



Marcia A. Brown  
*Attorney at Law*

*Environmental Law* ▪ *Utility Law*

August 1, 2024

VIA ELECTRONIC DELIVERY  
Daniel C. Goldner, Chairman  
N.H. Public Utilities Commission  
21 South Fruit Street, Suite 10  
Concord, NH 03301

Re: DW 24-069 Mill Brook Village Water System, Inc.  
Joint Petition for Approval to Change Ownership  
Post Prehearing Report and Proposed Procedural Schedule

Dear Chairman Goldner:

Pursuant to the Commission's temporary filing requirements dated March 17, 2020 and pursuant to the Commission's request at the July 31, 2024 prehearing conference in this proceeding for the parties to file a proposed procedural schedule and other information by August 2, 2024, the parties propose the below procedural schedule for the Commission's consideration.

08/14/24 – Data Requests – Set 1  
08/28/24 – Data Responses – Set 1  
09/11/24 – Data Requests – Set 2  
09/25/24 – Data Responses – Set 2  
10/09/24 – Technical Session @ 10:00 AM (Virtual)  
10/11/24 – Data Requests – Set 3  
10/18/24 – Data Responses – Set 3  
11/15/24 – File Settlement

Additionally, it is presently the parties' intention and desire, that once a joint Settlement Agreement is filed with the Commission in this case, that the Commission would issue an Order *Nisi* relative to the proposed transaction without the need of a final hearing in this case. However, if the Commission deems that a final hearing is necessary in this proceeding or it is eventually realized that the parties are "not in agreement" pursuant to RSA 374:26 relative to the proposed transaction, the parties further propose the following three dates in December of this year to conduct such a hearing: December 4, December 5, or December 10, 2024. The parties anticipate that such a hearing could be conducted in one day and would require approximately 3 hours.

Finally, the parties respectfully request that the Commission would issue its final order in this case by December 31, 2024 so as to coincide with the year-end closings for both the buyers and the seller.

The Commission had requested three potential dates for a hearing, thus the parties provided the above dates. However, at the prehearing conference, the Commission also requested that the parties address whether a hearing is required.

RSA 374:26 states: “The commission shall grant such permission whenever it shall, **after due hearing**, find that such engaging in business, construction or exercise of right, privilege or franchise would be for the public good, and not otherwise; and may prescribe such terms and conditions for the exercise of the privilege granted under such permission as it shall consider for the public interest. **Such permission may be granted without hearing when all interested parties are in agreement.**”

Having met in a technical session, the parties believe they will ultimately be “in agreement” at the conclusion of this proceeding. Therefore, technically, the statute does not require a hearing. Notwithstanding this technical provision, the Commission has gone to lengths to afford due process in the past and has offered a hearing but through an Order *Nisi* process. Mill Brook asks that the Commission continue this practice. See for example, City of Somersworth, Petition to Extend Water Service Area, Order No. 26,685 (September 14, 2022) (“While we are not aware of any parties opposed to the franchise petition, we will nonetheless afford interested parties the opportunity to comment. Accordingly, we will issue our decision on a nisi basis.”)

Also, there is a practical reason for concluding this matter as efficiently as possible. This is a small water system of only 44 customers. Regulatory costs, such as travel to hearings and the cost of a stenographer, increase the revenue requirement that is applied to all customers through rates. Therefore, the parties support any measure that can reduce the costs that could ultimately be borne by customers. One way to reduce those costs is to allow for Orders *Nisi*, which allows interested persons a second bite at the apple to participate in the proceeding but allows the order to go into effect without a hearing. To date, no customers have sought intervention. As Mr. Ingram stated at the prehearing, on June 5, 2024 he mailed the Commission-approved notice letter to all customers, including to the Department of Environmental Services, and the Town of Thornton. That letter included the date of the prehearing conference as well as a hyperlink to the Commission’s docket book. Thus, the lack of participation at the prehearing conference was not due to lack of notice of this proceeding or of the proposed sale of the water system.

For these reasons, the parties propose hearing dates for the Commission’s consideration but believe the hearing can be cancelled once it is known whether the parties are “in agreement”. Although under such facts, a hearing would not be required, Mill Brook requests an Order *Nisi* so as to preclude inadequate due process from being an appealable issue.

At the prehearing conference, the Commission requested that this report include the proposed hearing dates, in the event a hearing is required in addition to discussion of the issues presented in the filing, and the Commission’s legal authority relative to the issues presented. To that end, the parties agree that the issues identified by the Commission do not need to be amended at this time:

“[W]hether the transfer of Mill Brook’s franchise and assets to the Buyers is for the public good and should be permitted under RSA 374:30, RSA 374:22, and RSA 374:26; whether the transfer of Mill Brook’s franchise to the Buyers will result in the Buyers providing reasonably safe and adequate service at just and reasonable rates to customers in the transferred franchise area in accordance with RSA 374:1, RSA 374:2, and RSA 378:7; and whether the transfer of Mill Brook’s liabilities to the Buyers is consistent with the public good under RSA 369:1.”

The Department of Energy intimated at the prehearing that RSA 366 might be triggered due to the possibility of the buyers’ affiliate operating Mill Brook. At the technical session following the prehearing, however, the buyers discussed that their preference is to not change the current operator of the water system which is an unaffiliated entity. Therefore, Commission analysis and findings on an affiliate agreement under RSA 366 would not be necessary at this time. For that reason, the parties believe the Commission’s summary of the issues remains accurate and that the standards of review involving “for the public good” under RSA 374:22 and RSA 374:30 also remains accurate.

In conclusion, for purposes of the proposed procedural schedule, the parties have supplied proposed hearing dates and suggest the Commission choose one as a place holder. Should all parties be “in agreement” at the conclusion of this matter and file a settlement agreement, the parties further suggest that the Commission cancel the hearing upon the filing of a settlement agreement and consider the settlement through an Order *Nisi* process. Should an affiliate agreement eventually be necessary, it will be filed with the Commission pursuant to RSA 366 and will be taken up at Mill Brooks’ next rate case.

Thank you for the Commission’s consideration of this post-prehearing conference report of the parties.

Very Truly Yours,



Marcia A. Brown

cc: ClerksOffice@puc.nh.gov  
justin@apec-mt.com  
Marie-Helene.B.Bailinson@energy.nh.gov  
mab@nhbrownlaw.com  
Energy-Litigation@energy.nh.gov  
robyn.j.descoteau@energy.nh.gov  
paul.b.dexter@energy.nh.gov  
jim.r.ingram@gmail.com  
jayson.p.laflamme@energy.nh.gov  
marc@apec-mt.com  
ocalitigation@oca.nh.gov