

THE STATE OF NEW HAMPSHIRE
PUBLIC UTILITIES COMMISSION

Docket No. DW 13-0171

IN RE: EASTMAN SEWER COMPANY, INC.

Sale of Assets and Liabilities to Village District of Eastman

EASTMAN SEWER USERS COALITION'S
PRELIMINARY STATEMENT OF POSITION

Several members of the Coalition petitioned the Grantham Board of Selectmen pursuant to RSA Chapter 52 to establish a new village district for the purposes of the construction and maintenance of main drains and common sewers per RSA 52:1 (e) and the operation and maintenance of sewage and waste water treatment plants RSA 52:1 (f). The petition requested district boundaries coterminous with the boundaries of the franchise granted by the PUC to the Eastman Sewer Company (ESC) on November 2, 1989. The Grantham Board of Selectmen granted the petition and called a meeting for August 17, 2013 of the voters within the boundaries of a district slightly different than the petitioners requested.

It is the position of the Coalition that approval by the PUC of the sale of the assets of the ESC to the Village District of Eastman (VDE) is not in the public good because the petitioned sewer district, if approved by the voters on August 17, 2013, would be a more equitable and more appropriate entity to operate the Eastman sewerage and sewage treatment works than the VDE.

1. Equity mandates a separate and independent sewer district.

Petitioners and other customers of the ESC at present enjoy the protection of the PUC governance over ESC sewer rates and capital expenditures. Upon sale of the assets of ESC to VDE that protection will no longer exist. Instead, the operating and capital budgets of the Eastman sewerage and resulting sewer user charges will be controlled by the 1530 resident voters of the VDE, of whom only 280 are sewer users.

Petitioners are entitled to a fair and equitable assessment of sewer user and capital recovery charges. Once the Eastman sewerage is controlled by the voters of the VDE, petitioners and other sewer users will have their operating, maintenance and capital recovery rates controlled by a majority of voters who have no direct interest in the Eastman sewerage. The intent of the VDE is to allocate all costs associated with the Eastman sewerage against the sewer users, even though some costs could be allocated against all properties in the VDE via a village property tax and even though VDE asserts that its control of the sewerage will benefit the entire Village District of Eastman.

2. Concerns about the capabilities of a new district are misplaced.

The concerns stated in VDE's Statement in Support of Joint Petition to Approve Sale filed by Attorney Waugh on June 27, 2013 are misplaced. It is noted that if VDE had not voted on January 9, 2013 to acquire the ESC assets, ESC's backup plan was to go to the Grantham Board of Selectmen to petition a second village district composed only of properties served by sewers. (Comments of Commissioner Woods, Minutes, 1/9/13 VDE Special Meeting, p. 2).

a. Facilities within Town of Springfield. All sewer users live within the boundaries of the district petitioned to the Town of Grantham by several Coalition members. If the new district is approved on August 17, 2013, it will be a "municipality" under NH law. As is commonly

known, a municipality may own real estate and improvements in another municipality. *E.g.* Keene municipal airport located in Swanzey; Berlin Municipal Airport located in Milan. Hence, there would be nothing unlawful, unusual or unworkable for the new district to own sewage treatment facilities located outside its boundaries.

b. Organization of New District. If the new district is established on August 17, 2013, the voters will also elect officers at that time. (RSA 52:2; 52:3). Absent a superior court order, the new district could not have its first annual meeting, appropriate monies or approve bond issues until its annual meeting. However, that annual meeting could be held as soon as January 2, 2014, (see RSA 52:12), which is only 4 ½ months away.

ESC's and VDE's assertion of urgency and hardship due to the need to rapidly move forward with system upgrading is specious. The VDE voted to acquire the assets of the ESC on January 9, 2013, yet it took another 6 months to submit the Joint Petition to the PUC on June 12, 2013. Some upgrades, such as a pond aeration system, have been recommended by the operator for a decade, with no action taken by ESC. Another few months of delay is de minimus.

Also, it is noted that no funds for system upgrades could be approved by VDE until its annual meeting on March 21, 2014.

c. Acquisition of Sewerage and Sewage Treatment Works. At its first annual meeting the new district can vote to adopt the provisions of RSA 149-I, just as the VDE has done. Such a vote would give the new district all the powers of the mayor and alderman of a city, including the authority to acquire sewerage and sewage treatment works.

ESC's assertion that it will never sell its assets to the new district is capricious, where, as noted above, its backup plan was to form a district similar to the Coalition's proposed district in

the event the VDE did not vote to acquire the ESC assets. VDE's concerns about entanglement in eminent domain are merely speculation.

d. Adequate Resources. VDE's assertion that the new district will have inadequate resources to bond improvements due to the 1% of assessed valuation limitation of RSA 33:4-a is misplaced for two reasons:

1. The representation of only around \$60 million of valuation is incorrect. The Coalition has a spreadsheet which indicates assessed valuation of more than twice that.
2. Per RSA 33:5, improvements to sewerage and sewage treatment works ordered by NH DES are exempt from the RSA 33:4-a 1% limitation.

