

STATE OF VERMONT  
PUBLIC SERVICE BOARD

Docket No. 6061

Petition of Starksboro Aqueduct Company )  
seeking: (1) Board approval of the transfer of )  
control and operation of the Starksboro water )  
system to the Starksboro Village Water )  
Cooperative; (2) approval of a lease to that effect; )  
and (3) revocation of Starksboro's Certificate of )  
Public Good )

Order entered: 12/20/99

Present: Lawrence F. Lackey, Hearing Officer

Appearances: Herbert W. Olson, Esq.  
for Starksboro Aqueduct Company

Geoffrey Commons, Esq.  
for the Vermont Department of Public Service

Andrew Raubvogel, Esq.  
Alex M. Elliott, Esq.  
for the Water Supply Division, Vermont Agency of Natural  
Resources <sup>1</sup>

Hugh Johnson, *pro se*,  
for Starksboro Village Water Cooperative

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1. Msrs. Raubvogel and Elliott entered appearances on behalf of the Agency of Natural Resources, but did not attend any of the hearings.

### **SUMMARY**

In this Proposal for Decision, I conclude that the general good of the state will be promoted by the lease of the water system property owned and presently operated by Starksboro Aqueduct Company ("the Company") to the Starksboro Village Water Cooperative ("the Cooperative"). Further, consistent with the wishes and recommendation of all parties to this proceeding, I recommend approval of the Lease Agreement, as amended, that has been proposed by the parties.

Execution of such a lease of all water system property by the Company to the Cooperative would remove the Company from the Public Service Board's ("Board") present jurisdiction. Upon execution of such a lease, the Board must revoke the Certificate of Public Good ("CPG") issued previously to the Company. The stipulation among the parties requested the Board approve "relinquishment" of the CPG. I concur with the view of the Department of Public Service ("DPS" or "the Department") that "relinquishment" is synonymous with a voluntary request for revocation pursuant to 30 V.S.A. § 231. I, therefore, recommend approval of the stipulation.

### **PROCEDURAL HISTORY**

This docket was initiated when the Company filed a petition on December 1, 1997, seeking permission to relinquish its CPG.<sup>2</sup> The Board designated Kathleen M. Fleury, Utilities Analyst, as Hearing Officer.

At a technical hearing, held June 22, 1998, the Company filed a stipulation among the Company, the DPS, and the Agency of Natural Resources ("ANR"), requesting Board approval of a draft lease agreement between the Company and a proposed cooperative.<sup>3</sup> Ms. Fleury determined that the Stipulation and its attachments amended the original petition and would require further clarification. The parties were not prepared to present sworn testimony

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2. In addition to its request for relinquishment of its CPG, the Company's petition contained references to an increase in rates. The rate increase went into effect prior to the prehearing conference. See tariff filing No. 2904. At a prehearing conference, held on March 23, 1998, it was determined that the Company and the DPS had previously stipulated to the increase, and that the increase was not intended to be a part of this docket.

3. At the time of the draft lease agreement, the Cooperative had not been formally created. The Cooperative was subsequently incorporated as the Starksboro Village Water Cooperative.

on the Stipulation at this hearing.<sup>4</sup> Also, the amended provisions required another properly noticed public and technical hearing to consider the revisions and the terms of the Stipulation.

On October 26, 1998, a public hearing and a technical hearing were held in Starksboro, Vermont. A copy of the Certificate of Incorporation and By-Laws of the Cooperative and a copy of a signed Lease Agreement between the Company and Cooperative were submitted into evidence.

Ms. Fleury issued a Proposal for Decision on February 8, 1999. She concluded that the customer cooperative was qualified to operate the water system, but that the Company's proposals would neither permit the cooperative sufficient capability to comply with potential future regulatory requirements, nor adequately provide for the long-term provision of water to the customers. Accordingly, she recommended that the Board reject the Stipulation, approve the proposed lease to the Cooperative as a short-term measure, and deny the Company's request that it be relieved of its obligations under its CPG.

