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: 7/13/99

PREHEARING CONFERENCE MEMORANDUM
AND PROCEDURAL ORDER

I convened a prehearing conference in this docket on June 2, 1999. Appearing at the prehearing conference were Herbert Olson, Esq., on behalf of Starksboro Aqueduct Company ("Company"), and Geoffrey Commons, Esq., on behalf of the Vermont Department of Public Service ("Department").

This memorandum summarizes that conference and outlines a procedure for resolution of this investigation, and requests additional evidence and comment on legal issues.

The Cooperative's Request to Intervene

The president of the Starksboro Village Water Cooperative ("the Cooperative"), Hugh Johnson, attended the prehearing conference and indicated that the Cooperative wished to intervene in the investigation. The Public Service Board ("Board") received on June 21, 1999, a notice of appearance from Mr. Johnson, *pro se*, on behalf of the Cooperative. Both the Company and the Department support the intervention request of the Cooperative. The Department stated that the Cooperative's request would meet the Board's criteria for permissive intervention, pursuant to PSB Rule 2.202(B). The only other party to the proceeding, the Vermont Agency of Natural Resources ("ANR") was not represented by counsel at the conference. Accordingly, if it so wishes, ANR may file not later than one week from today an objection to the Cooperative intervening. If no objection is received, the Cooperative's motion to intervene is granted.

Lease Addendum and Additional Exhibits

Prior to the prehearing conference, the Company filed additional prefiled testimony of Jay Rutherford and Dennis Casey, to which was attached an addendum to the lease agreement between the Company and the Cooperative. Counsel for the Company offered that the lease addendum would address the concerns expressed by the previous Hearing Officer regarding the lease agreement. At the prehearing conference, no party objected to the admission of this additional testimony. The prefiled testimony of Dennis Casey, including the lease addendum, is admitted into the record.[1] The prefiled testimony of Jay Rutherford of the ANR was admitted at the hearing.

Additional Public Hearings

The Department stated that it did not believe that additional public hearings were necessary. No other party proposed that the Board conduct additional public hearings. The Cooperative has intervened, and its members are, in all likelihood, the members of the public most interested in this matter. Consequently, I conclude that additional public hearings are not necessary at this time.

Interested persons are welcome to request a public hearing, or to offer written comments for the Hearing Officer's and Board's consideration.

Next Steps

All parties support the Company's petition, and recommend approval of the stipulation with the amended lease agreement. The Company and Department proposed that the Hearing Officer review the record from the previous hearings, in addition to the testimony filed subsequently. Upon initial review, it appears that the evidentiary record as it now exists lacks information necessary to support the approval of the stipulation. In addition, the testimony which formed the basis for the Proposal for Decision previously issued was submitted roughly a year ago. To assure that the facts which will form the basis of my Proposal for Decision are timely and accurate, I ask the parties to review the evidence in the record, and identify areas in which the facts or circumstances have changed materially.

---

1. The ANR, which was not represented by counsel at the conference, stated in a letter to the Board dated June 15 that it would have no objection to the admission of the supplemental prefiled testimony.

By this Order, I request the parties to provide testimony and legal memoranda on the issues and questions contained below. I encourage the parties to attempt to stipulate to the admission of the additional testimony; depending on the substance of the testimony, this may obviate the need for additional technical hearings. On the basis of these filings, I will then determine whether additional information or technical hearings, or both, are necessary.

Before identifying these additional issues and questions, it may be of some assistance to offer a few thoughts for consideration by the parties. The Hearing Officer previously assigned to this case expressed concern that, under the terms of the lease agreement, the Company could terminate the lease, and as a consequence, leave some or all of the Cooperative members without a supply of water. The Company and Cooperative have attempted to address this concern by amending the lease agreement to allow termination of the lease agreement only under certain circumstances, and have likewise extended the lead time for termination. However, under the terms of the amended lease, the Company still retains the right to terminate the lease, and -- in fact -- the lease must be terminated in the event that continuous disinfection is required by law or regulation.[2] If the shareholder/users, subsequent to termination of the lease, continue taking water from the current source using the existing distribution system, the consequence of this requirement would seem to be that the Cooperative must build its own distribution system. While the needs of some users would be met in such a circumstance, a potentially significant cost to construct a largely duplicate distribution system (assuming a new community well would be the Cooperative's new water source) might be incurred by the Cooperative's remaining users. I ask the parties to consider whether this issue should be of concern in this proceeding, and if so, how the parties might address it. For instance, might the Cooperative be granted an option to purchase the distribution lines?

