

DW 02-051

HOLIDAY ACRES WATER AND WASTEWATER SERVICES

Order Approving Settlement Agreement and Transfer of Franchise

O R D E R N O. 24,140

March 17, 2003

APPEARANCES: Eugene F. Sullivan, III, Esq., on behalf of Holiday Acres Joint Venture Trust and Community Water and Wastewater Services, L.P.; James Jackson, pro se; Marcia A. B. Thunberg, Esq. on behalf of the Staff of the New Hampshire Public Utilities Commission.

I. BACKGROUND AND PROCEDURAL HISTORY

On March 26, 2002, Holiday Acres Joint Venture Trust (HAJVT), a regulated public utility under RSA 362:2 and 362:4, and Community Water and Wastewater Services, L.P. (CWWS) filed a Joint Petition (Petition) with the New Hampshire Public Utilities Commission (Commission). HAJVT and CWWS requested approval to transfer the franchise and associated assets from HAJVT to CWWS.

HAJVT is a New Hampshire trust established by Stephen Hynes of British Columbia, as Trustee. HAJVT registered the trade name of Holiday Acres Water & Wastewater Services in New Hampshire in July 1996. CWWS was formed by The Hynes Group in response to Commission Order No. 23,931 (March 8, 2002), wherein the Commission ordered Holiday Acres Joint Venture Trust, to file with the Commission, no later than March 29, 2002, a petition to transfer its utility assets.

On April 11, 2002, the Commission issued an Order of Notice (OON) scheduling a prehearing conference for April 29, 2002. The prehearing conference was held as scheduled. After the prehearing conference, the Staff and parties proposed a procedural schedule which was approved by Commission Order No. 23,973 (May 17, 2002).

On May 23, 2002, the Commission received a late-filed request from Mr. James R. Jackson, a customer, for full intervenor status. The Commission granted Mr. Jackson's request on June 7, 2002.

During the summer of 2002, Staff and the Parties continued to conduct discovery and engage in settlement negotiations. Staff, HAJVT and CWWS eventually reached a Settlement Agreement which was filed with the Commission on January 13, 2003. A hearing on the Settlement was held on February 13, 2003 with all parties in attendance.

II. POSITION OF THE PARTIES

A. HAJVT and CWWS

HAJVT and CWWS requested the Commission find that it will be in the public good for HAJVT to transfer its utility assets, works, and franchise to CWWS; that HAJVT be authorized to discontinue the provision of regulated utility services; and that CWWS be authorized to provide water supply and sewage disposal services as a public utility in New Hampshire. HAJVT

and CWWS stated their intent to comply fully with the terms of the Settlement Agreement. In particular, HAJVT and CWWS expressed their optimism that they will be able to find a full time manager for the new utility within 60 days.

B. Intervenor James Jackson

Mr. Jackson expressed his concern that HAJVT customers are not treated similarly. Under the existing tariff, HAJVT does not charge customers inside the park for the cost of service connections. Customers outside the park, however, are responsible for the cost of their service connections.

C. Staff

Staff expressed their support for the Settlement Agreement and requested the Commission approve the terms contained therein. Staff stated it believed the treatment of the issues in this docket was consistent with the Commission Order No. 23,931 (March 8, 2002). In that order, the Commission determined that separation of the mobile home park functions from the utility functions would occur first and that the Commission would review the utility's capital structure at a later date. Staff stated it was prepared to investigate the financial structure of the utility in the upcoming rate case.

III. SETTLEMENT AGREEMENT

The Settlement Agreement presented to the Commission on February 13, 2003 contained the following points:

1. An agreement that transferring the utility franchise, assets, and works from HAJVT to CWWS was in the public interest.

2. That CWWS would, within 60 days of the order, retain a full time manager for its utility services. This full time manager would have no responsibilities associated with HAJVT or the mobile home park and would report directly to The Hynes Group. In the event CWWS is unable to retain a utility manager within 60 days, CWWS shall report monthly to the Commission on its progress toward hiring a manager.

