

DW 01-196

ROLLING RIDGE WATER SYSTEM

Receivership Proceedings

Order Regarding Motion to Postpone Termination of Receivership

ORDER NO. 24,697

November 8, 2006

I. BACKGROUND AND PROCEDURAL HISTORY

Rolling Ridge Water System (Rolling Ridge) is a public water utility that provides service to approximately 30 customers in a limited area in the Town of Bartlett, New Hampshire. Rolling Ridge has been in receivership pursuant to RSA 374:47-a since 2001. The procedural history of this docket is more fully set forth in Order No. 24,517, (September 20, 2005) in which the Commission determined that the receivership must terminate, and set June 30, 2006, as the date for termination. The Commission subsequently issued Order No. 24,642, (June 30, 2006) which extended the deadline for terminating the receivership until September 30, 2006, to allow the Rolling Ridge Water Association (Association) additional time to acquire the water system. In that order, the Commission also authorized LRW Water Services, Inc. (LRW), the system operator, to bill Rolling Ridge customers \$251.24. This total reflected \$101.24 for water service for the period from April 1 through June 30, 2006, and \$150.00 for a surcharge to reduce outstanding expenses incurred by LRW.

On August 8, 2006, Staff filed a letter informing the Commission of updated expenses and revenues regarding LRW, which amount to a deficit of approximately \$17,335 through June 30, 2006. Staff also estimated that title research may cost \$8,000. Staff recommended the Commission approve a billing surcharge in the amount of \$465 to cover the deficit and title

research.

On September 1, 2006, the Commission issued Order No. 24,659, authorizing LRW to issue bills to Rolling Ridge customers to collect \$297.87, which represented a total of \$101.24 for water service from July 1, 2006, through September 30, 2006, and \$196.63 for a surcharge to recover outstanding costs owed LRW. The Commission further ordered LRW to issue bills to Rolling Ridge customers, on or before October 15, 2006, to collect \$266.67 for a surcharge to recover estimated legal expenses associated with resolving title issues as well as \$33.75 for October water usage. The Commission allowed customers to pay the combined amount of \$300.42 over two months, with final payment to be made no later than December 15, 2006. Further, the Commission extended the receivership until October 31, 2006, and requested that Staff and the Association file a transfer plan with the Commission no later than September 15, 2006.

On September 15, 2006, Staff filed a letter stating that it had met with the Association on September 8, 2006, but that no agreement was reached on a termination plan. Staff identified two issues that remained outstanding: 1) collection of outstanding receivables; and 2) the cost of title work. As to receivables, Staff stated it planned to work with LRW to collect outstanding amounts owed from customers and to get a current customer list. As to legal work, Staff stated that Attorney Thomas E. Dewhurst, whom the Commission contracted with to conduct title research, expected to complete most of his work within the month. In light of Attorney Dewhurst's expected timetable for completion, Staff planned to contact him by October 6, 2006, to ascertain a cost estimate. Staff stated it would make a recommendation to the Commission as to whether the billing authorized by Order No. 24,659 should be adjusted given Attorney

Dewhurst's cost update. Lastly, Staff stated that it would monitor financial statements and alert the Association and the Commission of any anticipated billing deficiencies or over-collections so that the Commission could modify bills accordingly. On September 22, 2006, Attorney Dewhurst filed with the Commission an invoice for professional services totaling \$3,519.78.

II. ASSOCIATION REQUEST TO POSTPONE TERMINATION

On October 26, 2006, the Association filed a request to postpone termination of the receivership until June 30, 2007. In support of its request, the Association stated that legal research regarding ownership of the water system shows that the prior owner was granted an easement in gross for the water system and that the easement terminated upon his death. The Association stated that the well and pump station for the water system may be located in the deeded right of way for the Town of Bartlett or on private land and the Association stated it is necessary for a surveyor or LRW to determine the exact location of the well, pump station, water system, and pipelines in order to determine whether it is feasible to transfer the water system to the Association. The Association stated the well and pump appear to be owned by the estate of the prior owner, Mr. Demers, and that an estate needs to be opened in Oxford County, Maine. The Association also took issue with the Commission's characterization, in the Order issued September 20, 2005, that an alternative water system "may be a long way off" and stated that it needs the additional time to: formalize the Bartlett Village Water Precinct's (Precinct) agreement to provide bulk water to the Association; hire an engineer for a grant; and negotiate cost sharing with another Precinct customer, River Run Company. The Association also contended that the Commission had failed to manage the Rolling Ridge water system consistent with RSA 374:47-a. The Association further stated that it believed it was uncertain whether the present operator

would continue to operate the water system and that the system was in such undesirable shape that “in all practicality, no contractor qualified to run such a system would agree to do so.”

