

DW 99-166

LOWER BARTLETT WATER PRECINCT

Petition for Franchise Extension

Order Granting Petition in Part

O R D E R    N O.    23,562

September 25, 2000

**APPEARANCES:** Ransmeier & Spellman, P.C. by Timothy E. Britain, Esq. for Lower Bartlett Water Precinct; Karen and George Weigold, *pro se*; Upton, Sanders & Smith by Robert Upton II, Esq. for Town of Bartlett; Bernard Lucey for Department of Environmental Services; and Donald M. Kreis, Esq. for the Staff of the New Hampshire Public Utilities Commission.

**I.    PROCEDURAL HISTORY**

On October 28, 1999, the Lower Bartlett Water Precinct (Precinct or LBWP) 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 Precinct is in the process of extending its mains westward along Route 302 in Bartlett to serve the area formerly served by Birchview by the Saco, Inc., pursuant to the franchise awarded to the Precinct in Docket No. DE 97-255. See Order No. 23,253 (July 7, 1999). In the instant petition, the Precinct seeks to expand its territory to serve additional customers along the main being constructed in connection with the Birchview expansion, and further requests franchise territory extending westward along Route 302 to the

present boundary of the Bartlett Village Water Precinct (BVWP).<sup>1</sup>

The Commission conducted a duly noticed pre-hearing conference on February 16, 2000, granting a petition to intervene by the Selectmen of the Town of Bartlett and, over the objection of the Precinct, a petition to intervene by Birchview by the Saco customers George and Karen Weigold. In its order following the pre-hearing conference, the Commission clarified that the instant proceeding would not concern the Birchview by the Saco franchise territory, since the Commission had already awarded that franchise to the Precinct in Docket No. DE 97-255. See Order No. 23,414 (February 28, 2000).

Discovery ensued, but required Commission intervention. On May 9, 2000 (Order No. 23,471) the Commission granted in part and denied in part a motion to compel discovery filed by Mr. and Ms. Weigold in connection with data requests they had made of the Precinct. The Precinct subsequently filed a motion to compel discovery concerning the data requests it posed of Mr. and Ms. Weigold. In his capacity as hearings examiner, General Counsel Gary

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<sup>1</sup> The Bartlett Village Water Precinct is sometimes referred to as the Upper Bartlett Water Precinct.

Epler conducted a hearing on the motion on July 7, 2000, which Mr. and Ms. Weigold did not attend. On July 18, 2000, Mr. Epler recommended to the Commission that the Precinct's discovery motion be granted in part and denied in part. The Commission approved Mr. Epler's recommendation on August 1, 2000.

While discovery was proceeding, the Commission dealt with one other preliminary matter. On May 30, 2000, the Commission denied a motion of Mr. and Ms. Weigold to cause the publication of an amended Order of Notice in the docket. Mr. and Ms. Weigold objected to the description of the proposed franchise territory in the Order of Notice issued by the Commission and published by the Precinct at the Commission's direction.

The Commission conducted a hearing on the merits of the petition on September 6, 2000. On September 13, 2000, the Commission received post-hearing statements from the Precinct, the Town of Bartlett and Mr. and Ms. Weigold.

## **II. POSITIONS OF THE PARTIES AND STAFF**

### **A. Lower Bartlett Water Precinct**

The Precinct points out that the Commission has, on three previous occasions, granted requests to expand the Precinct's franchise territory. In addition to the Birchview

franchise transfer described, supra, the Precinct draws the Commission's attention to Order No. 21,951 (December 19, 1995), concerning an area north of the Precinct's boundaries, and Order No. 22,581 (May 1, 1997), concerning the franchise formerly held by the Holiday Ridge Supply Company.