3. The Settlement Agreement specified the breadth of management duties for the full time manager including, but not limited to: a) handle all customer contacts; b) maintain the day-to-day transactions of the utility including work orders, receipts, accounts payable and receivable, entry of meter readings and utility billing; c) coordinate and oversee all utility repairs; d) retain contractors in areas such as management services, accounting, system construction, maintenance and repair, meter reading, and a certified water/sewer system operator; e) interact with the Commission and the Department of Environmental Services; and f) respond or coordinate response 24/7 to emergency calls.

4. That CWWS will establish its books and records in accordance with its responses to Staff Data Requests #2 and #3,

which adhere to the accounting principles set forth in the Uniform System of Accounts for Water Utilities, found at N. H. Admin. Code Rule Puc 610.

5. That CWWS shall adopt the rates, tariff, and terms and conditions for the provision of service to its customers established by the Commission in *Holiday Acres Water and Wastewater Services*, 81 NH PUC 1058 (1996).

6. That CWWS shall abide by the terms and conditions of all orders of the Commission issued subsequent to the above referenced Order governing or affecting the terms and conditions of service or the manner in which it keeps its books and records.

7. That CWWS shall file affiliate contracts with Holiday Acres Joint Venture Trust and The Hynes Group, pursuant to the provisions of RSA 366:3, within 30 days of the date of the Commission's order approving this agreement.

8. That CWWS shall submit, prior to the next billing and for Staff review, a revised bill form reflecting the name change of the utility and complying with all applicable Commission rules.

9. That HAJVT shall revise the park rules within 60 days of the date of the Commission's order approving this agreement, to eliminate any reference or inference that utility matters fall under management of the park, and shall submit a copy of

the revised rules to the Commission by the end of the 60 day period.

IV. COMMISSION ANALYSIS

All public utilities regulated by the Commission must furnish service and facilities which are reasonably safe and adequate and all charges for such service shall be just and reasonable. RSA 374:1 and 2. The Commission's ability to determine whether charges are just and reasonable is dependent upon the presentation of a utility's books and records and their conformance with the Uniform System of Accounts for Water Utilities. Pursuant to RSA 374:8, the Commission has established the system of accounts which appear at N.H. Admin. Code Rule Puc 610.

The Commission has previously expressed its concern over Holiday Acres Water and Wastewater Services' lack of adherence to Puc 610. See, *Holiday Acres Water and Wastewater Services*, Order No. 23,931 (March 8, 2002); and *Holiday Acres Water and Wastewater Services*, 86 NH PUC 480 (2001). In Order No. 23,931 the Commission ordered the utility to separate its utility functions from its mobile home park functions as a means of remedying reporting and record keeping deficiencies.

To that end, CWWS was formed in New Hampshire on June 6, 2001 to control the water supply and sewage collection assets formerly controlled under Holiday Acres Joint Venture Trust. At

hearing, HAJVT and CWWS explained that CWWS's general partner is Community Water and Wastewater Services, Inc. and limited partners are Stephen A. Hynes and Donna Hynes. Hearing Transcript of February 13, 2003 ("2/13/03 Tr.") at 32 lines 5-10. Exh. 5.

According to the Settlement Agreement, CWWS will retain a full time manager and that manager will report directly to The Hynes Group. Exh. 1 at 3. However, CWWS has 60 days from the date of the Commission's approval of the Settlement Agreement within which to seek a manager. After we approve the transfer of the franchise and during the 60 day time period CWWS is searching for a full time manager, however, someone must be responsible for and perform the management functions of the utility. Our concern stems from the fact that after the franchise is transferred, if a full time manager has not been hired, no one will be responsible to address or respond to the Commission's or to utility customers' concerns.

At hearing, CWWS presented witness Marcia Heath, from HAJVT, who indicated she would continue responding to utility customer calls, take care of the books, and handle all the money and deposit it in the bank until the new employee is retained. 2/13/03 Tr. at 10 lines 14-20 and at 16 lines 8-12. Despite the assurance and good intentions that HAJVT will manage the water utility after the requested franchise transfer but before the

new utility actually has employees, however, we decline to transfer the franchise unconditionally. The act of transferring the franchise would result in HAJVT being relieved of its public utility obligations. It would then be removed from the Commission's authority under RSA 374:3 to supervise all public utilities and carry into effect the provisions of Title XXXIV, including the requirement that utilities provide safe and adequate service at just and reasonable costs to customers. Thus, transferring the franchise without assurances that a manager has been retained would expose customers to unnecessary risk and which we might not be able to remedy.