III. STAFF OPPOSITION TO POSTPONEMENT

On October 27, 2006, Commission Staff filed a letter recommending that the Commission deny the Association’s motion. In support of its recommendation, Staff stated that the Association had not presented any compelling reason why the Association should not take responsibility for the water service at Rolling Ridge effective November 1, 2006. Staff noted that more than one year had passed since the Commission determined that the receivership must terminate.

Staff did not agree it was necessary to extend the receivership in order to resolve legal questions surrounding ownership of the water system. Staff stated that it had spoken with Attorney Dewhurst concerning the status of title and learned that there was nothing to transfer. Staff noted that the easements for the water system had apparently terminated upon the death of Mr. Demers and that the only remaining property is the water system facilities. Staff observed that since Mr. Demers’ passing, in 2001, no one has challenged the use or ownership of these water system facilities.

Staff disagreed with the Association’s assertion that the Commission mischaracterized the time period at which an alternative water system would be available. Staff stated that construction of a main from the Precinct to Rolling Ridge will not occur until summer 2008, at the earliest. Staff did not believe the existence of wholesale water contracts would impact the receivership since actual performance of the water supply agreement would not occur until 2008.

Staff disagreed with the necessity of extending the receivership due to the Association not having a certified operator in place for November 1, 2006. Staff characterized the Association as having waited until the last minute to put a certified operator in place. Staff stated that the Association should not be permitted to use its neglect of this critical element of operating the water system as a reason to continue the receivership. Staff stated that it has been in contact with LRW regarding reconciliation of receivership expenses and customer payments and Staff stated that it anticipates no difficulties in completing those tasks.

IV. COMMISSION ANALYSIS

The Commission has overseen operation of the Rolling Ridge water system pursuant to RSA 374:47-a since 2001. In Order No. 24,517, (September 20, 2005) the Commission set in motion the termination of the receivership in an orderly fashion. Fourteen months ago, the Commission stated that it did not intend to leave the homeowners without adequate time to organize formally and move ahead with acquiring the water system, and it set the receivership to terminate on June 30, 2006. By Order No. 24,642, (June 30, 2006) the Commission postponed termination of the receivership until September 30, 2006, to allow additional time for the homeowners to formalize their association and for title research to be conducted. It was noted at that time that a final reconciliation would be performed of all receipts and expenses associated with the receivership for a final billing, which would occur prior to the end of the Commission's involvement with this receivership.

In Order No. 24,659, (September 1, 2006) the Commission again extended the receivership, until October 31, 2006, and it designed a billing sequence that would allow time for: Staff to perform a final reconciliation; LRW to collect for its expenses as well as for

estimated legal expenses; customers to pay their bills until December 15, 2006; and the Association to take over operation of the water system with no outstanding financial liabilities as of November 1, 2006. It is our intent to proceed on the course of resolving the affairs of this receivership.

The Association requests that the termination of the receivership be postponed in order to: conduct further analysis and research regarding title issues; put a wholesale water supply contract in place prior to termination; and hire an engineer for a grant we understand the Association is pursuing connection to the Precinct. With respect to title issues, we understand that Attorney Dewhurst has filed an initial invoice for his law firm's services performed in connection with the contract for title research and that, on November 3, 2006, he filed a preliminary title opinion regarding real property and personal property. As for water supply issues, we commend the Association for commencing negotiations with the Precinct and reaching an apparent agreement as to a source of supply, however, we disagree with the Association's position that the receivership needs to continue until it has a water supply agreement in hand. Our analysis applies similarly to the Association's stated need to hire an engineer in its pursuit of grant funds.

