

**STATE OF NEW HAMPSHIRE
PUBLIC UTILITIES COMMISSION**

DW 11-242

LOWER BARTLETT WATER PRECINCT

Request for Franchise Expansion

Order *Nisi* Approving Expansion

ORDER NO. 25,290

November 18, 2011

I. BACKGROUND

On October 31, 2011, Lower Bartlett Water Precinct (Lower Bartlett) filed a petition for approval to expand its franchise to serve additional areas outside its existing municipal boundaries within the Town of Bartlett. In support of its petition, Lower Bartlett filed the testimony of Richard R. Glines, Chairperson of the Board of Commissioners of the Precinct. Lower Bartlett is a village district established pursuant to RSA Chapter 52 to provide water service. The Commission has authorized Lower Bartlett to serve customers outside its boundaries.¹ Lower Bartlett now seeks approval to expand its franchise westerly and southerly from its existing westerly franchise boundary. The proposed franchise area will be limited by the Saco River to the north, the westerly lines of Lots 283R00, 281L00, and 249L00 of the Town of Bartlett tax map 3RT 302-4 on the west, and by the White Mountain National Forest to the south. Included in the proposed new franchise area are the Cathedral Trails, Tree Tops, and Cow Hill developments, the Bear Peak Ski Area, and Rogers Crossing. The petition and subsequent docket filings, other than information for which confidential treatment is requested of or granted

¹ See, e.g., *Lower Bartlett Water Precinct*, Order No. 23,938, 87 NH PUC 149 (2002); *Lower Bartlett Water Precinct*, Order No. 23,562, 85 NH PUC 635 (2000).

by the Commission, is posted to the Commission's website at

<http://www.puc.nh.gov/Regulatory/Docketbk/2011/11-242.html>

Lower Bartlett states that it has received requests for service from residences and businesses within the proposed franchise area. This area was recently adversely impacted by Tropical Storm Irene. Extension of the Precinct's water mains into the new franchise area will include the installation of fire hydrants as a further benefit to residences and businesses whether or not those properties take domestic service from Lower Bartlett. Lower Bartlett states it plans to extend a water main approximately two miles along Route 302 to the access road for the Bear Peak Ski Area and adjoining town roads along this route.

Lower Bartlett states that it will provide a quality and quantity of water to customers in the proposed franchise area equal to that currently provided to its customers within its current franchise and municipal boundaries. Customers receiving service within the proposed franchise area will be charged rates that are no higher than 15% above that charged to existing inside customers of Lower Bartlett, pursuant to RSA 362:4 III-a, (a) – (e). Lower Bartlett states that its wells produce water at a rate in excess of two million gallons per day, and that it has satisfied the requirements of RSA 374:22, III regarding the suitability and availability of water. Lower Bartlett states it has the managerial, legal, technical, and financial expertise to provide water service in the proposed franchise area and that there is no other private water utility, or water precinct or municipal water system capable of serving the proposed franchise area. Lower Bartlett's voters have approved the proposed franchise expansion in votes taken in 1997, 1998, 2005, and 2007.

Lower Bartlett has notified the Selectmen of the Town of Bartlett of its' intention to provide water service in the proposed franchise area; as of the date of the petition, the Bartlett Selectmen have not provided a response to Lower Bartlett's proposal.

On November 15, 2011, Staff of the Commission filed a letter recommending approval of Lower Bartlett's franchise request. Staff stated that all affected parties are in agreement with Lower Bartlett's request, with the exception of the Board of Selectmen of the Town of Bartlett, which has been notified of the instant petition.

Staff stated that it had reviewed Lower Bartlett's petition and had propounded data requests to understand the damage caused by Tropical Storm Irene to roads and the water mains owned by the Cow Hill homeowners association. The Cow Hill system voted in September to obtain water from Lower Bartlett and to turn its system over to Lower Bartlett as part of the project. Lower Bartlett has been able to secure a commitment from the New Hampshire Department of Environmental Services (DES) for available State Revolving Loan Funds (SRF) to finance the water main extension. Staff confirmed from DES that Lower Bartlett has adequate water supplies to provide water service within the proposed franchise area. DES provided a letter stating that Lower Bartlett meets the requirements of RSA 374:22, III for suitability and availability of water. Through discovery responses, Lower Bartlett clarified that it intends to charge the same water rates to customers in the proposed franchise area that it charges within its corporate boundaries, but Lower Bartlett reserves the right to request authority to charge customers outside its corporate boundaries a rate no higher than 15% above that charged to its municipal customers. Staff noted that, because the authority to charge outside customers an additional 15% only applies to 'new' customers, it recommends that Lower Bartlett seek the

opinion of the Commission prior to implementing any rate increase to these outside customers. Staff noted that Lower Bartlett's current tariff states it charges its outside water customers an annual charge based on property valuation to recover certain water system related costs that are otherwise included in real estate tax bills paid by inside customers.

