

DW 03-103

HALL FARM REALTY TRUST

Petition for Franchise Approval

Order Approving Franchise Petition and Stipulation

O R D E R N O. 24,244

December 5, 2003

**APPEARANCES:** Stephen P. St. Cyr and Associates, Inc. by Stephen P. St. Cyr on behalf of Hall Farm Realty Trust; Boynton, Waldron, Doleac, Woodman & Scott, P.A. by Francis X. Quinn, Esq. on behalf of the Home Owners Association at Atkinson Woods; and Marcia A.B. Thunberg, Esq. for the Staff of the New Hampshire Public Utilities Commission.

**I. PROCEDURAL HISTORY AND BACKGROUND**

On April 28, 2003, Hall Farm Realty Trust (Hall Farm) filed a Petition with the New Hampshire Public Utilities Commission (Commission) for authority to establish a water utility in a limited area of the Town of Atkinson, New Hampshire. The proposed franchise serves 56 units in the Atkinson Woods Condominium development (Atkinson Woods). Hall Farm developed Atkinson Woods and had previously turned the water system over to the Home Owners Association at Atkinson Woods (Home Owners Association) in 2001. The Home Owners Association decided to turn the operation of the water system back over to Hall Farm, effective March 1, 2003. Hall Farm then filed this Petition for Franchise Approval.

On May 13, 2003, the Commission issued an Order of Notice establishing a Prehearing Conference and Technical Session for June 12, 2003. The Home Owners Association filed for intervention on June 9, 2003. At the June 12, 2003 Prehearing Conference, Staff filed with the Commission a proposed procedural schedule, which the Commission approved on June 30, 2003. It also granted the Home Owners Association's intervention request.

The Staff and Parties conducted discovery and ultimately filed a Stipulation on October 23, 2003, which the Staff and Parties indicated resolved their issues relating to Hall Farm's request for franchise approval. The Commission held a duly noticed hearing on the merits on October 30, 2003. Staff and the Parties presented the Stipulation and requested approval of the instant Petition.

On November 3, 2003, Hall Farm submitted the following responses to record requests made at the hearing: 1) a copy of the Secretary of State Certificate of Formation for Atkinson Woods Water, L.L.C., reserved as exhibit 4; 2) copies of DES Permits to Operate for fiscal year 2004, reserved as exhibit 5; and 3) copies of DES Sanitary Surveys for the water system, reserved as exhibit 6.

On December 1, 2003, Hall Farm informed the Commission, by letter, that Hall Farm Realty Trust had sold its

interest in all the components and assets of the water system to Atkinson Woods Water Company, L.L.C. Hall Farm also indicated that Atkinson Woods Water Company had taken out a loan in the amount of \$248,600, payable over 20 years at seven percent interest.

## **II. SUMMARY OF STIPULATION PROVISIONS AND SUPPORTIVE TESTIMONY**

Staff and the Parties stipulated to the following provisions:

1. Hall Farm has demonstrated it possesses the legal, technical, managerial and financial expertise to operate a water utility involving 56 service connections at Atkinson Woods Condominium;

2. Hall Farm will file, within sixty (60) days from the date the Commission approves this Stipulation, a Petition to establish appropriate rates pursuant to RSA 378;

3. Hall Farm's water testing will be conducted by a licensed individual or entity, and it will obtain such water tests as required by the New Hampshire Department of Environmental Services, the results of such water tests will be posted at the utility building; and

4. In the event that Hall Farm fails such water tests, it will comply with the New Hampshire Department of Environmental Services' notification requirements.

At hearing, Staff and the Parties requested Commission approval of the Stipulation and of the franchise petition. The Company further elaborated on its legal, technical, managerial and financial expertise to operate the water system.

Mr. Ernest M. Cherry Jr., trustee of Hall Farm, testified that he has been a landlord since 1967 and presently manages 183 apartments. He has operated the Atkinson Woods water system since 1997, with the exception of the brief period the Home Owners Association operated the system in 2001. Hall Farm also owns construction equipment that would be available in the event such equipment is needed for the water system. Hearing Transcript of October 30, 2003 (10/30/03 Tr.) at 7 lines 2-24. Mr. Cherry testified that he is very familiar with wells and water quality issues. 10/30/03 Tr. at 8 lines 1-3. Mr. Cherry indicated Hall Farm contracts out bookkeeping services, legal services, and regulatory services and that Hall Farm hires Epping Well and Pump to operate the system. Id. at 8 lines 5-12. Mr. Cherry testified that Hall Farm sought and received necessary approvals from the Attorney General's Office for the Atkinson Woods condominium development.

