

DW 01-196

ROLLING RIDGE WATER SYSTEM

Receivership Proceedings

Order Terminating Receivership and Transferring Franchise

O R D E R N O. 24,707

December 8, 2006

In Order No. 24,697 (November 8, 2006), the New Hampshire Public Utilities Commission (Commission) denied the motion of the Rolling Ridge Water Association (Association) to postpone the scheduled termination of the receivership of the subject utility, Rolling Ridge Water System (Rolling Ridge), until June 30, 2007. Instead the Commission extended the receivership through December 11, 2006 for the purpose of finalizing legal and accounting matters related to the planned assumption by the Association of the Rolling Ridge franchise. Rolling Ridge is a water utility serving approximately 30 customers in Bartlett, most but not all of whom are members of the Association. In this order, we terminate the receivership and transfer the franchise.

This proceeding began in 2001 when the Commission determined that Rolling Ridge should be placed in receivership and operated under Commission supervision by LRW Water Services, Inc. (LRW). Essentially, the receivership became necessary as the result of the death of Rolling Ridge's owner, who had operated the utility as a sole proprietorship and who had allowed the system to fall into disrepair. A history of the first four years of the receivership appears in Order No. 24,474 (June 16, 2005). In Order No. 24,517, the Commission fixed June 30, 2006 as the date for termination of the receivership. Order No. 24,642 (June 30, 2006) postponed the termination date to September 30, 2006. Order No. 24,659 (September 1, 2006)

moved the termination date to October 31, 2006 and directed Commission Staff (Staff) to file a plan by which the long-anticipated franchise transfer to the Association would take place. In these orders, as well as those that preceded them in this docket, the Commission has authorized the charging of rates and the making of certain expenditures related to maintaining the system and conducting certain legal work related to the planned franchise transfer.

As directed in the November 8, 2006 order that extended the receivership through December 11, 2006, Staff filed a report on November 22, 2006. According to this filing, Staff had received an accounting of the utility's receipts and expenses from LRW, which the Commission's audit staff was reviewing. Staff reported that it had forwarded a copy of unaudited statements from LRW to the Association to assist the Association in determining what rates to charge upon assuming the franchise.

Staff further reported that, based on invoices received and on further work undertaken, legal work associated with the title search necessitated by the planned franchise transfer was likely to reach the \$8,000 initially estimated for this purpose. Staff stated that it was assisting the Association with the development of an appropriate tariff. Noting that LRW would not make a final accounting of receivership-related expenses until after the termination of the receivership, Staff recommended that the Commission defer the issuance of a final order, authorizing a final customer billing in connection with the receivership, after December 11, 2006. The November 22, 2006 letter also raised questions related to Rolling Ridge customers who had opted since the beginning of the receivership to use private wells in lieu of service from the utility. Staff raised questions related to billing these former customers for amounts still owed, as well as the

lawfulness of these customers having availed themselves of private wells to obtain water in light of applicable land-use and water quality requirements.

Staff submitted an additional report on December 7, 2006. The letter summarized title research conducted by outside counsel, noting that there is no interest in real property that should be passed from Rolling Ridge to the Association in connection with the franchise transfer. Staff recommended that the Commission undertake no further title research, concluding that sufficient information has been ascertained about the utility's property to allow the Commission to terminate the receivership.

RSA 374:30 authorizes us to approve the transfer of a utility franchise, works or system upon a determination that such transfer is for the public good. The Commission has already determined that a transfer to "an organized homeowners' group with the legal standing to address long term solutions to water supply" is the only feasible option to assure continued operation of the Rolling Ridge system. Order No. 24,517, slip op. at 2-3. Subsequent orders have tracked the progress of the association formed for this purpose. As noted in those orders, the Association has been receiving assistance from the Rural Community Access Program (RCAP) and has been in negotiations with the Bartlett Village Water Precinct about obtaining a new water supply. Staff's report alludes to significant progress with the remaining details of Association assumption of the franchise. No objections to such transfer are on file or otherwise known to the Commission. In these circumstances, it is our finding that a transfer of the Rolling Ridge franchise, system and works to the Association is for the public good.

The next question is whether the Association, having accepted such a transfer, is subject to regulation as a public utility. We conclude that in the circumstances of this case the

Association is a public utility subject to Commission regulation to the extent that it serves consumers who are not members of the Association. As we recently reemphasized, a homeowners' association that provides water service only to its members is in essence serving itself and is therefore not providing service to an undifferentiated public so as to make it a public utility under New Hampshire law. *See Property Owners Assn. at Suissevale, Inc.*, Order No. 24,698 (Nov. 8, 2006), slip op. at 3-4 (citing *Appeal of Zimmerman*, 141 N.H. 607 (1995)). We nevertheless treated the Suissevale homeowners' association as a public utility within the meaning of RSA 362:2 and RSA 362:4 because it was serving not simply its own members but others as well. The same logic applies here and, accordingly, we treat the Rolling Ridge Water Association as a public utility.

RSA 362:4, I authorizes the Commission to exempt a public utility providing water service from any and all provisions of the Commission's regulatory regime in certain circumstances. Specifically, if "the whole of such water . . . system shall supply a less number of consumers than 75, each family, tenement, store, or other establishment being considered a single consumer," then we may grant such an exemption upon a determination that it is consistent with the public good. The Association qualifies for such a potential exemption because the Rolling Ridge system serves fewer than 75 consumers. It is our understanding that the Association has opted not to seek such an exemption at this time. This seems to be a reasonable approach for the time being because it allows the utility to continue to receive active Commission assistance and oversight as it begins operation of the Rolling Ridge system. The availability of such an exemption is premised on the notion that, for small water utilities such as Rolling Ridge, the cost of Commission regulation, or parts of it, can reasonably be determined to

exceed the potential benefits to consumers of such regulation. It would thus seem to be in the best interests of the Association to consider an exemption request at some point.

A regulated utility is required to have appropriate tariffs on file with the Commission. To that end, we direct Staff to continue to work with the Association on the preparation of new tariffs for submission by the Association as soon as possible. Until that time, the existing rates of Rolling Ridge are to remain in effect.

As noted by Staff, the decision we make today does not end this proceeding. Further steps are necessary to complete the winding down of Rolling Ridge's operation in receivership. In particular, Staff and LRW must conclude their efforts to ascertain the responsibility, if any, for past water charges that have been billed to customers who have discontinued the use of water from the Rolling Ridge system. Staff's letter suggests that, at least as to some of these customers, the use of private wells from water supply may not be consistent with applicable environmental and land-use requirements. These questions need to be resolved as quickly and efficiently as possible, as does the broader question of what legal and other expenses, relative to the winding down of the receivership, should be paid by Rolling Ridge customers. We caution those customers that these obligations will survive the franchise transfer and will be subject to lawful collection efforts if necessary. We anticipate and expect the cooperation of all concerned with respect to these matters.

Based upon the foregoing, it is hereby

ORDERED, that the franchise, system and works of Rolling Ridge Water System is hereby transferred to the Rolling Ridge Water Association, effective on December 12, 2006; and it is further

ORDERED, that the Rolling Ridge Water Association, a public utility by virtue of its receipt of such transfer, file a tariff consistent with the determinations made herein; and it is further

ORDERED, that this docket remain open for the purposes of winding down the operation of Rolling Ridge Water System in receivership, as set forth above.

By order of the Public Utilities Commission of New Hampshire this eighth day of December, 2006.

Thomas B. Getz
Chairman

Graham J. Morrison
Commissioner

Clifton C. Below
Commissioner

Attested by:

Debra A. Howland
Executive Director & Secretary