We next address the issue of having a certified operator for the water system. In furtherance of the orderly termination of this receivership, we requested that Staff and the Association file a transfer plan no later than September 15, 2006. Staff filed a report on September 15, 2006, but the Association did not file anything until it filed its instant motion on October 26, 2006. The Association thus put itself in a situation where it had not secured a certified operator for the water system for a November 1, 2006 take-over date. This is an

unfortunate event but it does not warrant extending the receivership until June 30, 2007. Water systems have discretion in choosing operators so long as the operators are certified according to the requirements of the N.H. Department of Environmental Services (DES). Staff will work with the Association to rectify this situation and the Association can also seek a list of certified operators from DES. We note that LRW is retained by the Commission to conduct billing services from November 1, 2006, through the December 15, 2006 billing due date, and it is possible that this relationship may be something the Association can expand upon to satisfy its own needs for a certified operator. However, the request for services must come from the Association since we cannot require LRW to perform certified operator functions for others.

In summary, the pleading filed by the attorneys for the Rolling Ridge Water Association on October 26, 2006, mischaracterizes in fundamental ways the history of the receivership and the actions of the Commission and Staff in administering the receivership. This case has a long and difficult history, arising in large part from the death of the water system's previous owner, Mr. Demers. The Commission, however, promptly engaged the services of LRW to act as operator and the firm has been attentive to the needs of the customers and the system for the past five years. In fact, at a public statement hearing on July 20, 2005, customers acknowledged the good work done by LRW. During that period, the Commission and Staff have invested considerable time and resources in working with residents to find a long term solution to water service in Rolling Ridge, which has involved consideration of extensions by water precincts and private developers that have not come to fruition. Consequently, the argument that the five-year receivership should be extended an additional year because the Commission and Staff have not fulfilled their duties under the receivership statute is wholly without merit. Moreover, based on

the history of other unsuccessful development plans that have been raised in the context of this proceeding, there is no reasonable basis for concluding that the receivership should be extended yet again on the prospect of this latest proposal.

The October 26, 2006 pleading, nevertheless, does make a reasonable point about the usefulness of finalizing certain legal research and accounting activities. In order to allow time to conclude these activities, the receivership will be extended until December 11, 2006. To accomplish these steps in a timely fashion, we direct Staff to work with the Association, its attorneys and LRW and report the progress of such efforts by November 22, 2006.

Lastly, we address final reconciliation and the surcharge for legal expenses. In Order No. 24,659, the Commission authorized LRW to collect from customers a surcharge for estimated legal expenses. As stated earlier, we have received a bill for legal services in the amount of \$3,519.78. Staff originally estimated legal expenses at \$8,000. In furtherance of the orderly resolution of this receivership, we will need a final accounting of legal expenses. We understand that Attorney Dewhurst has recommended certain courses of action to resolve legal issues and we will be reviewing those recommendations. As also stated earlier, we will be balancing the need to pursue further title options with the cost of those options to customers. Our determination will impact the final accounting. Accordingly, we will issue a separate order at a later date addressing future customer billings related to legal expenses. It is our intent that this separate order also will include the final reconciliation of all receipts and expenses for the receivership and authorize a final billing or refund, as appropriate.

Based upon the foregoing, it is hereby

ORDERED, that Rolling Ridge Water Association's Second Request to Postpone Termination of Receivership is DENIED; and it is

FURTHER ORDERED, that the Commission's receivership of the Rolling Ridge water system is extended and shall terminate on December 11, 2006; and it is

FURTHER ORDERED, that Staff report by November 22, 2006, the progress of efforts to finalize legal and accounting activities; and it is

FURTHER ORDERED, that the Commission Staff shall provide to Rolling Ridge Water Association within twenty (20) days of the date of this order, copies of all financial records of the water system; and it is

FURTHER ORDERED, that the Commission Staff mail a copy of this order to all customers of Rolling Ridge water system by first class mail, postmarked no later than November 13, 2006.

By order of the Public Utilities Commission of New Hampshire this eighth day of November, 2006.

Thomas B. Getz
Chairman

Graham J. Morrison
Commissioner

Clifton C. Below
Commissioner

Attested by:

Debra A. Howland
Executive Director & Secretary