The Company and the Department each filed comments on the Hearing Officer's Proposal for Decision. Both asked the Board to reject the Hearing Officer's conclusion that the Board should retain jurisdiction over the Company. The Company further requested that the Board consider new evidence, including additional prefiled testimony and an Addendum to the Lease Agreement dated March 8, 1999.

By its Order of May 10, 1999, the Board designated me as Hearing Officer, and remanded the case "to consider the new evidence submitted by Starksboro Aqueduct Company on April 5, 1999, to conduct additional hearings if appropriate, and to issue a proposed decision, based on the entire record in this docket."

I convened a prehearing conference in this docket on June 2, 1999. The president of the Cooperative, Hugh Johnson, attended the prehearing conference and indicated that the Cooperative wished to intervene in the investigation. No party objected. Both the Company and the Department support the intervention request of the Cooperative. The Cooperative was granted intervention.

Prior to the prehearing conference, the Company filed additional prefiled testimony of Jay Rutherford and Dennis Casey, to which was attached the March 8, 1999, addendum to the

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4. See Hearing Officer's memorandum to parties dated June 30, 1998.

lease agreement ("the Addendum") between the Company and the Cooperative. At the prehearing conference, counsel for the Company offered that the Addendum would address the concerns expressed by the previous Hearing Officer regarding the lease agreement. The additional prefiled testimony, including the Addendum, was admitted at the prehearing conference.

The Company stated at the prehearing conference that additional hearings would be unnecessary if the Hearing Officer was inclined to accept the Stipulation, but would otherwise wish the Hearing Officer to conduct technical hearings.<sup>5</sup>

In a prehearing conference memorandum issued July 13, 1999, I outlined a procedure for resolution of this investigation. I concluded that additional public hearings would not be necessary -- particularly in light of the admission of the Cooperative as a party to this proceeding. Due to the time which had elapsed between the initial hearings and the present, I asked the petitioner and parties to review the evidence in the record, and to identify areas in which the facts or circumstances have changed materially. I also requested the petitioner and parties to provide testimony and legal memoranda on several issues and questions. I encouraged the parties to attempt to stipulate to the admission of the additional testimony. I stated that, on the basis of these filings, I would then determine whether additional information or technical hearings, or both, are necessary.

The Company, Cooperative, Department and ANR each responded to the questions posed in the prehearing conference memorandum, as described further, below.

#### **PROCEDURAL ISSUES**

In response to my prehearing conference memorandum, the Company offered the prefiled testimony of Dennis Casey dated September 13, 1999, and stated its belief that "the evidence of record is accurate and sufficient" for the Board to approve the stipulation and lease agreement (as amended).<sup>6</sup> The Department likewise stated its belief "that the existing record is

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5. Tr. 6/22/99 at 16-18, 21-22. The Department offered a similar recommendation. Tr. 6/2/99 at 13.

6. Response to the Hearing Officer's Procedural Order by Company, 9/13/99, at 3.

accurate."<sup>7</sup> The Cooperative stated that "existing testimony is not significantly different."<sup>8</sup> The ANR considers the existing record to be accurate.<sup>9</sup> On the basis of these comments and my own review, I conclude that the existing record is still accurate and is adequate to render decision.

No party objected to the Company's additional prefiled testimony of Dennis Casey. The testimony is admitted, noting the Department's observation.<sup>10</sup>

### **FINDINGS**

I have reviewed the record of this proceeding, including the portion which preceded my involvement. It may bear noting that, primarily for clarity and convenience, I do not incorporate by reference the findings contained in the proposal for decision issued previously. Instead, where I have concurred with the previous Hearing Officer, I have made findings that are similar or identical to those previously proposed; I have also omitted findings not pertinent to my conclusions, and added findings where necessary.

Based upon the evidence of record and the testimony presented at the hearings, I submit the following findings to the Board in accordance with 30 V.S.A. § 8.

#### **The Water System**

1. The Starksboro Aqueduct Company was organized in 1908. Exh. 4 (Casey pf. 10/26/98 at 2).
2. The Company currently serves 63 residential customers, several businesses and farms, and the local elementary school, all located within the village area of Starksboro, Vermont. Exh. 4 (Casey pf. 10/26/98 at 2).

