

DE 97-255

BIRCHVIEW BY THE SACO, INC.

**Investigation into Quality of Service and Future of Water Supply
and Distribution System**

Order Nisi Setting Rates for Receivership

O R D E R N O. 23,218

May 18, 1999

In July of 1997 the New Hampshire Public Utilities Commission (Commission) was contacted by a number of customers of the Birchview by the Saco, Inc. (Company) water utility which provides service in a limited portion of the Town of Bartlett, New Hampshire. The complaints related to the alleged poor quality of service being provided by the Company. The Commission Staff (Staff) met with those customers on August 6, 1997 and toured the water system on August 18, 1997.

On August 29, 1997, Staff Water Engineer Douglas Brogan sent Carlton Bacon, the system owner, a letter identifying a number of system deficiencies and concerns with regard to the system and requested specific written information by October 15, 1997. Having received no response to this request, Mr. Brogan sent a second letter on October 20, 1997, noting the absence of a response to the October 15, 1997 letter and requested a response by November 15, 1997.

On December 22, 1997, Mr. Brogan informed the

Commission by memo of the absence of a substantive response from the Company and of a number of immediate system needs including, among other things, two of three wells being inoperative, a main break remaining unrepaired, holes in the pump station roof and a refusal by the Company to install mandated corrosion control. Mr. Brogan's memo also stated that the system had additional longer term needs, that it had over \$40,000 of outstanding Company unpaid debts and that it appeared the Company's revenues were inadequate to meet the operational needs of the system.

Following a show cause hearing related to the concerns expressed by Mr. Brogan, the Commission placed the water distribution system under receivership pursuant to RSA 374:47-a, and appointed FX Lyons, Inc., the system operator employed by the Company, as the Receiver to address the day-to-day operation, maintenance and management of the system. See, Re Birchview by the Saco, Inc., Order No. 22,992 (August 3, 1998); Re Birchview by the Saco, Inc., Order No. 23,002 (August 31, 1998).

Over the course of the past year the Commission and Staff have attempted to address the long term operational condition of the system and have also attempted to conduct a financial audit of the Company's books. On May 3, 1999, the Commission determined at its public meeting that the interests of the customers were best served through interconnection with the Lower Bartlett Water Precinct (Precinct), a municipal water utility operating in the vicinity of the water supply and

distribution system and the Birchview development. The Commission further concluded that the public good required the system, which would eventually be replaced by the Precinct as part of the interconnection process, to remain under its receivership until interconnection actually occurs. The Commission will issue a separate order to address the interconnection with the Precinct.

By memo dated March 25, 1999, the Finance Staff informed the Commission that the Receiver was operating the Birchview system at a loss and that those losses would continue to mount without a rate increase. Staff concluded that without a rate increase the Receiver would be unable to ensure safe and adequate service to customers. Staff attributed the losses to current rates that are inadequate to meet the system's last approved revenue requirement.

The Finance memo noted serious concerns regarding the operations and record keeping of Birchview prior to being placed in receivership. Based on these concerns and the short period in which the Receiver has kept the Company's books, Staff did not feel an adequate record could be developed to determine an appropriate rate at this time based on current data. Staff, therefore, recommended rates based on the last approved revenue requirement.

The current Birchview quarterly unmetered rate of \$34.93 per customer was established by Order No. 20,064 using a

1988 test year. Re Birchview by the Saco, Inc., 76 NH PUC 100 (1991). The residential customer charge was established based on an overall revenue requirement of \$18,988, and the assumption that a hotel then being served by the Company would pay \$4,177, or 22%, of the revenue requirement and residential customers would contribute \$14,811, or 78%. Subsequently, the hotel left the system resulting in a substantial revenue loss that has been only slightly offset by an increase in the number of residential customers from 106 to 112. Staff recommended that the approved revenue requirement of \$18,988 be recovered from existing customers through a quarterly rate of \$42.38.

Moreover, as part of the investigation in this proceeding, the Receiver has incurred regulatory expenses of \$7,584 since being appointed. Regulatory expenses were not included in the calculation of the revenue requirement and are not considered normal operating expenses, but were a necessary component of this proceeding because of the particular nature of this proceeding and the numerous hearings that required the attendance of the Receiver. Staff recommended that these regulatory expenses be recovered through a surcharge of \$16.93 over four quarters, to begin with bills rendered on July 1, 1999.