In connection with its effort to serve its newly acquired Birchview franchise area, the Precinct points out that it must extend its water distribution system by installing a new water main along Route 302, westerly from the Precinct's current main. The Precinct notes that it has received a \$700,000 grant and a \$500,000 loan from the federal Rural Development program (under the aegis of the U.S. Department of Agriculture) to complete the project. According to the Precinct, completion of this new main would give it the physical capability to serve additional customers who are presently outside the Precinct's boundaries and franchise territory but whose properties are along the new main.

With regard to the proposed franchise territory that would extend further west along Route 302 than the Birchview-related main extension project now in progress, the Precinct points to the testimony of its chairman, Thomas Caughey, that the Precinct has received expressions of interest in receiving service from the Precinct from a number of businesses and

individuals in the proposed franchise area. The Precinct presented four such letters at hearing, two specifically relating to the area west of the Birchview development. Further, the Precinct points to the testimony of the Commission Staff's witness, Douglas Brogan, and the statement of Bernard Lucey of the Department of Environmental Services, to suggest that a number of existing water systems in the proposed franchise area are experiencing water quality problems.

The Precinct points out that its two existing wells have the ability to produce more than two million gallons of water per day, and that the existing pumps have a capacity of 730 gallons per minute, or 1,051,200 gallons per day. Citing the 1998 master plan produced by its consulting engineers (Exhibit 3), the Precinct contends that its existing facilities have the "design capacity to serve the proposed franchise area provided the proper infrastructure and equipment are put in place."

Conceding that its present expansion project will bring its mains only as far west as the Birchview subdivision, the Precinct maintains nevertheless that it is appropriate for the Commission to grant its request to franchise the entire Route 302 corridor west to the BVWP boundary. According to

the Precinct, it is a matter of logic that the granting of a franchise would precede the construction of the facilities necessary to serve the area. The Precinct further points out that its previous franchise expansions have proceeded on this basis and that the results have been a good record of service.

With regard to its managerial and technical expertise, the Precinct draws the Commission's attention to Mr. Caughey's 17 years of experience as a member of the Precinct's Board of Commissioners, and the fact that he has served as chairman since 1987. The Precinct also points out that it employs an experienced system operator - F.X. Lyons, Inc., whose principal is certified both as a system operator by the Department of Environmental Services and by the Rural Development program as a construction supervisor for federally funded projects. The Precinct also avers that it uses the services of competent accounting, engineering and legal firms.

**B. Karen and George Weigold**

Mr. and Ms. Weigold urge the Commission to reject the Precinct's request for franchise expansion on the grounds that the Precinct has failed to demonstrate a public need for the expansion.

According to Mr. and Ms. Weigold, the Precinct's master plan (Exhibit 3) shows that construction of additional

facilities would be necessary in order to serve customers west of the Birchview subdivision, with the Precinct unable to provide fire protection service to the Birchview, Saco Ridge, Four Seasons and Jericho Road areas if existing pressure-reducing valves are removed. Mr. and Ms. Weigold further point to language in the master plan noting that the construction of additional storage, and extension of the main across the Saco River and Maine Central Railroad right-of-way were, as of 1998, expected to occur "within ten years." According to Mr. and Ms. Weigold, in light of this ten-year planning horizon, the Precinct cannot serve its proposed franchise territory within two years, which they contend is required by RSA 374:27.

Noting that the Commission Staff and the Department of Environmental Services have expressed concern about the Rolling Ridge water system, located near the western boundary of the proposed franchise area, Mr. and Ms. Weigold point out that the master plan refers to extending the main to that area within a ten-year period. Noting the Precinct's suggestion that Rolling Ridge could be operated as a stand-alone system until the main reaches the area, Mr. and Ms. Weigold contend the record is devoid of evidence as to the cost and impact of such a plan. With regard to the contention of the Precinct

that it has received expressions of interest from customers in its proposed expanded franchise area, Mr. and Ms. Weigold point out that (1) there is nothing in the record to suggest that residents of the Saco Ridge subdivision (located across Route 302 from Birchview) have expressed any interest in receiving water from the Precinct, and (2) two of the letters of support proffered by the Precinct express only potential interest in such service.

