

DW 01-027

HOLIDAY ACRES WATER AND WASTEWATER SERVICES

Petition to Revoke Franchise

Order Denying Motion For Rehearing

O R D E R N O. 23,766

August 24, 2001

I. BACKGROUND AND HISTORY

On February 7, 2001, the New Hampshire Public Utilities Commission (Commission) opened this docket to consider a petition by James R. Jackson (Petitioner), then a customer of Holiday Acres Water & Wastewater Services (the Company or HAWWS) to revoke the Company's franchise.

After an initial investigation and consideration of the position of the parties, on July 9, 2001, the Commission issued Order No. 23,739. The Order denied the Petition but, among other requirements, established deadlines by which the Company was required to bring its books and records into compliance with Commission rules and regulations.

On July 20, 2001, Mr. Jackson filed a Motion for Rehearing, restating many of the issues presented in his original Petition. In response, Staff and the Company filed Objections stating that Mr. Jackson presented no new issues or evidence and, in fact, is no longer the legal property owner within the Company's franchise or customer of record of the Company and,

therefore, is no longer entitled to participate in this proceeding.

On August 3, 2001, John Provost, an intervenor in this docket, also filed a Motion for Rehearing which mirrored that of Mr. Jackson.

II. POSITION OF THE PARTIES

A. James R. Jackson

Mr. Jackson states in his Motion for Rehearing that he is a customer of the Company and his rights, privileges and interests are affected by this proceeding; that he desired but was not afforded a hearing; and that he had no opportunity for discovery. The remainder of his motion restates the issues brought forth in his petition alleges failures, mistakes and omissions of the Commission in Order No. 23,739. It remains his position that the Company's franchise should be revoked.

B. John A Provost

Mr. Provost asserts in his Motion for Rehearing that the Commission exceeded its authority when it recognized Holiday Acres as a business entity "that meets the requirements for registration with the state" under the laws of New Hampshire. The remainder of his motion restates the issues already brought forth by the Parties and ruled on by this Commission. Mr.

Provost also claims that the Company's franchise should be revoked.

C. Holiday Acres Water and Wastewater Services

In its Objection to Petitioner's Motion for Rehearing, the Company states that Mr. Jackson sets forth no new issues or evidence not already considered in Order No. 23,739. Additionally, the Company points out that on May 18, 2001, the Town of Allenstown took possession by tax deed of the residence on Chester Turnpike Road formerly owned by Mr. Jackson, and that Mr. Jackson is no longer the owner of record and, therefore, no longer affected by the Commission's decisions regarding Holiday Acres Water and Wastewater Services. The Company asks that Mr. Jackson's motion be denied.

D. Commission Staff

Staff of the Commission also objects to the Motions for Rehearing filed by Messrs. Jackson and Provost. Staff stated in its Objection that Mr. Jackson does not meet the standards contained in RSA 541:3, which states that a commission may grant a rehearing if good reason is shown. The same standard applies to Mr. Provost's Motion. Staff also contends that Mr. Jackson was afforded ample opportunity to request a hearing and discovery or challenge the procedural schedule in this docket, but failed to do so. Finally, Staff also points out that Mr. Jackson is no

longer the lawful owner of the property, and therefore not a ratepayer entitled to intervenor status in this docket. Staff requests that Mr. Jackson's motion be denied. Staff contests Mr. Provost's theory that the Commission exceeded its authority.

III. COMMISSION ANALYSIS

This Commission may grant a motion for rehearing if it is of the opinion that the rehearing is requested for "good reason." RSA 541:3; NH Admin. Rules, Puc 203.15. The New Hampshire Supreme Court has held that the purpose of a rehearing is to "direct attention to matters said to have been overlooked or mistakenly conceived in the original decision, and thus invites reconsideration upon the record upon which that decision rested." *Dumais v. State Personnel Commission*, 118 NH 309, 312 (1975) [citations omitted].

The Motions for Rehearing of Petitioner and Provost do not provide the Commission with any grounds for reopening the case. Neither party presents new evidence that was not already available prior to our decision, nor have they offered any persuasive evidence that this Commission erred in its analysis. The fact that the Parties are unhappy with Order No. 23,739 or disagree with the Commission is not sufficient "good reason" for reconsideration or rehearing, nor does it follow that we erred in our findings and rulings on the law.

In his Motion for Rehearing, Petitioner claims that our prior order "incorrectly" stated that the Parties agreed to a limited procedural schedule as the central issues could be resolved without hearing. Petitioner now claims that he did desire a hearing. Petitioner also charges that he was denied the opportunity for discovery. Motion for Rehearing at ¶2-3. We agree with Staff that Petitioner was afforded an opportunity to request a hearing and discovery. At no point before our decision did Petitioner challenge the procedural schedule for the case. There is no requirement for a public hearing to be held under the circumstances of this case. Petitioner did not allege the Company unreasonably failed to render service or that service in the franchise area was inadequate. See RSA 374:28. Petitioner's claim that discovery would have brought forward additional relevant evidence is specious. At no point in his motion does the Petitioner allege what type of evidence would have been discovered. He provides no detail as to what he hoped to learn through the discovery tool. Nor does he explain why he failed to pursue discovery during the initial proceeding.

Petitioner's Motion for Rehearing reiterates the position found in his brief. Petitioner and Mr. Provost continue to argue that Holiday Acres Mobile Home Park and Holiday Acres Joint Venture Trust should have been registered with the

Secretary of State. Petitioner also admittedly repeats his claim that the utility is in violation of RSA 205-A. Motion for Rehearing at ¶15. He goes on to claim that the Company's failure to respond to his allegation that it was in violation of RSA 205-A amounts to a default on that issue.

We have already addressed each of their concerns and provided legal analyses to support our conclusions. We continue to find that the Company was properly franchised and that it is appropriately charging rates for its services.

Mr. Provost questions our authority to make these determinations. We derive our authority through RSA 374:3, which states: "The public utilities commission shall have the general supervision of all public utilities and the plants owned, operated or controlled by the same so far as necessary to carry into effect the provisions of this title." The New Hampshire Secretary of State's office granted authority to the Company to do business in New Hampshire; this Commission granted the Company's petition to act as a public utility. The Commission must determine whether a company meets the statutory requirements to be franchised and, as such, we have the authority to make the ruling we did in Order No. 23,739. Mr. Provost's argument that we exceeded our authority is specious and is, therefore, not a "good reason" to grant a rehearing in this docket.

Both Staff and the Company call into question Petitioner's right to continued participation in this docket. Petitioner states in his Motion for Rehearing, filed on July 20, 2001, that he "is a customer of Holiday Acres . . . and as such his rights, privileges and other substantial interests may be affected by the proceeding." Yet Staff and the Company have presented evidence that as of May 22, 2001, fully two months prior to Petitioner's Motion, he was no longer the owner of record of the property serviced by Holiday Acres. We need not rule on this issue as we have determined that a rehearing is not warranted.

Based upon the foregoing, it is hereby

ORDERED that Petitioner's Motion for Rehearing is DENIED; and it is

FURTHER ORDERED that the Motion for Rehearing of John Provost is DENIED.

By order of the Public Utilities Commission of New
Hampshire this twenty-fourth day of August, 2001.

Douglas L. Patch
Chairman

Susan S. Geiger
Commissioner

Nancy Brockway
Commissioner

Attested by:

Thomas B. Getz
Executive Director and Secretary