

STATE OF NEW YORK  
PUBLIC SERVICE COMMISSION

At a session of the Public Service  
Commission held in the City of  
Albany on March 27, 2014

COMMISSIONERS PRESENT:

Audrey Zibelman, Chair  
Patricia L. Acampora  
Garry A. Brown  
Gregg C. Sayre  
Diane X. Burman

CASE 11-W-0600 - Petition of Antlers of Raquette Lake, Inc. for  
Approval to Abandon its Water System.

CASE 04-W-0502 - Petition of Antlers of Raquette Lake, Inc. for  
the Right to Abandon its Non-Community Water  
System.

ORDER PERMITTING TERMINATION OF SERVICE

(Issued and Effective March 31, 2014)

INTRODUCTION

On October 31, 2011, Antlers of Raquette Lake, Inc. (Antlers or the Company) filed a petition requesting that the Commission approve the abandonment of its water system. A water utility is required to obtain Commission authority prior to the transfer of a water system (Public Service Law (PSL) § 89-h); transfer of a water system includes abandonment.<sup>1</sup>

Antlers provides unmetered seasonal (May 15 to October 15) water service in the Town of Long Lake, Hamlet of Raquette Lake, Hamilton County, to 30 residential customers and one non-residential customer, the State University of New York

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<sup>1</sup> Spring Brook Water Co. v. Village of Hudson Falls, 269 A.D. 515 (1945), appeal den. 295 N.Y. 993 at 519.

Auxiliary Services Corporation (ASC).<sup>2</sup> ASC developed its own water supply and treatment facility, which it plans to activate in the Spring of 2014. Fire protection service is not provided.

Due to rate increases to obtain sufficient operating revenues and fund installation of filtration and disinfection techniques needed to comply with the Surface Water Treatment Rule (SWTR) as mandated by the New York State Department of Health (DOH) and delays in obtaining sufficient revenues for a filtration system or a ground water source, a majority of the Company's initial 65 customers have obtained alternative water supply sources, and its non-residential/anchor customer, contributing nearly one-third of Antlers' revenues, will leave the system Spring of 2014. Thereafter, due to the small customer base and limited opportunity to obtain sufficient operating revenues, the Company is unable to recover the necessary revenues and raise adequate funds to install a water filtration system necessary to provide for safe and adequate service. The capital and annual operating costs for customers to obtain other sources of water, by drilling a well or accessing lake water, is less than the estimated per-customer costs necessary for Antlers to continue the water system's operation and install a filtration system. Accordingly, we authorize Antlers to abandon its provision of water service, no earlier than April 15, 2014, to allow time for customers to arrange for an alternative water supply before the summer season begins.

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<sup>2</sup> ASC is a not-for-profit corporation that provides campus dining services, college stores, vending, and other essential services to the students, faculty, and staff of the State University of New York at Cortland.

PETITION

Antlers provides unmetered seasonal water service (May 15 - October 15) to 30 residential customers and ASC. The Company draws its water from Raquette Lake, by means of a suction line extending approximately 150 feet out into the lake at a depth of approximately 15 feet. The water is chlorinated and piped to a 3,000-gallon pneumatic tank for distribution. A 115 KW back-up generator with 275 gallons of fuel oil storage is on site in case of a power outage. The distribution system consists of a mix of galvanized, transite, and PVC lines.

Typical daily consumption averages approximately 7,000 gallons per day, of which almost half is used by the ASC facility. Antlers states that the capital costs and operation and maintenance expenses required for its operations significantly exceed the revenues it collects from its ratepayers. It incurs \$20,000 in annual routine expenses and collects \$12,168 in revenues. Antlers states that it is subject to the SWTR requirement that a water system install filtration and disinfection techniques for its surface water supply or obtain its water supply from a ground water source.

To obtain the necessary revenues to improve its solvency, Antlers proposed the construction of a hotel and restaurant on its property. Joseph A. and Christa E. Pepe, individual owners, and the Raquette Lake Owners Association, Inc. (Association), an association of real property owners located in Raquette Lake, commenced an action seeking an injunction against commercial development of three parcels of property owned by Antlers. The plaintiffs claimed that the lots are subject to restrictive covenants limiting their use to residential purposes. The Court held that commercial use is

prohibited on two parcels owned by Antlers.<sup>3</sup> Thus, the Company is prohibited from pursuing commercial development of the properties.