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7. Response to Procedural Order by DPS, 9/13/99, at 2.

8. Minutes of July 27, 1999, Cooperative Member meeting attached to Response to the Hearing Officer's Procedural Order by Cooperative, 9/10/99.

9. Response of the Agency of Natural Resources to the Prehearing Conference Memorandum and Procedural Order, 9/13/99.

10. The Department's 9/20/99 Supplemental Response notes that Exhibit 2 to Mr. Casey's testimony does not contain the condensed balance sheet to which the testimony refers. The balance sheet is not critical to these findings; no correction is necessary.

3. On March 31, 1997, the shareholders of the Company met and decided to discontinue selling water, after considering all other options. The decision was reaffirmed at a shareholders meeting on June 29, 1997. Exh. 4 (Casey pf. 10/26/98 at 7).

4. The water system is fed by a spring located on a remote parcel of land. The system relies on gravity to supply pressure for the system. Casey pf. 9/13/99 at 1.

#### The Cooperative and its Qualifications to Operate a Community Water System

5. Starksboro Village Water Cooperative ("the Cooperative") is a nonprofit, consumers' cooperative corporation organized under the laws of the State of Vermont pursuant to 11 V.S.A. § 991(4). Exh. 2 (Lease Agreement); Exh. 3 (application for Certificate of Incorporation, attached to Marcelle pf.).

6. The Cooperative was formed for the purpose of "leasing water from the Company for purposes of supplying that water (not selling) to its Members who are residents of the Village of Starksboro and for the exclusive benefit of its Members who are residents of the Village of Starksboro." Exh. 3 (application for Certificate of Incorporation, attached to Marcelle pf.).<sup>11</sup>

7. All customers of the Company have indicated that they will join the Cooperative. Exh. 3 (Richard pf. at 2).

8. The Cooperative desires to lease the Company's property used to supply water to the Company's customers, for the purpose of continuing to supply drinking water for the village of Starksboro. *Id.*

9. The Cooperative believes that it would be imprudent to purchase the water system, and that leasing it would be the best course of action, given the terms offered by the Company. Moreover, the Company has not offered to sell the water system. Exh. 3 (Bissel pf. 7/17/98 at 2, Hayes pf. at 2).

10. The by-laws of the Cooperative state that each patron of the Cooperative shall be a member of the Cooperative, and that any owner of property served by the Cooperative shall be eligible to be a member. Exh. 3 (by-laws attached to Marcelle pf.).

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11. I note that the purpose of the cooperative, as described in its application for a certificate of incorporation, is described as "leasing water," rather than leasing the Company's water system assets. This purpose differs from the terms of the lease agreement. The Cooperative may wish to consider whether amendment of its articles of incorporation is warranted.

11. The Cooperative's Board of Directors will be responsible for overseeing the operations of the water system. The Board of Directors would authorize repairs and maintenance through outside contractors or, when possible, cooperative volunteers. Water would be tested by a state-certified volunteer. Exh. 3 (Johnson pf. at 3).

12. The ANR looks at who has effective control of the water system in compliance actions. In this instance, the ANR would consider the Cooperative to have effective control of the water system under the Lease Agreement, despite the lease provisions restricting continuous chlorination. Tr. 10/26/98 at 122-123 (Rutherford).

13. The Cooperative will be required to comply with the ANR water supply regulations. Two Cooperative members plan to become certified water system operators so that they can maintain and operate the system and perform the necessary water quality testing. Tr. 10/26/98 at 70-71 (Johnson).

#### Necessary Improvements and Feasibility of Continued Operation by the Company

14. During 1994, the Company became aware that it could become subject to lead and copper testing requirements; at that time, it felt the water system would fail the copper test. The Company, therefore, decided not to spend the money on tests. On October 23, 1995, the ANR issued a Notice of Alleged Violation to the Company because of its failure to monitor the system for lead and copper. Exh. 4 (Casey pf. 10/26/99 at 6).

