

**STATE OF NEW HAMPSHIRE
PUBLIC UTILITIES COMMISSION**

DW 17-145

HAMPSTEAD AREA WATER COMPANY, INC.

Petition to Transfer Utility Assets and Franchise and for Related Approvals

Order *Nisi* Approving Acquisition of Bow Lake Estates Water Works

ORDER NO. 26,153

June 26, 2018

In this order *nisi*, the Commission approves Hampstead Area Water Company's acquisition of Bow Lake Estates Water Work's assets and utility franchise. The Commission allows Hampstead Area Water Company to charge its current consolidated water rates in the new franchise area once water meters are installed and proper notice is provided. The Commission also authorizes Bow Lake Estates Water Works to discontinue operations as a public utility. After the transaction closes, Bow Lake Estates Water Works will cease to be a regulated public utility in New Hampshire. This renders the show-cause proceeding in Docket No. DW 16-257 moot, and that proceeding is closed.

While the statute (RSA 374:26) does not require a hearing when all interested parties are in agreement, the Commission is issuing this order on a *nisi* basis to ensure that all interested persons receive notice of the decision and have the opportunity to request a hearing prior to the effective date.

I. PROCEDURAL HISTORY

Hampstead Area Water Company, Inc. (HAWC), is a public water utility that serves approximately 3,600 customers in the Towns of Atkinson, Chester, Danville, East Kingston, Fremont, Hampstead, Kingston, Newton, Nottingham, Plaistow, Salem, and Sandown. Bow

Lake Estates Water Works, Inc. (Bow Lake), is a public water utility serving approximately 40 customers in a portion of the Town of Strafford.

In early 2016, Bow Lake's failure to file required annual reports prompted the Commission to initiate a show-cause proceeding to explore what, if any, sanctions should be imposed on Bow Lake. *See Bow Lake Estates Water Works, Inc.*, Order No. 25, 871 (March 10, 2016); *see generally* Docket No. 16-257.¹ That proceeding continued through 2016 and 2017.

On September 20, 2017, HAWC petitioned to acquire Bow Lake's water utility assets and franchise pursuant to RSA 374:22 and RSA 374:30, and to apply HAWC's consolidated rates to the Bow Lake service area. The petition included the \$8,000 cash purchase contract for Bow Lake's utility assets. An Order of Notice, issued on October 3, 2017, scheduled a prehearing conference, which was held on October 31, 2017. Following some discussions, HAWC and Bow Lake filed a settlement agreement (Settlement) on February 13, 2018. Staff concurred with the Settlement by letter dated April 13, 2018. The petition and subsequent docket filings, other than any information for which confidential treatment is requested of or granted by the Commission, are posted on the Commission's website at <http://www.puc.nh.gov/Regulatory/Docketbk/2017/17-145.html>,

II. SETTLEMENT AGREEMENT

The Settlement, entered into by HAWC, Bow Lake, and later concurred with by Staff, presented various terms for Commission consideration. It requests (1) a finding that HAWC possesses the requisite managerial, technical, financial, and legal expertise to own and operate water systems within New Hampshire; (2) approval of transfer of the system assets to HAWC pursuant to the sales contract for the amount of \$8,000; (3) award of the franchise area, as

¹ Documents from the show-cause proceeding may be found on the Commission's website at <http://www.puc.nh.gov/Regulatory/Docketbk/2016/16-257.html>.

described in the petition; and approval of HAWC's operation of the water system; (4) approval of application of the current Bow Lake water rates to existing customers pending the installation of meters, following which HAWC's consolidated rates would apply after 30 days' notice; (5) that HAWC and Bow Lake would divide financial responsibility before and after the closing; and (6) that HAWC will appropriately file Tariff compliance pages for the approved area.

III. COMMISSION ANALYSIS

The Commission finds the proposed Settlement to be just and reasonable, in the public interest, and in conformance with all applicable legal standards. Therefore, we approve the Settlement and the proposed transaction. 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 participants in a proceeding to settle issues through negotiation and compromise, because it is an opportunity for creative problem solving, allows the participants to reach a result in line with their expectations, and is often a better alternative to litigation." *Lakes Region Water Co., Inc.*, Order No. 26,144 at 4 (June 15, 2018). 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." N.H. Code Admin. Rules Puc 203.20(b). In order to approve a settlement agreement, the Commission must independently determine that the result comports with applicable standards. Order No. 26,144 at 5 (citing *Liberty Utilities (EnergyNorth Natural Gas) Corp.*, Order No. 26,122 at 7 (April 27, 2018)).

We first examine the acquisition of Bow Lake's assets and franchise by HAWC under the standard established 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, I, “[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. *Lakes Region Water Company, Inc.*, Order No. 26,144 at 5; *see also, e.g., Lakes Region Water Company, Inc.*, Order No. 25,964 (November 10, 2016); *Liberty Utilities (EnergyNorth Natural Gas) Corp. d/b/a Liberty Utilities*, Order No. 25,987 (February 8, 2017).

We find that HAWC possesses the managerial, technical, and financial ability to operate the water system. While the participants involved all concur with this point, no specific evidence has been presented to show as much. The Commission recently found, however, that HAWC possesses the requisite managerial, technical, and financial abilities to operate other water systems. *See Hampstead Area Water Co., Inc.*, Order No. 25,979 at 4-5 (January 23, 2017). The Commission, citing numerous prior orders, based that decision on HAWC’s operation as a water company since 1989, its sound financial planning by periodically taking advantage of low-cost financing through the State Revolving Loan fund for various projects, and its regular filing of rate cases, ensuring that it earns a “revenue requirement sufficient to cover its expense and capital investments.” *Id.* The Commission has issued no other order to the contrary since that

finding. Accordingly, we find that transfer of the Bow Lake franchise to HAWC meets the public good standard necessary for our approval.

