hampshire.

I. PROCEDURAL HISTORY

Abenaki Water Co., Inc. (“Abenaki”), is a regulated utility that currently provides water service to limited areas in the towns of Bow and Belmont. Abenaki is a wholly owned subsidiary of New England Service Company, Inc. (“NE Service”). NE Service owns and operates four public utilities that provide water service in the states of Connecticut, Massachusetts, and New Hampshire. Rosebrook Water Company, Inc. (“Rosebrook”), is a regulated utility providing water service to approximately 410 customers in the Town of Carroll and in Crawford’s Purchase.

On April 15, 2016, Abenaki and Rosebrook submitted a petition to transfer the utility assets and franchise of Rosebrook to Abenaki pursuant to RSA 374:22 and :30. Abenaki requested permission to borrow up to \$400,000 under RSA 369:1 and :2 to finance the acquisition of Rosebrook's assets and to make system improvements. Abenaki also sought permission to modify its tariff to allow for monthly billing following the transfer of Rosebrook's franchise pursuant to RSA 378:3. The petition also requested that Rosebrook be permitted to discontinue its operation as a public water utility following the transfer pursuant to RSA 374:28.

The Office of Consumer Advocate ("OCA") filed a notice of participation on April 19, 2016, pursuant to RSA 363:28. The Commission issued a procedural schedule on May 11 and set a prehearing conference for June 1, 2016. The parties attended the prehearing conference and met in a technical session following the hearing to set a procedural schedule for the case. Following the conclusion of that technical session, the parties agreed to a procedural schedule, which the Commission approved on June 3. After exchanging discovery and engaging in a conference call on July 11, Abenaki, Rosebrook, the OCA, and Commission Staff (the "Settling Parties") reached a negotiated settlement of all issues raised in the petition.

The settlement agreement was filed with the Commission on July 22 and a final hearing was held before the Commission on July 28, 2016. There were no intervenors in the proceeding and no one appeared or testified in opposition to the settlement at the final hearing. At that hearing, the Settling Parties recommended that the Commission authorize the Company to approve the transfer of assets under RSA 374:22 and :30, approve the terms of financing under RSA 369:1 and :2, revise Rosebrook's tariff to provide for monthly billing under RSA 378:3, and discontinue Rosebrook's franchise following the transfer under RSA 374:28.

The 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/2016/16-448.html>.

II. THE SETTLEMENT AGREEMENT

The Settling Parties agreed that Abenaki should be permitted to: (i) acquire all of the assets of Rosebrook pursuant to RSA 374:22 and :30; (ii) borrow an amount not to exceed \$400,000 pursuant to RSA 369:1 and :2 in order to finance the acquisition and make improvements following the transfer of Rosebrook's franchise to Abenaki; and (iii) modify Rosebrook's existing tariff pursuant to RSA 378:3 to provide for monthly billing following the acquisition. The Settling Parties also agreed that Rosebrook should be permitted to discontinue its operation as a water utility pursuant to RSA 374:28 following the transfer. Last, the Settling Parties agreed that Abenaki and Rosebrook could assign and direct the sale proceeds to REDUS NH Water Co., LLC, as the holder of certain rights to acquire the stock of Rosebrook pursuant to an agreement approved by the Commission in Order No. 25,685 (July 1, 2014).

III. COMMISSION ANALYSIS

Under RSA 541-A:31, V(a), informal disposition may be made of a contested case at any time prior to the entry of a final decision or order, by stipulation, agreed settlement, consent order, or default. We encourage parties to settle issues through negotiation and compromise because it is an opportunity for creative problem solving, allows the parties to reach a result in line with their expectations, and is often a better alternative to litigation. *Granite State Electric Co.*, Order No. 23,966 at 10 (May 8, 2002); *see* RSA 541-A:31, V(a) ("informal disposition may be made of any contested case ... by stipulation [or] agreed settlement").

The Commission's procedural rules provide for the approval of a settlement "if it determines that the result is just and reasonable and serves the public interest." NH Code Admin.