15. The Company sent an initial round of lead and copper monitoring results to the ANR on February 7, 1997. The test exceeded the allowed copper level and triggered ANR action requiring corrosion control measures for the system. In response to this pending ANR enforcement action, the stockholders of the Company met on March 31, 1997, and decided to discontinue selling water. Exh. 4 (Casey pf. 10/26/99 at 7).

16. ANR brought the enforcement action, and on May 22, 1997, assessed the Company a penalty of \$2,000 for: (1) not providing the system users with notification of the failure to monitor for lead and copper; (2) failing to secure a determination from the ANR as to whether its water supply is under direct influence of surface water; and (3) failing to pay outstanding ANR fees. Exh. 4 (Casey pf. 10/26/99 at 7).

17. The viability of the existing spring as a long-term source of water for a community water system is in question. There are, at present, several potential problems with the existing system.

First, the results of tests for copper levels have been erratic, which might require expensive remediation. While it appears likely that the failed copper tests are the result of poor sampling technique, the possibility exists that compliance can only be achieved through expensive treatment.

Second, the spring has failed one of two Microscopic Particulate Analysis ("MPA") tests. The Water Supply Division of ANR has recommended that the spring box be rebuilt before conducting the MPA tests again. Even then, there is no guarantee that the spring will pass the MPA test. Should the spring fail the MPA test another time, filtration will be required. Filtration would be very expensive to install and operate.

Third, the Company does not have a deeded right of way to the spring site. It is accessed by virtue of neighborly good will. This situation can be expected to continue for the short and medium term, but there is no permanent guarantee of access. Exh. 3 (Bissel pf. 7/17/98); exh. 4 (Casey pf. 10/26/98, letter of 4/1/98 from Jay Rutherford to Senator Elizabeth Ready).

18. The Company tried to secure private financing for the improvements required by the failed copper test, but was unsuccessful. Exh. 4 (Casey pf. 10/26/98 at 8).

19. On August 18, 1997, the ANR sent the Company a letter requiring the construction of a limestone contactor by January 1, 1998, to address the failed copper test. From discussions with the ANR, the Company believed that the cost of this capital improvement would be between \$35,000 and \$100,000. Even at the lower figure, the Company did not have the resources to comply with the requirement, and could not obtain financing for it. Exh. 4 (Casey pf. 10/26/98 at 8).

20. The Cooperative believes that, should expensive treatment of the water be required, the best course of action would be to drill a community well just outside of the village. Exh. 3 (Bissel pf. 7/17/98 at 3).

21. The cost of creating a new source of water through one or more community wells is projected to cost in the range of \$200,000 to \$300,000. Exh. 3 (Bissel pf. 7/17/98 at 3).

22. The federal Environmental Protection Agency has announced that it will propose new rules for water systems that use a groundwater source. The new rules are expected to take effect in the year 2000. The rules would provide that systems such as the Company's may be required to determine whether they are sensitive to contaminants such as viruses. Filtration or some means of continuous disinfection may be required. Exh. 6 (Rutherford pf. 6/2/99 at 1-2).

23. Filtration or other continuous disinfection of drinking water usually requires an electrical supply. Exh. 6 (Rutherford pf. 6/2/99 at 2).

24. The water source for the water system is located on a parcel of land that is not accessible to electrical power. Exh. 6 (Rutherford pf. 6/2/99 at 2).

25. Access to electricity for the spring is not feasible because of the topography and the lack of deeded access from the owner. In the opinion of the Company, there is no reasonable likelihood that a deeded access will ever be granted by the owners of the surrounding property. Exh. 3 (Bissell pf. 7/17/98 at 2).

26. Should continuous chlorination or other permanent water treatment become necessary, there is insufficient space to install such facilities. Exh. 3 (Johnson pf. at 2).

27. As a consequence of the new federal rules and lack of electrical power at the water source, it is possible that the Starksboro system will require a completely new source of water. Exh. 6 (Rutherford pf. 6/2/99 at 2).

28. The customers of the Company were reluctant to acquire the water system on a permanent basis because of regulatory uncertainty and because of the physical limitations of the system (a small parcel of land surrounding the spring, and restricted access rights to the land). Exh. 2 (Casey pf. 6/10/98 at 2).

