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CONCORD, NEW HAMPSHIRE 03302-1137

June 15, 2012

VIA HAND DELIVERY

Ms. Debra A. Howland, Executive Director
New Hampshire Public Utilities Commission
21 South Fruit Street, Suite 10
Concord, NH 03301



RE: DW 11-242 - Lower Bartlett Water Precinct

Dear Ms. Howland:

As you know, this office represents the Lower Bartlett Water Precinct (the "Precinct"). We are in receipt of a letter from Orr & Reno, P.A., as counsel for The Cathedral Trail Homeowners, Phase II, Association ("CT II"), dated June 8, 2012.

The Precinct is a New Hampshire Village District governed by RSA 52 and is a municipal corporation. The Precinct was established on April 24, 1915 at a meeting of inhabitants of the village precinct, duly called by the Selectmen of the Town of Bartlett by Notice dated April 5, 1915. The bounds of said Precinct were set by vote of the Selectmen of the Town of Bartlett on April 5, 1915, in response to a petition of 10 inhabitants dated April 3, 1915. The said bounds were then confirmed by vote of the village precinct inhabitants at the April 24, 1915 meeting. See Carroll County Registry of Deeds, Book 6, Pages 536 through 539. Other actions voted at the April 24, 1915 meeting were election of a Moderator, election of a Clerk, three Commissioners, and a Treasurer, each to hold office until the first annual meeting of said district to be held in March 1916. It was further voted to name the district "Lower Bartlett Precinct." At a subsequent meeting on May 22, 1915, duly called, it was voted to raise and appropriate funds (\$7,000) for the purpose of installing a water system and at a meeting, duly called, on June 26, 1915, it was voted to construct, run, manage and maintain suitable water works and to raise by taxation or by borrowing the sum of \$7,500 for this purpose and including the purchase of real estate, water rights, springs, streams, ponds, and it was further voted to purchase the Charter granted by the State of New Hampshire, granting a franchise for a water system, to Walter Pitman, George L. Nute and Whitman C. McGill.

The Precinct provides water service to customers within its municipal boundaries and to various franchise areas approved by the New Hampshire Public Utilities Commission

("NHPUC") as follows: (a) Order No. 21,951, dated December 1995, with respect to an area to the North of the Precinct's municipal boundaries; (b) Order No. 22,581, dated May 1997 with respect to the Holiday Ridge Subdivision to the West of the Precinct's municipal boundaries; (c) Order No. 23,253, dated 1999, as clarified by Order No. 23,414, with respect to the Birchview by the Saco Subdivision, which is also located to the west of the Precinct; (d) Order No. 23,562, dated September 25, 2000 (Docket No. DW 99-166), as supplemented by Commission letter dated November 15, 2002, with respect to the area from Glen westerly to approximately the base of Cow Hill Road in Bartlett. Most recently, by Order No. 25,290 dated November 18, 2011 (Docket No. DW 11-242), the Precinct was granted a franchise to serve the Cow Hill Road area in Bartlett.

The Cow Hill area is outside the Precinct's municipal boundaries and represents a new franchise area not previously served by the Precinct. The Precinct sought permission to serve that area at the urgent request of CT II and others in the Cow Hill area following Hurricane Irene last year and has incurred significant expenses to extend its water main up to and along Cow Hill Road to serve the Cow Hill area.

In the testimony of Richard Glines submitted with the Precinct's petition to serve the Cow Hill area, the Precinct advised that it proposed to charge rates equivalent to those charges to its municipal customers, subject to the right to add a 15% surcharge to said rates, as permitted by RSA 362:4, III-a. NHPUC Order No. 23,252 recognizes the right of the Precinct to impose such surcharge and advised the Precinct to keep Commission Staff informed of the rates it intended to charge. By email correspondence dated May 14, 2012, the Precinct advised Commission Staff that it intended to charge the 15% percent surcharge to new customers within the Cow Hill franchise area. By letter dated May 23, 2012, Commission Staff acknowledged that the Precinct's intended actions complied with RSA 362:4, III-a.

The arguments set forth in Orr & Reno's above-referenced letter are legally and factually incorrect. First, the Precinct is an independent municipality organized under RSA 52, or its predecessor statutes. The municipal boundaries of the Precinct correspond with the boundaries established when the Precinct was organized in 1915. Those boundaries do not coincide with the Town of Bartlett municipal boundaries. The Cow Hill area is outside the Precinct's municipal boundaries.

Second, since the Cow Hill area is a new franchise area all customers within that franchise area are new customers. Consequently, the Precinct is acting within the scope of RSA 362:4, III-a in charging a 15% surcharge to its customary rates and therefore the NHPUC does not have jurisdiction to regulate the rates charged by the Precinct. We would also note that the existing "Cow Hill water system" managed by CT II, which provides private water service to CT II, The Cathedral Trail Homeowners Association Phase I (Cathedral Trails Lodges), Treetops at

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Attitash Homeowners Association and other individual lots along Cow Hill Road is a public utility within the meaning of RSA 362:2 and it appears that CT II may be operating said system in violation of RSA 374:22. Moreover, the equipment and facilities of the Cow Hill water system are outdated and in substantial disrepair. As stated in the Precinct's letter to Orr & Reno of May 18, 2012, the Precinct is willing to take over the Cow Hill water system. However, it should not and is not willing to bear the brunt of years of deferred maintenance. Hence the reason for the surcharge.

Third, the factual allegations concerning the discussions in the fall of 2011 between the Precinct Commissioners and representatives of CT II are disingenuous and not supported by the written record. It is important to note that at all times during these discussions Fran Lyons was the system operator of the Cow Hill water system while similarly serving as system operator for the Precinct water system. Many statements attributed by CT II to Fran Lyons were never authorized by the Precinct.

In short, the allegations set forth by CT II in its above-referenced letter are legally wrong and factually incorrect. We respectfully submit that because the Precinct is in compliance with RSA 362:4, III-a, the New Hampshire Public Utilities Commission has no jurisdiction with respect to the rates the Precinct proposes to charge to CT II and others in the Cow Hill area and accordingly, we respectfully request that the Commission decline to undertake a proceeding with respect to this matter.

Very truly yours,

A handwritten signature in blue ink, appearing to read "T. E. Britain", written in a cursive style.

Timothy E. Britain

TEB/lb

cc: Richard Glines, Chairperson
Connie B. Lane, Esquire
Susan S. Geiger, Esquire