

DW 01-196

ROLLING RIDGE WATER SYSTEM

Receivership Proceedings

Order Terminating Receivership

ORDER NO. 24,517

September 20, 2005

I. BACKGROUND

Rolling Ridge Water System (Rolling Ridge) is a public water utility providing water service to approximately 30 customers in a limited area in the Town of Bartlett. Many of the customers are seasonal residents. A complete procedural history of this docket is contained in Order No. 24,474 (June 16, 2005).

On October 4, 2001, and pursuant to RSA 374:47-a, the New Hampshire Public Utilities Commission (Commission) placed Rolling Ridge in receivership on an emergency basis. *See, Rolling Ridge Water System*, Order No. 23,794, 86 NH PUC 636 (2001). In that order, the Commission noted that it had been informed that Mr. Robert A. DeMers, the system's owner, had died in January 2001 and that Mr. DeMers owned the utility as a sole proprietorship. The Commission was familiar with the condition of the water system from Rolling Ridge's recent rate case. *Rolling Ridge Water Company*, 84 NH PUC 114 (1999). Testimony from the rate case indicated significant problems existed with the system's pump station, storage, pumping and electrical facilities, well location, water quality, and distribution system. *Rolling Ridge Water System*, 84 NH PUC 114, 115 (1999). The Commission determined that Rolling Ridge was failing to provide adequate and reasonable service to its customers, and that such failure posed a serious and imminent threat to the health and welfare of the utility's customers. *Rolling Ridge Water System, supra at 637*. The Commission immediately appointed LRW Water Services,

Inc. (LRW) as the utility's receiver and granted an emergency rate increase, consistent with determinations made in Rolling Ridge's previous rate case. The Commission stressed that placing Rolling Ridge in receivership was a temporary, emergency measure. *Id.* In 2003, the Commission was advised of efforts to form a homeowner's association, and the Commission encouraged customers to explore that option. The Commission imposed a one-time surcharge in mid-2003 to pay expenses associated with deepening the well and installing a new pressure storage tank. Recently, Staff informed the Commission that efforts to find a solution to the receivership of the water system had faltered.

II. COMMISSION ANALYSIS

It has been nearly four years since the Commission placed Rolling Ridge in receivership. Staff reported that during this period an informal group of homeowners met numerous times to discuss these issues and, on at least two occasions, met with Staff. Staff also advised the Commission that the system still needs many of the upgrades and improvements identified four years ago. Any solution to this situation by necessity involves the homeowners at Rolling Ridge. It is imperative that an entity be formed that is authorized to execute documents, assume ownership, and obtain funding in order to provide for the long term operational needs of the system. However, at the Public Comment Hearing held in the Town of Bartlett on July 20, 2005, no viable options for alternative ownership of the Rolling Ridge water system were advanced. Without an owner, meaningful progress cannot be made toward improving the current system or pursuing other water supplies for Rolling Ridge.

Customer ownership through an organized homeowners group with the legal standing to address long-term solutions to water supply appears to be the only feasible option at

this time. Perhaps long-term supply options, including the possibility of wholesale purchase of water from Bartlett Village Water Precinct, may arise in the future; but it is clear from the Public Comment Hearing that the Bartlett Village Water Precinct's present focus is on ensuring adequate supplies for its current customers. We understand a future connection to Lower Bartlett Water Precinct may be possible but, based on comments of Mr. Lucey of the Department of Environmental Services (DES) at the Public Comment Hearing, such connection would be dependant on in-fill development along Route 302 and thus may not occur for some time. Transcript of July 20, 2005 (7/20/05 Tr.) at 66 lines 13-17.

According to Mr. Astarita, of the Rural Community Assistance Program (RCAP), he has assisted Rolling Ridge homeowners in evaluating options with respect to the water system and available funding. 7/20/05 Tr. at 17 lines 7-13 and at 18 lines 1-7. We further understand that homeowners have delayed formally organizing and taking over the water system because of uncertainty about the current ownership of the system assets and concern over possible liability, both individually and as a group, for past and present water quality deficiencies. 7/20/05 Tr. at 26-27 lines 5-8 and at 60 lines 13-14. We will respond to these concerns in turn.

Subsequent to the July 20th Public Comment Hearing, we directed Staff to research the title to the Rolling Ridge water system and determine the ownership status. Staff reported, on September 16, 2005, that Robert A. DeMers, d/b/a White Mountain Electric, acquired the water system in 1978. Staff found no subsequent transfer to Rolling Ridge, no recorded death certificate for Mr. DeMers, and no documents from Mrs. DeMers to disclaim the Rolling Ridge assets, as was previously indicated by Mr. DeMers's counsel. Staff concluded that, because Mrs. DeMers, and any heirs, had not perfected any disclaimer, they retained some

interest in the water system assets and associated utility easements. Because Staff did not have available a copy of Mr. DeMers's will, Staff could not determine whether the easements and utility assets were specifically devised, were remainder property, were transferred with conditions, or were to be held by multiple heirs. Further, Staff stated that a cloud exists over Mrs. Demers' and any heirs' ownership since RSA 552:1 requires all real estate passing by will be proved and allowed by probate court. Staff found no evidence that the transfer of the easement and utility assets was proved or allowed indicating that Mrs. Demers may have never taken ownership of Rolling Ridge. Staff recommended further research be done to determine if Mrs. DeMers was the sole heir to the utility assets and how the transfer was intended by Mr. DeMers. With this missing information in hand, Staff believes it would then be possible to determine the most efficient means of perfecting a transfer of the ownership interest.