29. The rates now in effect are insufficient to pay for necessary capital improvements (e.g., limestone contactor; rebuilding of the spring house). Exh. 4 (Casey pf. 10/26/98 at 9).

30. The Company has not distributed dividends to its shareholders since 1994, nor has it had sufficient funds to do so. Exh. 4 (Casey pf. 10/26/98 at 9).

31. The Company does not have the capacity to borrow funds for work on the system that is now needed. The Cooperative should be in a more favorable position to borrow funds as needed, and would probably have access to low-interest loans. Exh. 3 (Runcie pf. 7/19/98 at 2).

32. The Lease Agreement provides the organizational and operational structure needed to secure financing and develop and implement plans for necessary improvements of the current water source or a new water source. Exh. 6 (Rutherford pf. 6/2/99 at 2).

33. A privately-owned community water system may apply to the Vermont Economic Development authority for a loan from the Vermont drinking water state revolving fund. A "privately-owned water system" means any water system which is not owned or operated by a municipality. 24 V.S.A. §§ 4770 and 4752(7).

34. Once the Cooperative is regulated as a water system, it would be eligible to apply for a loan from the state revolving fund for the purchase of the water distribution and the water source. Finding 33, above.

#### The Lease Agreement

35. The Company and Cooperative entered a Lease Agreement dated July 21, 1998. Exh. 3.

36. The Company and Cooperative signed an Addendum to the Lease Agreement dated March 9, 1999, for the purpose of clarifying the intent and effect of the Lease Agreement. The Addendum incorporates by reference each and every term of the Lease Agreement, except as clarified and amended pursuant to Paragraphs 1 and 2 of the Addendum. Exh. 5 (Casey pf. 6/2/99 at 1).

37. Under the Lease Agreement, the Company would lease to the Cooperative the land upon which the present water source (a spring) is located, the right to use the spring water, the standby chlorination equipment located on the land, and the piping used to distribute water to the customers of the Company on the date the lease is executed. Exh. 3.

38. Under the Lease Agreement, at the request of the Cooperative, the Company will assist the Cooperative in providing to the Cooperative such information and good will of the Company as is necessary to operate and maintain the water system. Exh. 3.

39. In consideration of the use of the Company's property, the Cooperative will not charge the residences or businesses of the stockholders of the Company, nor their family members, for their water service. *Id.*

40. The term of the lease will be 5 years, subject to various termination provisions expressed in the Lease Addendum. The lease provides for automatic renewal for an additional

5-year term, unless either party provides one year's notice of its intent to not renew.<sup>12</sup> Exh. 3 at paragraph 2; exh. 5.

41. The lease permits all customers, including those stockholders who live in the village, to continue to receive water while a determination is made as to the long-term viability of the system. This is a fair resolution of a difficult problem for the stockholder/operators of the Company, and their friends and neighbors who are also water system users. Exh. 2 (Casey pf. 6/10/98 at 2).

42. The Cooperative believes that the uncertainties regarding the possible need to develop a new water source will be made clear within three to five years. Exh. 3 (Bissel pf. 7/17/98).

43. Should the existing system prove non-viable, it is anticipated that the Cooperative would change to a Fire District to take advantage of grant money available to such entities. Exh. 3 (Bissel pf. 7/17/98).

44. The Addendum states: "If state and federal regulations require capital improvements, such as continuous chlorination, which need electric power to operate and maintain, a new source of water will need to be found." Exh. 5.

45. The Addendum makes clear that, if an alternative source of water must be developed, the Cooperative will have as much time as is needed to accomplish this task prior to termination of the Lease Agreement. Exh. 5 (Casey pf. 6/2/99 at 1).

46. The Addendum requires 24 months' notice prior to termination of the lease, while the Lease Agreement originally provided 12 months. The Lease Agreement originally allowed an extension prior to termination, if it were determined that additional time was needed to secure a supply of drinking water for the members of the Cooperative, of "no more than an additional 12 months," while the Addendum allows an extension "for a specific additional period of time." Exhs. 3 and 5.