II. COMMISSION ANALYSIS

The Commission most recently determined that Lower Bartlett possesses the requisite managerial, financial, and technical expertise to provide water service in Bartlett in its decision in *Lower Bartlett Water Precinct*, Order No. 24,811, 92 NH PUC 484 (2007). DES has confirmed in a letter dated August 6, 2010 that Lower Bartlett has suitable and available water to supply the proposed new franchise area. By extending its water mains into the new franchise area, Lower Bartlett is in part responding to emergency circumstances created through a natural disaster and will provide water service to homeowners associations and other new customers who have had significant operating difficulties. Lower Bartlett will also provide fire protection within the new franchise area by installing hydrants. Lower Bartlett has demonstrated it has access to external sources of funding by virtue of the availability of SRF funding for the extension of its water mains to provide service. Lower Bartlett will continue to charge equivalent rates to customers outside its corporate boundaries, and will therefore continue to be exempt from regulation by this Commission. Staff has identified a potential question, not at issue today, regarding the applicability of RSA 362:4, III-a that limits charging a rate premium to 'new' customers outside corporate boundaries. We encourage Lower Bartlett to consult with counsel and discuss these matters with Staff if in the future it seeks to charge the 15% rate premium to its outside customers.

The Commission reviews franchise petitions to ensure that they are consistent with the orderly development of the region. *Pennichuck Water Works, Inc.*, 72 NH PUC 589, 593 (1987). RSA 374:26 explicitly authorizes the Commission to act on a franchise petition without hearing when all interested parties are in agreement. We note that Lower Bartlett's request is of an emergency nature, the Bartlett Board of Selectmen has been notified of this petition, and that the Board has not objected to Lower Bartlett's petition. In light of the support for the proposal, the need for prompt action as a result of Hurricane Irene damage and the current availability of SRF monies, we will issue this order on a *nisi* basis.

Having reviewed Lower Bartlett's filing and Staff's recommendation, we find that Lower Bartlett has the requisite capability to provide water service in the requested franchise area, meets the rate and service requirements of RSA 362:4, III-a and its expansion within the Town of Bartlett is for the public good. Lower Bartlett shall not be considered a public utility pursuant to RSA 362:2 and RSA 362:4 so long as it complies with RSA 362:4, III-a.

Based upon the foregoing, it is hereby

ORDERED NISI, that subject to the effective date below, Lower Bartlett Water Precinct is authorized to extend water service into a limited area of the Town of Bartlett as described above; and it is

FURTHER ORDERED, that except for franchise application requirements, Lower Bartlett Water Precinct is exempt from certain Commission regulation in accordance with RSA 362:4, III-a; and it is

FURTHER ORDERED, that Lower Bartlett Water Precinct shall cause a copy of this Order *Nisi* to be published once in a newspaper of circulation in those portions of the state where

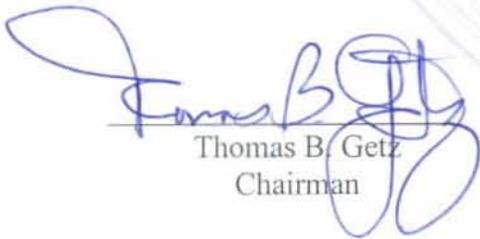
operations are conducted, such publication to be no later than November 22, 2011 and to be documented by affidavit filed with this office on or before November 30, 2011; and it is

FURTHER ORDERED, that all persons interested in responding to this Order *Nisi* be notified that they may submit their comments or file a written request for a hearing which states the reason and basis for a hearing no later than November 28, 2011 for the Commission's consideration; and it is

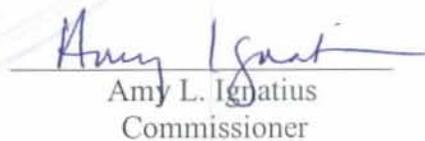
FURTHER ORDERED, that any party interested in responding to such comments or request for hearing shall do so no later than November 29, 2011; and it is

FURTHER ORDERED, that this Order *Nisi* shall be effective November 30, 2011, unless Lower Bartlett Water Precinct fails to satisfy the publication obligation set forth above or the Commission provides otherwise in a supplemental order issued prior to the effective date.

By order of the Public Utilities Commission of New Hampshire this eighteenth day of November, 2011.

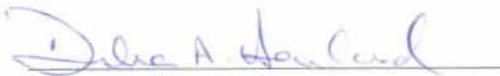


Thomas B. Getz
Chairman



Amy L. Ignatius
Commissioner

Attested by:



Debra A. Howland
Executive Director