

**STATE OF NEW HAMPSHIRE
BEFORE THE
PUBLIC UTILITIES COMMISSION**

DW 18-108

**Abenaki Water Co., Inc.
Tioga River Water Company, Inc.**

Petition to Transfer Utility Assets and Franchise and for Related Approvals

Docket No. DW 18-108

SETTLEMENT AGREEMENT

I. INTRODUCTION

This Settlement Agreement (Agreement) is entered into this 31st day of January, 2019, between and among Abenaki Water Co., Inc. (Abenaki), Tioga River Water Company, Inc. (Tioga), and the Staff of the New Hampshire Public Utilities Commission (Staff) (collectively, the Settling Parties), with the intent of resolving certain issues, more fully described below, in the above-captioned proceeding.

II. THE PARTIES

Abenaki is a New Hampshire corporation authorized to operate as a public water utility in the State of New Hampshire. Abenaki currently serves a total of approximately 663 customers located in Bow, Belmont, and Carroll. Tioga is a New Hampshire corporation and a regulated public water utility that provides water service to 22 customers in Belmont (Tioga: Belmont Division) and 38 customers in Gilford (Tioga: Gilford Village Division) (collectively the Tioga Systems).

III. PROCEDURAL BACKGROUND

On July 26, 2018, Abenaki and Tioga submitted a joint petition (the Joint Petition) for approval to:

- (1) Transfer Tioga's water utility assets and franchise to Abenaki as set forth in an Asset Purchase Agreement (the APA), filed as Exhibit B to the Joint Petition, pursuant to RSAs 374:22 and 30;
- (2) Discontinue Tioga's operation as a public water utility following the transfer pursuant to RSA 374:28;
- (3) Authorize Abenaki to assume Tioga's existing State Revolving Fund (SRF) loans; and
- (4) Authorize Abenaki to modify Tioga's existing tariff to allow Abenaki to convert customers to monthly billing (measured in gallons) using existing rates, pursuant to RSA 378:3.
- (5) Grant such other relief as justice may require.

The Joint Petition was accompanied by an Asset Purchase Agreement and Testimony of Abenaki President Pauline M. Doucette.

On August 21, 2018, the Commission issued an Order of Notice scheduling a prehearing conference and technical session to be held on September 26, 2018.

On September 26, 2018, the Commission held a pre-hearing conference attended by Abenaki, Tioga, and Staff. No petitions for intervention were received. A technical session followed. On October 1, 2018, Staff filed a procedural schedule for discovery and review of the Joint Petition. On November 14, 2018, Staff and the parties held a technical session and settlement conference in which the Settling Parties agreed to recommend approval to the

Commission, subject to Abenaki and Tioga obtaining approval from the Town of Gilford to replace the Town water meters installed by its Sewer Department. On December 18, 2018, Abenaki obtained approval from the Town to replace its meters, which resulted in this Agreement for approval by the Commission.

IV. TERMS OF AGREEMENT

The Settling Parties agree as follows:

A. Sale of Assets

The Settling Parties agree that such sale by Tioga as set forth in the APA, is for the public good pursuant to RSA 374:30 and, therefore, recommend that the Commission approve the sale.

B. Authority to Operate

The Settling Parties agree that Abenaki has the requisite managerial, technical, and financial expertise to provide service to Tioga's customers. As Abenaki is owned by New England Service Company (NESC), Tioga's customers will benefit from the expertise NESC can provide to its subsidiary customers. Through its subsidiaries, NESC owns water systems in Connecticut, Massachusetts, and New Hampshire, totaling approximately 9,400 customers. That brings Tioga customers the benefit of a greater economy of scale. Furthermore, NESC employs 23 experienced staff members and has greater technical resources available than Tioga. Abenaki, through NESC, will be able to finance future projects at a lower capital cost. Lastly, the New Hampshire Department of Environmental Services (DES), along with Governor and Council, determined Abenaki had the managerial and financial expertise to assume Tioga's outstanding long-term SRF loan debt. *See* Section IV, Section D below.

