

**STATE OF NEW HAMPSHIRE
PUBLIC UTILITIES COMMISSION**

DW 06-075

LAKEVIEW WATER COMPANY, INC.

Petition to Dissolve Lakeview Water Company, Inc. as a Public Utility

Order Authorizing Temporary Discontinuation of Service

ORDER NO. 25,078

February 26, 2010

I. PROCEDURAL HISTORY

Lakeview Water Company, Inc. (Lakeview) is a regulated public utility authorized to provide water service to residents in the Bachelor Mountain Estates subdivision in Alton and Gilford. On June 18, 2006, Lakeview filed a petition to dissolve and cease operating as a public utility. In support of its request, Lakeview stated that, as of May 2006, eleven of the original twenty-two customers had put in their own wells and had removed themselves from the water system without Lakeview's permission. Lakeview stated that it no longer received income from these customers and that it was presently in debt in the amount of \$4,950. Lakeview attached to its petition a letter it sent to customers informing them of the situation. In this customer letter, Lakeview set forth three options: 1) Lakeview would deed over the water system to the remaining customers who could continue to operate the system for themselves; 2) Lakeview would give the remaining customers until June 15, 2006 to install their own wells; or 3) Lakeview would file for bankruptcy as of June 15, 2006.

The Commission issued an Order of Notice notifying customers of the petition. A pre-hearing on the issues of whether it was in the public interest for Lakeview to continue to operate as a public utility and whether Lakeview could provide safe and adequate service was held on

June 30, 2006. On July 24, 2006, Staff filed a report on a technical session it had held with the parties. Staff stated that Lakeview now served only four customers and that Staff planned to contact the remaining customers to determine if they intended to leave the system. Staff also stated that it would report later on its investigation of whether the subdivision served by Lakeview was conditioned upon the existence of a public water supply.

On July 25, 2006, Staff wrote to customers and informed them of the pending docket. Staff also inquired of customers' intent to settle balances due to Lakeview and whether current customers intended to remove themselves from the system. On November 9, 2006, Staff wrote to Lakeview informing it that the subdivision it served had been approved by the Department of Environmental Services (DES) on the condition of a community water system. Staff suggested Lakeview attend a meeting with Staff and DES to discuss alternative ways to proceed.

On February 5, 2007, Staff wrote to customers informing them of the fact that the subdivision was only approved for a community water supply and that Staff and Lakeview had met with DES to discuss options such as rehabilitating or abandoning the water system depending on whether residents could comply with RSA 485-A:29 pertaining to subsurface disposal systems and RSA 485-A:30-b regarding well locations or abandoning the system. Staff stated Lakeview would be conducting a survey of the development to identify lot perimeters, house locations, septic locations, and well locations and recommended that if residents had such information already that they provide it to Lakeview.

On July 19, 2007, Staff responded to Lakeview's inquiry for names of consultants who could assist it in amending the subdivision plan. On January 1, 2008, Staff inquired of Lakeview as to its progress on addressing the subdivision condition and on whether Lakeview would be pursuing an alternative to dissolving the utility. On January 22, 2008, Staff filed a letter with the

Commission, stating it had spoken with Lakeview and learned that Lakeview had hired an engineer to assist it with amending the subdivision plan. According to Staff, Lakeview requested the Commission keep the docket open while it addressed the subdivision approval condition.

On September 24, 2008, Staff again inquired of Lakeview's intentions, having heard that Lakeview might discontinue power to the pump house in the near future. Staff notified Lakeview that, pursuant to RSA 374:22, Lakeview could not discontinue the water system without Commission approval.

On January 15, 2010, Staff filed a letter updating the Commission on Lakeview's efforts with DES. Staff stated that Lakeview had hired an engineer who had assembled historical test pit data for many of the lots in the subdivision, but that some of the lots lacked data. Attempts to dig test pits on some of the lots were met with little cooperation from residents. Staff stated that DES is requiring test pit data for all lots before it will remove the public water system condition from the subdivision approval. Staff stated that all customers had removed themselves from the water system and that this included one customer who had connected to the water system without Lakeview's knowledge.

In light of the circumstances, Staff recommended the Commission consider authorizing Lakeview to temporarily discontinue service pursuant to RSA 374:28. Staff stated its concern that, with a very small number of customers taking service, the system could become unviable both in terms of adequate revenues to run the system and in availability of capital for future system improvements. Staff observed that with all customers off the system, viability becomes less of a concern. According to Staff, authority to temporarily discontinue service would mean that the system assets, including the lot containing the system's supply well, would remain in

place and the water system could be rehabilitated if the customers are required by DES to reconnect to a public water system.

