

DW 01-054

WEST EPPING WATER COMPANY

Investigation into Status of Franchise  
Order Following Pre-Hearing Conference

O R D E R    N O.    23,682

April 20, 2001

**APPEARANCES:** Richard F. Fisher and Judith M. Golden for West Epping Water Company; Paul R. Wright, *pro se*; Rick St. Jean, *pro se*; Roger Gauthier for the Town of Epping and Donald M. Kreis, Esq. for the Staff of the New Hampshire Public Utilities Commission.

**I.    PROCEDURAL HISTORY**

The New Hampshire Public Utilities Commission (Commission) opened this docket at the request of its Staff to conduct an investigation pursuant to RSA 374:3 of West Epping Water Company (WEWC), a water utility located in the Town of Epping. Staff made its request following the receipt of a written complaint from Paul R. Wright, a customer of the utility and the owner of property on which one of WEWC's wells is located.

The Commission issued an Order of Notice on March 15, 2001. The Order of Notice indicated that, in response to Mr. Wright's complaint, Staff learned that the original WEWC had been dissolved by the New Hampshire Secretary of State in 1996 and that WEWC had reincorporated in March 2001 as a newly formed not-for-profit corporation. As noted in the Order of

Notice, Staff believed that such action constitutes a franchise transfer within the meaning of RSA 374:30 and that the failure of WEWC to seek the Commission's permission for such a transfer rendered it void pursuant to RSA 374:31. The Order of Notice also made reference to additional allegations about WEWC that Mr. Wright had asked for an opportunity to present to the Commission, and also referred to the possibility of exempting WEWC from Commission regulation pursuant to RSA 362:4, I.

The Order of Notice scheduled a Pre-Hearing Conference for April 11, 2001, directed WEWC to notify all customers of the Pre-Hearing Conference by March 23, 2001 and established April 2, 2001 as the deadline for the filing of petitions to intervene. The Commission received two petitions: one from Mr. Wright and the other from Rick St. Jean, another WEWC customer who identified himself in his petition as a member of the WEWC Board of Directors.

The Pre-Hearing Conference took place as scheduled on April 11, 2001. At the Pre-Hearing Conference, the Commission considered the intervention petitions and gave the parties and Staff an opportunity to make preliminary statements of their position. Following the Pre-Hearing Conference, the parties and Staff met for a technical session

and, at the request of the Commission, discussed and agreed upon a proposed procedural schedule to govern the remainder of the proceeding.

## **II. PETITIONS TO INTERVENE**

There were no objections to the petitions to intervene submitted by Paul R. Wright or Rick St. Jean. Accordingly, the Commission granted both petitions.

## **III. POSITIONS OF THE PARTIES AND STAFF**

### **A. Staff**

Staff indicated that its understanding of the relevant facts, at this early stage of the investigation, are fairly summarized in the Order of Notice. Staff further indicated that it has had difficulty over a period of several years in eliciting cooperation from WEWC with regard to compliance with the Commission's rules. Specifically, Staff indicated that the Company's 1997 annual report had been rejected as inadequate and its 1998, 1999 and 2000 annual report remained unsubmitted.

Staff raised the possibility of exempting WEWC from Commission regulation pursuant to RSA 362:4, I. According to Staff, information recently submitted by WEWC indicates that it has approximately 12 customers, which would place it above

the exemption threshold in the statute.<sup>1</sup>

According to Staff, there are three potential outcomes to this docket: (1) placing WEWC in receivership pursuant to RSA 374:47-a, (2) exempting WEWC from Commission regulation pursuant to RSA 362:4, I, or (3) taking such action as is reasonably necessary to compel WEWC to comply with all applicable Commission rules.

Finally, Staff asked the Commission to admonish WEWC and the intervenors to comply with Puc 202.07 (setting forth the requirement that documents be filed by sending an original and eight copies to the Secretary and Executive Director) and Puc 202.18 (requiring that copies of all such filed documents be furnished to parties on Service List). Staff indicated that it had experienced problems with documents being sent to individual Staff members in disregard of the above-referenced rules.

**B. West Epping Water Company**

WEWC offered a brief overview of the utility's history, noting that it began when Judith Golden purchased some property in Epping that included wells that were

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<sup>1</sup> However, as Chairman Patch noted, there is a bill pending in the Legislature (House Bill 337) that would give the Commission discretion to exempt water companies from regulation if they have fewer than 75 customers.

providing service to others in the area. According to WEWC, Ms. Golden agreed to provide this water service without charge in exchange for other services provided to her by the users of the water from the well.<sup>2</sup> Then, according to WEWC, the Company was approached by an apartment building containing 12 units that had experienced what WEWC characterized as "massive septic failure," whereupon WEWC agreed to provide service to the building.<sup>3</sup> Thereafter, according to WEWC, the Route 101 expansion project and the blasting associated with it caused a variety of damage to WEWC's system and resulting service interruptions. According to WEWC, the blasting rendered the Company's so-called "Mohawk wells" (two of the three wells owned by WEWC) inoperable.