The Settling Parties agree that Abenaki's managerial, technical, and financial expertise is further evidenced by previous Commission findings in similar acquisition dockets. *See Abenaki Water Company, Inc., & Rosebrook Water Company, Inc.*, Order No. 25,934 at 7 (August 9, 2016) (finding Abenaki "demonstrated that it has the requisite financial, managerial and technical skills required to take over and run the Rosebrook system"); *White Rock Water Company, Inc., and Lakeland Management Company, Inc.*, Order No. 25,621 at 6 (January 14, 2014) (finding "that Abenaki has the managerial, financial, and technical ability to operate the public utilities now known as White Rock and Lakeland"). The Settling Parties note that the Commission has issued no other order to the contrary since those findings.

Accordingly, the Settling Parties recommend the Commission find that Abenaki's request for approval to engage in the business of providing water service in Tioga's franchise area is for the public good.

C. Authority to Discontinue Service

The Settling Parties agree that, once the transfer to Abenaki has been completed, there is no reason to require Tioga to continue its service as a public utility. The Settling Parties further agree that the public good does not require the further continuance of such service by Tioga. The Commission has found that discontinuing a franchise following the acquisition of that franchise by another utility to be prudent based on a finding that the successor has the financial, managerial, and technical skills necessary to run the system. Order No. 25,934 at 7. As stated above, Abenaki possesses the financial, managerial, and technical skills necessary. Thus, Tioga's discontinuation of service will be for the public good, and the Settling Parties

recommend the Commission grant Tioga's request to cease providing service as a public utility as of the date of the acquisition closing as contemplated in the APA.

D. Assumption of Existing Long-Term Debt

The Settling Parties agree that Abenaki's proposal to assume Tioga's existing, approved long-term SRF loan, administered by DES, is consistent with the public good. In an abundance of caution, the Settling Parties recommend the Commission approve Abenaki's request to assume Tioga's existing, approved long-term SRF loan, pursuant to RSAs 369:1 and 2. *See Tioga River Water Company, Inc.*, Order No. 24,988 (July 23, 2009) (order approving underlying SRF loan). The Settling Parties further agree and recommend that the Commission may grant the transfer of this debt from Tioga to Abenaki without conducting further analysis as to the financing's consistency with the public good, as it was previously approved in Order No. 24,988. The Settling Parties note that DES requested and received approval from Governor and Council of Abenaki's assumption of the SRF loan. *See Attachment 1* (letter from DES to Governor and Council).

E. Purchase Price

The Settling Parties agree and recommend that the Commission approve the sale of the system assets to Abenaki. As of November 8, 2018, the purchase price was estimated to be in the amount of \$55,348, under the terms contained in the APA. *See Attachment 2* (Staff Discovery Response 2-3). The Settling Parties agree that the final purchase price will not be finalized until the date of the acquisition closing. The Settling Parties further agree that the purchase price does not include an acquisition premium, nor will an acquisition premium be allowed for recovery in a future rate case.

F. Acquisition Closing Date

The Settling Parties agree and recommend the Commission approve that the acquisition closing date shall not occur until after the order approving this Agreement is issued by the Commission. An executed copy of the acquisition closing agreement shall be forwarded to the Commission within 30 days after the acquisition closing date.

G. Billing

1. Monthly Billing

The Settling Parties agree and recommend the Commission approve that the Tioga Systems' billing cycle shall be converted from quarterly to monthly based on the Tioga Systems' existing rates. The Settling Parties note the numerous benefits of monthly billing: water charges are more manageable and predictable; leaks can be identified quicker, eliminating water loss and reducing costs; influence customer usage reduction; billing delinquencies minimized; and quicker calculation of water loss, a valuable water utility metric.

2. Conversion of Units of Measurement from Cubic Feet to Gallons

The Settling Parties agree and recommend the Commission approve that the Tioga Systems' unit of water measurement on customer bills shall be converted from cubic feet to gallons based on the Tioga Systems' existing rates. The Settling Parties note that the conversion renders a more customer friendly bill as it adopts a more recognizable and understandable unit of measurement.

H. Meter Replacement

1. Tioga: Belmont Division

The Settling Parties agree that the Tioga: Belmont Division water meters are the property of and were installed by Tioga and are at least 10 years old or greater. The Settling Parties agree at this time that the existing meters will be replaced with a Neptune T-10 model. The Settling Parties agree that the estimated cost at this time is \$6,600, which covers the material purchase price, installation, and office time; this estimated cost is contingent upon the absence of unusual installation or removal impediments, such as a finished wall covering a meter, plumbing valve issues, etc. The targeted date for water meter replacement completion is June 30, 2019.