With respect to the Stipulation provision requiring Hall Farm to post results of water tests at the utility building, Mr. Cherry testified that such results would be posted as soon as possible after Hall Farm received the test results

and would be located in the front window of the building. Id. at 10 and 11 lines 23-3.

Mr. Cherry testified that there was no other water utility in the area able to serve the development and that the Town of Atkinson approved the development with the understanding that Hall Farm would construct a water system for the development. 10/30/03 Tr. at 6 lines 8-14. As units were purchased, Hall Farm conveyed a one/fifty-sixth interest in the water system land to the unit owners. Hall Farm, however, retained the right to the water supply and water distribution system. 10/30/03 Tr. at 16 lines 6-13.

Mr. Cherry testified that he recently created a separate entity, Atkinson Woods Water, L.L.C., to own and operate the Atkinson Woods water system. 10/30/03 Tr. at 14 lines 3-4. He further testified that Hall Farm would transfer ownership of the water system to Atkinson Woods Water, L.L.C. Mr. Cherry testified that Hall Farm agrees to keep the water system books and records in accordance with the Commission's rules, N.H. Admin. Rule Puc 607.07, Uniform System of Accounts for Water Utilities. 10/30/03 Tr. at 16 lines 19-22.

### **III. COMMISSION ANALYSIS**

Petitions for franchise approval must meet the requirements of RSA 374:22 and 374:26. RSA 374:22 requires a person or business entity seeking to do business as a utility in

this state to first obtain authorization from the Commission. This is commonly referred to as seeking franchise approval. RSA 374:22(III) specifically requires water companies to satisfy requirements of the Department of Environmental Services (DES) relating to suitability and availability of water for the proposed water utility.

RSA 374:26 authorizes the Commission to approve franchise requests upon a finding that it is in the public good. In determining what constitutes the public good, the Commission reviews: 1) the need for the service, and 2) the ability of the applicant to provide the service. *New Hampshire Yankee Electric Corporation*, 73 NH PUC 563, 566 (1985). In reviewing the fitness of an applicant to provide service, the Commission reviews the applicant's: 1) financial backing; 2) management and administrative expertise; 3) technical resources; and 4) the general fitness of the applicant. *International Generation and Transmission Company*, 67 NH PUC 478, 484 (1982).

Also overlaying these criteria is the Commission's policy that granting new franchise areas be consistent with the orderly development of the region and that random "leap-frogging" of service areas be avoided. *Pennichuck Water Works*, 72 NH PUC 589, 593 (1987).

At hearing, Staff and the Parties presented evidence that Hall Farm or the future owner of the water system, Atkinson

Woods Water Company, L.L.C., possesses the financial, managerial, technical and legal expertise to operate the water system at Atkinson Woods.

After reviewing the evidence in the record, we find that the new owner of the water system, Atkinson Woods Water Company, L.L.C., possesses the managerial, technical, financial and legal expertise to operate a water system. We find the operation of a water utility by Atkinson Woods Water Company, L.L.C. is in the public good and therefore approve the instant petition.

We next turn to Atkinson Woods Water Company's letter indicating it had entered into a long-term loan in the amount of \$248,600. RSA 369:1 requires public utilities engaged in business in this state to seek approval from the Commission prior to entering into long-term debt. We recognize Hall Farm's compliance with maintaining separate books and records for the utility included creation of a new business entity. We also recognize creation of a new business entity might require the new company to incur debt. We recognize that Hall Farm has already taken out a loan, but this information was not submitted until the first of December, 2003. Therefore, we have not yet evaluated the terms and whether they are in the public good. To complete our analysis, we direct Atkinson Woods Water Company,

L.L.C., to file a petition for financing approval within sixty (60) days of this order.

**Based upon the foregoing, it is hereby**

**ORDERED**, that Hall Farm Realty Trust's franchise petition for operation of a water utility in Atkinson Woods Condominium development is GRANTED; and it is

**FURTHER ORDERED**, that Atkinson Woods Water Company, L.L.C., shall have sixty (60) days within which to file a petition for financing approval.

By order of the Public Utilities Commission of New Hampshire this fifth day of December, 2003.

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Thomas B. Getz  
Chairman

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Susan S. Geiger  
Commissioner

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Graham J. Morrison  
Commissioner

Attested by:

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Michelle A. Caraway  
Assistant Executive Director