

DW 01-196

**ROLLING RIDGE WATER SYSTEM**

**Receivership Proceedings**

**Emergency Order Imposing Receivership**

**O R D E R    N O.    23,794**

**October 4, 2001**

Pursuant to RSA 374:47-a, whenever the New Hampshire Public Utilities Commission (Commission)

finds that a public utility regulated by the commission and having gross annual revenues of less than \$2,000,000 is failing to provide adequate and reasonable service to its customers, and that such failure is a serious and imminent threat to the health and welfare of the customers of the utility, the commission may appoint a receiver or direct its staff to take such temporary action as is necessary to assure continued service.

For the reasons set forth more fully below, the Commission has determined that such a situation exists with regard to Rolling Ridge Water System (Rolling Ridge) and we are therefore exercising our authority to place this utility in receivership as of the entry of this Order.

As noted in *Rolling Ridge Water Company*, Order No. 23,140, 84 NH PUC 115, 115 (1999), Rolling Ridge is a sole proprietorship providing service to 30 customers in a limited area of the Town of Bartlett. Its approved rates stand at \$279.64 per year, billed semiannually. In 1998, Rolling Ridge

sought a rate increase of 91.7 percent, a request we denied. *Id.* at 115-16. Our order denying the proposed rate increase referred to testimony presented by Douglas Brogan of the Commission's engineering staff that

the system has many structural deficiencies including an underground pump station that is only 5 feet from the road and is frequently flooded or covered with snow. Mr. Brogan recommended that the pump station be relocated and that there are other severe problems with the system that need attention, including: poor water quality; inadequate pressure storage; leaks in the distribution system which lead to periodic outages; and poor construction generally. In summary, according to Mr. Brogan, the system is in "serious condition" and [Robert A. DeMers, the utility's Maine-based owner] clearly does not want to continue to operate it.

*Id.* at 115.

In light of this testimony, we determined in 1999 that the record adduced at that time supported a finding "that Rolling Ridge is failing to provide adequate and reasonable service to its customers and that such failure is a serious and imminent threat to the health and safety of its customers." *Id.* at 116. We opted not to appoint a receiver but, rather, directed Staff to take such action as was necessary to assure continued service. *Id.* We further determined that, "[i]n the event the water system is placed

under the supervision of a receiver or the Commission approves the transfer of the system to another water utility," we would approve a 44.82 percent rate increase recommended by Staff in order to finance necessary system improvements. *Id.*

On March 15, 2001, the Commission learned of Mr. DeMers' death in January 2001 via a letter from an attorney who apparently represented Mr. DeMers' estate. The letter indicated that the estate was insolvent and would not be administered.

The Commission is further in receipt of a report dated July 24, 2001 from Mr. Brogan of our engineering staff. Mr. Brogan noted that the Rolling Ridge system was being operated by LRW Water Services (LRW), an affiliate of Lakes Region Water Company. Mr. Brogan further outlined efforts that had taken place subsequent to our 1999 order with regard to financing system improvements and identifying a potential successor to Rolling Ridge as franchise holder. None of those efforts have, as yet, borne fruit. However, pending in Docket No. DW 99-166 are competing franchise expansion requests from the Lower Bartlett Water Precinct and the Bartlett Village Water Precinct that would cover the service territory (among others) presently served by Rolling Ridge.

On October 3, 2001, Mr. Brogan reported that he had

received a call from LRW Water Services in its capacity as system operator, reporting that the Rolling Ridge system's sole well pump was failing and in need of immediate replacement at an estimated cost of between \$2,000 and \$4,000. LRW advised Mr. Brogan that it had already expended approximately \$2,000 on Rolling Ridge repairs without any certainty of repayment and, in the circumstances, was unwilling to finance the necessary emergency pump replacement. Mr. Brogan advised the Commission that the system is likely to fail in the immediate future absent replacement of the pump.

This likelihood of imminent system failure, combined with the absence of an active franchise holder capable of paying for the repairs, supports a finding that Rolling Ridge is failing to provide adequate and reasonable service to its customers, and that such failure is a serious and imminent threat to the health and welfare of the customers of the utility. Accordingly, pursuant to RSA 374:47-a, LRW Water Services, Inc. is appointed receiver of Rolling Ridge Water System, effective immediately.

