

DW 99-166

LOWER BARTLETT WATER PRECINCT
BARTLETT VILLAGE WATER PRECINCT

Requests for Franchise Expansion

Order Following Pre-Hearing Conference

O R D E R N O. 23,926

March 4, 2002

APPEARANCES: Ransmeier & Spellman, P.C. by Timothy E. Britain, Esq. for the Lower Bartlett Water Precinct; Robert Blake and Bert George for the Bartlett Village Water Precinct; and Donald M. Kreis, Esq. for the Staff of the New Hampshire Public Utilities Commission.

I. PROCEDURAL HISTORY

This case requires the New Hampshire Public Utilities Commission (Commission) to consider two competing requests by municipal water precincts to provide service outside their respective precinct boundaries along the Route 302 corridor in Bartlett. The applicable law, RSA 362:4, III, exempts such service from rate regulation, as long as the outside service is comparable in quality and ratepayer cost to the service provided within the precinct, but makes clear that the franchise application requirements of RSA 374 still apply. Accordingly, this is an RSA 374 proceeding.

The Lower Bartlett Water Precinct (LBWP) initiated this case in 1999, having previously gained Commission approval under RSA 374 to serve certain areas west of the

Precinct's boundaries along Route 302, including the area formerly served by Birchview by the Saco, Inc. The LBWP proposed to extend its franchise territory further west, up to the boundary of the Bartlett Village Water Precinct (BVWP). The Commission granted the LBWP's request in part and held the remainder in abeyance for a one-year period. See *Lower Bartlett Water Precinct*, Order No. 23,562, 85 NH PUC 635, 641 (2000).

The delay was imposed at the request of the BVWP, which indicated that it was then in the process of assessing its own growth options. *Id.* at 644. We gave the BVWP a fixed period of time, one year, to conduct that assessment "in light of what we consider to be the public interest in seeing that customers in this area and in some of these troubled water systems [along the Route 302 corridor] have viable options for safe and reliable water service." *Id.*

At the conclusion of the one-year period, the BVWP advised the Commission in writing that it wished to provide service outside its precinct boundaries as well. Specifically, the BVWP filed a letter on August 6, 2001, indicating that it wished to extend bulk water service two miles eastward to the intersection of Route 302 and Attitash Road, with a "spur" extending into the subdivision then being

served by a regulated utility known as the Rolling Ridge Water System.¹

Although the BVWP's August 6, 2001 filing was not clear on the point, the Commission indicated that it would treat the letter as a petition for franchise authority and, accordingly, the Commission instructed the BVWP by letter to serve a copy of its request on the other parties to this docket.² This was accomplished and the Commission scheduled a status conference for October 16, 2001.

The parties and Staff conducted the status conference as contemplated and, thereafter, Staff advised the Commission by letter that an agreement had not been reached on what schedule the Commission should adopt. Accordingly, Staff

¹ The Commission has since placed the Rolling Ridge Water System in RSA 374:47-a receivership, as a result of the utility's inability to provide safe and reliable service. See Order No. 23,794 (October 4, 2001) (imposing receivership) and Order No. 23,836 (November 2, 2001) (extending receivership until further order of Commission) in Docket No. DW 01-054. The BVWP proposes to provide water to the subdivision on a bulk, wholesale basis, which presupposes that a homeowners' association or some other entity would emerge to provide service to individual residences in the subdivision.

² The BVWP itself never formally intervened in this docket when it was limited to considering the LBWP petition. However, when the BVWP made its own franchise request, and over the written objection of the LBWP, the Commission opted to consider both requests in this docket (as opposed to opening a separate docket to consider the BVWP petition). This had the effect of making the BVWP a party here as a petitioner.

submitted a proposed schedule, as did the LBWP. By Secretarial Letter dated November 7, 2001, the Commission approved the scheduling framework proposed by Staff, albeit with a somewhat less ambitious set of deadlines, culminating in a merits hearing in May 2002. Pursuant to that schedule, the Commission issued an Order of Notice providing for a Pre-Hearing Conference on January 28, 2002, preceded by public notice via newspaper publication and an opportunity for the submission of additional intervention petitions (of which there were none).

