

**THE STATE OF NEW HAMPSHIRE
BEFORE THE
PUBLIC UTILITIES COMMISSION**

IN RE EASTMAN SEWER COMPANY, INC.

Sale of Assets and Liabilities to VILLAGE DISTRICT OF EASTMAN

JOINT PETITION TO APPROVE SALE

NOW COME the EASTMAN SEWER COMPANY, INC., the VILLAGE DISTRICT OF EASTMAN and the EASTMAN COMMUNITY ASSOCIATION, pursuant to RSA 374:22 and 30, to request that the Commission approve the sale of all of the assets and liabilities of the EASTMAN SEWER COMPANY, INC. to THE VILLAGE DISTRICT OF EASTMAN. In support of this joint petition, the EASTMAN SEWER COMPANY, INC., the VILLAGE DISTRICT OF EASTMAN and the EASTMAN COMMUNITY ASSOCIATION state:

1. EASTMAN SEWER COMPANY, INC. (“ESC”) is a corporation organized and existing under the law of the State of New Hampshire. It is a public utility, owning and operating a sewer system exclusively in the Village District of Eastman, as shown on Exhibit 1. The Company’s principal place of business is in Grantham, New Hampshire with a mailing address of PO Box 470, Grantham, NH 03753-0470.

2. VILLAGE DISTRICT OF EASTMAN (“VDE”) is a governmental entity (municipality) organized and existing under the laws of the State of New Hampshire, with a principal place of business in Grantham, New Hampshire and with a mailing address of PO Box 990, Grantham, NH 03753-0990. VDE is authorized to operate sewer facilities.

3. EASTMAN COMMUNITY ASSOCIATION (“ECA”) is a not for profit corporation organized and existing under the law of the State of New Hampshire, having a principal place of business in Grantham, New Hampshire with a mailing address of PO Box 53, Grantham, NH 03753-0053. ECA owns all of the stock of the ESC.

4. These Parties have entered into a Purchase and Sale Agreement relative to the transfer of all of the assets and liabilities of the ESC to the VDE. (Exhibit 2) The Agreement is conditioned upon approval of the Public Utilities Commission.

5. The assets and liabilities to be transferred by ESC to VDE primarily consist of the following:

All rights, licenses, easements, equipment, tools, inventory, devices, accessories, collection mains and lines, pumping and disposal facilities, manholes, pump stations and related equipment, use of holding ponds, bank accounts, contracts and leases, bank and investment account balances on the date of closing, as of the closing date the accounts receivable and accounts payable which have been incurred in the normal course of business of ESC and will be assumed by VDE, books and records (both paper and electronic) pertaining to ESC’s operation, permits held by ESC to allow it to conduct its business and miscellaneous infrastructure which is necessary for the collection and treatment of effluent as is currently connected to or that has access to the present sewer collection system within the Eastman development.

After the transfer, the present shareholders of the Company will have no further connection with the provision of sewer services except to provide continuity as set forth below. These sewer services will be entirely owned and operated by VDE as a municipality within its municipal boundaries.

6. Water System Operators, Inc., Joseph P. Damour, President, 405 Flanders Road, PO Box 69, Henniker, NH 03242, operates, and will continue to operate the system as an independent contractor. (Exhibit 3)

7. The voters of the District have approved this acquisition and financing. Full hearings were held with the required "super majority" two thirds (2/3) vote to assume ESC debt. The community has itself determined that this sale is in the public good and accepted responsibility for the operation of that system. (Exhibit 4)

8. The Department of Environmental Services has approved the suitability of the sewer system (Exhibit 5), and confirmed the transferability of this Permit. (Exhibit 6)

9. Subsequent to the Annual Meeting and the voters of the VDE approving this transfer, twelve voters petitioned the Grantham Selectmen to establish another Village District for the operation and maintenance of a sewage and wastewater treatment plant. All three of the Petitioners in this PUC Petition oppose the creation and transfer of sewer company assets to such an entity. See Attorney Albert Cirone's letter to the Grantham Selectmen dated April 5, 2013 (Exhibit 7), and William S. Weber's letter dated April 9, 2013, to the Grantham Selectmen, in his capacity as General Manager of VDE. (Exhibit 8)

