

DW 01-244

HOLIDAY ACRES WATER AND WASTEWATER SERVICES

**Petition for Approval of Refinancing and Issuance of
First Mortgage**

Order Nisi Approving Petition Subject to Certain Conditions

O R D E R N O. 23,908

January 25, 2002

The Petitioner, Holiday Acres Water and Wastewater Services (Holiday Acres or the Company), a division of Holiday Acres Joint Venture Trust (Trust), on December 14, 2001, filed with the New Hampshire Public Utilities Commission (Commission) a petition seeking the Commission's approval of the refinancing of the Trust's long-term debt and for approval of a mortgage that would include utility assets to secure that obligation.

In 1995, the Trust purchased a manufactured housing community, or mobile home park (Park), known as Holiday Acres located in the Town of Allenstown, New Hampshire from the Trustee in Bankruptcy for the United States Bankruptcy Court for the District of New Hampshire. The Trust purchased the property for \$4.2 million as part of the resolution of the bankruptcy of the previous owner.

Shortly thereafter, the Company requested authorization from the Commission to operate the water and

sewer utilities on the Park premises that also serve certain customers located outside of the Park and to charge rates for those services. In 1996, the Commission issued an order authorizing the Company to conduct business and approving rates for the utility. *Re Holiday Acres Water and Wastewater Services*, 81 NH PUC 1058 (1996). That order further adopted a stipulation that reflected a commitment by the Company to make substantial investments in the utility infrastructure serving the Park.

The purchase of the Park was financed in part by a \$3.9 million note. The interest rate on this note is a variable rate computed from LIBOR plus 350 basis points with a cap of 12.95% and a floor of 6.50%. The current rate under this note is approximately 8.00%. That note will mature within six months, July 1, 2002, and must therefore, be refinanced.

The proposed refinancing note in the amount of \$5.6 million carries a fixed interest rate of 7.00% and a term of seven years. This note refinances the remaining portion (approximately \$3.7 million) of the initial \$3.9 million note used to purchase the bankrupted Park. The result will be an infusion of an additional \$1.9 million into the Trust. These funds will be used to refinance short term obligations and

equity infusions by the settlors into the Trust to significantly rehabilitate the Park and the utility infrastructure.

The proceeds of the financing will not be used to make further significant investments in utility plant that might lead to increased rates to customers. Rather, this is a refinancing of debts and obligations that are already in existence that were incurred to improve the overall Park and the utilities serving the Park. These investments in utility plant, amounting to approximately \$800,000, were made as part of an overall plan to upgrade the utility facilities and were designed and implemented by the engineering firm retained by the Trust to advise it along those lines.

Those plans were reviewed by Staff as part of the 1996 rate proceeding. Included in the stipulation agreement from that proceeding was the recommendation by Staff and the Company that once these improvements were completed, another rate proceeding of some nature should be initiated in order to consider recovery of the costs of those investments. See *Re Holiday Acres Water and Wastewater Services*, 81 NH PUC 1058 (1996). As of this date, such proceeding has not yet taken

place.¹

¹In October 1999, Docket No. DW 99-154 was opened to consider the Company's petition for step increases in both their water and sewer rates to recover the costs of significant fixed plant additions. In September 2000, as a result of the Company's continued delays in submitting requested information to the Commission Staff, a Secretarial Letter was issued informing the Company that Docket No. DW 99-154 had been closed.

With regard to the overall financial, managerial and operational health of the Company; in 2000, the Commission initiated an investigation of the Company's bookkeeping practices. That investigation resulted in the issuance of Order No. 23,739 (July 9, 2001) requiring the Utility to bring its books and records into conformance and compliance with Commission rules and regulations and to meet certain deadlines to file their 1999, 2000 and 2001 Annual Reports. As of this time, the Company has substantially complied with Order No. 23,739.