47. The Lease Agreement is contingent upon the "appropriate authorities' permitting the unconditional relinquishment of the Company's Certificate of Public Good and approving this lease of the Company's property." Exh. 5.

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12. This automatic renewal clause is self-renewing; that is, the renewed agreement would contain the same automatic renewal clause as the original agreement. Accordingly, absent a notice of intent to terminate, the agreement could run indefinitely.

48. Neither the Cooperative nor the Company want to chlorinate the water supply. Exh. 5.

49. The Lease Agreement, as modified by the Addendum, allows the Company to terminate the lease in the event that the Cooperative constructs, installs or operates any system of continuous disinfection of the water system or if regulations or laws require it to do so. Except in the event of either a public health emergency or a federal requirement to continuously disinfect the water, the Lease Agreement requires the Cooperative to obtain consent of the Company before continuously disinfecting the water. Exh. 5.

50. The Lease Agreement, at paragraph 5, provides that the Cooperative shall be solely responsible for operation of the water system in compliance with all federal, state, and local laws and regulations. Exh. 2.

51. Upon approval of the Lease Agreement by the Board, it is the intention of the Company and Cooperative to record the Lease Agreement in the land records of the Town of Starksboro. Exh. 3 (Casey pf. 10/26/98 at 1).

### The Stipulation

52. Three of the four parties to this proceeding – the Company, the DPS and the ANR – entered a Stipulation to resolve this proceeding. In the Stipulation, the parties request that the Board:

- (1) find that the lease of the Company's property to the Cooperative in accordance with the Lease Agreement would promote the general good of the state;
- (2) approve the lease;
- (3) find that relinquishment of the Company's CPG, upon the effective date of the Lease Agreement, is consistent with the public interest and will promote the general good of the state; and
- (4) approve said relinquishment.

Exh. 1.

53. Good cause exists to revoke the Company's CPG, pursuant to the Company's voluntary request, upon the effective date of the Lease Agreement. Such revocation is

consistent with the public interest and will promote the general good of the state. Findings 5-52, *supra*.

### **DISCUSSION AND CONCLUSIONS**

The Company, the State regulatory agency responsible for assuring compliance with standards for quality of drinking water, the public advocate, and a cooperative that all present customers of the Company intend to join, are parties to this proceeding. All of these parties, as well as the Cooperative, recommend that the Board approve the Stipulation, which, in turn, would approve the lease of the water system by the Company to the Cooperative and allow the Company to relinquish its Certificate of Public Good.

The pivotal questions in this case are, first, which entity – the Company or the Cooperative – would be best able to address the investment and operational requirements of the water system, and, second, whether the terms of the Lease Agreement provide adequate assurance that customers of the Company will have access to high quality water at a reasonable cost.

#### **The Relative Capabilities of the Company and Cooperative**

On the first point, the record indicates that the Cooperative would be better suited to provide water service to the community. The Company has a history of non-compliance with the ANR water supply regulations, which was the impetus for its decision to relinquish its CPG. The Cooperative's ability and willingness to comply with ANR regulations is untested, but, initially, its relationship with the ANR appears constructive.

The Cooperative will employ qualified water system operators and has expertise and capabilities sufficient to competently run the system. Also, the Cooperative will have better access than the Company to external financing – a factor which may be critical to the continued operation of the system. The cooperative form of ownership should, as well, allow member-users to participate directly in the significant pending and future decisions regarding their source of water.

The capital investments now required for the Company to comply with regulatory requirements are beyond the capacity of the Company to finance, either through external sources or through the operating cash flow. The potential capital investment requirements,

such as developing an entirely new water source, are larger yet. The Company, in its present circumstance, is unable to finance the system improvements that are, or may be, necessary to provide adequate service to its customers. In contrast, by all indications, the Cooperative will have superior access to capital, and is therefore better positioned to address the physical and regulatory requirements that may arise.