Antlers explains that, without commercial development, the water system will not produce sufficient revenue, unless its rates are substantially increased, to pay its operating costs and install a water filtration system, in compliance with DOH requirements. The Company states that most, if not all, of its customers will leave its water system and install separate waters supplies, if rates are sufficiently increased. Antlers maintains that no acceptable alternatives to abandonment exist; and, it proposes to cease operation of its water system.

Antlers reports that, as of the date of its Petition, it served 31 customers; six operate wells on their parcels; 15 customers reside on Lake front parcels and could draw water from the Lake, and 16 would need to drill wells. The Company states that, over the years, 41 individual wells have been drilled within the Antlers service area that provide sufficient water. It asserts that this history proves that the potential for a satisfactory alternative source of ground water exists for those customers who wish to avail themselves of the option to drill wells.

#### BACKGROUND

##### 2004 Petition for Abandonment

On April 17 2004, Dean Pohl, Antlers' owner and operator, petitioned the Commission for approval to abandon the water system.<sup>4</sup> He stated that, given the the small and shrinking

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<sup>3</sup> Joseph A. Pepe, et al., Respondents v. Antlers of Raquette Lake, Inc., 87 A.D.3d 785; 927 N.Y.S.2d 732 (2011) (Pepe Decision).

<sup>4</sup> Case 04-W-0502, Petition of Antlers of Raquette Lake, Inc. To Abandon Its Water System (2004 Abandonment Petition).

customer base, it is financially impossible to incur the cost of installing a filtration system to comply with the SWTR. He reported that the results of a survey conducted in November 2003 indicate that customers express little support for continuing the water system in light of the rate increases necessary to finance the water filtration system. The petition states that individual wells or water drawn directly from Raquette Lake for Lake front properties provide the most feasible alternatives.

The Staff contacted and met with the Company to explore possible alternate solutions to abandonment. After discussions with Staff, Antlers decided to request a rate increase.

#### 2005 Rate Order

On July 12, 2005, as an alternative to its 2004 Abandonment Petition, Antlers filed a petition requesting a rate increase. At that time, under rates in effect since the Company's incorporation in 1956, the Company charged residential customers a \$25 flat rate per season; and, it recovered a \$150 flat fee per season from ASC. The Commission approved a rate increase of \$13,459 on a temporary basis, effective April 30, 2006.<sup>5</sup> The seasonal bills under the new rates increased from \$25 to \$338 for residential customers and from \$150 to \$2,028 for ASC. The Commission authorized semi-annual billing on May 15 and October 15. The Commission authorized the Company to recover a capital surcharge from customers to collect \$15,000 over a two-year period (\$7,500 per year), charged on a semi-

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<sup>5</sup> Case 05-W-0839, Antlers of Raquette Lake, Inc. - Rates, Order Approving Temporary Rates and Establishment of Surcharge and Escrow Account (issued March 30, 2006).

annual basis, to finance a project to meet the SWTR requirements.<sup>6</sup>

Decrease in Number of Customers

Since the 2005 Rate Order, 15 of Antlers' customers drilled wells on their parcels. Of the remaining 21 residential customers, 14 occupy lake front parcels and can obtain surface water directly from Raquette Lake and seven are considered land-locked and would require individual wells.

ASC, Antlers' non-residential/anchor customer whose seasonal bill increased 1,352% or \$1,878 since 2005, used a typical daily average consumption of approximately 3,500 gallons per day, or nearly half of the typical daily consumption of the entire Antlers water system. It will leave the Antlers' system Spring of 2014, after completion of its own treatment facility.

Attempts to Continue Service

In response to a request by the Association for additional time to explore options and develop proposals to allow the water system to continue, the Company requested the Commission to postpone its petition for abandonment. On May 20, 2013, Dean Pohl submitted a proposal to the residents of the Antlers community whereby the Company would agree to continue operating the water system, if the parties to the 2011 Court Decision sought to vacate the Decision, Order and Judgment of the Court and extinguish the covenant against commercial use of certain property. If approved, the Company, at its own expense, was willing to bring the water system into full compliance with the DOH requirements and committed the Company to running the system for the next ten years provided that the remaining customers kept service during the same ten year period.