The pre-hearing conference took place as scheduled, before Hearings Examiner Edward N. Damon. The parties and Staff gathered for a technical session thereafter, which was the subject of a report filed by Staff on January 29, 2002. Mr. Damon filed his report and recommendation on January 30, 2002.

II. POSITIONS OF THE PARTIES AND STAFF

In its January 29 letter, Staff noted that (1) the BVWP had raised concerns about the procedural schedule outlined in the Commission's previously issued Order of Notice, (2) that the LBWP stated an intention at the technical session to withdraw its petition, and (3) that on or before February 7, 2002, the BVWP would submit a written proposal for

a revised procedural schedule to accommodate certain delays it deems necessary in order to facilitate the full development of its franchise plans. Mr. Damon recommended that the Commission await the BVWP's February 7 filing before making a determination as to how the case should proceed.

Although the Town of Bartlett is an intervenor in the case, it did not participate in the Pre-Hearing Conference or technical session. The Town submitted a letter on January 29, 2002 signed by the selectmen. The letter endorsed the BVWP's franchise request, described the proposal as a "whole new concept" for the BVWP and therefore urged the Commission to be "understanding" and to "offer any assistance and guidance as the process moves along."

The LBWP filed a written withdrawal of its petition on January 29, 2002. Specifically, the LBWP indicated that it no longer wished to seek additional franchise authority west of The Seasons subdivision, as previously granted by the Commission during an earlier phase of this docket. See Order No. 23,562 (September 25, 2000). Accordingly, the LBWP requested a Commission order clarifying that it could serve certain parcels in the vicinity of The Seasons and indicated that the LBWP petition was otherwise withdrawn.

On February 7, 2002, the BVWP submitted its proposed procedural schedule as previously contemplated, viz:

BVWP to file project-related warrant article to be presented at its April 10 Annual Meeting	March 1, 2002
BVWP to file signed conditional user agreements from customers in proposed service territory	March 31, 2002
BVWP to submit results of Apr. 10 Annual Meeting	April 11, 2002
BVWP to issue Request for Qualifications re Engineering Study	April 15, 2002
BVWP to submit Feasibility Study and progress report	July 19, 2002
BVWP to submit Engineering Study and pre-filed testimony	Oct. 1, 2002
Data requests to BVWP	Oct. 15, 2002
Responses to 10/15 Data Requests	Oct. 30, 2002
Pre-filed testimony from Staff, LBWP and intervenor, and supplemental BVWP testimony	Nov. 1, 2002
Merits hearing	Nov. 15, 2002

The BVWP's proposed procedural schedule also includes certain additional events, such as public meetings, regular monthly meetings of the Precinct itself, and tentative planning and construction milestones that do not relate directly to the Commission proceedings but are obviously highly relevant to

the progress of the BVWP expansion plan. Further, with regard to the proposed October 1, 2002 filings, on that date the BVWP proposes to submit not simply an engineering study and pre-filed testimony but also

additional information concerning selected options and cost estimates, proposed rates, rate impact scenarios with regard to the proposed expansion, an analysis and description of how [B]VWP would satisfy the exemption criteria of RSA 362:4, III(a) and a discussion of the extent to which extension to the Rolling Ridge subdivision could be considered or constructed separately from the larger extension along Route 302.

No party has indicated any objection to the BVWP's scheduling proposal.

On February 15, 2002, the LBWP filed a letter revising and supplementing its January 29, 2002 filing. The February 15 letter clarified the LBWP's withdrawal of its petition so as to seek a Commission order clarifying that certain additional parcels are within the already-granted franchise territory. Further, and more significantly for present purposes, the LBWP requested that the Commission "defer action on LBWP's withdrawal request until June 30, 2002." The LBWP further noted that, "[i]n the event that the Bartlett Village Water Precinct . . . is unwilling or unable to serve the area between its easterly municipal boundary and the westerly line of the LBWP's above-described franchise

area, LBWP is willing to reconsider its position regarding the terminus of its franchise area." There were no objections to the LBWP's February 15 filing.