Mr. and Ms. Weigold dispute a contention in the Precinct's original petition that "there is no water utility in the area of Bartlett capable of serving Birchview . . . [or] the remainder of the requested expanded franchise area." They draw the Commission's attention to Exhibit 11, which is an undated letter from the commissioners of BVWP that counsel to the Town of Bartlett stated he had received just prior to the hearing. The letter stated that BVWP was "wary of the PUC awarding LBWP franchise rights six to eight miles from their precinct boundaries to BVWP boundaries and leaving us with absolutely no options for growth." The letter requested a "delay" in consideration of LBWP's petition, at least in the "East Main St. area of the Village down to Rolling Ridge," to permit BVWP to "explore [its] growth options." According to Mr. and Ms. Weigold, since LBWP is years away from being able

to extend its main into this area in any event, it would not be prejudiced if the Commission followed BVWP's suggestion and deferred the granting of franchise rights in the area.

According to Mr. and Ms. Weigold, the Precinct is not managerially, financially and technically responsible as alleged in the Precinct's petition because: (1) one person holds two positions in the Precinct in violation of RSA 670:4-a; (2) the elected clerk of the Precinct has rarely attended meetings and has delegated her duties to a "clerk pro tem" in violation of RSA 41:17 and RSA 670:4; (3) in contracting with a private company to serve as the system operator, the Precinct has "abrogated its duties" because it lacks "the necessary human resources to manage the Precinct;" (4) the Precinct violated statutory open-meeting requirements by canceling its September 14, 1999 meeting without notice; (5) the Precinct does not qualify for the Rural Development grants it has acquired because the service territory in question consists of a second-home community and the Precinct misrepresented that Birchview has bacterial contamination and dry weather yield problems; (6) the Precinct used public funds to install a new well and tank to serve the Eagle Ridge subdivision even though the developer of the subdivision "pulled out of the project;" and (7) the Precinct has failed

to provide evidence as to the costs or impacts of constructing a \$1 million storage tank that would be necessary to serve areas west of the Birchview subdivision.

Finally, Mr. and Ms. Weigold contend that granting the Precinct's petition would have the effect of "usurping the rights of the people of Bartlett" because residents and customers of the proposed franchise area will not be Precinct voters. According to Mr. and Ms. Weigold, projects of this nature should be a matter for town government. They allege that the Precinct has failed to coordinate its plans with Bartlett's municipal officials. They urge the Commission to encourage the Precinct to turn its system over to the town.

**C. Town of Bartlett**

The Town of Bartlett asks the Commission to deny the Precinct's petition insofar as it seeks to expand the franchise territory beyond the Seasons development on Route 302. (The Seasons is located just to the south and west of the Birchview subdivision.) According to the Town, the evidence adduced at hearing demonstrates that the reason for the Precinct's request for a much larger territory is "convenience and not public need."

With regard to expanding the franchise territory beyond the Seasons, the Town contends that (1) there is no

crisis in service in the area, (2) notwithstanding Mr. Brogan's testimony and Mr. Lucey's statement, there are no health problems in the area causing a lack of potable water, nor any record evidence about the nature and extent of any contaminants; (3) the only evidence of public good consists of four unsworn statements from developers who stand to benefit financially from any expansion of the Precinct's service into the area (Exhibit 4); (4) expansion beyond the Seasons would likely require the construction of additional facilities; and (5) the BVWP, which has two new commissioners, has now expressed an interest in possibly serving the area.

According to the Town, the Precinct's master plan contemplates only an expansion up to and including the Seasons subdivision. The Town contends that previous Precinct franchise expansions have been preceded by an appropriate study such as the master plan. In the Town's view, the master plan supports an extension as far as the Seasons but further franchise expansion is purely a matter of convenience for the Precinct rather than a matter of careful study or planning.

