

STATE OF MAINE  
PUBLIC UTILITIES COMMISSION

Docket No. 2019-00328

February 5, 2020

YORK WATER DISTRICT  
Notification of Amendment of Lease

ORDER

BARTLETT, Chair; WILLIAMSON and DAVIS, Commissioners

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## I. SUMMARY

By this Order, the Commission certifies, pursuant to 35-A M.R.S. § 1101(4), that the amendment to the May 12, 1980 Lease Agreement between the York Water District (District) and the Town of York (Town) filed on December 9, 2020 does not require Commission authorization under 35-A M.R.S. § 1101(1)(A). Further, the Commission finds that the amendment to the Lease Agreement does not constitute a sale of water resource land within the meaning of 35-A M.R.S. § 6109 and Chapter 691 of the Commission's Rules

## II. PROCEDURAL HISTORY

On December 9, 2019, the District notified the Commission of an amendment to a May 12, 1980 Lease Agreement between the District and the Town. The Lease Agreement involves approximately 7.5 acres of land that the town uses for public recreational access to Mount Agamenticus. The amendment will extend the term of the Lease Agreement until May 12, 2050, and allow the Town, at its own expense, to improve the parking area for Mount Agamenticus and widen the current access corridor.

On January 9, 2020, the Commission provided notice of the amendment to the Lease Agreement. The Commission did not receive any comments regarding the amendment.

## III. LEGAL STANDARD

### A. 35-A M.R.S. § 1101(1)(A)

Section 1101(1)(A) of Title 35-A requires a public utility to secure an order of authorization from the Commission before it may:

Sell, lease, assign, mortgage or otherwise dispose of or encumber the whole or part of its property that is necessary or useful in the performance of its duties to the public, or any part of the property under construction for the performance of its duties to the public, or its franchises, permits or rights under them.

Section 1101(4) authorizes the Commission to exempt certain transactions from the requirements of Section 1101(1). Specifically, Section 1101(4) allows the Commission to certify that certain transactions relating to utility property do not require Commission authorization where the property sought to be transferred does not materially affect the ability of the utility to perform its public service.

B. 35-A M.R.S. § 6109 and Chapter 691 of the Commission's Rules

Section 6109 governs the sale or transfer of land by a consumer-owned water utility such as the District. Section 6109 imposes several requirements on a consumer-owned water utility that intends to sell or transfer land or property owned by the utility that is used for the purposes of providing a source of supply or land adjoining the source of supply.

Chapter 691 of the Commission's Rules implements section 6109 and establishes additional requirements for the sale or transfer of water resource land by a consumer-owned water utility. Section 1(B) of Chapter 691 defines a "sale" of "water resource land" as

a conveyance or transfer of title to water resource land from the utility to another person or entity. For the purposes of this rule, "sale" shall also mean an assignment of a property right, a land lease of more than twenty years, a grant of an easement or any other encumbrance of the land, whereby the utility gives up for consideration rights to the use of a substantial part of the land surface. "Sale" does not include a transfer in accordance with or pursuant to statutory or contractual rights which predate the effective date of this rule. "Sale" does not include sales of land or easement to public utilities for public utility purposes. "Sale" does not include transfers to municipalities or state agencies that could be subject to condemnation under eminent domain proceedings.

#### IV. DISCUSSION AND DECISION

A. Section 1101

According to the District, the 7.5 acres of land at issue in this proceeding is used by the District for water resource protection, and, thus, there is no dispute that the property is "necessary or useful in the performance of [the District's] duties to the public." The Commission does, however, agree with the District that the amendment to the Lease agreement will not materially affect the ability of the utility District to perform its public service. The land in question has been under lease to the Town for nearly 40 years and contains protections for the watershed and water quality. In addition, the amendment will allow for the construction of new restroom facilities, which should serve

to further protect water quality. The District also states that all construction will be done in accordance with design requirements specified by the District. Accordingly, the Commission certifies pursuant to 35-A M.R.S. § 1101(4) that the amendment to the Lease Agreement does not require Commission approval.

B. Section 6109 and Chapter 691

The District makes two arguments that the amendment to the Lease Agreement is not a "sale" within the meaning of Section 6109 or Chapter 691. First, the District states that for a lease to be a "sale" pursuant to statute and rule that lease must be for more than twenty years. Here, the amendment extends the term of the Lease Agreement from May 12, 2030 until May 12, 2050—a period of precisely twenty years—with two options for additional twenty-year extensions. Second, the District notes that the original 1980 Lease Agreement predates Chapter 691, and Section 1(B) of Chapter 691 exempts "transfers . . . in accordance with contractual rights which predate the effective date" of the Chapter.

The Commission agrees with the District that the amendment is not a "sale" within the meaning of Section 6109 or Chapter 691. The term of the amendment, and, thus, the extension of the original lease, does not exceed twenty years. Further, the original 1980 Lease Agreement predates the 1991 promulgation of Chapter 691 and also contains a term stating that the Lease Agreement is "subject to renewal," thus creating a preexisting contractual right. Accordingly, the Commission finds that neither Section 6109 nor Chapter 691 are applicable to the amendment.

**V. ORDERING PARAGRAPH**

Accordingly, the Commission

**O R D E R S**

1. That, pursuant to 35-A M.R.S. § 1101(4), the Commission certifies that the amendment to the Lease Agreement between the York Water District and the Town of York filed on December 9, 2019 does not require Commission authorization under 35-A M.R.S. § 1101(1)(A); and
2. That 35-A M.R.S. § 6109 and Chapter 691 of the Commission's Rules do not apply to the May 12, 1980 Lease Agreement between the York Water District and the Town of York, and the amendment to that Lease Agreement filed on December 9, 2019.

Dated at Hallowell, Maine this Fifth Day of February, 2020.

BY ORDER OF THE COMMISSION

/s/Harry Lanphear

Administrative Director

COMMISSIONERS VOTING FOR:     Bartlett  
   Williamson  
   Davis

## NOTICE OF RIGHTS TO REVIEW OR APPEAL

5 M.R.S. § 9061 requires the Public Utilities Commission to give each party to an adjudicatory proceeding written notice of the party's rights to review or appeal of its decision made at the conclusion of the adjudicatory proceeding. The methods of review or appeal of PUC decisions at the conclusion of an adjudicatory proceeding are as follows:

1. Reconsideration of the Commission's Order may be requested under Section 11(D) of the Commission's Rules of Practice and Procedure (65-407 C.M.R. ch. 110) within **20** days of the date of the Order by filing a petition with the Commission stating the grounds upon which reconsideration is sought. Any petition not granted within **20** days from the date of filing is denied.
2. Appeal of a final decision of the Commission may be taken to the Law Court by filing, within **21** days of the date of the Order, a Notice of Appeal with the Administrative Director of the Commission, pursuant to 35-A M.R.S. § 1320(1)-(4) and the Maine Rules of Appellate Procedure.
3. Additional court review of constitutional issues or issues involving the justness or reasonableness of rates may be had by the filing of an appeal with the Law Court, pursuant to 35-A M.R.S. § 1320(5).

Note: The attachment of this Notice to a document does not indicate the Commission's view that the particular document may be subject to review or appeal. Similarly, the failure of the Commission to attach a copy of this Notice to a document does not indicate the Commission's view that the document is not subject to review or appeal.