The Settling Parties agree and recommend that Abenaki shall replace the Tioga: Belmont Division water meters subject to three conditions; 1) Abenaki shall submit the proposed customer notice of meter replacement to the Commission's Consumer Services and External Affairs Division (Consumer Services) for review and approval; 2) once approved by Consumer Services, the notice will be sent to Tioga: Belmont Division customers after the acquisition closing date; and 3) 30 days after the date the notice is mailed, Abenaki will contact each customer to schedule a date and time at their convenience for meter replacement.

2. Tioga: Gilford Village Division

The Settling Parties agree that the Tioga: Gilford Village Division water meters are currently owned by the Town of Gilford and the majority of which are at least 10 years old. The Settling Parties recognize Abenaki's concern that, from a regulatory and operational standpoint, meters owned by a third-party can be problematic because calibration and accuracy of the meters is unknown. *See* Attachment 3 (Staff Discovery Response 1-14, "[e]xisting meters are made by

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a different manufacture [sic] and are incompatible with data collection equipment as well as software utilized by Abenaki”). There is also a concern that control of the meters and consumption information is not available to the utility operator, except through the Town of Gilford. *See* Attachment 4 (Staff Discovery Response 1-18, “Gilford reads the meters and provides the readings to Tioga/[Gilford Village Water District] once per quarter”). The Settling Parties further agree that these concerns will be addressed because the Town of Gilford agreed to Abenaki’s request to change out all the water meters in the Tioga: Gilford Village Division. *See* Attachment 5 (Letter from the Town of Gilford to Abenaki confirming agreement to switch out water meters).

The Settling Parties agree at this time that the existing meters will be replaced with a Neptune T-10 model. The Settling Parties agree that the estimated cost at this time is \$11,400, which covers the material purchase price, installation, and office time; this estimated cost is contingent upon the absence of unusual installation or removal impediments, such as a finished wall covering a meter, plumbing valve issues, etc. The targeted date for water meter replacement completion is June 30, 2019.

The Settling Parties agree and recommend that Abenaki shall replace the Tioga: Gilford Village Division water meters subject to three conditions; 1) Abenaki shall submit the proposed customer notice of meter replacement to Consumer Services for review and approval; 2) once approved by Consumer Services, the notice will be sent to Tioga: Gilford Village Division customers after the acquisition closing date; and 3) 30 days after the date the notice is mailed, Abenaki will contact each customer to schedule a date and time at their convenience for meter replacement.

I. Tariff Revisions and Further Customer Notice

1. Tariff Revision Notifying Customers of Tioga's Change of Ownership

The Settling Parties agree and recommend that the Commission authorize Abenaki to modify both the Tioga: Belmont Division's and the Tioga: Gilford Village Division's existing tariffs to reflect Abenaki as the owner of the franchise immediately subsequent to the acquisition of Tioga's assets and franchise. These modified tariffs will still reflect the Tioga Systems' current billing cycle (quarterly), current unit of measurement (cubic feet), as well as existing rates. Abenaki shall file revised Tioga: Belmont Division and Tioga: Gilford Village Division tariffs with the Commission within 30 days of the acquisition closing date.

2. Customer Notice and Tariff Revisions of Billing Frequency and Unit of Measurement Change

The Settling Parties agree that Abenaki will submit to Consumer Services, for review and approval, a proposed customer notice relative to a change in 1) billing frequency from quarterly to monthly, and 2) unit of measurement from cubic feet to gallons. Upon approval by Consumer Services, and after the meter replacements are completed in the respective divisions, these customer notices will be mailed at least 30 days prior to the date the actual billing changes become effective. The Settling Parties agree and acknowledge that the respective divisions may submit their customer notices for review by Consumer Services separately, depending on the anticipated completion date of the respective meter replacements.