Finally, according to the Selectmen,

[i]t is well known that there is significant condominium and commercial development in Bartlett. This extension of the franchise, if approved, will, in the opinion of the Selectmen, open for consideration marginal areas that probably would not otherwise be developed or

result in expansion of existing developments that might not have occurred without the availability of water.

According to the Town, expansion of this sort "should not happen without an opportunity for the Town to consider the impact of such an extension and without consideration of the alternatives including expansion by Upper Bartlett or the regionalization of water supply in the Mt. Washington Valley."

**D. Department of Environmental Services**

The Department of Environmental Services (DES) did not seek leave to intervene in this proceeding. However, it is the Commission's custom to permit other state agencies to comment on pending Commission proceedings when those agencies wish to do so. Therefore, Bernard Lucey of DES had an opportunity to offer oral comments during the merits hearing. Mr. Lucey described certain water-quality problems in existing systems currently operating within the Precinct's proposed expanded franchise territory. According to Mr. Lucey, one such system does not meet standards for beryllium, five systems do not meet standards for fluoride, two small systems suffer from arsenic contamination and eight systems exceed the new federal standard for radon.

In addition to Mr. Lucey's statement, DES has also

furnished a letter from Anthony P. Giunta, administrator of the Department's Water Supply Engineering Bureau, dated March 20, 2000. Mr. Giunta's letter notes that DES certifies that DES "attests to the suitability of availability of water works facilities" to serve the proposed franchise area as required by RSA 374:22, III. Mr. Giunta further states that it is DES's recommendation that the Precinct's franchise request be granted.

**E. Staff**

Douglas Brogan of the Commission's engineering department testified on behalf of the Commission Staff in support of the Precinct's petition.

Mr. Brogan noted that two other Commission-regulated water systems fall within the proposed franchise territory. With regard to the first, Saco Ridge (located immediately to the east of Birchview but accessible only by proceeding westward on Route 302), Mr. Brogan testified that the company serves 30 customers at rates that are at or above a typical Precinct rate, that Saco Ridge has a "weak distribution system and problems with fluoride," and that the owner of Saco Ridge has "indicated that revenues remain insufficient for needed improvements, and expressed a strong interest in service by the Precinct." Mr. Brogan described the other system in

question - Rolling Ridge - as also serving 30 customers, suffering from a "litany of problems" including a pump station that is a "cramped, below grade pit" without sealed walls, entry hatch or floor, lacking a sanitary radius. Mr. Brogan noted that a failed booster pump at Rolling Ridge had not been replaced, that pressure storage was inadequate and that the water provided by the system had elevated levels of beryllium, fluoride and manganese. According to Mr. Brogan, Rolling Ridge customers "receive mandatory notifications (currently quarterly for beryllium and annually for fluoride) that make the thought of using the water for drinking or cooking unappealing at best." Mr. Brogan testified that efforts to solve the Rolling Ridge problem by having BVWP extend a main into the area "ultimately collapsed, mainly due to a lack of interest" by that Precinct. According to Mr. Brogan, a study commissioned by Rolling Ridge's owner "indicates rates well in excess of \$1000/year if the system were to be 'fixed' under remaining scenarios."

Mr. Brogan testified that he had no knowledge of any interest by BVWP in expanding service to the east of its present boundaries, suggesting that "[i]f ever there were a genuine impetus for expansion, it would have been the combination of Rolling Ridge's need and the potential for

grant-funded improvements." According to Mr. Brogan, DES has encouraged BVWP to consider expansion since at least 1995. Mr. Brogan further indicated that the North Conway Water Precinct has indicated no opposition to LBWP's expansion plans.