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<sup>6</sup> Antlers used these and other funds for preliminary engineering and administrative requirements relating to the filtration plant, including a pilot plant and water tests, engineering plans, and applications to DOH.

A counter proposal, made by letter on June 30, 2013 by Joseph A. and Christa E. Pepe of the Association offered to relieve Dean Pohl of operations of the Antlers system for the sum of one dollar (\$1.00). Additionally, the counter proposal requested that Antlers provide all customer contact information; system schematics; and accounting information, among other requests. Ultimately, Dean Pohl rejected the offer as he believed the offer was not made in good faith, and after no other comments or suggestions were made by the remaining customers, elected to continue the abandonment of Antlers water system.

PUBLIC COMMENTS AND CUSTOMER NOTIFICATION

In accordance with State Administrative Procedure Act (SAPA) §202(1), a Notice of Proposed Rulemaking was published in the State Register on December 21, 2012. The public comment period in conformance with SAPA expired on February 4, 2012. On May 1, 2012, Antlers sent letters to its customers notifying them of its petition. Thus, the Company requests a waiver of the requirement of the statutory and regulatory requirements of newspaper publication of its petition (Public Service Law (PSL) §89-c (10) and 16 NYCRR §720-8.1).

Five letters were received in opposition to the abandonment from: members of the Association; Joseph A Pepe; Ron Kilbourn, President of the Raquette Lake Owners Association, Inc.; Nancy Grosselfinger, on behalf of her mother, Anna W. Grosselfinger; and, Boyd and Linda Kimball. The Association states that the Pepe Decision does not prohibit Antlers from continuing to operate the water system comments because it is a commercial property use; it prohibited Antlers from proceeding with the proposed development of a hotel, restaurant, or gift shop on the property; and, Antlers cannot use the Pepe Decision

as the rationale for abandonment of its water system. The other letters express concerns about the expense of installing private wells or treatment systems.

STATE ENVIRONMENTAL QUALITY REVIEW ACT

Under the State Environmental Quality Review Act (SEQRA) (Environmental Conservation Law Article 8), state agencies are required to determine whether the actions they are requested to approve result in a significant impact on the environment. The Commission is considering approval of the abandonment of the provision of water service to Antlers, a small water company.

No other agency exercises jurisdiction relating to the proposed action; and, no interested agency indicated an interest in participating in the proceeding. Accordingly, we are the lead agency responsible for environmental review under SEQRA of the proposed action.

A lead agency is required to classify a proposed action as a Type I action that may have a significant impact on the environment and likely requires preparation of an Environmental Impact Statement, a Type II action that is presumed to result only in minimal environmental impacts and does not require environmental review, or an unlisted action that is not specifically classified as a Type I or Type II action and requires a Full or Short Environmental Assessment Form (EAF). As lead agency for the environmental review of the proposed action, we determine that the approval of the transfer is an unlisted action, because it is not specifically classified as a Type I or Type II action under SEQRA (6 NYCRR §617.2(a) through (k)).

As required by SEQRA for unlisted actions, the petitioners prepared part 1 and the DPS Staff prepared Parts 2

and 3 of a Short EAF for the proposed action. Based upon our review of the petition, EAF, and criteria for evaluation of significant adverse environmental impact (6 NYCRR §617.7(c)(1)), we make a determination that the proposed discontinuance of water service will not result in any significant adverse impacts on the environment (determination of significance) and, consequently, no environmental impact statements are required; and, we adopt a negative declaration for the action. The property used for the water system is already developed; the owner of the water system will continue to exercise responsibility for maintenance or disposal of the facilities used to provide service; and, no major changes in use or effects on environmental elements will result from service discontinuance. A Determination of Non-Significance Negative Declaration for the proposed transfer is attached to this Order. Antlers is expected to obtain any necessary approvals for removal or retirement of the facilities that were used to provide service.