Finally, on February 25, 2002, the Commission received a letter from the Water Supply Engineering Bureau of the Department of Environmental Services (DES). The DES indicated that the BVWP "can meet the suitability and availability requirements of RSA 374:22, III" and, therefore, that the DES supports the awarding of a franchise to BVWP covering "the general area of the Attitash Ski Area."

III. COMMISSION ANALYSIS

The above-referenced filings make clear that there is agreement between the two water precincts that the BVWP should be given the first opportunity to serve its requested franchise territory, which is situated to the east of the Precinct's boundary. Such a strategy is also consistent with the expressed views of the Town of Bartlett. Staff has indicated no objection to this implicit agreement between the precincts, and we have no reason to discourage this approach to the case.

Accordingly, we approve the BVWP's proposed procedural schedule as consistent with the public good. The schedule gives the BVWP more time than the Commission had

previously contemplated to develop the BVWP franchise expansion plans more fully, which is appropriate in the circumstances. The Commission cannot approve a franchise petition such as that of the BVWP's unless the Precinct demonstrates that it has the requisite "technical, managerial and financial" capability. *Valleyfield Water, Inc.*, Order No. 23,752 (July 30, 2001). It is clear that the BVWP is still in the process of developing that capability, with engineering/feasibility studies ongoing as well as efforts to gain the necessary funding approvals. No purpose would be served by foreclosing those efforts by imposing early deadlines.

However, the situation involving water supply in the Route 302 corridor cannot remain unresolved indefinitely, particularly where the LBWP appears to have the capability to develop the infrastructure to provide service in the area. Of particular concern is the Rolling Ridge Water System, which is presently in RSA 374:47-a receivership and thus no longer functioning as an independent utility. Both the LBWP and BVWP franchise expansion requests address the Rolling Ridge problem. Choosing among those proposed solutions in a timely manner is an important objective of this docket.

It is appropriate in these circumstances for us to

place the BVWP on notice that it will be held to the timetable it has proposed in its February 7 filing. If the BVWP project does not move forward as contemplated - either because the Precinct voters fail to endorse the appropriate warrant article or articles, or the necessary engineering and feasibility studies are not being completed, or the Precinct fails to submit testimony or discovery responses according to the schedule it has proposed, or for any other reason - the Commission may determine that the BVWP is not in a position to provide service outside its present boundaries. At that point, consistent with the LBWP's most recent filing, the Commission could conclude that the full LBWP franchise expansion request should move forward. *See Lower Bartlett Water Precinct*, 85 NH PUC at 644 (reserving right to approve LBWP franchise expansion request without development of further record in appropriate circumstances).

Finally, we pause to comment briefly on the Town's request that we provide assistance and guidance to the BVWP as it seeks to develop its expansion plans fully. The Staff of the Commission's Gas and Water Division is available to the BVWP, or any other party, to the extent that its expertise would be of assistance. Commission statutory authority in a proceeding such as this is limited to the neutral evaluation

of the franchise expansion requests.

We thank the two precincts for their considerable efforts to date, aimed at expanding the area in Bartlett that can take advantage of reliable public water supply. We encourage the two precincts to communicate and cooperate with each other, and with Staff, in the interest of bringing this proceeding to a successful resolution as efficiently as possible.

Based upon the foregoing, it is hereby

ORDERED, that the procedural schedule proposed by the Bartlett Village Water Precinct on February 7, 2002 is APPROVED; and it is further

ORDERED, that the petition for franchise expansion of the Lower Bartlett Water Precinct shall be deemed to be withdrawn, but only to the limited extent stated in the Precinct's February 15, 2002 letter to the Commission.

By order of the Public Utilities Commission of New Hampshire this fourth day of March, 2002.

Thomas B. Getz
Chairman

Susan S. Geiger
Commissioner

Nancy Brockway
Commissioner

Attested by:

Debra A. Howland
Executive Director & Secretary