

DW 99-166

LOWER BARTLETT WATER PRECINCT

Petition for Franchise Extension

Order Approving Procedural Schedule and Clarifying Issues

O R D E R N O. 23,414

February 28, 2000

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

I. BACKGROUND

On October 28, 1999, the Lower Bartlett Water Precinct (Precinct) filed with the New Hampshire Public Utilities Commission (Commission) a petition pursuant to RSA 374:22 to expand its franchise territory within the Town of Bartlett. The proposed franchise territory includes, but is not limited to, the area presently served by Birchview by the Saco, Inc. (Birchview), a water utility that has been operating under receivership.

The Commission issued an Order of Notice on January 27, 2000 scheduling a pre-hearing conference for February 16, 2000 and directing that any petitions to intervene be filed by February 11, 2000. Two such petitions were filed: one, from the Selectmen of the Town of Bartlett (Selectmen) and another from Mr. George Weigold and Ms. Karen Weigold, residents of

the Town of Bartlett who are presently Birchview customers.

The Commission conducted the prehearing conference as scheduled. The parties seeking intervenor status did not appear at the conference. However, Mr. and Ms. Weigold submitted a written statement that laid out a series of concerns for the Commission's consideration. The Selectmen laid out their preliminary position, albeit briefly, in their petition to intervene.

II. PETITIONS TO INTERVENE

Neither Staff nor the Precinct objected to the Selectmen becoming intervenors. Accordingly, their request for intervenor status is granted.

The Precinct objected to granting Mr. and Ms. Weigold intervenor status. Relying both on Mr. and Ms. Weigold's written statements, as well as certain public statements attributed to them by a local newspaper, the Precinct contended that Mr. and Ms. Weigold intend to delay the proceedings by interjecting irrelevant issues, making assertions that are not supported by evidence and attempting to relitigate matters that were previously adjudicated by the Commission in Docket No. DE 97-255, in which we considered the status of the Birchview franchise and determined that it should ultimately be transferred to the Precinct.

Staff did not object to the intervention of Mr. and Ms. Weigold. However, it was Staff's contention that all putative intervenors waived any objection to the procedural schedule established at the prehearing conference. Staff indicated that it shares the Precinct's concerns that issues previously adjudicated in the Birchview docket not be relitigated.

The relevant provisions of the Administrative Procedure Act requires the Commission to grant a timely petition to intervene if (1) "the petition states facts demonstrating that the petitioner's rights, duties, privileges, immunities or other substantial interests may be affected by the proceeding or that the petitioner qualifies as an intervenor under any provision of law," and (2) the Commission determines "that the interests of justice and the orderly and prompt conduct of the proceedings would not be impaired by allowing the intervention." RSA 541-A:32, I.

As will be explained more fully below, at the conclusion of the Birchview receivership Mr. and Ms. Weigold must become customers of the Precinct if they intend to avail themselves of public water supply at their home in Bartlett. Neither Staff nor the Precinct contended that, in these circumstances, the rights and privileges of presumptive

customers of the Precinct may not be affected by the outcome of this docket. We accept that general proposition.

With regard to whether granting the petition of Mr. and Ms. Weigold is in the interests of justice and will adversely affect the orderly and prompt conduct of this docket, we agree with Staff that it suffices for us to make clear that issues previously adjudicated in the Birchview docket will not be relitigated here. We are confident that such an admonition is sufficient to assure that all parties to this docket will work diligently to assure that this matter is resolved expeditiously and in a manner conducive to the orderly and prompt conduct of these proceedings. Accordingly, we grant the Weigolds' request for intervention and that of the Selectmen of Bartlett.

III. POSITIONS OF THE PARTIES

With regard to articulating a preliminary statement of the other issues in the docket, Staff indicated that it would likely support the Precinct's request to expand its franchise territory beyond that which the Commission has already granted. However, Staff noted that it would like the Precinct to clarify the precise boundaries of its proposed service territory and to provide additional documentation for its proposal.

As noted above, neither the Selectmen nor Mr. and Ms. Weigold appeared at the prehearing conference to provide a preliminary statement of the issues they wish to raise in this docket. However, in their petition for intervention the Selectmen indicated that their concern is that the Precinct will likely follow up franchise expansion with a request to expand the boundaries of the Precinct itself, an outcome which they do not approve. In their written statement, Mr. and Ms. Weigold expressed a number of concerns.