10. "When acting on a petition pursuant to RSA 52 the Selectmen of a given town must exercise a duty to act fairly and honestly and to exercise their best judgment in reaching a decision." Attorney General v. Littlefield, 78 N.H. 185 (1916). Also, see Chasan v. Village District of Eastman et al., 128 N.H. 16 (1986). While the Court in Chasan found that the Village District of Eastman (VDE) was legally formed pursuant to RSA 52, it also noted that Chapter 198 of the Laws of 1981, via legislative enactment, ratified the establishment of that village district. Accordingly, the current petitioners are attempting to compel the Selectmen to conduct a

vote, with presently undefined boundaries, to establish a sewer district when one has already been established by vote and legislation. Presumably, the proposed boundary will overlay the present VDE boundary and will serve no other purpose than to duplicate that which is presently in place. Your Petitioners believe that the Selectmen would not be acting responsibly and fairly and would not be exercising "their best judgment" in fixing an overlay boundary for a village district which is already empowered to operate a sewage and wastewater treatment plant.

Additionally, a portion of the aeration ponds and all of an adjacent lab/aeration building which is part of the sewage treatment plant which is owned by the ESC and which it proposes to transfer to the VDE, as outlined above, are located in Springfield, NH. Your Petitioners are not aware that the Springfield Selectmen have been approached to establish the Springfield property as part of the boundary for the proposed sewage treatment facility. (See Exhibit 7)

11. Your Petitioners believe, and submit, that VDE is in a superior position to meet the needs of ESC customers now and in the future. Increased environmental regulations and demands on water as a natural resource make operation of a water utility by an entity of limited resources and staff more and more difficult, both technically and economically. VDE is a "Community" of which ESC is an integrated and essential component. VDE owns and operates the water system serving the entire Village District and has demonstrated that it is capable of reliable and safe operations. Your Petitioners further submit that VDE has the necessary technical, managerial and financial resources to operate and enhance, as necessary, these systems. They therefore submit that the transfer of the ESC franchise and distribution properties to VDE will be consistent with the public good and that, effective upon the transfer of its utility franchise and distribution properties to VDE, the cessation of business by ESC as a public utility will be consistent with the public good.

12. The VDE and current management of the ESC have reached agreement for the continuity of operational supervision with existing staff. ESC will continue to exist as a corporate entity until any transitional issues have been resolved. Contemporaneously herewith, the Parties will submit an Affidavit/Pre-filed Testimony of Brian Harding, General Manager of the Eastman Sewer Company, Inc., relative to the geographical boundaries of and relationship among the entities involved in this transfer and the present intended transitional and future operational status of sewer services. William Weber for VDE and Maynard Goldman for ECA will also submit Pre-filed Testimony.

WHEREFORE, ESC, VDE and ECA pray that the Commission issue an order approving the transfer of all of the assets and liabilities of the ESC to the VDE and terminate Public Utility Commission regulation. The Parties believe that because this is an existing, approved system, because the voters of municipality have, after full hearing, determined that this acquisition is in the public good and because full control will remain within the State, no further hearing before the Public Utilities Commission is necessary or appropriate and that an Order Nisi may be issued. If further hearing is required however, the Parties request that it be conducted on an expedited basis.

Respectfully submitted,


EASTMAN SEWER COMPANY, INC.

By:



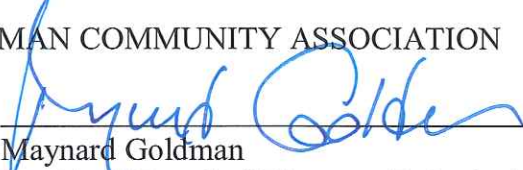
Brian Harding
General Manager, Duly Authorized

VILLAGE DISTRICT OF EASTMAN

By: 

William Weber
District Manager, Duly Authorized

EASTMAN COMMUNITY ASSOCIATION

By: 

Maynard Goldman
President, Board of Directors, Duly Authorized