With regard to the proposed franchise territory, Mr. Brogan described as "striking" the number of existing individual water systems in the area, stating that their density is among the highest in the state. According to Mr. Brogan, this suggests a high level of potential for service by the Precinct. He testified that the majority of these existing systems have some level of fluoride problem, with two systems suffering from "repeated instances of bacteriological detections, averaging one a year over the last 5 years." Further, according to Mr. Brogan, "[a]t least four other systems have endured boil water orders, four occurring in the last two years alone." He stated that several, including Rolling Ridge, have suffered from elevated levels of beryllium, that almost all of the systems face the prospect of radon abatement, a number have elevated levels of manganese and elevated iron levels occur in one system. Mr. Brogan also referred to "the condition of pump stations, adequacy of storage, status of mains, whether space exists to add

treatment, the need for supply (three of the systems fail to meet DES's requirement for two wells when serving over 30 customers) etc." He also noted that non-community water systems (such as those belonging to workplaces, schools and ski areas) face similar problems.

Contrasting with this situation, according to Mr. Brogan, is "the exceptionally high quality of the Precinct's system and operations in any number of areas." According to Mr. Brogan, "[w]hile various parties may oppose the expansion for other than quality of service reasons, they unfortunately offer no realistic alternative for the problems facing the other existing systems." Mr. Brogan testified that the Precinct currently serves nearly 500 residential and commercial customers with "essentially none of the problems noted above," has ample water and offers fire protection.

### **III. COMMISSION ANALYSIS**

Upon a careful review of the evidence adduced at hearing, we have concluded that it is for the public good to grant part of the Precinct's franchise expansion petition and hold the remainder of the request in abeyance for a period of one year. Specifically, we will grant that portion of the petition that includes the proposed franchise area extending westward along Route 302 up to the development known as the

Seasons.

The statutory authority under which we act is contained in RSA 362:4 and RSA 374:22. RSA 362:4, III(a) provides that a municipal corporation such as LBWP, providing water service beyond its boundaries, is not considered a "public utility" within the meaning of the Commission's enabling statutes if the corporation is "charging such customers a rate no higher than that charged to its customers within the municipality, and serving those customers a quantity and quality of water . . . equal to that served customers within the municipality." In the context of this proceeding, we take the phrase "within the municipality" to mean "within the Precinct," a construction that the parties here have implicitly accepted. There is no dispute here that the Precinct proposes to charge rates in the proposed franchise territory that meet this statutory standard for exemption from Commission regulation.

However, the statute specifically provides that the Commission has authority to determine whether such a municipal corporation should serve the territory in question. See RSA 362:4, III(a) ("Nothing in this section shall exempt a municipal corporation from the franchise application requirements of RSA 374."). In relevant part, RSA 374

precludes the commencement of service in the proposed franchise territory "without first having obtained the permission and approval of the commission." RSA 374:22, I. Further "[n]o water company shall obtain the permission or approval of the commission to operate as a public utility without first satisfying any requirements of the department of environmental services concerning the suitability and availability of water for the applicant's proposed water utility." RSA 374:22, III. As noted, *supra*, Mr. Giunta has provided the requisite certification on behalf of DES.

Three years ago, when we granted the Precinct franchise authority to provide service in what had been previously the territory of the Holiday Ridge Supply Company, we noted we had "already recognized the financial, managerial and technical expertise of the Precinct to provide water service" and that nothing had been presented to the Commission that would cause us to reconsider that determination. Order No. 22,581, slip op. at 5. As suggested in the testimony of Mr. Brogan here, nothing justifies any determination other than that the Precinct continues to have the requisite financial, managerial and technical expertise to meet the new service obligations it proposes to undertake. Indeed, as best we are able to ascertain, the Precinct can only be described

as exemplary in that regard.

Obviously, then, we are unable to agree with the concerns expressed by Mr. and Ms. Weigold. We take up each of them, as expressed in Mr. and Ms. Weigold's post-hearing statement, in turn.

RSA 670:4-a provides that "[n]o person shall file as a candidate for a village district office for more than one seat on the same village district or school district board, commission, committee, or council." This provision is part of RSA Chapter 670, which regulates village district elections generally. Determinations of whether village districts have followed the requirements of Chapter 670 are clearly not within this Commission's jurisdiction. However, to the extent it has any bearing on the Precinct's level of financial or technical responsibility as suggested by Mr. and Ms. Weigold, we believe that the same person serving as clerk and as treasurer of the Precinct does not implicate RSA 670:4-a, which by its terms clearly applies only to the Precinct's three commissioners themselves.