We next turn to the concern regarding the possibility of liability to homeowners individually or as a group resulting from past and present water quality deficiencies. At the public hearing, Mr. Lucey indicated that DES deals with hundreds of mobile home park cooperatives and condominiums that operate water systems and offered that those entities could provide sample documentation as to their establishment and handling of liability questions. 7/20/05 Tr. at 76 lines 19-24 and at 77 line 1. This is reasonable advice, and we encourage the homeowners to review the structure of similar entities that own water systems. The Commission itself has seen numerous instances where homeowners' groups own and operate their water system. Homeowner ownership and operation is not new, and neither are liability issues. We have every reason to believe that a homeowners group could own and operate the Rolling Ridge water system similarly to other groups that own and operate their water systems.

This Commission, however, cannot dispense legal advice or provide legal services and we have given as much guidance as is proper. A full resolution of the ownership and liability concerns expressed at the Public Comment Hearing involves legal advice and services and, therefore, we urge the homeowners to seek legal counsel to resolve these concerns.

With this order, we are setting in motion the termination of the receivership of the Rolling Ridge system. RSA 374:47-a was not intended to provide a long-term solution to issues prompting receivership. As we noted in Order No. 24,474 (June 16, 2005), this particular receivership has been pending for such a lengthy period because there appeared to be real possibilities that the system would be acquired or served by another entity. It is now clear, however, that none of those possibilities are viable any longer. Consequently, we are required to take steps to terminate the receivership in an orderly fashion.

We have heard testimony that a homeowners' group of some type exists and that it has the basic structure to govern itself if it is formally organized. We find that it is in the public interest to make certain efforts to facilitate the potential transfer of the water system to its users. In undertaking these efforts, we do not intend to leave the homeowners without adequate time to organize formally and move ahead with acquisition. Accordingly, we will establish the date of June 30, 2006, as the end of the receivership of the Rolling Ridge water system.

In the meantime, pursuant to powers contemplated by RSA 374:47-a, we will engage the services of an attorney on behalf of the system and its customers to resolve the legal issues surrounding ownership of the water system. The attorney will be directed to take the steps necessary to determine ownership and prepare the documents required to transfer ownership to a homeowners association. The cost of these legal services will be passed onto Rolling Ridge

customers as provided in RSA 374:47-a. It will be a corresponding obligation of homeowners to engage an attorney to effect the formation of a suitable homeowners association and to advise the association regarding the acceptance of ownership.

We find this approach to be reasonable for several reasons. First, it provides adequate time for homeowners to examine the liability questions, plan for the establishment of a formal organization, hold meetings, and prepare documents. We understand that billing for service is issued twice per year, in advance, on January 1st and July 1st. Thus, terminating the receivership as of June 30th would allow a new ownership entity to pick up billing for service as of July 1, 2006, assuming such entity is formed and prepared to undertake such responsibilities.

With respect to reconciliation of LRW's expenses with revenues received since receivership began, that reconciliation should take place prior to the January 1, 2006 billing to allow any necessary adjustment to rates to be accomplished with that billing. Accordingly, we will direct LRW to file with the Commission a full accounting of its receipts and expenses incurred from the initial date of receivership to the date of the filing. We also direct Staff to thoroughly review the reconciliation filing and make a recommendation to the Commission as to what reconciliation surcharge may be appropriate.

LRW has done an excellent job of keeping this system working and, in fact, has markedly improved service. However, it appears that LRW may have performed so well that customers fail to appreciate how fragile the system truly is and that equipment failures could occur at any time that would disable the water system for a considerable period. Moreover, because receivership is intended to be temporary, long-term planning is not being performed. It is vital that a new ownership entity be put in place to take a long-term view of system operations.

In the absence of new ownership, because RSA 374:47-a does not contemplate that the Commission, or a receiver engaged by the Commission, will operate a water system indefinitely, we will be compelled to terminate LRW's operation of the system and require that the system be shut down effective June 30, 2006.

Based upon the foregoing, it is hereby

ORDERED, that the Commission's receivership of the Rolling Ridge Water System pursuant to RSA 374:47-a will end as of June 30, 2006; and it is

FURTHER ORDERED, that LRW Water Services, Inc. submit to the Commission no later than October 1, 2005 a full accounting of its receipts and expenses for the Rolling Ridge Water System commencing from the initial date of receivership; and it is

FURTHER ORDERED, that Staff shall review LRW Water Services, Inc.'s financial information and submit a report and recommendation to the Commission no later than November 1, 2005; and it is

FURTHER ORDERED, that the Commission's Executive Director & Secretary shall, within ten days from the date of this order, inform all customers of Rolling Ridge of this decision by mailing a copy of this order to each customer by first class mail; and it is

FURTHER ORDERED, that the Commission's Executive Director & Secretary shall also publish this order in a newspaper of general circulation in the Bartlett area.

By order of the Public Utilities Commission of New Hampshire this twentieth day
of September, 2005.

Thomas B. Getz
Chairman

Graham J. Morrison
Commissioner

Michael D. Harrington
Commissioner

Attested by:

Debra A. Howland
Executive Director & Secretary