To protect customers, we will not make transfer of the franchise effective until CWWS has actually retained someone to manage the utility. In the meantime, we expect Ms. Heath to continue to perform the duties as represented at the hearing. This is particularly important in this situation where CWWS has no affiliate agreements in effect and no parent corporation to step into the shoes of CWWS. We will require proof of such retention to be in writing and be filed with the Commission. Upon satisfaction of the condition that a full time manager has been retained, the Commission will acknowledge transfer of the franchise as of the date the aforementioned documentation of proof is filed with the Commission.

In the event CWWS fails to retain a full time manager within 60 days, the Settlement requires CWWS file monthly progress reports with the Commission. If such reports come due, we instruct CWWS to file the reports by the 15th of the month.

The remaining terms of the Settlement Agreement appear to reasonably effectuate a smooth transfer of the utility franchise and assets. CWWS will adopt the existing tariff, CWWS will correct reporting deficiencies and comply with the Uniform System of Accounts, CWWS will file appropriate affiliate contracts, HAJVT will cleanse park rules of any reference to utility matters, and CWWS will work with the Commission in revising its new customer bill to reflect the change in ownership. We find these measures to be in the public interest and we will approve the terms of the Settlement Agreement.

We will next address Mr. Jackson's concerns that customers be treated similarly with respect to the cost of service connections. Presently, the tariff makes customers responsible for service connections between the utility's property boundary and the meterhorn within the premises served. Inside the park, there is no division along the service connection between utility property and customer property. Park customers thus do not become responsible for the service connection. Outside the park, however, customers own the

property from the utility property line to the meterhorn, thus making them responsible for the service connection.

The Commission acknowledges Mr. Jackson's concerns. These are appropriate issues to be addressed in the upcoming rate case. The instant docket issues were limited to separating the utility and the mobile home park functions. The Commission believed separation was necessary to make clear the distinction between the park and the utilities, and to ensure that the books and records of the utilities remain in conformance with the Uniform Systems of Accounts. Changing tariff rates and charges has not been noticed in this docket for our review. In addition, these issues are more properly considered among the rate design issues to be reviewed in the upcoming rate case.¹ For these reasons, we will defer consideration of Mr. Jackson's concerns to the rate case which the Commission expects to review soon.

Based upon the foregoing, it is hereby

ORDERED, that the Joint Petition to transfer the assets, franchise, and works of HAJVT to CWWS is GRANTED conditioned upon Commission receipt of proof of retention of a full time manager as described above; and it is

¹ HAJVT filed a Notice of Intent to File Rate Schedules on January 17, 2003 in DW 03-008.

FURTHER ORDERED, that the terms of the Settlement Agreement described above are APPROVED; and it is

FURTHER ORDERED, that CWWS Services shall, within sixty (60) days from this order, retain a full time manager, separate from HAJVT, and if not, submit progress reports on hiring efforts by the 15th of the month; and it is

FURTHER ORDERED, that CWWS shall adopt and assume the existing tariff approved in *Holiday Acres Water and Wastewater Services*, 81 NH PUC 1058 (1996); and it is

FURTHER ORDERED, that CWWS shall file properly annotated tariff pages in compliance with this Order no later than 15 days from the issuance of this Order, as required by N.H. Admin. Rules, Puc 1603; and it is

FURTHER ORDERED, that CWWS shall file with the Commission affiliate contracts with HAJVT and The Hynes Group within 30 days; and it is

FURTHER ORDERED, that CWWS shall file with the Commission a revised customer bill format within 60 days; and it is

FURTHER ORDERED, that HAJVT shall submit to Commission Staff for review, revised park rules within 60 days.

By order of the Public Utilities Commission of New
Hampshire this seventeenth day of March, 2003.

Thomas B. Getz
Chairman

Susan S. Geiger
Commissioner

Nancy Brockway
Commissioner

Attested by:

Debra A. Howland
Executive Director & Secretary