

STATE OF VERMONT
PUBLIC SERVICE BOARD

Docket No. 7163

Joint Petition of Riverside Water Works, Inc. and the)
Canaan Fire District No. 1 for approval to transfer the)
public water supply system owned and operated by)
Riverside to the Fire District)

Order entered: 9/13/2006

FINDINGS AND ORDER

I. INTRODUCTION

On February 9, 2006, Riverside Water Works, Inc. ("Riverside") and the Canaan Fire District No. 1 ("Fire District") jointly filed a petition with the Vermont Public Service Board ("Board"), pursuant to 30 V.S.A. §§ 109 and 231. The petition requests a Board order approving the sale to the Fire District of all assets owned by Riverside and used in the operation of the community public water supply system known as Riverside Water Works. The petition also requests that the Board revoke Riverside's Certificate of Public Good ("CPG").

Appended to the petition are: (1) a copy of an Asset Purchase Agreement ("APA") between Riverside and the Fire District; (2) a copy of a Petition for Exemption filed by Riverside and the Fire District with the New Hampshire Public Utilities Commission; and (3) a copy of Order No. 23,519 issued on June 29, 2000, by the New Hampshire Public Utilities Commission ("NHPUC Order").¹

The petition is supported by a stipulation ("Stipulation") by and among all parties to this docket – Riverside, the Fire District, and the Vermont Department of Public Service ("Department") – filed with the Board on March 6, 2006.

1. In the order, the New Hampshire Public Utilities Commission approved a rate increase for Riverside's New Hampshire customers. This approval followed the June 14, 2000, Order in Docket No. 6323, in which the Board approved a rate increase for Riverside's Vermont customers.

For the reasons set forth below, I recommend that the Board approve the requested sale of assets, approve the Stipulation, and revoke Riverside's CPG.

Pursuant to 30 V.S.A. § 8, I report the following findings to the Board.

I. FINDINGS

1. Riverside holds a CPG, issued by the Board, to operate a certain small water system in the village of Beecher Falls which is located in the town of Canaan, Vermont. Docket No. 1054, Order of July 30, 1924.

2. Riverside serves customers located in the towns of Canaan, Vermont, and Stewartstown, New Hampshire. Petition at 1.

3. Riverside is a 107-customer system serving approximately 71 Vermont customers. Its largest customer is the industrial plant in Beecher Falls owned by Ethan Allen, Inc. Riverside is owned by Ethan Allen. Docket No. 6323, Order of 6/14/00, at 5; NHPUC Order No. 23,519, dated June 29, 2000, at 1.

4. The Fire District was created by action of the Board of Selectmen of the Town of Canaan under authority of the predecessor to 20 V.S.A. § 2481. Letter of J. Paul Giuliani, Esq., dated May 25, 2006.

5. The Stipulation provides that Riverside shall convey to the Fire District all of its real and personal property related in any way to the ownership, operation and management of the Riverside Water Works. Stipulation at 1.

6. The Stipulation provides that, upon the proposed asset transfer, the Fire District shall assume the responsibility for delivering water to all existing service connections in Vermont and New Hampshire, and for billing customers for water delivered by the Fire District. Stipulation at 2.

7. The Stipulation provides that the Fire District shall provide the Board with copies of deeds, bills of sale and assignments effecting the transfer of Riverside's unencumbered assets to the Fire District. Stipulation at 2.

8. The APA imposes obligations upon Riverside and/or the Fire District to provide various certifications from the Vermont Secretary of State, the Vermont Commissioner of Taxes, the

Vermont Agency of Natural Resources, the New Hampshire Department of Environmental Services, and the Board. Asset Purchase Agreement at 1-2.

9. The APA addresses the parties' respective responsibilities related to financing, making remedial improvements to water company property, liability for pre-existing water supply system deficiencies, and billing customers. Asset Purchase Agreement at 2-3.

10. Notice of the proposed transfer was mailed to Riverside's customers on or about June 5, 2006.² The notice included a request that customers file their comments or objections to the proposed transfer with the Board on or before June 23, 2006. No Riverside customer has filed with the Board comments or objections concerning the proposed transfer. Letter of Geoffrey Commons dated August 2, 2006.

II. DISCUSSION

The filings in this docket demonstrate that Riverside and the Fire District are prepared to take the necessary steps to ensure that the proposed transfer of the water company will comply with all applicable laws and regulations, and will not adversely impact customers. Under the provisions of 20 V.S.A. § 2602, a fire district has the authority to own, operate and finance a system of public water works.³ The Fire District has undertaken and completed studies, surveys and analyses incident to constructing improvements to the subject water system necessary to comply with standards promulgated by the Secretary of the Vermont Agency of Natural Resources, and the Fire District is prepared to construct such improvements.⁴ Riverside and the Fire District also have clearly outlined their respective responsibilities regarding financing, remedial improvements to water company property, liability for pre-existing water supply system deficiencies, and billing customers.⁵ The foresight of Riverside and the Fire District concerning

2. A copy of the Notice of Proposed Sale of Assets to Canaan Fire District No. 1 was provided to the Board by the Department. Enclosure to letter of Geoffrey Commons, dated August 2, 2006.

