

STATE OF VERMONT
PUBLIC SERVICE BOARD

Docket No. 5947

Petitions of Alpine Haven Water Company, Inc.)
and AHA Water Cooperative, Inc., for approval)
of the sale of all of the assets of the Water)
Company to the Cooperative)

Order entered: 8/31/2000

ORDER ON MOTION TO ALTER, CORRECT, AND RECONSIDER FINAL ORDER
AND
REVISED FINAL ORDER

Background

AHA Water Cooperative, Inc. ("the Coop") has filed a motion ("the Coop's Motion") asking the Board to make both technical and substantive corrections to its final order issued July 24, 2000 ("the Final Order"). Both the Department of Public Service ("the Department") and Laura Snyder have filed responses to the Coop's Motion. This Order will dispose of all issues raised by the Coop's Motion.

1. The Coop notes that, through a clerical error, the paragraphs of the Final Order were misnumbered. This has been corrected.
2. Another error caused the Coop to be referred to as "Alpine Haven Water Cooperative, Inc.," rather than as "AHA Water Cooperative, Inc." This has also been corrected.
3. The Coop asks that the Board reconsider its determination that the Board will and should continue to have jurisdiction over sales of water by the Coop to non-members. The Coop's Motion refers to users who will be "owners solely by virtue of use," but in the next sentence states that the Coop "is the sole purchaser of the system." Coop's Motion at 1-2. The Coop is an incorporated entity, but the Coop's Motion seems to ignore the difference between corporate ownership of an asset and personal ownership of interest in a corporation. We find the Coop's arguments to be unpersuasive.

4. The Coop states that it does not object to the review of the books and closing documents by the Department mandated in our Order, on condition that (1) the DPS not have "veto power" over the details of the closing transactions, and (2) that third parties, in particular the Intervenor, Mrs. Snyder, be precluded from obtaining "any procedural or substantive relief" from the Board based upon the review. Coop's Motion at 2. As the Department notes in its reply to the Coop's Motion, it does not expect to have "veto" authority over any transaction. The Board asked the Department to perform a review of the transaction for appropriate accounting treatment and allocation of costs, not to perform a detailed audit. The Department staff would review the transaction, as it does hundreds of transactions, and will submit a report to the Board. If the Coop is aggrieved by the report, it will have an opportunity to be heard, as would the other party to the docket, Mrs. Snyder. The Board does not need to rule in advance on possible objections to a future report.

5. The Coop asks for affirmative rulings on two Motions to Take Judicial Notice that it filed. The materials submitted with the motions included various documents indicating that three individuals (from two households) whose problems with Alpine Haven management were the subject of testimony during the docket no longer reside in the Alpine Haven development. Judicial notice is normally limited to facts that are beyond dispute. See generally Reporter's Notes to V.R.E. 201(b). In addition, we would be inclined to open a closed record for the admission of late material only if it appeared highly material. In this case, whether or not those particular individuals still reside in Alpine Haven does not affect their testimony concerning the treatment of dissident residents, nor does it affect our conclusions about Board jurisdiction over sales to non-member customers. The Motions to Take Judicial Notice are, therefore, denied.

6. The Coop moves for a change of wording of Paragraph 5 of the Final Order, to change "clear title" to "marketable title." As noted by the Department's brief, these two terms are often used interchangeably. However, the Coop's Motion suggests that "marketable title" is the term of common usage in real estate conveyancing, and indeed Vermont has a Marketable Record Title statute, 27 V.S.A. § 601. We accept counsel's representation that "marketable title" is a more precise term than "clear title," and have made that change.

REVISED ORDER

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

1. The findings and conclusions of the Hearing Officer are accepted, except as noted.
2. Ownership and operation of a water system by AHA Water Cooperative, Inc., will promote the general good of the state.
3. The transfer of ownership of all of the assets of Alpine Haven Water Company, Inc., to the AHA Water Cooperative, Inc., is approved, and certificates of consent and of public good shall be issued.
4. Before the transfer may take place, AHA Water Cooperative, Inc., shall provide access to its books and closing documents sufficient for the Department of Public Service to review them and assure that all proper costs of setup and of pre-transfer operation have been transferred from the accounts of the Property Owners' Association to AHA Water Cooperative, Inc., and of the accounting procedures adopted by AHA Water Cooperative, Inc., to account for in-kind payment of water system expenses by the Property Owners' Association. The transfer shall not be completed until the Department has performed its review.
5. This approval is contingent upon the transfer of marketable title by the seller to AHA Water Cooperative, Inc.
6. AHA Water Cooperative, Inc., shall modify its Articles of Association to reflect the fact that it will be providing water service to non-members. The modified Articles of Association shall be filed before the actual transfer of assets.
7. AHA Water Cooperative, Inc., shall inform the Public Service Board and the Department of Public Service of the date of the transfer of assets, within fifteen days of said transfer.
8. AHA Water Cooperative, Inc., shall file with the Public Service Board and the Department of Public Service pursuant to 30 V.S.A. Section 225, proposed rate and conditions of service tariffs within sixty days of the transfer of assets. It shall continue to serve existing customers at the rates now in effect for Alpine Haven Water Company, Inc., until the new tariffs are approved.

DATED at Montpelier, Vermont, this 31st day of August, 2000.

s/Michael H. Dworkin)
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s/David C. Coen)
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PUBLIC SERVICE

BOARD

OF VERMONT

OFFICE OF THE CLERK

FILED: August 31, 2000

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 mail) of any technical 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.