Mr. and Mrs. Weigold further contend that a practice by the Precinct's clerk of rarely attending Precinct meetings and delegating her authority to an employee of the system operator constitutes a violation of RSA 670:4 and RSA 41:17.

Subject to the same observations as made, supra, about our jurisdiction and the issue's relevance, we note that RSA 670:4 requires any candidate for a village district office to be a resident of the district and to file a declaration of candidacy. We find nothing in the present record to suggest that the Precinct's elected clerk has failed to follow the statutory nomination requirements. RSA 41:17 provides that if a "town clerk shall be absent from any town business meeting and there is no deputy clerk to act in his stead, the town shall choose by unofficial ballot by majority vote a town clerk pro tempore who shall be sworn and shall perform all the duties of the town clerk for that business meeting." See also RSA 52:8 (noting that moderator, clerk, treasurer and commissioners of village districts "shall severally qualify and possess the same powers and perform the same duties in respect to the district's meetings and business affairs that the moderator, clerk, treasurer and selectmen of towns respectively possess and perform in respect to like matters in towns"). Again, it is clearly beyond this Commission's jurisdiction to adjudicate disputes as to whether a village district such as the Precinct is complying with the statutory requirements for its governance. It appears to us that the "town business meeting" referenced in RSA 41:17 as requiring

either a clerk, a deputy clerk or an elected clerk pro tem is at least arguably analogous not to the routine commissioners' meetings at which the record here suggests an official of F.X. Lyons kept the minutes but, rather, to the Precinct's annual meeting at which all Precinct voters are eligible to participate and vote. In these circumstances, even assuming that a technical violation of RSA 41:17 had occurred when the Precinct failed to cause the election of a clerk pro tem, we find no impact on the Precinct's level of managerial responsibility.

Nor can we agree that the Precinct has somehow been irresponsible by entering into a turnkey contractual arrangement with a system operator, as opposed to acquiring an employee or employees for the purpose of operating its water system. The record here reflects that it is economically efficient and thus fiscally responsible for the Precinct to obtain the necessary services by contract. The record is likewise undisputed that the operator in question, F.X. Lyons, Inc., conducts its business in exemplary fashion.

With regard to the meeting that the Precinct's commissioners canceled at the last minute, without public notice, we understand the frustration of Mr. and Ms. Weigold, who had planned on attending the meeting and were apparently

left standing at the designated meeting place without an explanation. Obviously, the failure to conduct a meeting cannot constitute a violation of the statutory requirement that meetings be conducted publicly in most circumstances. Nor, in our view, does an isolated incident of this sort merit a determination that the Precinct lacks the requisite qualifications for a franchise to provide water service.

The concerns of Mr. and Ms. Weigold with regard to the Precinct's Rural Development grant and loan appear to have metamorphosed somewhat over the course of the proceeding. In an outline of their testimony filed on May 3, 2000, Mr. and Ms. Weigold allege that the Precinct made "fraudulent and misleading statements" to the Rural Development program in order to obtain the federal financing package.<sup>2</sup> In their post-hearing statement, Mr. and Ms. Weigold simply suggest that the Precinct "has not demonstrated that it can obtain the necessary grants from Rural Development to fund future expansion into second home communities such as Saco Ridge,

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<sup>2</sup> Mr. and Ms. Weigold filed this outline on the date specified by the Commission in its procedural schedule for the submission of pre-filed direct testimony in this docket. Many of the allegations contained in this "outline" do not appear in the post-hearing statement submitted by Mr. and Ms. Weigold and were not discussed by any witness at hearing. To the extent that Mr. and Ms. Weigold continue to press any of these allegations, we reject them summarily as not supported by the evidence of record.