I conclude that the Cooperative is capable of providing adequate water service to consumers within the village area of Starksboro, and that the Cooperative will be better able to provide such service than the Company. A transfer of the water system operations, albeit not necessarily a permanent arrangement, is consistent with the wishes of all parties to this proceeding, including the water system owners, the Cooperative, and the ANR.

The next question is whether the Lease Agreement, which will enable the Cooperative to assume responsibility for the water system operations, is adequate for that purpose.

#### Adequacy of the Lease Agreement

Pursuant to 30 V.S.A. § 109, the Board must find that the lease of property by the Company will promote the general good of the state. The parties request a finding to that effect. The record demonstrates that the Cooperative is capable of operating the water system and will be better able to provide water service than is the Company. All parties concur with this view, and – significantly – the customers of the water system express support for the lease and the resulting cooperative management of the water system.

The Hearing Officer previously assigned to the case rightly expressed concern that the Lease Agreement did not adequately provide for the long-term provision of water to the customers. The Agreement originally would have allowed the Company, under certain circumstances, to terminate the lease – potentially leaving all but a few of the customers with no water service or requiring the customers, at significant cost, to drill individual wells.

The Company and Cooperative subsequently modified the Lease Agreement, through the Addendum, in a manner that satisfactorily addresses this concern. Specifically, the Addendum provides 24 months' notice prior to termination, while the Lease Agreement originally provided 12 months. The change provides an additional year for the Cooperative, or residents individually, to secure a new water supply. Likewise, the Addendum replaced the finite 12-month extension with a more general allowance "for a specific additional period of

time." While this latter additional period could, conceivably, be less than the 12 months originally provided, the Company testified that "the Addendum makes clear that, if an alternative source of water must be developed, the Cooperative will have as much time as is needed to accomplish this task prior to termination of the Lease Agreement."<sup>13</sup> It is on the basis of this testimony, in particular, that I conclude the interests of the Customers will be protected adequately.

Accordingly, I conclude that the Lease Agreement, as amended by the Addendum, will promote the general good of the state.

#### Revocation versus Relinquishment

Through the stipulation, the parties request that the Board "approve relinquishment" of the Company's CPG.

Under 30 V.S.A. § 231(a), for good cause, the Board may amend or revoke any CPG awarded under the provisions of § 231(a). The parties requested, and I have made, a finding that relinquishment of the CPG is consistent with the public interest and will promote the general good of the state. This finding provides the requested good cause for revocation.

Relevant to the Company's CPG, the statute allows only two actions – amendment or revocation. The stipulation does not, directly, request that the Board amend or revoke the CPG issued to the Company. Instead, the stipulation requests the Board to approve the Company's "relinquishment" of its Certificate. While the Company holds the view that the differences between relinquishment and revocation are significant, the Department believes that relinquishment is synonymous with a voluntary request for revocation. I agree with the latter. The Department correctly observes, further, that the statute does not distinguish between voluntary revocation pursuant to a request of the CPG holder, or involuntary revocation pursuant to findings of inadequacy or misconduct.

The Company contends that it is free to relinquish its CPG because Vermont law provides the Board no authority to prohibit the Company from doing so: "Where the performance or behavior of the Company is not at issue, no provision of the public service laws prohibit a public service company from going out of business if it believes such a course of

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13. Exh. 5 (Casey pf. 6/2/99 at 1)

action is in its best interests. The decision to cease doing business as a public service company is a reasonable decision properly left within the discretion of the company's management."<sup>14</sup> Although I have concluded that the Stipulation can be read as a voluntary request for revocation, the Company's erroneous view warrants correction.<sup>15</sup>

All water companies that are subject to the Board's jurisdiction have an obligation to serve. Under 30 V.S.A. § 218(a), the Board may compel a company under its supervision to provide adequate service. Under 30 V.S.A. § 231(b), a company subject to supervision by the Board may not abandon or curtail service except upon approval of the Board. There is no statutory basis, other than requesting revocation of its CPG, for a regulated public utility to discontinue offering service.