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.” The Commission has found that discontinuing a franchise following its acquisition by another utility is for the public good based on a finding that the successor has the managerial, financial, and technical skills necessary to run the system. Order No. 26,144 at 6 (citing *Eastman Sewer Co., Inc.*, Order No. 25,634 at 11-13 (March 11, 2014)). We find that the public good does not require Bow Lake to continue service, given that its assets and franchise will be transferred to HAWC. We therefore approve the termination of Bow Lake’s franchise and status as a public utility following the transfer of its assets.

We find that the proposal to apply Bow Lake’s rates to its current customers until meter installation is completed and 30-day notice is provided to customers is just and reasonable. After meter installation is completed and notice is provided, HAWC’s existing consolidated water rates will be applied to Bow Lake’s customers. In this instance, we are persuaded that a single tariff with general terms and conditions applicable to all customers served by HAWC is fair and administratively efficient.

Finally, while RSA 374:26 provides the Commission with the authority to grant a utility a franchise after a hearing, the statute also notes “permission may be granted without a hearing when all interested parties are in agreement.” In this proceeding, even though Staff, HAWC, and Bow Lake are in agreement that HAWC should provide service in the proposed franchise area, we believe it is appropriate to approve HAWC’s petition on a *nisi* basis with a delayed effective

date, to ensure that all interested persons receive notice and have an opportunity to request a hearing.

In light of the proposed sale and our approval of the Settlement, the show-cause proceeding in Docket No. DW 16-257 will soon be moot. We therefore order that, upon consummation of the sale, all outstanding fines against Bow Lake Estates Water Works and Stanley Oliver, shall be lifted, and we shall close Docket No. DW 16-257.

Based upon the foregoing, it is hereby

ORDERED NISI, that, subject to the effective date below, the Settlement Agreement between Hampstead Area Water Company, Inc., and Bow Lake Estates Water Works, Inc., with Commission Staff's concurrence, is hereby APPROVED as submitted; and it is

FURTHER ORDERED, that pursuant to RSA 374:22 and RSA 374:30, Hampstead Water Company, Inc., may purchase the assets of Bow Lake Estates Water Works, Inc., and operate as a public utility in the Bow Lake Estates Water Works, Inc., franchise area of Strafford; and it is

FURTHER ORDERED, that upon transfer of the utility assets, the franchise of Bow Lake Estates Water Works, Inc., is terminated pursuant to RSA 374:28; and it is

FURTHER ORDERED, that the rates, terms, and conditions of Bow Lake Estates Water Works, Inc.'s, tariff shall remain applicable to Bow Lake Estates Water Works, Inc.'s, customers, and shall be administered by Hampstead Area Water Company, Inc., until all meters are installed at each Bow Lake Estates Water Works, Inc.'s, customer home and 30 days' notice of the rate change is provided; and it is

FURTHER ORDERED, that the rates, terms, and conditions of Hampstead Area Water Company's consolidated tariffs shall apply to the Bow Lake Estates Water Works' customers following meter installation and notice to customers; and it is

FURTHER ORDERED, that upon transfer of the utility assets, all outstanding fines against Bow Lake Estates Water Works, Inc., and Stanley Oliver shall be lifted; and it is

FURTHER ORDERED, that the show-cause proceeding involving Bow Lake Estates Water Works, Inc., in Docket No. DW 16-257 is hereby closed; and it is

FURTHER ORDERED, that Hampstead Area Water Company, Inc., shall file tariff pages pursuant to the terms of the Settlement Agreement; and it is

FURTHER ORDERED, that Hampstead Area Water Company, Inc., shall cause a summary of this order *nisi*, issued concurrently with this order, 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 occur not later than July 6, 2018, and to be documented by affidavit filed with this office on or before July 23, 2018; and it is


FURTHER ORDERED, that all persons interested in responding to this order *nisi* be notified that they may submit their comments or file a written request for a hearing which states the reason and basis for a hearing no later than July 13, 2018, for the Commission's consideration; and it is

FURTHER ORDERED, that any party interested in responding to such comments or request for hearing shall do so no later than July 20, 2018; and it is

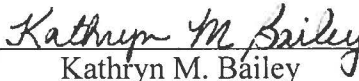
FURTHER ORDERED, that this order *nisi* shall be effective July 26, 2018, unless Hampstead Area Water Company, Inc., fails to satisfy the publication obligations set forth

above, or the Commission provides otherwise in a supplemental order issued prior to the effective date.

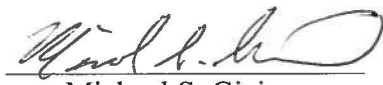
By order of the Public Utilities Commission of New Hampshire this twenty-sixth day of June, 2018.



Martin P. Honigberg
Chairman

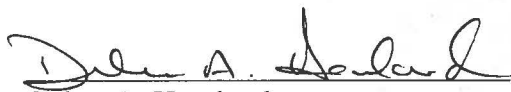


Kathryn M. Bailey
Commissioner



Michael S. Giaimo
Commissioner

Attested by:



Debra A. Howland
Executive Director