

DW 01-054

WEST EPPING WATER COMPANY

Response of Paul R. Wright on Order No. 24,309

Order Ruling on Request of Paul R. Wright

O R D E R N O. 24,330

June 4, 2004

The New Hampshire Public Utilities Commission (Commission) issued Order No. 24,309 on April 12, 2004, which addressed the regulatory status of West Epping Water Company (WEWC). WEWC is a small water utility located in the Town of Epping that had served approximately 12 customers, one of which was a multi-unit apartment building, after its expansion in 1994. *West Epping Water Co.*, 79 NH PUC 472 (1994). Nine customers remain after a number of customers, including the apartment building owner, transitioned to other sources of water supply. WEWC has never charged rates for water service and there are no pending issues regarding water quality or quantity.

Based on those facts, the Commission determined, in Order No. 24,309, that it would conditionally grant WEWC an exemption from regulation, pursuant to RSA 362:4,I. The order was issued on a *nisi* basis, and any affected party was entitled to respond to the Commission with its views, provided they did so by April 29, 2004. The order also required WEWC to mail a copy of the order to current customers by April 22, 2004 and submit an

affidavit to that effect by April 27, 2004. Finally, the Commission instructed WEWC to remit \$298.75 for transcription costs that were incurred by the WEWC at the Commission, but had not been billed.

On April 21, 2004, Richard Fisher of WEWC paid the transcription cost. On April 22, 2004 he circulated to all customers a copy of Order No. 24,309 as required.

On April 28, 2004 Paul R. Wright, a former customer of WEWC, filed with the Commission a Response and Request for Hearing. In his filing, Mr. Wright took issue with the Commission's action, requesting a hearing based on three broad areas of concern:

- 1) the transfer to a users association had not been done in accordance with previous Commission orders;
- 2) the Commission's language regarding a users association was "inappropriate, vague and ambiguous"; and
- 3) the Commission should simply have revoked the franchise.

On Mr. Wright's first issue, he is correct that the users association has not been created in accordance with the direction of the Commission. See Order No. 23,909 (January 29, 2002) and Order No. 24,016 (July 24, 2002).¹ At times the Commission has observed or even overseen the transfer of utility

¹ The Commission stated in Order No. 24,309 that it was not making a finding on the validity of the transfer of assets to a users association.

assets to an association. This is because the owners were essentially serving themselves, there was no service to the public and the Commission no longer had jurisdiction. These findings of no jurisdiction are distinct from exemptions from regulation, which are discretionary with the Commission pursuant to RSA 362:4, I.

Though creation of a users association had clearly been anticipated in 2002, the existence of such an association was not the basis on which the Commission conditionally granted WEWC an exemption in Order No. 24,309. With the passage of time, resolution of litigation between the Fishers and some abutters, including Mr. Wright², and the further reduction in the number of customers WEWC service, the Commission is no longer imposing such a requirement.

Mr. Wright's second issue again addresses the status of the users association. As with his first issue, however, the existence of a users association was not the basis on which the Commission granted a discretionary exemption. Whether it was validly created is not material, therefore, to the Commission's action in Order No. 24,309.

Finally, Mr. Wright argued that the Commission should not grant an exemption from regulation, rather it should revoke the franchise pursuant to RSA 374:28 and put the system into

² See Rockingham County Superior Court, Docket Number 01-E-0181 (November 25, 2002) and Docket Number 03-E-0374 (March 1, 2004).

receivership. Receivership is authorized by RSA 374:47-a and is a step not lightly taken. In an extremely small system in which there are no customer complaints regarding water service, quality or quantity and rates are not being charged for water, we will not take that extraordinary step. We would be hard pressed to justify to these nine customers the imposition of rates to pay the receiver for what is apparently safe and adequate water that they now receive at no charge.

Mr. Wright has not raised any issues that cause us to reconsider our decision to grant WEWC an exemption from regulation. We will, therefore, deny his request for a hearing. Because WEWC has complied with the conditions imposed in Order No. 24,309, the exemption from regulation is hereby granted.

Based upon the foregoing, it is hereby

ORDERED, that the Request for Hearing of Mr. Paul Wright is DENIED; and it is

FURTHER ORDERED, that West Epping Water Company shall be exempt from regulation pursuant to RSA 362:4.

By order of the Public Utilities Commission of New
Hampshire this fourth day of June, 2004.

Thomas B. Getz
Chairman

Susan S. Geiger
Commissioner

Graham J. Morrison
Commissioner

Attested by:

Debra A. Howland
Executive Director & Secretary