#### Responsibility for Compliance with Laws and Regulations

The Lease Agreement, at paragraph 5, provides that the Cooperative shall be solely responsible for operation and maintenance of the water system in compliance with all federal, state, and local laws and regulations. Revocation of the Company's CPG will remove the Company from the Board's jurisdiction, and the Cooperative will not be subject to the Board's jurisdiction. This paragraph, then, amounts to an understanding between the two parties regarding which entity is responsible for compliance with applicable laws and regulations, other than those of the Board. It is outside of the Board's jurisdiction to determine which entities are, or are not, responsible for compliance with the rules and regulations of other regulatory agencies. In approving the Lease Agreement, the Board is expressing no opinion whether the lease releases the Company from any responsibilities that are outside of the Board's jurisdiction.

#### Assignment of the Lease by the Cooperative

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14. Response to the Hearing Officer's Procedural Order by Company, 9/13/99, at 2.

15. The Company, in its 9/13/99 Response, states that its petition "is in the nature of a request for declaratory judgment." The intent of this statement is somewhat ambiguous; it is not clear whether counsel is requesting a declaratory judgment or simply drawing an analogy between the instant docket and the process of rendering a declaratory judgment. Since the Board's Rules of Practice – specifically Rule 2.403 – establish, pursuant to 3 V.S.A. § 806, a specific procedure for an interested person to petition the Board for a declaratory ruling, and the Company has not filed such a petition, one can only assume that no such ruling is requested.

The Lease Agreement allows, with certain limitations, the Cooperative to assign its interests to another entity. Depending on the ownership of the other entity and its relationship to the water system consumers, it could be subject to the Board's jurisdiction. Approval of the Lease Agreement, here, should in no way be construed as authorizing operation of the water by an assignee that would be subject to the Board's jurisdiction. Prior to assignment of the Lease, such an entity would require a CPG.

### Concluding Observations

This proceeding has taken longer than the Board would ordinarily take for a case involving the transfer of a water system. This is due to various changes that the Company has made to its proposal as this docket progressed, and to the transition to a new Hearing Officer. It also due to the unusual nature of lease arrangement upon which the petitioner settled. The Addendum to the Lease provides sufficient assurance that the customers of the Company will not be left abruptly without water.

The lease appears to be a reasonable transitional, and perhaps permanent, tool to cope with a difficult situation. The record of this proceeding – in particular, the testimony offered by many members of the Cooperative – leads me to conclude that the Starksboro village community has done an exceptional job in evaluating its options for a water supply and organizing a cooperative. That the Cooperative is formally organized, understands the technical and regulatory challenges it faces, and seems eager to take on the responsibility of operating the water system, is a significant factor in my conclusion that the lease will promote the general good of the state.

This Proposal for Decision has been served on all parties to this proceeding in accordance with 3 V.S.A. §811.

Dated at Montpelier, Vermont, this 16<sup>th</sup> day of December, 1999.

s/Lawrence Lackey  
Lawrence F. Lackey  
Hearing Officer

### ORDER

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

1. The findings and recommendations of the Hearing Officer are adopted.

2. The Stipulation among the Starksboro Aqueduct Company, the Department of Public Service, and the Agency of Natural Resources is approved.

3. The lease of the assets of Starksboro Aqueduct Company to the Starksboro Village Water Cooperative, as proposed in the Lease Agreement dated July 21, 1998, and as modified by an Addendum dated March 8, 1999, is in the public interest and will benefit the general good of the State of Vermont.

4. A Certificate of Consent shall be issued in accordance with 30 V.S.A. Section 109 approving this lease.

5. Starksboro Aqueduct Company shall notify the Board in writing when the lease of assets to the Starksboro Village Water Cooperative has been completed.

6. Upon receipt of such written notification, the Certificate of Public Good of Starksboro Aqueduct Company shall be, and hereby is, revoked without further order of this Board.

DATED at Montpelier, Vermont, this 20<sup>th</sup> day of December, 1999.

s/Michael H. Dworkin	)	PUBLIC SERVICE  BOARD  OF VERMONT
)		
s/Suzanne D. Rude	)	
)		
	)	
	)	

OFFICE OF THE CLERK

Filed: December 20, 1999

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 of any technical errors, in order that any necessary corrections may be made.*

*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.*