



June 8, 2012



**Via First Class Mail and Electronic Mail**

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

***Re: DW 11-242, Lower Bartlett Water Precinct Request for Franchise Expansion  
– Proposed Increase In Rates Charged to Customers Outside Municipal  
Boundaries***

Dear Ms. Howland:

We are writing on behalf of Cathedral Trails II Homeowners' Association regarding Lower Bartlett Water Precinct's ("Lower Bartlett") intention to increase rates charged to customers in the Cow Hill section of its newly-expanded franchise area in the Town of Bartlett. This section includes developments known as Cathedral Trails I, Cathedral Trails II, Tree Tops and other individual homes/lots along Cow Hill Road. For the reasons discussed below, Cathedral Trails II ("CT II") objects to the proposed rate increase.

In Order No. 25, 290 (Nov. 18, 2011), the Commission granted Lower Bartlett's request to expand its franchise area by extending its water mains to a section of the Town of Bartlett that includes Cow Hill. The Order reflects a finding by the Commission that "Lower Bartlett will continue to charge equivalent rates to customers outside its corporate boundaries, and will therefore continue to be exempt from regulation by this Commission." Order at p. 4. The Order also indicates that there is a potential question about the applicability of RSA 362:4, III-a that limits charging a rate premium to "new" customers outside corporate boundaries, and that Lower Bartlett should "consult with counsel and discuss these matters with Staff if in the future it seeks to charge the 15% rate premium to its outside customers." *Id.*

A letter dated May 23, 2012 from Mr. Mark Naylor, Director of the Commission's Gas and Water Division, indicates that Lower Bartlett has informed Commission Staff that it "has decided to add the 15 percent rate premium to rates of all customers to be served by the main extension." In addition, by letter dated May 18, 2012 from Lower Bartlett's attorney, Timothy Britain to Attorney Connie Boyles Lane, counsel to CT II, Lower Bartlett outlines the conditions under which it would

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be willing to take over the Cow Hill Water System, as well as the methodology for calculating the proposed rates for water service. (A copy of this letter is attached for your reference.)

At the outset, CT II notes that all of the provisions/subsections of RSA 362:4, III-a relating to a municipal corporation's ability to charge new customers rates no higher than 15% above those charged to its municipal customers **apply only to new customers outside the municipal corporation's municipal boundaries**<sup>1</sup>. Thus, because CT II is located within the municipal boundaries of the Town of Bartlett, CT II customers are municipal customers and therefore should be charged for water service at the same rates as all other customers located within the municipal boundaries of the Town of Bartlett. In addition, CT II agrees with Staff's position set forth in Mr. Naylor's May 23, 2012 letter, that Lower Bartlett cannot now increase the rates charged to CT II customers because they are current customers of Lower Bartlett, and therefore are not "new customers" within in the meaning of RSA 362:4, III-a.

Even assuming CT II customers were considered to be new customers located outside of Lower Bartlett's municipal boundaries, the proposed 15% rate increase may not be applied to them unless the increase is found by the Commission to be in the public good after notice and hearing. *See* RSA 362:4, III-a (b). As there has been no notice and hearing on this rate increase, Lower Bartlett may not imposed this rate increase at this time. In addition, Dick Glines, Commissioner of Lower Bartlett, informed the Board of CT II on at least one occasion that Lower Bartlett would not impose the surcharge to customers of the Cow Hill Water System. No reason has been given to CT II customers for Lower Bartlett's decision to change its position and impose the surcharge. It is also unclear if the 15 former customers of Cow Hill Water System along Cow Hill Road are subject to this surcharge, or if only applies to those in CT II, Cathedral Trails I and Tree Tops. If they are exempt from the surcharge, it is inequitable to discriminate among the customers of the Cow Hill Water System in such a manner.

In addition to the foregoing arguments concerning the inability of Lower Bartlett to raise rates to CT II customers, CT II wishes to make the Commission aware of the following:

1. Dick Glines assured the Board of Directors of CT II last fall and again in March 2012 that Lower Bartlett was going to "get you out of the water business." In discussions last fall prior to the vote of CT II owners to connect with Lower Bartlett, both Mr. Glines and Fran Lyons, agent for Lower Bartlett, assured the Board that Lower Bartlett was going to acquire all the assets of Cow Hill Water System. During the fall, Lower Bartlett sought assurance from CT II's attorney that Cow Hill Water had good title to the lines, equipment and easements necessary to provide the water to all of its customers. Lower Bartlett assisted with the drafting of the vote that was circulated to the customers of Cow Hill Water System to seek their approval of turning over the assets of Cow Hill Water System to Lower Bartlett.

2. Then, in early 2012, Lower Bartlett abruptly changed its position concerning the purchase of the assets of Cow Hill Water System, stating it was never its intention to do so. Such

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<sup>1</sup> Although Order No. 25, 290 (Nov. 18, 2011) refers to "corporate boundaries," that term does not appear in any of the provisions of RSA 362:4. Instead, that statute references "municipal boundaries." *See* RSA 362:4, subsections II, III (a), III-a (a)(1), III-a (b), III-a (c), III-a (d) and III-a (e).

assertion is inconsistent with Lower Bartlett's actions in Fall 2011 to insist on clear title of all the assets and its reluctance to discuss bulk water distribution with CT II -- it was insisting at that time that all Cow Hill Water System customers be direct retail customers of Lower Bartlett.

3. Fran Lyons, agent for Lower Bartlett, represented to CT I in January 2012 that it was going to purchase the assets of Cow Hill Water System.

4. Lower Bartlett stated last fall that it was not going to use the so-called Well Lot upon which the pump house is now located, but was going to put in water lines along Cow Hill Road. At some point, Lower Bartlett changed its plans and unilaterally decided to connect through the existing pump house -- without communicating with Cow Hill Water System.

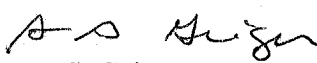
5. Lower Bartlett also led Sarah Pillsbury of NH Department of Environmental Services to believe that Lower Bartlett was going to use the so-called "Hurricane Irene" funds to take over the Cow Hill Water System. Letters from Ms. Pillsbury to CT II confirm her understanding and can be provided, upon request.

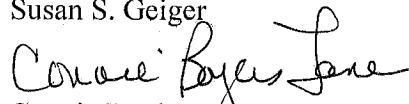
6. Lower Bartlett has not provided notice of any of the proceedings before the PUC to the customers of Cow Hill Water System, most of whom are seasonal residents and do not read the local paper.

7. Lower Bartlett took over 2 months to provide the information that it promised to CT II and Cow Hill Water System in a meeting held on March 10, 2012. Rather than schedule another meeting to discuss a solution with CT II, CT I and Cow Hill Water System as agreed in March, Lower Bartlett created its own proposal and gave CT II, CT I, Tree Tops and Cow Hill Water an arbitrary deadline of 30 days to accept their solution. Upon request, Lower Bartlett did extend the deadline to 60 days. Nevertheless, the manner in which they handled the delivery of their proposal is indicative of their poor communication with and treatment of CT II, CT I, Tree Tops and Cow Hill Water.

We ask that the 15% surcharge not be allowed since it violates not only the law as outlined above, but also is in direct contravention of what was represented to the Cow Hill Water System in connection with the expansion of the Lower Bartlett franchise area to Cow Hill Road. We also ask that Lower Bartlett be required to provide notice of any proceedings related to Cow Hill Road to customers of Cow Hill Water System.

Very truly yours,

  
Susan S. Geiger

  
Connie Boyles Lane

Enclosure