#### DISCUSSION

The Company has continuously incurred capital costs and operation and maintenance expenses that are significantly higher than the revenues it collects from its customer base; the number of its seasonal customers decreased from its original 65 to 21 customers; and, its major customer using approximately 50% of water production will leave the system Spring of 2014. Antlers has made significant efforts to explore and develop a solution to comply with SWTR. Acceptable solutions to comply with the SWTR, specifically either filtration and disinfection treatment for surface water or providing a ground water source, are capital intensive and cost prohibitive for a seasonal system with a limited customer base. After several failed attempts to

obtain the necessary financing, including applying for and being rejected by the Environmental Facilities Corporation (EFC) for Drinking Water State Revolving (DWSRF) funds, and develop an effective project to comply with SWTR requirements at a reasonable cost, Antlers concludes it is in the best interest of its remaining customers to abandon its provision of water service.

The local DOH has worked with Antlers and DPS staff since 1993 to develop alternative water supply sources if Antlers discontinues its provision of water service. DOH regulates well development as part of its responsibility to exercise oversight of the State's water resources. In a letter to DPS staff dated June 7, 2012, DOH stated that it supports Mr. Pohl's request to abandon the system and that this is in the best interest of the property owners of the Antlers subdivision, from a financial and most importantly, a public health point of view. DOH further stated that property owners that drill wells and use ground water will have access to a safe and adequate source of water, which is highly preferable to using unfiltered surface water. In that same letter, DOH stated that it "can and will issue specific waivers from the separation requirements by identifying mitigating measures. Further, it "intends to assist the property owners, the Town of Long Lake and the well drillers to develop the replacement onsite water systems that will provided satisfactory sanitary protection of new onsite wells."

DOH has assured Staff that it will take the necessary regulatory action to permit Antlers' customers to drill private wells using a guidance document that allows the use of additional measures in water well siting and construction.<sup>7</sup> Of the remaining 21 seasonal residential customers, 14 can obtain

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<sup>7</sup> [http://www.health.ny.gov/environmental/water/drinking/regulations/fact\\_sheets/fs1\\_additional\\_measures.htm](http://www.health.ny.gov/environmental/water/drinking/regulations/fact_sheets/fs1_additional_measures.htm)

surface water directly from Raquette Lake and seven would need to drill private wells. According to Staff, well drillers in the area report that most wells are completed within one day at an average cost of \$15,000 and would provide a year-round water supply.

Staff reviewed the Company's cost estimates to comply with the SWTR and concludes that the estimate for the least-cost well drilling project of approximately \$124,223 and is reasonable. Choice of this option and ongoing operation and maintenance expenses would justify a significant rate increase. Based upon a preliminary review, bills for the remaining 21 customers are estimated to increase by a minimum \$376 or 211% to cover increased operation and maintenance costs; and, each of the 21 customers would need to pay a one-time payment of about \$5,915 to finance the full \$124,223 cost for the new groundwater system. A cost analysis is provided in Appendix A. In comparison, avoidance of annual charges for water service over a number of years, and an average cost of \$15,000 for a private well and an average \$2,500 for access to the surface water supply is a more reasonable investment for the remaining customers. The comments noted limitation of property size and cost of installing private wells. While the cost of drilling a well is significant, the alternatives are even more expensive, assuming that all 21 customers remain on the system. If any of the 21 customers decide to obtain their own water supply, the burden on the remaining customer's increases. As shown in Appendix A, should one customer leave the system, each remaining customer will pay an additional \$331.48 on their annual water bill. If customers continue to leave the system, customers' annual bills will grow exponentially.

Although the Pepe Decision prohibiting commercial development of a hotel and restaurant on the site is not a

sufficient rationale for the abandonment or discontinuance of Antlers' water service, commercial development would provide an opportunity for expansion of the year-round customer base. The elimination of this opportunity represents an economic impact that is a consideration for allowing abandonment of water service.

We conclude that it is in the best interests of the remaining customers to allow Antlers to abandon its water system, and for each customer to develop a private seasonal or year-round source of supply with the assistance of the local DOH. Accordingly, we grant Antlers' petition to terminate the provision of water service.

#### CONCLUSION

We authorize Antlers to abandon its water system, discontinue provision of water service, and cancel its tariff schedule. Antlers is required to notify its customers of the Commission's decision in this Case and supply each customer with a copy of the Commission's Order within 10 days of its issuance.