Legal Issues for Parties

1. The stipulation (Exhibit 1), which was signed by the Department, ANR and the Company, requested the Board to find that the lease of the Company's property, in accordance with the Lease Agreement, will promote the general good of the state. Do the parties request

---

2. According to paragraph 8(c) of the amended lease agreement, "... termination of the Lease Agreement shall take effect...".

the Board to make the same finding with respect to the lease, as amended by the lease addendum? Similarly, do the parties also request that the Board approve the lease addendum?

2. Identify and describe the source of the Board's authority to allow a company that possesses a CPG to "relinquish" its CPG. Identify the manner, if any, in which the practical effect of allowing a company to relinquish its CPG differs from the effect of revoking the same.

3. Do all parties hold that, if the lease is approved, the Company cannot be subject, under 30 V.S.A. § 203, to regulation by the Board? (The Company has previously expressed its opinion on this issue in its written response to the previous Hearing Officer's questions, filed with the Board July 22, 1998. The Department's opinion, in particular, on this issue is requested.)

Evidentiary issues for Parties

1. Please provide updated testimony on any significant matter on which you believe the record now existing (*i.e.* petition, testimony or exhibits) is no longer accurate, or, alternatively, state that the existing record is accurate.

2. The lease addendum states that the Company's water source is a spring located on a parcel inaccessible to roads and electric power. Please describe the physical location of the spring and the factors that make the spring inaccessible. If the costs of constructing an adequate road and electric line to the spring location have been estimated, please provide the amounts of the estimates and cite the sources of the estimates.

3. Please provide a simple schematic diagram of the water system which indicates the approximate locations of the spring, the main transmission line, the distribution network, the likely location(s) of a new community well, the residences of the shareholder/users, and connections to the remaining existing users.

4. Is there an option for the Cooperative to purchase the Company assets? If not, are the parties amenable to one?

5. Please provide a balance sheet for the Company, as of December 31, 1998, including a schedule of plant balances by category.

6. If the Cooperative ultimately decided to drill a new well and disconnect the spring, would the Company's distribution lines still be useful to the Cooperative? Describe what, if any, portion of the existing water system would not be used in the event that the Cooperative drilled a new well.

7. Would state revolving loan funds, or other governmental sources of capital, be available to the Cooperative for the purchase of the water distribution system and the water source?

8. Finding number 47 of the previous proposal for decision stated:

> Mr. Rutherford believes that the contingencies contained in the Lease Agreement would not result in Cooperative members being left without water or the ability to obtain water.

Tr. 10/26/98 at 116 (Rutherford). In the event that the lease is terminated, what water supply options are available to present customers?

9. Does the lease, as amended, pose the possibility that water users would be left without a water supply?

10. Paragraphs 8(a) and 8(c) of the lease addendum refer to securing or assuring a new water supply for Cooperative members prior to termination of the lease. In allowing for continuation of the lease under such circumstances, what, if any, consideration will be given to the cost of alternative water sources?

11. Please describe the sources of additional capital (both internal and external) that would be available to the Company for the purpose of undertaking plant improvements that are presently, or may be, necessary.

12. Describe the sources of capital that are presently, or may be, available to the Cooperative for the purpose undertaking plant improvements.

13. If the amounts or costs of additional capital (e.g. loans, shareholder equity, member contributions) differ between the Company and the Cooperative, please describe the differences.

The parties should provide the additional information described above by July 26, 1999.

SO ORDERED.

DATED at Montpelier, Vermont, this 13th day of July, 1999.

s/ Lawrence F. Lackey
Lawrence F. Lackey
Hearing Officer

OFFICE OF THE CLERK

FILED: JULY 13, 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.