Four Seasons and Rolling Ridge."

Nothing in the present record suggests either that the Precinct has misled or defrauded the federal government or that the Precinct is somehow unqualified for Rural Development's financial assistance. What the record *does* contain is Exhibit 12, consisting of the correspondence between Mr. and Ms. Weigold and progressively higher officials of the U.S. Department of Agriculture regarding their contention that the Precinct is ineligible for Rural Development's assistance because the proposed franchise territory consists predominantly of second-home communities.<sup>3</sup> In each instance, the federal official in question informs Mr. and Ms. Weigold that upon a thorough review the responsible official or officials have determined that the Rural Development financing was appropriately and lawfully approved. Further, and notwithstanding this ongoing effort by Mr. and Ms. Weigold to cause the Precinct's federal funding to be

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One of the letters contained in Exhibit 12 is that of Mr. and Ms. Weigold, dated March 28, 2000, to Ms. Roberta Harold of the Rural Development office in Montpelier, Vermont. This letter contains numerous factual allegations, going beyond the mere contention that the Precinct is ineligible for Rural Development financing because of the predominance of second homes in the proposed franchise territory. We do not take up these allegations as Mr. and Ms. Weigold did not press them at hearing or in their post-hearing statement.

rescinded, Exhibit 10 demonstrates that as recently as August 17, 2000 the U.S. Department of Agriculture informed the Precinct in writing that "the grant and the loan are legally in order for closing." It is obviously beyond this Commission's jurisdiction to second-guess these determinations, even given the suggestion of Mr. and Ms. Weigold that it is relevant to our inquiry into the Precinct's financial and managerial capacity to provide service in the requested franchise territory. The record adduced at the hearing, concerning the Precinct's acquisition or use of federal funding, gives us no reason to doubt that the Precinct has the requisite managerial and financial capability to provide service in the proposed franchise territory.<sup>4</sup>

We make the same determination as to matters relating to the Eagle Ridge subdivision. At worst, the evidence concerning Eagle Ridge suggests that the Precinct acted prudently when the developer may not have.

We next address the concern of Mr. and Ms. Weigold that expanding the Precinct's franchise territory will have

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At hearing, Mr. and Ms. Weigold were invited to supplement the record with documents from their file, which they contended at hearing would further demonstrate that the Precinct should not be receiving Rural Development funding. Mr. and Ms. Weigold submitted 13 documents on September 13, 2000. We have reviewed each of them, finding that they contain no basis for questioning the Precinct's financial or managerial capabilities.

the undesirable effect of disenfranchising the Precinct's water customers who do not live within the Precinct's boundaries. Mr. and Ms. Weigold note that, should the Precinct's expansion plans move ahead, it is more than likely that the Precinct's non-voting franchise customers will outnumber voting Precinct residents.

We have two responses to this expressed concern. First, we believe it may be somewhat overstated. In many respects, customers in the Precinct's franchise territory are in the same relationship to the Precinct as customers are to an investor-owned water utility, which obviously would not permit ratepayers to vote on matters of corporate governance. However, we acknowledge that, unlike investor-owned water companies, which are subject to rate regulation and full oversight by the Commission, the Precinct proposes to exempt itself from Commission regulation by charging franchise customers the same rates providing the same quantity and quality of service as within-Precinct customers. To that extent, we agree with Mr. and Ms. Weigold that customers within the Precinct's franchise territory, lack either ordinary recourse to the Commission or a direct voice in Precinct governance. Somewhat attenuating this concern, however, is the practical reality that, at least as to rates, Precinct voters have the same incentive as

franchise customers do - to make sure that the Precinct's rates are as low as possible and that the Precinct provides an acceptable level of service. To the extent that Precinct voters would be inclined to impose discriminatory rates or unequal quantity and quality of service on the franchise customers, full Commission regulation would be triggered as a result by operation of RSA 362:4, III(a).