#### The Commission orders:

1. Antlers of Raquette Lake, Inc. is authorized to abandon its water system and discontinue its provision of service effective April 15, 2014.
2. Antlers of Raquette Lake, Inc. is directed to file a cancellation supplement, effective on not less than one day's notice, to become effective May 15, 2014, cancelling its electronic tariff schedule, supplements, and statements to P.S.C. No. 2 - Water.
3. Antlers of Raquette Lake, Inc. is directed within ten days of the issuance of this Order to notify its customers individually by direct mail of the Commission's decision in this case and provide each customer with a copy of this Order.

4. The requirements of newspaper publication pursuant to Public Service Law §89-c(10)(b) and 16 NYCRR §720-8.1 for Antlers of Raquette Lake, Inc. cancellation of its electronic tariff schedule, supplements, and statements to P.S.C. No. 2 - Water is waived, provided that the Company file with the Secretary to the Commission, not later than May 1, 2014, copies of the letter notifying its customers of the Commission's determination in this case.

5. The Secretary in her sole discretion may extend the deadlines set forth in this order. Any request for an extension must be in writing, must include a justification for the extension, and must be filed at least one day prior to the affected deadline.

6. The proceeding in Case 04-W-0502 is closed; and, the proceeding in Case 11-W-0600 is closed upon compliance with Ordering Clauses 1, 2, 3, and 4.

By the Commission,

KATHLEEN H. BURGESS  
Secretary

STATE OF NEW YORK  
PUBLIC SERVICE COMMISSION

CASE 11-W-0600 - Petition of Antlers of Raquette Lake, Inc. for Approval to Abandon its Water System.

CASE 04-W-0502 - Petition of Antlers of Raquette Lake, Inc. for the Right to Abandon its Non-Community Water System.

NOTICE OF DETERMINATION  
OF NON-SIGNIFICANCE

This is a negative declaration for an unlisted action, in compliance with the State Environmental Quality Review Act (SEQRA) (Environmental Conservation Law Article 8). Antlers of Raquette Lake, Inc. requests Commission approval of its abandonment of the provision of water service. The Commission assumed the role of lead agency for the environmental review of the proposed action and determined that it is an unlisted action, as defined under 6 NYCRR §617.2(a) through (k). The Commission determined that its approval will not result in any significant impact on the environment and no preparation of an Environmental Impact Statement is required. The determination is made because the discontinuance of water system will not result in any changes to the facilities; the owner will continue to exercise responsibility for maintenance or disposal of the facilities; and, no major changes in use or effects on environmental elements will result. The address of the Public Service Commission, the lead agency for purposes of the Environmental Quality Review of this project is Three Empire State Plaza, Albany, New York 12223-1350. Questions may be directed to Richard H. Powell at the above address, [Richard.Powell@dps.ny.gov](mailto:Richard.Powell@dps.ny.gov), or (518) 486-2885.

KATHLEEN H. BURGESS  
Secretary

**ANTLERS OF RAQUETTE LAKE, INC.**  
**Cost Analysis of Water Supply and Service**

	<u>Minimum System Upgrades to Meet DOH Standards</u>	<u>Individual Wells for Land- locked Customers*</u>	<u>Individual Water Supply from Surface Water</u>
Estimated Project Cost	\$124,223.00	\$15,000.00	\$2,500.00
One Time Infrastructure Cost Per Customer	\$5,915.38	\$15,000.00	\$2,500.00
Annual Rates Per Customer (After Assumed Rate Increase)	\$714.29	\$0.00	\$0.00
Total Cost Per Customer includes: Annual Rates, Infrastructure Costs and Assumed 1% Inflation Rate Over 30 Years.	<u>\$27,558.24</u>	<u>\$15,000.00</u>	<u>\$2,500.00</u>
Cost Per Year Over 30 Year Period	\$918.61	\$500.00	\$83.33

**NOTES:**

(1) Costs are based on a customer base of 21 seasonal residential customers and estimates provided by Dean Pohl, owner of Antlers of Raquette Lake, Inc.

(2) If one customer leaves the system, the remaining customers annual bill will increase by approximately \$331.48.

Furthermore, should additional customers chose to leave the system annual bill increases will grow exponentially .

(3) If the Minimum System Upgrades to Meet DOH Standards option is considered, further capital investment most likely would be required.

\*Represents year-round water supply.