

VALLEYFIELD/NORTHLAND WATER SYSTEM

Show Cause Proceeding Relative to Exemption Under RSA 362:4

Order on Exempt Status

O R D E R N O. 23,587

November 8, 2000

APPEARANCES: Attorney Fred Cirome, for Valleyfield, and Lynmarie Cusack, Esq., for the Staff of the Public Utilities Commission

I. PROCEDURAL HISTORY and POSITIONS OF THE PARTIES

On July 7, 2000, the New Hampshire Public Utilities Commission (Commission) issued Order No. 23,533 requiring Valleyfield/Northland Water System (Valleyfield or the Company) to show cause why its exemption, granted in *Re Valleyfield/ Northland Water System*, 75 NH PUC 492 (1990) pursuant to RSA 362:4, should not be reconsidered or revoked. On July 31, 1990, the Commission issued Order No. 19,897 which granted the Company an exemption *NISI*. Order No. 19,897 indicated the Company had averred that it was providing service to 3 customers in the Town of Plaistow.

As a result of customer inquiries, the Staff of the Commission recommended that the Commission open a proceeding to determine whether the Company's exempt status continues to be in the public good. Order No. 23,533 set a hearing on the matter for August 24, 2000. At the hearing, Staff explained

how the case was initiated and indicated that there was a concern that Valleyfield, while having exempt status, actually had more than 10 customers and that there was a potential threat that the Company would discontinue service to one or more of its customers. Staff argued that RSA 362:4 does not permit an exemption if there are more than 10 customers and, by Staff's count, there are in excess of 40 customers. Accordingly, Staff cited RSA 365:28 as authority for the Commission to alter, amend or otherwise modify a previous order.

The Company claimed that Valleyfield was merely supplying water to a strip mall and condominium association as an accommodation, and that the Company did not want to be in the water business. The Company presented Mr. Robert LaRochelle, President of Valleyfield, as a witness for its case.

Mr. LaRochelle admitted his Company provided water to the Northland Mall, which consists of twelve (12) stores; the Northland Condominium Association, which consists of forty (40), one-bedroom, condominium units; and the Valleyfield Apartments, which are ultimately owned by Mr. LaRochelle, and consist of eight (8) buildings with four (4) units in each building, for a total of 32 units. Mr. LaRochelle also

admitted that the original May 14, 1990, petition never included the number of apartment buildings or the number of units in each building, but did specify the number of stores in the mall and condominium units.

Mr. LaRochelle additionally testified that his customers, the mall, condominium and apartments, are billed semi-annually. Moreover, he maintained that he never told the mall or any customer that the Company would not provide service should the mall be sold. Mr. LaRochelle indicated that he would not stop supplying the mall with water service without asking for Commission approval to allow the discontinuance.

No other witnesses were presented by either the Company or by Staff. There were no interveners. The Company, in closing remarks, maintained that its exempt status should be maintained. Staff did not argue that the Company should be regulated.

II. COMMISSION ANALYSIS

This case presents the issue of whether a company should be exempt from our regulation. We have the discretion to grant a water or sewer company an exemption only if the company serves less than 10 customers, each family, tenement, store or other establishment being considered a single

consumer. Even if a company serves less than 10 customers we still evaluate whether an exemption should be granted based on the public good standard.

RSA 362:4 , I provides:

If the whole of such water or sewage disposal system shall supply a less number of consumers than 10, each family, tenement, store or other establishment being considered a single consumer, the commission may exempt any such water or sewer company from any and all provisions of this title whenever the commission may find such an exemption consistent with the public good.

It is clear from the testimony in this proceeding that Valleyfield serves more than ten consumers. As each store is a single consumer, there are 12 consumers in the Northland Mall alone. As each tenement¹ is a single consumer, there are 32 consumers in the Valleyfield Apartments. The Northland Condominium Association, though similarly sent one bill, would also be considered 40 consumers for the purpose of this statute as it is not supplying water to itself. We have in the past exempted condominium associations and homeowner associations, treating them as a single customer when they are

1

Webster's Third New International Dictionary (1993) defines "tenement" as "a single room or set of rooms for use by one tenant or family". The building which has many "tenements" would be a "tenement house", i.e. "a dwelling house divided into separate apartments for rent to families".

providing services to themselves. Ropewalk Services Company, Order No. 21,561 (March 7, 1995); Re Cathedral Ledge Water System, 72 NH PUC 208 (1987). See also Order No. 21,513 in Re Belleau Lake Corporation/Beverly Hills Water Association, Inc. (January 31, 1995); but see Re North Country Water Supply, Inc., Order No. 21,709 (June 26, 1995). Therefore, utilizing the RSA 362:4, I definition, Valleyfield supplies 84 customers, and no exemption is warranted.

It is interesting to note that Valleyfield serves no more consumers today than it did when Order No. 19,897 was issued. In Order No. 19,897, the Commission ordered Valleyfield to notify the Commission if and when it expands the water system to serve 10 or more consumers, thereby implying that the exemption was not permanent, and the Order would be modified if the statutory conditions for exemption did not continue to be met. Unfortunately, there is no analysis in that order, or in the underlying file, as to why the exemption was granted. The Petition in Docket DE 90-086 clearly stated that there were 12 tenants in the mall and 40 condominium units. The number of apartments was not indicated. It is arguable that the exemption should never have been granted. Be that as it may, as Valleyfield clearly serves 10 or more consumers, the Company does not meet the

exemption requirements of RSA 362:4, I and Order No. 19,897 should be so modified pursuant to RSA 365:28.

Based upon the foregoing, it is hereby

ORDERED, that the exemption previously granted to Valleyfield/Northland Water System is revoked; and it is

FURTHER ORDERED, that Valleyfield should petition this Commission for a franchise and submit rate schedules within 60 days of receipt of this order.

By order of the Public Utilities Commission of New Hampshire this eighth day of November, 2000.

Douglas L. Patch
Chairman

Susan S. Geiger
Commissioner

Nancy Brockway
Commissioner

Attested by:

Thomas B. Getz
Executive Director and Secretary