

STATE OF VERMONT
PUBLIC SERVICE BOARD

Docket No. 6994

Joint Petition of Richard Hazen, d/b/a Allen Point)
Water System, and Allen Point Water Company for)
approval to sell the assets of Allen Point Water)
System to Allen Point Water Company)

Order entered: 10/18/2004

I. INTRODUCTION

On July 19, 2004, Richard Hazen, d/b/a Allen Point Water System ("APWS"), and Allen Point Water Company ("Company"), a mutual-benefit non-profit corporation formed for the purpose of acquiring the APWS assets, petitioned the Vermont Public Service Board ("Board") for approval under 30 V.S.A. §§ 109 and 231 to sell the assets of APWS to the Company.

On October 5, 2004, the Vermont Department of Public Service filed a letter with the Board recommending (1) that the Board approve the petition without hearings, (2) that the Certificate of Public Good held by APWS be revoked, effective upon notification to the Board that the transfer has been consummated, and (3) that the Board rule that the Company is exempt from regulation under 30 V.S.A.

II. FINDINGS

1. On April 19, 1978, APWS received a CPG from the Board to operate a water system located on Allen Point in South Hero, Vermont. Docket No. 4244, Order of 4/19/78.
2. APWS has 13 residential connections. Pet. at 2.
3. APWS has been out of compliance with applicable water treatment and monitoring requirements of the Agency of Natural Resources Water Supply Division ("WSD"). As a result, the Secretary of the Agency of Natural Resources issued an Administrative Order on May 18, 2004, which, among other things, imposed a fine on APWS of \$22,095 and required APWS to secure a new groundwater source, construct adequate treatment facilities, decertify the system by reducing the number of connections/users or connect with the South Hero Fire District #4 ("FD#4") water system. Pet. at 2.

4. The users of APWS have undertaken significant efforts since 2001 to pursue connection with FD#4. These efforts have included:

- a. Filing with WSD plans for interconnection with FD#4 facilities, consisting of a 4800 foot 6" pipeline along the west side of South Street between Martin Road and the APWS system at the southerly end of South Street, at a cost currently estimated to be on the order of \$200,000;
- b. Securing applicable state and local permits;
- c. Forming the Company, the members of which are the owners of the 13 residences currently served by APWS;
- d. Entering into a Statement of Principles with FD#4, relating to the terms by which FD#4 would interconnect with, and sell water to the members of, the Company; and
- e. Securing an informal understanding with APWS concerning the terms for sale of the APWS assets to the Company.

Pet. at 3.

5. Prior to construction of the interconnection with FD#4, the following agreements and approvals are necessary:

- a. Agreement among the Company, FD#4 and the Town of South Hero, relating to the terms of interconnection and the sale of water;
- b. Agreement between APWS and the Company for the sale of APWS assets;
- c. Agreement between the Company and its members providing for payment of the cost of the interconnection and related costs;
- d. Easements from 16 owners of land abutting South Street, across which the interconnection will be located;
- e. Agreement among the Company, FD#4 and a contractor for the construction of the interconnection;
- f. WSD approval of the interconnection plans; and
- g. Board approval.

The Company intends to complete the interconnection by the beginning of November, 2004. The construction of the interconnection is estimated to take two weeks. Pet. at 3.

6. As indicated in Attachment A to the Petition, all 13 APWS users/Company members support the sale of the APWS assets to the Company and the interconnection with FD#4, and have agreed to pay for the cost of the interconnection in equal shares. Attachment A; pet. at 3.

7. The current APWS customers have technical expertise and, since they are members of the Company, there will be no reduction in available technical expertise. Pet. at 3.

8. The Company has the financial capacity to fund the interconnection with FD#4 and to ensure the ongoing operational stability of the water system. Pet. at 3.

9. The transfer of assets from APWS to the Company will not cause disruption of service, or inconvenience or confusion for customers, because the 13 current users have agreed to fund the interconnection, thereby facilitating the continuation of service. Pet. at 3.

III. CONCLUSION

The current manager of APWS has found it difficult to meet the challenges facing this water system, including implementing the improvements necessary to maintain an adequate water supply to its customers. The proposed transfer of the water system to the non-profit company that is entirely owned and managed by its customers will help ensure that the water system is connected to the FD#4 and that it is managed in a safe and reliable manner. For these reasons, the transfer of the assets of APWS to the Company is in the public good, as the Company has the technical expertise and the financial stability to ensure adequate water service for APWC's customers.

Under 30 V.S.A. § 203(3), the Board regulates any "company other than a municipality engaged in the collecting, sale and distribution of water for domestic, industrial, business or fire protection purposes." If the Company does not offer water service to the general public, and it limits its service to its owners, the Company will not fall within the definition of "company" as used in 30 V.S.A. § 203(3) and would not require a CPG from the Board. See 30 V.S.A. § 203(3), 1966-68 Op. Atty. Gen. 153. Because the Company as organized will not sell water, it will not be subject to Board jurisdiction when it commences operation of the water system. Consequently, upon notification to the Board that the transfer of the water system to the Company has been consummated, the CPG that authorized APWS to own and operate the water system will be null and void and the Board will have no further jurisdiction over the Company.

Should the Company expand its service to customers who are not owners, it would be considered a company, as that term is used in 30 V.S.A. § 203(3), and would therefore be regulated by the Board and would require a CPG from the Board.

IV. ORDER

IT IS HEREBY ORDERED, ADJUDGED AND DECREED by the Public Service Board of the State of Vermont that:

1. Pursuant to 30 V.S.A. § 109, the transfer of ownership of the Allen Point Water System to the Allen Point Water Company is approved and a certificate of consent shall be issued.

2. Pursuant to 30 V.S.A. § 231, the Certificate of Public Good issued to Allen Point Water System on April 19, 1978, shall be revoked upon consummation of the proposed transaction.

4. Allen Point Water Company shall notify the Vermont Public Service Board and the Vermont Department of Public Service within ten days of the completion of the proposed transaction.

5. Allen Point Water Company shall seek a Certificate of Public Good from the Board should the Company expand its service to customers who are not owners.

Dated at Montpelier, Vermont, this 18th day of October, 2004.

<u>s/Michael H. Dworkin</u>	}	PUBLIC SERVICE BOARD OF VERMONT
<u>s/David C. Coen</u>	}	
<u>s/John D. Burke</u>	}	

OFFICE OF THE CLERK

FILED: October 18, 2004

ATTEST: s/Susan M. Hudson
Clerk of the Board

NOTICE TO READERS: This decision is subject to revision of technical errors. Readers are requested to notify the Clerk of the Board (by e-mail, telephone, or in writing) of any apparent errors, in order that any necessary corrections may be made. (E-mail address: Clerk@psb.state.vt.us)

Appeal of this decision to the Supreme Court of Vermont must be filed with the Clerk of the Board within thirty days. Appeal will not stay the effect of this Order, absent further Order by this Board or appropriate action by the Supreme Court of Vermont. Motions for reconsideration or stay, if any, must be filed with the Clerk of the Board within ten days of the date of this decision and order.