Rules Puc 203.20(b). Thus, even where, as here, all parties join in the settlement agreement, the Commission cannot approve it without independently determining that the result comports with applicable standards. *Granite State Electric Co.* at 11. The process leading up to a settlement is one relevant factor in determining whether we should approve the agreement. In determining whether rates are just and reasonable, the Commission “must balance the consumers’ interest in paying no higher rates than are required with the investors’ interest in obtaining a reasonable return on their investment.” *Eastman Sewer Company, Inc.* 138 N.H. 221, 225 (1994).

A. Transfer of Utility Franchise

The transfer of a water utility franchise and its assets is governed by RSA 374:22 and RSA 374:30. Pursuant to RSA 374:22, I, “[n]o person or business entity shall commence business as a public utility within this state ... or shall exercise any right or privilege under any franchise not theretofore actually exercised in such town, without first having obtained the permission and approval of the commission.” The Commission shall grant requests for franchise authority and allow an entity to engage in the business of a public utility when it finds, after a hearing, that the exercise of the right, privilege or franchise is for the public good. RSA 374:26. Pursuant to RSA 374:30, “[a]ny public utility may transfer or lease its franchise, works or system, or any part of such franchise, works or system exercised or located in this state ... when the commission shall find that it will be for the public good and shall make an order assenting thereto, but not otherwise.” In determining whether a proposed franchise or franchise transfer is for the public good, the Commission assesses, among other things, the managerial, financial and technical expertise of the Petitioners. *See Lower Bartlett Water Precinct*, 85 NH PUC 635, 641 (2000).

Abenaki put forward the pre-filed testimony of Donald D.E. Vaughan, the president of NE Service. He also testified at the hearing in support of the Settlement Agreement.

Mr. Vaughan testified that Abenaki will acquire the assets of Rosebrook for the net book value plus a ten percent premium. He stated that Abenaki has the requisite managerial, technical and financial skills necessary to operate a franchise in New Hampshire. He explained how Abenaki could provide significantly better access to debt with a lower cost of capital, which will be beneficial to consumers. Moreover, given its size and access to NE Service's managerial and software systems, Abenaki can provide a substantial improvement to Rosebrook's current data collection and billing systems. For example, Rosebrook manually reads customer meters, which is less cost effective than automatic meter reading which can be done remotely and eliminates the need to send staff to each customer location to take a meter reading. Abenaki can also offer Rosebrook's customers on-line access to consumption history, account information and e-billing. None of these services is currently offered by Rosebrook.

A 2014 New Hampshire Department of Environmental Services report noted that the pressure in the Rosebrook system is much higher than necessary for adequate water service and fire protection flow. System pressures frequently exceed an already extremely high level of 200 pounds per square inch. Abenaki demonstrated that it has a plan to reduce the serious pressure problems in the Rosebrook system over time. Planned system improvements include reducing the pressure gradient level from the main 650,000 gallon storage tank to customer access points, and installing pressure regulating valves throughout the system to alleviate this problem. Rosebrook has been unable to implement these necessary system improvements. Abenaki offered a plan in the form of a projected capital program that will be implemented over a 6 to 9 year period to systematically address some of the most urgent water system problems. Abenaki will also bring on additional employees to run the Rosebrook water system and immediately begin to implement needed system improvements following the transfer.

B. Financing Terms

Under RSA 369:1 “a public utility lawfully engaged in business in this state may, with the approval of the commission, but not otherwise issue ... other evidences of indebtedness payable more than 12 months after the date thereof for lawful corporate purpose.” Under RSA 369:2 “a utility may, with the approval of the commission ... mortgage its present and future property, tangible and intangible including franchises, to secure payment of its bonds or notes.”

