

DW 01-244

HOLIDAY ACRES WATER AND WASTEWATER SERVICES

**Objection to Petition for Approval of Refinancing and
Request for Hearing**

**Order Denying Request for Hearing and Requiring Holiday Acres
to File for Approval to Transfer its Assets Into a Separate
Entity**

O R D E R N O. 23,931

March 8, 2002

I. INTRODUCTION

On December 14, 2001, Holiday Acres Water and Wastewater Services (Holiday Acres or the Company), a division of Holiday Acres Joint Venture Trust (Trust), filed with the New Hampshire Public Utilities Commission (Commission) a petition seeking the Commission's approval for the refinancing of the Trust's long-term debt and for approval of a mortgage that would include utility assets to secure that obligation. The Trust owns and operates the Holiday Acres mobile home park, and owns and operates a water and sewer utility in that park. The utility also serves certain customers outside the park.

On January 25, 2002, the Commission issued its Order No. 23,908 (the Order), which provided its approval NISI for Holiday Acres' request. The Order provided that any person interested in responding to the petition, or any person filing

a written request for a hearing, do so no later than February 8, 2002.

On February 11, 2002, Mr. James Jackson, a customer of Holiday Acres living outside the park, filed an Objection to Petition for Approval of Refinancing and Issuance of First Mortgage and Request to Conduct a Hearing. On February 15, 2002, Holiday Acres filed an Objection to Motion for Hearing.

II. HEARING REQUEST OF MR. JACKSON

In his Objection and Request for Hearing, Mr. Jackson asserts that: he is the owner of the trade name "Holiday Acres Joint Venture Trust" and not the Trust; he is a customer of the utility and as such his rights, privileges and other interests are affected; the owner of the Trust paid \$4.2 million for the park in 1996, and since that time has collected in excess of \$6 million in lot rents as well as other fees from new homes being located in the park; since the utility began charging rates it has realized about \$793,000 in revenues; because the owners of the park also own the utility, they are operating in violation of RSA 205-A; he questions the assertion in Order No. 23,908 that the investment in utility plant is approximately \$800,000, believing that it is closer to \$400,000; he believes the utility has already recovered its entire investment and is now reaping "windfall" profits; the

proceeds of the loan will not be used to make further significant investments in utility plant, and therefore will be used in other business ventures; and that the refinancing has no benefit for ratepayers and would result in an additional \$1.9 million lien being placed on the utility's assets in what he terms a reckless disregard for the public interest.

III. HOLIDAY ACRES' OBJECTION

In its Objection to Mr. Jackson's request for a hearing, the Company asserts that Mr. Jackson's Motion raises issues that have already been addressed by the Commission, including the assertion that the owners of Holiday Acres are in violation of RSA 205-A; that other of his assertions have no bearing on the standards of law to be applied under RSA 369:1; that Mr. Jackson, not being a resident of the mobile home park and therefore not "directly affected", has no standing to challenge certain decisions of an administrative agency under RSA 541 as in *Appeal of Richards*, 134 N.H. 148, 154 (1991); and that at least two other of Mr. Jackson's assertions with respect to the utility's ownership of assets or their value are without basis in law or fact.

IV. COMMISSION ANALYSIS

Mr. Jackson's request for a hearing was received

late, after the deadline in the Order for such requests. The request, therefore, can be rejected on those grounds alone. However, even with a careful review of Mr. Jackson's filing, we conclude that no hearing is necessary. All of the issues he raises can either be resolved as a matter of law, and thus do not require the introduction of any additional evidence, or relate to issues that have been fully litigated in previous dockets involving Holiday Acres and need not be revisited. *See Re Holiday Acres Joint Venture Trust*, 81 NH PUC 1058 (1996); *Re Holiday Acres Water and Wastewater Services*, Order No. 23,739 (July 9, 2001); and *Re Holiday Acres Water and Wastewater Services*, Order No. 23,766 (August 24, 2001).

With regard to Mr. Jackson's assertion that the Company's refinancing would result in an additional \$1.9 million lien on the utility's assets, which could unnecessarily burden ratepayers, the Commission does agree that the continued operation of the water and sewer utilities as a part of a much larger entity, the mobile home park, is problematic from a regulatory perspective. The Company has indicated in its petition in this proceeding that it has created a new entity to take control of the operation and ownership of the utility assets, and intends to file for the requisite approval once all issues with its books and records

as raised in DW 01-027 are resolved to the Commission's satisfaction. Our Staff has indicated that the Company is in compliance; therefore, we will direct Holiday Acres to make its filing for transfer of its assets into a new, separate entity no later than March 29, 2002. Once that filing is made, the Commission will have the opportunity to establish a capital structure for the new entity which takes into account the appropriate amount of debt that will be assumed by the utility's customers.

Based upon the foregoing, it is hereby

ORDERED, that the request of Mr. James Jackson for a hearing is DENIED; and it is

FURTHER ORDERED, that Holiday Acres file a petition for transfer of its utility assets into a new, separate entity from the mobile home park no later than March 29, 2002.

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

Thomas B. Getz
Chairman

Susan S. Geiger
Commissioner

Nancy Brockway
Commissioner

Attested by:

Debra A. Howland
Executive Director & Secretary