3. In addition, under 24 V.S.A. § 3301, municipalities have the authority to own and operate systems of public water works, and under 1 V.S.A. § 126, a municipality is defined to include fire districts.

4. Petition at 1.

5. Asset Purchase Agreement at 2-3.

these matters promises to facilitate a smooth transition in ownership, and the Department supports the proposed transfer of the water company.⁶

Two jurisdictional matters also deserve mention here. First, under Vermont law, 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."⁷ Under 1 V.S.A. § 126, a municipality is defined to include fire districts. Therefore, the transfer of Riverside to the Fire District will remove this water system from the Board's jurisdiction.⁸

Second, although Riverside serves customers in both Vermont and New Hampshire, the Board does not have any jurisdiction over rates charged for connections in New Hampshire.⁹ With regard to its customers in New Hampshire, Riverside and the Fire District have filed a petition with the New Hampshire Public Utilities Commission ("NHPUC") seeking exemption from the provisions of New Hampshire's public utilities statutes, upon transfer of the water company to the Fire District.¹⁰ NHPUC staff have recommended approval of the New Hampshire petition with certain conditions designed to ensure that the water company's New Hampshire customers will be on par with its Vermont customers.¹¹

III. CONCLUSION AND RECOMMENDATION

For the reasons set forth above, I conclude that transfer of Riverside to the Fire District, in accordance with the provisions of the Stipulation, will promote the general good of the State of Vermont.¹² I further conclude that completion of the proposed transfer will provide good

6. Letter of Geoffrey Commons, Esq., dated March 6, 2006.

7. 30 V.S.A. § 203(3).

8. *In re Adam C. Dixon, et. al.*, 123 Vt. 111, 114 (1962).

9. *See* Docket No. 6323, Order of 6/14/00 at 5.

10. Petition for Exemption, dated January 25, 2006.

11. Letter of Mark A. Naylor to Debra A. Howland, dated July 28, 2006. The Department has reported that it has no objection to the conditions proposed by NHPUC staff. Letter of Geoffrey Commons dated August 2, 2006, at 1.

12. *See* 30 V.S.A. § 109.

cause for revocation of Riverside's CPG, and, that Riverside's cessation of service to its customers will be consistent with the public interest.¹³ I therefore recommend that the Board approve the parties' petition for transfer of Riverside to the Fire District and for revocation of Riverside's CPG. I also recommend that the Board approve the Stipulation.

The parties have waived issuance of a proposal for decision pursuant to 30 V.S.A. § 811 in the event that the Board adopts the Stipulation.¹⁴ Because I am recommending that the Stipulation be adopted, this proposal for decision has not been circulated to the parties.

Dated at Montpelier, Vermont, this 11th day of September, 2006.

s/Judith M. Kasper
Judith M. Kasper, Esq.
Hearing Officer

13. See 30 V.S.A. § 231.

14. Stipulation at 2.

IV. ORDER

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

1. The Findings, Conclusion and Recommendation of the Hearing Officer are adopted.
2. We hereby approve the stipulation ("Stipulation") by and among Riverside Water Works, Inc. ("Riverside"), the Canaan Fire District #1 ("Fire District") and the Vermont Department of Public Service ("Department"), filed with the Public Service Board ("Board") on March 6, 2006.
3. Pursuant to 30 V.S.A. § 109, the transfer of ownership of Riverside to the Fire District is approved, and a certificate of consent shall be issued.
4. Within ten days of the completion of the proposed transfer of ownership, Riverside and the Fire District shall provide the Board with written notice of such transaction.
5. Within 30 days of completion of the proposed transfer of ownership, the Fire District shall provide the Board with copies of deeds, bills of sale and assignments effecting the transfer of Riverside's unencumbered assets to the Fire District.
6. Pursuant to 30 V.S.A. § 231, the Certificate of Public Good ("CPG") issued to Riverside on July 30, 1924, shall be revoked upon completion of the proposed transfer of ownership and provision of copies of deeds, bills of sale and assignments effecting the transfer of Riverside's unencumbered assets to the Fire District.

Dated at Montpelier, Vermont, this 13th day of September, 2006.

s/James Volz)

) PUBLIC SERVICE

s/David C. Coen)

) BOARD

s/John D. Burke)

) OF VERMONT

OFFICE OF THE CLERK

FILED: September 13, 2006

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: psb.clerk@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.