

DW 99-166

LOWER BARTLETT WATER PRECINCT

Petition for Franchise Extension

**Order on Motion Requesting Publication of Amended Order of
Notice**

O R D E R N O. 23,495

May 30, 2000

This proceeding concerns a request by the Lower Bartlett Water Precinct (Precinct) to expand its franchise territory pursuant to RSA 374:22. In Order No. 23,414 (February 28, 2000), the Commission entered an order approving interventions, clarifying certain issues and establishing a procedural schedule for the docket. Order No. 23,414 noted that the Precinct proposes to expand its franchise territory to an area that "includes, but is not limited to, the area presently served by Birchview by the Saco, Inc."

Now pending is a motion by intervenors George and Karen Weigold that asks the Commission to issue an amended Order of Notice and to direct the Precinct to publish it. In essence, Mr. and Ms. Weigold seek to void the procedural schedule previously established and start the entire

proceeding over.¹

The asserted basis for the motion is that the original Order of Notice, as issued by the Commission and duly published by the Precinct, did not contain an accurate description of the proposed franchise territory. The Order of Notice contained the same description as that included in Order No. 23,414 - i.e., that the proposed franchise territory "includes, but is not limited to, the area presently served by Birchview by the Saco, Inc., a utility currently under receivership pursuant to RSA 374:47-a."

Mr. and Ms. Weigold draw the Commission's attention to the detailed description of the proposed franchise territory that is contained in the Precinct's petition. According to Mr. and Ms. Weigold, the description in the Order of Notice "does not conform to the service territory actually proposed" by the Precinct and, accordingly, "individuals located in the actual proposed service territory may be unaware that their properties are included in the proposed

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Specifically, the relief requested by Mr. and Ms. Weigold includes not only the reissuance and republication of a revised Order of Notice, but also a rescheduled prehearing conference, additional opportunities for intervention and the entering of a "revised Procedural Schedule that would allow Data Requests to be submitted to the Precinct, Staff and Intervenors."

service territory."

We deny Mr. and Ms. Weigold's motion for several reasons. First, as a factual matter, we cannot agree with the premise that the language in the Order of Notice is inaccurate. The Precinct's description of the proposed service territory is more specific than, but manifestly not inconsistent with, the characterization in the Order of Notice.²

Secondly, the Order of Notice previously issued conforms to the relevant requirement for "reasonable notice" as contained in the Administrative Procedures Act. See RSA 541-A:31, III(d) ("reasonable notice" of contested case includes "[a] short and plain statement of the issues involved" with "a more detailed statement of the issues" furnished within a reasonable time upon request). In other words, we disagree with the implicit premise of the motion

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Mr. and Ms. Weigold correctly point out that, in Order 23,414, the Commission clarified that the franchise previously held by Birchview by the Saco, Inc. had already been awarded to the Precinct in another proceeding, Docket No. DE 97-255. However, and for whatever reason, the Petition filed by the Precinct in this docket did include a request for a franchise to serve the Birchview territory. Thus, the subsequent clarification notwithstanding, the Order of Notice correctly characterized the Petition as filed by the Precinct.

that the Order of Notice was defective because it did not contain a description of the proposed franchise territory sufficiently detailed to permit all property owners within the proposed territory to determine from the face of the order whether their property was so situated.

Finally, even if we believed that the instant motion had merit, we would deny it as untimely. On May 9, 2000, in Order No. 23,471, we granted in part and denied in part a motion to compel discovery filed by Mr. and Ms. Weigold with regard to certain data requests they made of the Precinct. In that order, we expressed concern that Mr. and Ms. Weigold "waited an inordinately long period of time before seeking the Commission's intervention," stressing that we would not allow the discovery dispute to delay the procedural schedule in the circumstances. *Id.* at 6. We have precisely the same concern about the instant motion. In a written statement submitted to the Commission on the date of the Prehearing Conference, February 16, 2000,³ Mr. and Ms. Weigold complained that "[t]he scope of the franchise application stated in the legal notice

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Mr. and Ms. Weigold submitted the statement in lieu of attending the Prehearing Conference themselves. In normal circumstances, the Prehearing Conference was the appropriate occasion for prospective intervenors to argue that the Commission should have corrected and ordered the republication of the Order of Notice.

posted in the required newspapers is intentionally deceptive and names only Birchview by the Saco leaving out countless other developments and private homes and businesses." Mr. and Ms. Weigold did not request any remedy, or file any motion, in an effort to address this concern at that time or at any time in the ensuing three months. There is simply no reasonable explanation for why they waited so long to seek relief. We believe it is consistent with the letter and the spirit of the Administrative Procedures Act and notions of due process to avoid rewarding parties for withholding a motion for such an extended period.

Based upon the foregoing, it is hereby

ORDERED, that the motion of intervenors George and Karen Weigold for Publication of an Amended Order of Notice is DENIED.

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

Douglas L. Patch
Chairman

Susan S. Geiger
Commissioner

Nancy Brockway
Commissioner

Attested by:

Thomas B. Getz
Executive Director and Secretary