Staff has reviewed the filing and has recommended approval of the proposed financing based on the following facts: 1) the Company does not propose to increase its investment in plant, with the commensurate increase in rates that normally accompanies such investments, as a result of the proposed financing; 2) in the past, the debt, and debt to equity structure of the Trust have not been used to set rates for the utility services but have and will in the future only serve as potential proxies or guidelines for the overall cost of capital of the utility divisions of the Trust; and 3) to the extent the new financing is used in any manner to establish the cost of capital for utility services, the proposed financing decreases the overall cost of capital to

DW 01-244

-6-

ratepayers.

Pursuant to the provisions of RSA 369:1, public utilities engaged in business in this State may issue evidences of indebtedness payable more than 12 months after the date thereof only if the Commission finds the proposed issuance to be "consistent with the public good." The New Hampshire Supreme Court has further provided that this Commission may look beyond actual terms of the proposed financing to the use of the proceeds of those funds and the effect on rates to insure the public good is protected. See *Appeal of Easton*, 125 N.H. 205 (1984).

In the case at hand, the focus of the Trust's financing/refinancing is not the utility division but the overall manufactured housing community. While significant investments were made with the funds to be refinanced, these expenditures have already been completed and were reviewed to some extent by the Staff as part of the 1996 rate and franchise proceeding. Thus, there is no issue relative to the use of the proceeds of the funds.

Given the fact, however, that the refinancing may affect the overall cost of capital to ratepayers we must also review that aspect of the financing. We note that while the Trust's overall capital structure was not used to determine the cost of capital in the last rate proceeding, it may play a

role in the Company's cost of capital in future proceedings. To the extent the Trust is used as a proxy for the debt and equity structure of the Company, we must examine the actual terms of the note.

As is set forth above, the note is for a term of seven years with an interest rate of 7.00%. While this is not the most attractive rate we have reviewed for recent financings of other utilities under our jurisdiction, we believe it is an attractive rate for a utility of this size and nature. We further note that a rate of 7.00% in all likelihood would not have been offered to a utility of this size if it had sought financing on its own, without the additional guarantees and assurances offered by the other assets of the Trust.

Thus, under the circumstances, we find the proposed financing and mortgage consistent with the public good. Interest rates are approaching historical lows and refinancing at this time will reduce the cost of long-term debt. These savings will ultimately reduce the cost of service to ratepayers.

Based upon the foregoing, it is hereby

ORDERED NISI, that pursuant to RSA Chapter 369:1-4, the Commission finds that the proposed financing, upon the

terms and conditions proposed in the Company's petition and as set forth in the accompanying note, and subject to the terms and conditions specified in this Order, is consistent with the public good; and it is

FURTHER ORDERED, that the Commission hereby approves and authorizes the Trust, pursuant to RSA 369:1-4, to mortgage its properties to secure said note; and it is

FURTHER ORDERED, that the Petitioner shall cause a copy of this Order Nisi to be published once in a statewide newspaper of general circulation or of circulation in those portions of the state where operations are conducted, such publication to be no later than February 1, 2002 and to be documented by affidavit filed with this office on or before February 8, 2002; and it is

FURTHER ORDERED, that all persons interested in responding to this petition be notified that they may submit their comments or file a written request for a hearing on this matter before the Commission no later than February 8, 2002; and it is

FURTHER ORDERED, that any party interested in responding to such comments or request for hearing shall do so no later than February 15, 2002; and it is

FURTHER ORDERED, that this Order Nisi shall be

effective February 22, 2002, unless the Commission provides otherwise in a supplemental order issued prior to the effective date; and it is

FURTHER ORDERED, that the Petitioner shall file true copies of the loan documents executed or otherwise finally issued in connection with the closing of the transactions contemplated hereby.

By order of the Public Utilities Commission of New Hampshire this twenty-fifth day of January, 2002.

Thomas B. Getz
Chairman

Susan S. Geiger
Commissioner

Nancy Brockway
Commissioner

Attested by:

Debra A. Howland
Executive Director & Secretary