Richard F. Fisher, WEWC's certified water system

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<sup>2</sup> The Commission granted WEWC a franchise to provide service as a public utility on June 27, 1988. See *West Epping Water Company*, 73 NH PUC 243 (1988), rehearing denied, 73 NH PUC 301 (1988). The franchise territory approved by the Commission included "eleven parcels of land with frontage on Hickory Hill Road, an 11.53 acre parcel between the B&M Railroad and Mill Road . . . and an undeveloped eleven acre parcel adjacent to the Hickory Hill Road properties between the B&M Railroad and Route 101." *Id.* at 245. At the time it received its franchise, WEWC was an unincorporated association with three customers, two of whom were also providing water to eleven tenants and recovering the costs through rent. *Id.* at 246.

<sup>3</sup> WEWC's franchise area was expanded to include the apartment building in Order No. 21,338. See *West Epping Water Company*, 79 NH PUC 472 (1994).

operator, noted that he resigned as the certified operator on May 7, 1997 because the Company's system was in "real chaos" and he did not want to jeopardize his operator's license. He noted that he returned as system operator earlier this year. According to Mr. Fisher, the Company in 1997 tried to cause its customers to organize into a homeowners' association for the purpose of taking over the system, but the effort was not successful.

According to WEWC, it was determined that the solution to its problems was the acquisition of more land to develop additional wells. However, according to WEWC, the Company was then forced to spend two years litigating with the Town of Epping over access to the property. WEWC further averred that its Mohawk wells have been successfully returned to service with the completion of the Route 101 expansion project.

WEWC confirmed that it opted to incorporate as a not-for-profit corporation, rather than seek to renew its previously lapsed incorporation, as a means of avoiding a lengthy administrative process before the New Hampshire Secretary of State that would have culminated in a hearing to be held in September. According to WEWC, it believed that someone else was about to attempt to register its corporate

name and, in the wake of Mr. Wright's formal complaint filed with the Commission, WEWC felt under pressure to regain its status as a duly registered corporate entity. Noting that it has always considered itself a non-profit organization in any event and has never charged any rates, WEWC took the position that it is entirely appropriate for the Company to have official corporate status as a non-profit and that it did not intend the assumption of such status to effect a transfer of the Company's franchise.

WEWC noted that it has contracted with New Hampshire Bookkeeping Services to prepare the necessary annual reports because their preparation is beyond the expertise of anyone directly connected to the Company. Responding to the three options articulated by Staff, WEWC indicated that its objective is to remain under Commission regulation and to comply with the Commission's requirements.

**C. Paul R. Wright**

Mr. Wright took the position that the Company's franchise should be revoked and WEWC placed in receivership because WEWC is no longer a "legal entity." Mr. Wright also alleged that WEWC has disregarded applicable regulations of the New Hampshire Department of Environmental Services (DES) with regard to the Mohawk Wells.

**D. Rick St. Jean**

Mr. St. Jean expressed the view that the Company's franchise should not be revoked.

**IV. POSITION OF TOWN OF EPPING**

Although the Town of Epping has not sought intervenor status in this proceeding, a member of the Town's Water and Sewer Commission, Roger Gauthier, briefly addressed the Commission during the Pre-Hearing Conference. Mr. Gauthier indicated that the sole issue the Town wished to raise concerned WEWC's contention that it has entered into a signed agreement with the Town providing that the Town will not charge real estate taxes to WEWC in light of the fact that WEWC does not charge for providing service. According to Mr. Gauthier, no such agreement exists.

In response to Mr. Gauthier, WEWC indicated that it is in possession of such a document and that the Town has, therefore, agreed not to assess property taxes against the Company.

**V. PROCEDURAL SCHEDULE**

At their technical session, the parties and Staff agreed upon the following proposed procedural schedule:

Data Requests, 1st Round	April 25, 2001
Responses to 1st Round Data Requests	May 7, 2001



Data Requests, 2nd Round	May 14, 2001
Responses to 2nd Round Data Requests	May 24, 2001
Pre-Filed Testimony	June 8, 2001
Data Requests re Pre-Filed Testimony	June 15, 2001
Responses to Data Requests re Pre-Filed Testimony	June 25, 2001
Settlement Conference	July 10, 2001
File Settlement, if any	July 17, 2001
Merits Hearing	July 25, 2001

We have reviewed the proposed procedural schedule and conclude that it is consistent with the public interest. We will therefore approve it to govern the remainder of the proceedings in this docket.

In addition, as requested by Staff, we admonish all parties to comply with the requirements in the Commission's rules that require all filings to be made by providing an original and eight copies to the Executive Director and Secretary of the Commission with copies provided to all parties on the Commission's service list. The parties should also be aware that the Commission maintains a separate service list that applies to discovery (i.e., data requests and responses to data requests). The Commission is aware that the

Company does not employ counsel to represent it in this proceeding and that the other parties to the case appear pro se. Although we are not in a position to relax our procedural rules in such circumstances, we do remind the parties that our Staff is available to them in the event that questions arise about compliance with any rule that is applicable to the proceedings in this case.

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

**ORDERED,** that the proposed procedural schedule set forth above is APPROVED; and it is

**FURTHER ORDERED,** that all parties are required to comply with the Commission's rules regarding filing of papers.

By order of the Public Utilities Commission of New Hampshire this twentieth day of April, 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