As specified by RSA 374:47-a, LRW Water Services shall "have the authority to gain access to all company utility assets and records, and to manage the company's assets in a manner which will restore or maintain an acceptable level

of service." LRW Water Services is further "authorized to spend existing company utility revenues for labor and materials and to commit additional expenditures as are essential to providing an acceptable level of service, such expenditures to be funded in accordance with generally accepted ratemaking practices." *Id.* Consistent with this RSA 374:47-a authority, by virtue of our 1999 Order LRW is immediately authorized to implement the 44.82 percent rate increase that we indicated would be effective upon the appointment of a receiver. *See Rolling Ridge*, 84 NH PUC at 116. This results in an annual rate of \$404.97.

We stress that these are temporary, emergency measures. RSA 374:47-a specifies that a receivership imposed on an emergency basis "shall be for a period of no more than 30 days, unless the commission otherwise directs after hearing and order." Accordingly, we will convene a hearing on October 24, 2001 for the purpose of determining what measures, reaching beyond 30 days after this order, are necessary and appropriate in order to assure safe and adequate water service to Rolling Ridge's customers. Among the issues we will consider at that time is whether the \$404.97 rate should be modified, either upward or downward, in light of current circumstances (including the necessary emergency repairs and

the existence of unpaid pre-receivership expenses) in accordance with the generally accepted ratemaking practices referenced in RSA 374:47-a.

In a written proposal dated June 12, 2001, LRW indicated a willingness to serve as receiver of Rolling Ridge under terms that include (1) a monthly maintenance fee of \$350.00, covering semi-annual billing services, the taking of samples required by the Department of Environmental Services and the provision of 24-hour on-call service to customers. LRW further proposed to charge for additional labor at \$45.00 per hour, with additional fees of \$105.00 per hour for excavators, \$45.00 per hour for dump trucks and \$70.00 for low bed trucks. Water samples would be sent to an outside laboratory, which would charge additional testing fees. The Commission accepts this proposal as to the 30-day period of the initial receivership and will consider its appropriateness on a more long-term basis at the upcoming hearing.

Finally, the Commission is aware of the proceedings in Docket No. DW 99-166 that may have the effect of assigning the Rolling Ridge franchise territory and/or adjacent territory along Route 302 in Bartlett to either the Lower Bartlett Water Precinct or the Bartlett Village Water Precinct. At the October 24, 2001 hearing in this docket, we

intend to explore whether it would be appropriate to consolidate these proceedings with those in Docket No. DW 99-166.

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

**ORDERED**, that LRW Water Services, Inc. is appointed receiver of Rolling Ridge Water System, effective immediately, pursuant to RSA 374:47-a; and it is

**FURTHER ORDERED**, that, in its capacity as receiver, LRW Water Services, Inc. is authorized to implement the annual rate of \$404.97 for Rolling Ridge customers that was approved in Order No. 23,140; and it is

**FURTHER ORDERED**, that a hearing will take place in this docket on October 24, 2001 at 2:00 p.m., for the purpose of considering the status of the Rolling Ridge franchise and associated rates beyond the 30-day receivership imposed by this order; and it is

**FURTHER ORDERED**, that pursuant to N.H. Admin. Rules Puc 203.01, the Secretary shall notify all persons desiring to be heard at this hearing by mailing a copy of this order to each Rolling Ridge customer, the Town of Bartlett, the Lower Bartlett Water Precinct, the Bartlett Village Water Precinct, the Northeast Rural Community Assistance Program and Kenneth R. Cargill, Esq. counsel to the Estate of Robert A. DeMers;

and it is

**FURTHER ORDERED**, that pursuant to N.H. Admin. Rules Puc 203.02, any party seeking to intervene in the proceeding shall submit to the Commission an original and eight copies of a Petition to Intervene with copies sent to the Office of the Consumer Advocate on or before October 22, 2001, such Petition stating the facts demonstrating how its rights, duties, privileges, immunities or other substantial interests may be affected by the proceeding, as required by N.H. Admin. Rule Puc 203.02 and RSA 541-A:32,I(b); and it is

**FURTHER ORDERED**, that any party objecting to a Petition to Intervene make said Objection on or before October 24, 2001.

By order of the Public Utilities Commission of New Hampshire this fourth day of October, 2001.

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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