Abenaki intends to borrow approximately \$400,000 from CoBank with a 10-year term and a 20-year amortization, at an approximate interest rate of 3.78%, which will be reduced to 3.22% after the application of a patronage basis of 75 points. Deborah O. Carson, treasurer and office manager for both NE Service and Abenaki, submitted pre-filed testimony and testified at the hearing. She explained how Rosebrook’s current 100% equity financing results in a high weighted cost of capital. With the acquisition of the financing as proposed, the utility will have close to a 50/50 debt to equity ratio. This capital structure is beneficial to consumers because it is lower cost and provides a benefit to the company in having a balanced capital structure as opposed to one dependent on just equity.

C. Tariff Revisions

Under RSA 378:3, “[u]nless the commission otherwise orders, no change shall be made in any rate, fare, charge or price ... except after 30 days’ notice to the commission and such notice to the public as the commission shall direct.” Abenaki has requested that the Commission permit it to modify Rosebrook’s existing tariff to provide for a transition to monthly billing effective on the transfer. Mr. Vaughan and Ms. Carson both testified in support of this transition stating that monthly billing will make water charges more predictable and manageable by more closely tying usage to billing. Monthly billing permits the company to detect water leaks more

easily. Monthly billing will also be implemented in conjunction with the installation of radio-read meters which reduce meter reading expenses in the long term. All of this is beneficial to consumers in the form of a reduction in administrative expenses and other savings, including reduction of the allowance for delinquency and bad debt. The Commission has previously authorized monthly billing as being consistent with the public good. *See Abenaki Water Co., Inc.*, Order No. 25,760 (February 4, 2015); *Aquarion Water Co.*, Order No. 25,929 (July 27, 2016) (approving requests to change from quarterly to monthly billing).

D. Termination of Rosebrook's Franchise

RSA 374:28 provides that the Commission "may authorize any public utility to discontinue ... any part of its service ... whenever it shall appear that the public good does not require the further continuance of such service." In this case, after approval of the acquisition of the assets by Abenaki, Rosebrook will cease to have any assets in New Hampshire. As part of the purchase and sale agreement, Rosebrook has represented that all of its tangible assets are insured and that it has maintained business liability coverage in accordance with good industry practice. Abenaki will not be responsible for any liability caused by Rosebrook prior to the transaction. The Commission has found that discontinuing a franchise following the acquisition of that franchise by another utility to be prudent based on a finding that the successor has the financial, managerial and technical skills necessary to run the system. *See Eastman Sewer Company, Inc.*, Order No. 25,634 (March 11, 2014) at 19-21. In this case, Abenaki has demonstrated that it has the requisite financial, managerial and technical skills required to take over and run the Rosebrook system.

IV. Conclusion

The Commission finds the proposed settlement to be just and reasonable, in the public interest, and in conformance with all applicable legal standards. We therefore approve the agreement as filed.

Based upon the foregoing, it is hereby

ORDERED, that the Settlement Agreement between Abenaki, Rosebrook, Staff and the Office of Consumer Advocate is hereby **APPROVED** as submitted; and it is

FURTHER ORDERED, that pursuant to the Settlement Agreement Abenaki may purchase all of the assets of Rosebrook and operate as a public utility in the Rosebrook franchise area; and it is

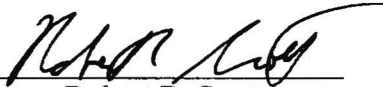
FURTHER ORDERED, that following the consummation of the transaction, Rosebrook's franchise is terminated pursuant to RSA 374:28, and it is

FURTHER ORDERED, that Abenaki shall submit a proposed form of notice of the approved billing changes from quarterly to monthly billing to Commission staff for their review and approval prior to any billing changes being implemented.

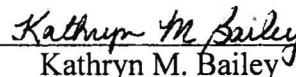
By order of the Public Utilities Commission of New Hampshire this ninth day of August, 2016.



Martin P. Honigberg
Chairman

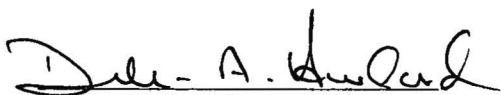


Robert R. Scott
Commissioner



Kathryn M. Bailey
Commissioner

Attested by:



Debra A. Howland
Executive Director