IV. ISSUES IN THIS DOCKET AND CLARIFICATION OF ORDER NO.

23,253

Both the Precinct and Staff also asked the Commission to clarify in its report of the Prehearing Conference the relationship between this docket and the Commission's Order No. 23,253 (July 7, 1999) in Docket No. DE 97-255. In the view of Staff and the Precinct, Order No. 23,253 establishes that the Precinct already enjoys the franchise rights in the Birchview territory, subject only to the Precinct's completion of the construction of the infrastructure necessary to replace that of Birchview. Thus, according to the Precinct and Staff, the only issue in this docket is a request by the Precinct to expand its franchise territory to certain areas outside both its present service

territory and the Birchview service area. Staff and the Precinct represent that they seek this clarification because confusion about or ignorance of the effect of Order No. 23,253 has engendered the widespread perception among Birchview customers that some other option than the Precinct may exist for them to obtain public water supply at the conclusion of the Birchview receivership. According to the Precinct and Staff, this perception threatens to jeopardize the \$1.2 million in financing the Precinct has obtained, through the federal Rural Development program, for its expansion into the Birchview territory because many Birchview customers have been unwilling to commit themselves contractually to taking service from the Precinct.

We agree that some restatement of our previous determination will both serve to clarify what is at issue in this docket and tend to promote the objectives endorsed in Order No. 23,253. In that order, which we issued following two days of evidentiary hearings, we considered all available alternatives for providing public water supply in the Birchview territory and concluded that it is in the best interests of Birchview customers to transfer the Birchview franchise to the Precinct. Order No. 23,253 (July 7, 1999) at 20. In so concluding, we determined that it is not "economic

for this system [i.e., Birchview] to be operated on a stand-alone basis any longer." We also rejected a proposed homeowners' cooperative as well as the prospect of indefinitely maintaining Birchview in receivership while interested parties sought other alternative solutions. *Id.* at 21-22. Accordingly, we explicitly approved the transfer of the Birchview franchise to the Precinct. *Id.* at 26.

Elsewhere in Order No. 23,253, we made the observation that "once the Precinct is ready to provide service to the [Birchview] subdivision it will qualify for exemption from Commission jurisdiction pursuant to RSA 362:4 so long as it offers the same quality of service and rates offered to customers within the boundaries of the Precinct." *Id.* at 25. This language was merely intended to state the legal and technical conditions precedent to the Precinct commencing service under the transferred franchise. Compliance with these conditions will allow the Precinct to provide service to Birchview customers without being subject to Commission regulation pursuant to RSA 362:4, III(a). Nothing in Order No. 23,253 was intended to suggest that the Precinct must obtain any further franchise approvals in order to serve the Birchview territory. It should be clear to the parties to this docket, as well as to all residents of the

Birchview subdivision, that the Precinct will be the sole option for public water supply in the Birchview subdivision once the Precinct is physically able to provide this service.¹

Elsewhere in Order No. 23,253, we ordered the Precinct to "request additional authority to provide service outside its municipal boundaries along the route of its main extension as such possibilities arise." The instant petition constitutes the Precinct's compliance with this directive, which was an implicit acknowledgment that it may well be sound public policy for the Precinct to serve other customers in the Town of Bartlett given the investment being made in main expansion to permit the Precinct to serve Birchview residents. Whether it is for the public good to permit the Precinct to serve those areas, outside the Birchview territory, is the sole issue in this docket. We will not relitigate the transfer of the Birchview franchise itself and we will not litigate issues that do not bear on the question of whether it

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By statute, no water company may obtain the Commission's approval to "operate as a public utility without first satisfying any requirements of the division of water supply and pollution control and the division of water resources concerning the suitability and availability of water for the applicant's proposed water utility." RSA 374:22, III (emphasis added). The Precinct has submitted the necessary documentation of its compliance with this requirement.

is in the public good to permit the Precinct to serve outside the Birchview territory.

V. PROCEDURAL SCHEDULE

Following the prehearing conference, Staff and the Precinct met for a technical session and agreed upon the following proposed procedural schedule:

Testimony, supplemental information from Precinct	March 15, 2000
Data Requests from Staff & Intervenors	March 29, 2000
Data Responses from Precinct	April 12, 2000
Staff and Intervenor Testimony	May 3, 2000
Data Requests from Precinct	May 17, 2000
Data Responses from Staff & Intervenors	May 31, 2000
Settlement Conference/Technical Session	June 14, 2000
Filing of Settlement Agreement, if any	June 21, 2000
Hearing on Merits	July 6, 2000

We find the proposed procedural schedule to be reasonable and will, therefore, approve it for the duration of the proceeding.

Based upon the foregoing, it is hereby

ORDERED, that the procedural schedule delineated

above is APPROVED; and it is

FURTHER ORDERED, that the Weigolds and the Selectmen of Bartlett are granted intervention.

By order of the Public Utilities Commission of New Hampshire this twenty-eighth day of February, 2000.

Douglas L. Patch
Chairman

Susan S. Geiger
Commissioner

Nancy Brockway
Commissioner

Attested by:

Thomas B. Getz
Executive Director and Secretary