Our second point on this issue is a reprise of the observation we made at the time we transferred the Birchview franchise to the Precinct. As we stated in that context, we agree that customers in the franchise territory "would be best served if they were given an opportunity to participate in the business of the Precinct through the expansion of precinct boundaries. Unfortunately, the authority to expand the Precinct boundaries is outside the authority of this Commission." Order No. 23,253, slip op. at 24 (noting that such authority is vested in the Town of Bartlett's Board of Selectmen). We understand that expansion of the Precinct's boundaries confers more than voting rights; it would mean making those areas subject to the Precinct's zoning ordinance and would make all property owners (as distinct from those actually taking service from the Precinct) subject to taxation by the Precinct. The task of weighing the relative merits of expanding or not expanding the Precinct's boundaries is a

matter consigned to the good judgment of the Town of Bartlett's Board of Selectmen. Assuming that the Selectmen continue to exercise that discretion by declining to authorize Precinct expansion - a view they have expressed unambiguously in their written filings here prior to the hearing - we believe that any concerns about non-representation in Precinct governance are adequately addressed by the measures we discuss, *infra*.

As a condition of our approval of LBWP's request for an expansion of its franchise area up to the Seasons, and in light of the concerns that many Bartlett residents and potential customers of the Precinct have about a lack of input into decisions being made at Precinct, we will require that the Precinct propose to us an advisory committee that includes customers in the new area authorized by this order and our previous order awarding the Birchview franchise. This advisory committee should be consulted on all significant decisions affecting customers in the area being served outside of the precinct. This proposal must be made within 30 days of our order.

Notwithstanding our firm view that LBWP has the requisite managerial, technical and financial capacity to provide service in the entire proposed franchise territory, we conclude that the public interest requires us to grant

outright only the requested franchise territory that extends westward along Route 302 to the Seasons.

We believe that it would be in the public interest to have a single entity with the necessary financial, managerial and technical capability serve this area and meet the needs of current and future customers. We think LBWP has the requisite capability to do so but, based on the record to date, it does not appear that it intends to do so within the two years provided for in RSA 374:27. Given this state of affairs and the request of BVWP, we think it best to hold the issue of the expansion of the franchise area beyond the Seasons in abeyance for up to one year.

In an undated letter (Exhibit 11), the Commissioners of BVWP asked the Commission to "at least delay approval in the East Main St. area of the Village down to Rolling Ridge until we can explore our growth options." We will accede to their request, but 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 have viable options for safe and reliable water service, we consider it necessary to impose a time limit on the delay of our consideration of the requested expansion. We will hold in abeyance the request from LBWP to expand its franchise area beyond the Seasons for a period of one year from the date of our order, to allow BVWP

to evaluate whether it intends to expand its service area and to report to the Commission within that year as to its intention.

The Commission reserves the right to approve the expansion beyond the Seasons based on the record in this proceeding, supplemented if the Commission deems it necessary. In effect, there may be no need for further hearings to authorize or deny the authorization of the expansion beyond the Seasons (and little or no more expenses to LBWP) - we could do so based on the record before us or by supplementing the record by giving parties and the public the chance to submit further comments. We strongly encourage BVWP and LBWP to meet and discuss their respective plans for providing water service to this area in the hope that this can be amicably resolved for the benefit of the public.

**Based upon the foregoing, it is hereby**

**ORDERED,** that the petition of the Lower Bartlett Water Precinct for expansion of its franchise territory is granted in part, as described more fully above; and it is

**FURTHER ORDERED,** that within 30 days of this order the Lower Bartlett Water Precinct shall submit a proposal for the creation of an advisory committee, as described more fully above; and it is

**FURTHER ORDERED,** that this docket shall remain open

for the purpose of further consideration of the remainder of the Precinct's franchise expansion request, subject to further order of the Commission.

By order of the Public Utilities Commission of New Hampshire this twenty-fifth day of September, 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