The Finance Staff also stated that it had reviewed Birchview's accounts payables of \$37,562 to determine which were legitimate and verifiable. Of the \$13,793 related to operations, Staff recommended payment of \$8,833 to be collected through a

surcharge of \$19.72 over four quarters to begin with bills rendered on July 1, 1999. Staff did not include carrying charges on the debts in the proposed surcharge.

Staff concluded, therefore, that base rates should be set at \$42.38 per quarter and that a surcharge be put in place to recover the Receiver's extraordinary expenses incurred to appear at Commission proceedings and to recover past due debts of the utility. Staff recommended a surcharge of \$36.65 be implemented for the next four quarters to recover these expenses. At the conclusion of the next four quarters the surcharge would be removed from customer bills and rates would return to the \$42.38 per quarter base level.

Once a utility is placed under receivership by the Commission pursuant to RSA 374:47-a the Commission is authorized to "expend 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." RSA 374:47-a. In the case at hand, Staff has demonstrated that existing utility revenues are inadequate to meet the operational need of the water supply and distribution system.

We believe Staff's reliance on the record in DR 89-207, which utilized a 1988 test year to establish rates, provides the Commission with a sufficient basis to determine a revenue

requirement of \$18,988 to be just and reasonable. Our only concern, however, is that the system has aged and inflation has increased certain costs, particularly electric rates. Thus, we believe it is safe to assume that the cost to operate the Birchview system may have increased significantly since 1988. Moreover, this budget does not include any reserve for capital expenditures necessary to maintain a reasonable level of service should such expenditures be necessary. Thus, we are concerned that Staff's proposed rates may prove inadequate prior to interconnection with the Precinct, and that customers should be prepared for further increases in rates.

With regard to the proposed surcharge to recover the regulatory expenses incurred by the Receiver, we have tried to balance the interests of keeping these costs at a minimum while allowing for a full and fair opportunity for all interested parties to participate in our investigation. As a result of our investigatory process, however, the Receiver has spent a great deal of time and expense responding to inquiries from the parties throughout the discovery process and attending and testifying at Commission hearings. These costs were borne on behalf of Birchview customers to provide the Commission and those customers that chose to participate in our investigation with essential information concerning the history of the system, current operational problems and recommendations regarding the future of the system. Accordingly, we will approve recovery of those costs

through a surcharge of \$16.93 over four quarters, effective with the next billing.

We also believe the Receiver should pay the legitimate and verifiable accounts payable owed by the Utility to those that have provided goods or services for the operations of the system in the past. Staff has reviewed outstanding invoices totaling \$13,793 for system operations and recommended approval of \$8,833. The invoices include carrying costs related to expenses incurred as far back as 1990 and make up a significant portion of the outstanding debt. The Commission has traditionally not passed interest and penalties resulting from mismanagement on to ratepayers, but required the owner or shareholders to absorb such costs. Thus, we will only approve recovery of the legitimate and verifiable past due debts of the utility without carrying cost from ratepayers.

In summary, on July 1, 1999, Birchview customers will see quarterly bills increase from \$34.93 to \$79.03, an increase of \$44.10. Included in that rate are quarterly surcharges of \$16.93 and \$19.72, for a total surcharge of \$36.65, to be billed through April 1, 2000 (four quarters). Beginning July 1, 2000, Birchview customers will only be billed the quarterly rate of \$42.38, an increase of \$7.45 over the current rate of \$34.93.

Based upon the foregoing, it is hereby

ORDERED NISI, that FX Lyons, Inc., as Receiver of the

Birchview by the Saco, Inc. water utility, is authorized to collect an annual revenue requirement of \$18,988 from existing customers as recommended by Staff at a flat rate of \$42.38 per customer, per quarter; and it is

FURTHER ORDERED NISI, that FX Lyons, Inc., as Receiver of the Birchview by the Saco, Inc. water utility, is authorized to recover its regulatory expenses of \$7,584 through a quarterly surcharge on customers bills over a one year period without interest, effective with the July 1, 1999 billing; and it is

