

DW 99-166

**LOWER BARTLETT WATER PRECINCT**

**Petition for Franchise Expansion**

**Order on Motion to Compel Discovery**

**O R D E R    N O.    23,471**

**May 9, 2000**

At issue in this docket is a request by the Lower Bartlett Water Precinct to expand its franchise territory. On February 28, 2000 (Order No. 23,414), we approved a procedural schedule for this docket and clarified that the pending franchise expansion request does not include the territory presently served by Birchview by the Saco, Inc., a utility currently operating under receivership. As we noted in Order No. 23,414, the Commission has already determined that the Precinct should receive the Birchview franchise as soon as the necessary construction work is completed. See Order No. 23,253 (July 7, 1999) in Docket No. DE 97-255. With regard to the Precinct's request for an additional franchise expansion, a hearing is scheduled for July 6, 2000.

In our order approving the procedural schedule, we granted intervenor status to George and Karen Weigold, two customers of Birchview by the Saco. We took this action over the objection of the Precinct, which contended that Mr. and Ms. Weigold intended to delay the proceedings by interjecting

irrelevant issues, making assertions that are not supported by the evidence and seeking to relitigate matters previously adjudicated in Docket No. DE 97-255. We stressed that we would not revisit issues that were finally determined in Docket No. DE 97-255 and admonished all parties to work diligently "to assure that this matter is resolved expeditiously and in a manner conducive to the orderly and prompt conduct of these proceedings." Order No. 23,414 at 4.

Under the procedural schedule previously established, data requests from Staff and Intervenors to the Precinct were due by March 29, 2000. On that date, Mr. and Ms. Weigold submitted ten data requests to the Precinct, requesting: (1) the Precinct's current voter list, (2) the "[a]ddress list of customers that Precinct bills for water service or Precinct tax," (3) the "[o]wner's name and physical location of all properties within the Precinct and property value of each," (4) the Precinct's application to the federal Rural Development Program for the "Glen Expansion," (5) the Precinct's application to expand its franchise to the "Jackson line," (6) any correspondence between the Precinct and the engineering firm of Prover and Lauber regarding the Precinct's plan to provide service in the Birchview territory, (7) the agreement between the Precinct and its system operator and/or

copies of "any documentation showing relationship between operator and Precinct," (8) a copy of the "agreement for lease of building from F.X. Lyons Inc.," (9), the Precinct's workers' compensation certificate, and (10) a copy of the Precinct's application to Rural Development concerning its "Holiday Ridge" expansion plans.

On April 3, 2000, pursuant to PUC Rule 204.04, the Precinct submitted to Mr. and Ms. Weigold a written objection to their data requests. According to the Precinct, all but the fifth request seek information that is irrelevant and not reasonably calculated to assist the Commission in its deliberation of the issues raised by this docket. The Precinct further asserted that the information sought in the fifth requests is a public record available to Mr. and Ms. Weigold at the Commission offices.

Mr. and Ms. Weigold filed a motion to compel responses to their data requests on April 24, 2000. In their motion, Mr. and Ms. Weigold contended that their data requests are reasonably calculated to produce evidence that will assist the Commission in determining whether the Precinct is financially, managerially and technically capable of serving its proposed franchise area. Specifically, according to Mr. and Ms. Weigold, their data requests "will assist the

Commission in determining if the Precinct is financially, managerially and technically responsible." Mr. and Ms. Weigold requested a hearing on their motion.

The Precinct filed a written objection to the motion on April 26, 2000. In its written objection, the Precinct urged the Commission to deem the motion untimely because Mr. and Ms. Weigold waited three weeks to file it. The Precinct further contended that Mr. and Ms. Weigold failed to set forth a sufficient basis for receiving the information requested. Mr. and Ms. Weigold filed a written response on May 1, 2000, reiterating that they seek the requested information in order to determine whether the Precinct is "managerially and financially responsible." Mr. and Ms. Weigold further invoked the New Hampshire Right-to-Know statute, RSA Chapter 91-A, suggesting that a failure to obtain the requested information via discovery here would lead them to seek relief from the Office of the Attorney General.

We have reviewed the motion papers submitted by the two sides in this dispute and deem them adequate for purposes of ruling on the issues raised. We will grant the motion in part and deny it in part. Although we typically allow parties to pursue wide-ranging discovery, we will deny a motion to compel responses to discovery requests when we can perceive of

no circumstance in which the requested data would be relevant. See, e.g., *New Hampshire Electric Cooperative*, Order No. 20,939 (Aug. 23, 1993). Mr. and Ms. Weigold's requests for lists of Precinct voters and ratepayers, and their request for information regarding each property within the Precinct's boundaries, have no conceivable relevance to a determination of whether the Precinct has the requisite qualifications to serve an expanded franchise area. However, we agree with Mr. and Ms. Weigold that information relating to the Precinct's financing with the Rural Development program, the Precinct's relationship with its system operator, F.X. Lyons, Inc., work performed for the Precinct by its consulting engineers, and its workers' compensation coverage are all matters that are at least arguably relevant to the Precinct's capability to serve the proposed franchise territory.

Our ruling is grounded in the Commission's discovery rule, PUC 204.04 and not the Right-to-Know statute. To the extent the Precinct is itself a public body subject to the Right-to-Know law, the Commission is without jurisdiction to provide relief for violation of the statute. See RSA 91-A:7-8 (providing for judicial remedies). Nor do we view disputes arising out of discovery requests posed to parties that litigate before the Commission as implicating the Commission's

own responsibilities to make its records available for public inspection pursuant to RSA 91-A:4. The Commission complies with its obligations under the Right-to-Know statute by making its public records available for inspection and/or copying during regular business hours. We express no view as to whether Mr. and Ms. Weigold would be entitled to any of the requested information by invoking RSA 91-A:4.

We share the Precinct's concern that Mr. and Ms. Weigold waited an inordinately long period of time before seeking the Commission's intervention in their effort to obtain responses to their discovery requests. While we do not believe this delay in itself justifies a denial of the motion, we stress that we will not allow the discovery dispute to delay the procedural schedule in these circumstances. Accordingly, the Precinct shall provide Mr. and Ms. Weigold with access to the information requested in Data Requests 4 through 10. In order to expedite the matter, we do not require the Precinct to provide copies of the material. Access shall be provided during regular business hours for the period of May 8th through May 17th. We grant Mr. and Ms. Weigold leave to file supplemental testimony by the close of business on May 17, 2000, strictly confined to matters arising out of discovery provided to them pursuant to this order. The

Precinct will have until May 22, 2000 to file data requests regarding the Weigolds' supplemental testimony, to which the Weigolds must respond by May 31, 2000. No additional revisions of the procedural schedule will be entertained based on discovery issues.

**Based upon the foregoing,** it is hereby ordered that the motion of Mr. and Ms. Weigold to compel the Lower Bartlett Water Precinct is GRANTED IN PART AND DENIED IN PART; and it is

**FURTHER ORDERED,** that the Lower Bartlett Water Precinct shall provide access to the information requested in all but the first three of the subject data requests as outlined herein; and it is

**FURTHER ORDERED,** that Mr. and Ms. Weigold shall have leave to file supplemental testimony on May 17, 2000 and the Precinct shall have until May 22, 2000 to file data requests.

By order of the Public Utilities Commission of New  
Hampshire this ninth day of May, 2000.

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Douglas L. Patch  
Chairman

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Susan S. Geiger  
Commissioner

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Nancy Brockway  
Commissioner

Attested by:

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Thomas B. Getz  
Executive Director and Secretary