II. COMMISSION ANALYSIS

The Commission may authorize a public utility to discontinue service permanently and to remove any equipment required to provide that service “whenever it shall appear that the public good does not require the further continuance of such service.” RSA 374:28. “The statutory term ‘public good’ has been . . . held not only to include the needs of particular persons directly affected by curtailment of the service but also to the needs of the public at large and the general welfare of the utility involved.” *EnergyNorth Natural Gas, Inc.* Order No. 24,657, 91 NH PUC 350, 354 (2006) citing *Boston & Maine R. R. v. State*, 102 N.H. 9, 10 (1959). In this case we must consider the impacts of this proposed service discontinuance on residents in the Bachelor Mountain Estates subdivision, any other potential customers, and the company itself.

In Lakeview’s last rate case, the Commission authorized it to charge its customers \$414.81 annually. *See Lakeview Water Company, Inc.*, Order No. 21,702, 80 NH PUC 365 (1995). Lakeview’s revenue requirement was based upon twenty-two customers. We know from the record that Lakeview has been operating the water system with significantly fewer customers than the twenty-two used to calculate the revenue requirement. Thus it follows that Lakeview has been earning less than is authorized. Lakeview’s petition states that it was in debt in the amount of \$4,950 in 2006 and Lakeview has since incurred additional expense in hiring a consultant to conduct a review of the original subdivision approval. Additionally, Staff reports that all customers are now off the system. Based upon these facts, we find that customers in Bachelor Mountain Estates who have removed themselves from the system will not be adversely affected by the curtailment of service since they have secured water from an alternate source.

We also find that curtailment of service would likely have a positive impact on Lakeview's financial position since it will no longer be incurring expenses associated with operating and maintaining the system.

As to the effect curtailment of service will have on the public, the record indicates that approval of the Bachelor Mountain Estates subdivision was conditioned upon the existence of a public water supply. Pursuant to RSA 362:4, IV (a), any customer of a water utility has the right to terminate water service and secure water from an alternate source if the customer can demonstrate the ability to comply with RSA 484-A:29 and RSA 485-A:30-b. The record does not indicate that the lots owned by Lakeview's former customers satisfy these requirements. On the contrary, the record indicates that no lots have been shown to satisfy RSA 485-A:29 and 30-b. Thus, we cannot make a finding that curtailment of service to Bachelor Mountain Estates on a permanent basis is consistent with the public good at this time. The water system assets need to remain in place until compliance with RSA 485-A can be resolved and the Commission authorizes Lakeview to dissolve and cease to be a public utility. Staff has recommended the Commission authorize Lakeview to temporarily discontinue service rather than grant Lakeview's request to dissolve the company.

RSA 374:28 states that the Commission "may authorize any public utility to discontinue, temporarily or during such portion of each year as the commission may deem expedient, any part of its service whenever it shall appear that such temporary or seasonal discontinuance will not unreasonably inconvenience the public." We find a temporary discontinuation to be the better resolution of this docket at this time. Temporary curtailment of service will improve the financial condition of the utility, it will not inconvenience customers who have removed themselves from the system, and it preserves the system in the event lots are required to be

connected to a public water system. Accordingly, we find that allowing Lakeview to temporarily discontinue the provision of water service to Bachelor Mountain Estates is consistent with the public good.

Based upon the foregoing, it is hereby

ORDERED, that Lakeview Water Company, Inc.'s request to dissolve and cease operating as a public utility is denied; and it is

FURTHER ORDERED, that Lakeview Water Company, Inc. is authorized to discontinue the provision of water service on a temporary basis in its franchise area in the Town of Alton and Town of Gilford effective as of the date of this order; and it is

FURTHER ORDERED, that Lakeview Water Company, Inc. mail a copy of this order by first class mail to the town clerks of Alton and Gilford and all residents in its franchise area no later than 10 days after the date of this order and file a letter with the Commission confirming the mailing was completed; and it is

FURTHER ORDERED, that Lakeview Water Company, Inc. is prohibited from removing its water system from its franchise area or otherwise rendering the system incapable of being rehabilitated in the future; and it is

FURTHER ORDERED, that Lakeview Water Company, Inc. file with the Commission within 15 days of the date of this order revised tariff pages indicating that it has temporarily discontinued the provision of water service in its franchise area.

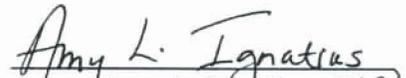
By order of the Public Utilities Commission of New Hampshire this twenty-sixth day of
February, 2010.



Thomas B. Getz
Chairman



Clifton C. Below
Commissioner



Amy L. Ignatius (KNS)
Commissioner

Attested by:



Lori A. Davis
Assistant Secretary