The Settling Parties agree and request Commission approval allowing Abenaki to modify the respective tariffs for the Tioga: Belmont Division and the Tioga: Gilford Village Division reflective of customer billing modifications relative to 1) billing frequency from quarterly to

monthly, and 2) unit of measurement from cubic feet to gallons. The Settling Parties agree the tariff revisions will be filed with the Commission for review and approval subsequent to the mailing of the customer notice of billing changes. The Settling Parties agree and acknowledge that each division may file its respective tariff revision separately, depending on the anticipated completion of the respective meter replacements for each division. The Settling Parties further agree that these tariff changes will become effective no sooner than 30 days after the customer notice of billing changes is mailed to customers (see above).

J. Acquisition Costs

The Settling Parties agree and recommend that the Commission approve that Abenaki shall record its acquisition costs as a deferred asset in its accounting records. It is anticipated that Abenaki shall request rate recovery of these acquisition costs via an amortization mechanism in its next rate proceeding before the Commission. The Settling Parties further agree that inclusion of these acquisition costs in customer rates shall be subject to review and approval by the Commission as provided by law. The Settling Parties also agree that the acquisition cost does not provide for an acquisition premium, nor will an acquisition premium be allowed for recovery in a future rate case.

K. Reporting Requirements

The Settling Parties agree and recommend the Commission approve that Abenaki shall continue reporting the Tioga: Belmont Division and Tioga: Gilford Village Division as separate divisions. This includes, but is not limited to, separate reporting in Abenaki's Annual Report to the Commission, and all other Commission required reports.

L. Avoidance of Hearing

The Settling Parties agree and recommend that the Commission approve this Agreement and may do so without the need for a hearing. Pursuant to RSA 374:26, the Commission may grant permission to transfer ownership of a utility and franchise area without a hearing “when all interested parties are in agreement.” A prehearing conference was held in this matter on September 26, 2018. There were no other motions for intervention, nor were there other participants in attendance other than the Settling Parties. As such, the Settling Parties agree that all interested parties in this matter are accounted for, and as evidenced by this document, are in agreement. The Settling Parties agree that all parties are participating and are in agreement, and thus recommend that the Commission approve this Agreement without a hearing as one is not needed per RSA 374:26.

V. CONDITIONS

This Agreement is expressly conditioned upon the Commission's acceptance of all of its provisions, without change or condition, and if the Commission does not accept said provisions in their entirety, without change or condition, the Agreement shall at any of the Settling Parties' option exercised within ten (10) days of such Commission order, be deemed to be null and void and without effect and shall not constitute any part of the record in this proceeding nor be used for any other purpose.

The Commission's acceptance of this Agreement does not constitute continuing approval of, or precedent regarding, any particular principle or issue in this proceeding, but such acceptance does constitute a determination that, as the Settling Parties believe, the provisions set forth herein in their totality are just and reasonable and in the public good.

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The information and testimony previously provided in this proceeding are not expected to be subject to cross-examination by the Settling Parties, which would normally occur in a fully litigated case. The Settling Parties agree that all of their pre-filed exhibits should be admitted as full exhibits for the purpose of consideration of this Agreement. Agreement to admit all pre-filed testimony without challenge does not constitute agreement by the Settling Parties that the content of the pre-filed testimony filed on behalf of the other is accurate or what weight, if any, should be given to the views of any witness.

The discussions which have produced this Agreement have been conducted on the explicit understanding that all offers of settlement relating thereto are and shall be confidential, shall be without prejudice to the position of any party or participant representing any such offer or participating in any such discussion, and are not to be used in connection with any future proceeding or otherwise.

This Agreement may be executed in multiple counterparts, which together shall constitute one Agreement. The Settling Parties agree that the proposed Agreement is lawful and consistent with the public good, and therefore recommend its approval.

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IN WITNESS WHEREOF, the parties have caused this Agreement to be duly executed
in their respective names by their authorized agents.

Abenaki Water Company
By Its Counsel,
UPTON & HATFIELD, LLP

Date: January 30, 2019

By:

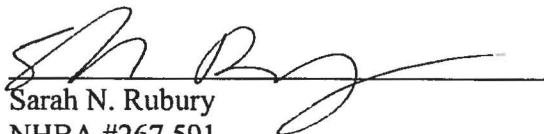


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Tioga Water Company, Inc.
By Its Counsel,
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Date: January 29, 2019

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Staff, New Hampshire Public Utilities Commission

Date: January 31, 2019

By:



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