Discussions at meetings of the VDE Commissioners during 2012 indicate that the 1% limitation may inhibit VDE's ability to finance both sewer and water system improvements in the future more so than it would impact the ability of the new district to incur debt. *E.g.* (Comments of Commissioner Fairweather, Minutes 1/9/13 VDE Special Meeting, p. 5).

d. Summary. While getting a new village district "up and running" may be complicated, it is not "rocket science." Small towns and small village district run by dedicated selectman and commissioners exist throughout New Hampshire. It is duplicitous for the VDE to suggest that the commissioners of a new sewer district will not be able to capably organize and operate the ECA assets should the new district be able to acquire those assets when that was the ECA's backup plan.

3. There is no benefit to VDE's non-sewer users resulting from sale of the ECA assets to VDE.

The VDE is a water district. VDE has not specifically stated how the non-sewer users of the VDE will benefit from acquisition of the ESC assets. The proposition put forth by advocates of the sale to VDE is that the benefit to the entire Village District of Eastman derives from the

protection the sewerage provides to Eastman Lake, which benefits the entire district, not just sewer users. That is specious because the Eastman Council voted not to enforce stringent septic system rules to protect the lake and because Eastman Community Association and ESC officials have stated that there will be no expansions of the sewer system in the foreseeable future, even though dozens of properties along the lake are not connected to sewers and rely on old septic systems.

The party principally benefiting from the approval of the Joint Petition is the Eastman Community Association (ECA), which owns the stock of ESC. If the Joint Petition is approved the ECA will be able to “dump” its responsibilities, including its responsibility as a private utility for the future costs resulting from deferred maintenance and deferred capital investment onto a public entity, which in many respects is a “mirror image” of the ECA and which will pass those on to a minority of VDE owners (i.e. the sewer users).

4. The public benefits touted by VDE would also accrue to a new sewer district.

All of the public benefits asserted by VDE will also accrue if the new district purchases the assets of ESC. The new district could contract with the existing qualified operator just as readily as the VDE can, and the transfer of DES permits would be no more difficult for a new district than for the VDE. The anticipated savings of \$12,400 in property taxes and utility taxes would also accrue.

5. Assertions that the majority of sewer users favor the acquisition by the VDE of the ECA assets are not correct.

There is no evidence to support the assertion of ESC and VDE that a majority of sewer users favor the VDE's acquisition of the ESC assets. At its special meeting of January 9, 2013, the VDE voters approved the acquisition of the ESC assets by only 11 votes (110-99). This 11

vote majority is hardly overwhelming when one considers only about 14% of the registered 1530 voters turned out.

In a September 2, 2010 letter to PUC's Mark Naylor, ESC represented that it would send a letter to all sewer users and hold a general meeting to ensure that users understand what is being proposed and why. That was never done. Also, during meetings in early 2013, VDE Commissioners discussed the advisability of doing mailings and polling of sewer users. One commissioner even completed a sewer user survey template. However, again, nothing was done to get the input of sewer users.

6. There is an inherent conflict of interest if the same entity controls both the water and sewage systems of Eastman.

Given the imbalance of voting sewer customers vs. voting water customers, there is an inherent conflict in having the same political entity control both water and sewer system operations. Water conservation measures benefit sewer users by reducing sewer rates whereas reduced water consumption adversely affects the revenues of the water system.

There is also a concern that the possibility of continuing to use grey water to irrigate the golf course, which benefits the ECA golfers, may influence VDE decision making.

7. The Coalition joins in the "due diligence" concerns stated in Robert Logan's Petition to Intervene.

There is no disagreement that the Eastman sewerage and sewer treatment works will require major capital expenses in the future due in large part to deferred capital expenditures by ESC. However, that expense is presently unknown. If the sewer system does indeed benefit the entire VDE and Eastman Community, the sewer users alone should not bear that expense.

For all of these reasons, the Eastman Sewer Users Coalition requests that the PUC deny the Joint Petition.

Respectfully Submitted
Eastman Sewer Users Coalition
By Their Attorney

Date: August 1, 2013

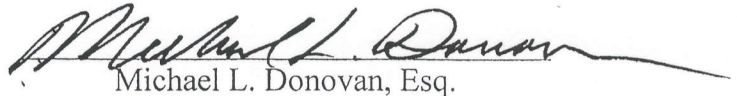


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CERTIFICATION OF SERVICE

I hereby certify that on the above date copies of this Preliminary Statement were mailed, first class, postage prepaid to the Office of the Consumer Advocate and to Bernard Waugh, Esq.

I further certify that electronic copies have been served on the Executive Director of the PUC and the other persons listed on the *Service List – Email Addresses – Docket Related* found on the PUC website for Docket # 13-171, as of today



Michael L. Donovan, Esq.