

**STATE OF NEW HAMPSHIRE
PUBLIC UTILITIES COMMISSION**

DW 13-305

LORDEN COMMONS SEWER COMPANY, LLC

Permanent Rate Proceeding

Order Approving Permanent Rates

ORDER NO. 25,677

June 13, 2014

APPEARANCES: Lorden Commons Sewer Company, L.L.C., by Mr. Stephen P. St. Cyr and Mr. Paul Kerrigan; Mr. James M. Tullis, Intervenor; and Marcia A. Brown, Esq. on behalf of Commission Staff.

In this order, the Commission approves Lorden Commons Sewer Company's initial rate, a per customer, permanent fixed rate of \$639.68 per year, or \$159.92 per quarter, with no volumetric charge.

I. PROCEDURAL HISTORY

Lorden Commons Sewer Company, L.L.C. (Lorden), is a regulated utility authorized to provide sewer service to a prospective residential development in the Town of Londonderry. The Commission granted Lorden a franchise to provide sewer service in Order No. 25,253 (July 22, 2011), effective August 22, 2011. Phase I of the development will consist of 50 single family homes. Phase II is expected to add 82 more homes for a total development of 132. Lorden has begun Phase I and seeks to charge rates.

On October 21, 2013, Lorden filed its Notice of Intent to file rate schedules, and, on October 25, 2013, Lorden filed the rate schedules. On November 6, 2013, the Commission informed Lorden that its filing was deficient because 30 days had not elapsed between its Notice of Intent and rate filing. *See* N.H. Code Admin. Rules Puc 1604.05(a). Lorden cured this

deficiency when it re-filed its rate schedules on November 21, 2013. On December 19, 2013, the Commission issued Order No. 25,608 suspending Lorden's rate schedules and scheduling a pre-hearing conference and technical session for January 22, 2014. The Commission also ordered Lorden to mail a copy of the order to the Town Clerk for the Town of Londonderry as well as to all current and known prospective customers of Lorden.

The Commission held the prehearing conference on January 22, 2014. On January 23, 2014, Commission Staff (Staff) filed an assented-to proposed procedural schedule, which the Commission approved. On January 24, 2014, Mr. James Tullis filed a request for intervention. The Commission granted his request on February 6, 2014. The Commission received no other requests for intervention.

On February 3, 2014, Lorden provided additional information to the Commission. Lorden stated that the Town of Londonderry will be charging Lorden \$96.00 per quarter per residential unit for sewage disposal. Londonderry discharges sewage collected within the town to the Manchester system in accordance with an intermunicipal agreement. Lorden stated that it incurred \$28,692.13 in design costs but that it would not seek recovery of those costs. It also stated that it incurred \$5,123.33 in franchise costs and that it would seek recovery of this amount in its revenue requirement, through amortization over 20 years. The amortization would add \$256.17 to its calculation of annual operating expenses. Lorden stated that it would be converting \$30,000, originally classified as debt, to equity, and requested that the rate of return on rate base be adjusted to 9.6%. Lorden stated that it sold its first home on October 18, 2013. Lorden also stated that it notifies prospective customers that the development is served by a sewer utility.

Staff and the parties conducted discovery pursuant to the approved procedural schedule and, on April 16, 2014, filed a settlement agreement with the Commission. Staff and the parties presented the settlement agreement at a hearing held on April 23, 2014.

II. POSITIONS OF THE PARTIES AND STAFF

Lorden, Mr. James Tullis, and Staff (Settling Parties) reached agreement on many issues raised in this proceeding and their positions are set forth in the settlement agreement.

III. SUMMARY OF SETTLEMENT AGREEMENT

A. Revenue Requirement

The Settling Parties agreed to an overall revenue requirement of \$31,984. The revenue requirement is based on a rate base of \$10,999, an overall rate of return of 9.6%, and operating income of \$1,056. Lorden's capital structure is 0% debt to 100% equity. Although Lorden has proformed test year plant in service of \$616,423, Lorden agreed to book \$606,284 as Contribution in Aid of Construction (CIAC) because that amount was contributed by the owner. The Settling Parties agree that the plant is used and useful.

B. Rate Impact, Rate Design

Lorden provides only unmetered, residential sewer service. Lorden expects that there will be 50 customers when Phase I is fully developed. The Settling Parties divided the revenue requirement among the 50 customers and arrived at an annual customer rate of \$639.68, or \$159.92 per quarter. The Settling Parties recommend the Commission find this rate just and reasonable and approve it effective for service rendered on and after January 7, 2014.

The Settling Parties also request that the Commission approve other fees: a bad check fee equivalent to the amount charged by Lorden's bank, a collection fee of \$50.00, and a 1% per month interest rate on outstanding amounts due. Lorden also requested approval of its recovery

of cost of collection, such as attorneys and court fees, and a \$100.00 fee if it has to place a lien on a customer's property.

C. Rate Case Expenses

Lorden agrees to file its rate case expenses with the Commission no later than 15 days from the date of the final order in this proceeding.

IV. COMMISSION ANALYSIS

RSA 378:7 authorizes the Commission to fix rates after a hearing upon determining that the rates, fares, and charges are just and reasonable. In determining whether rates are just and reasonable, the Commission "must balance consumers' interest in paying no higher rates than are required with the investors' interest in obtaining a reasonable return on their investment."

Eastman Sewer Company, Inc., 138 N.H. 221, 225 (1994). In addition, when a utility seeks to increase rates, the utility bears the burden of proving the necessity of the increase. RSA 378:8. Informal disposition may be made of a contested case at any time prior to the entry of a final decision or order, by stipulation, agreed settlement, consent order, or default. RSA 541-A:31, V(a). Prior to approving disposition of a contested case by settlement, the Commission must find that the settlement results are just and reasonable and serve the public interest. N.H. Code Admin. Rules Puc 203.20(b).

A. Revenue Requirement

The Settling Parties propose an overall revenue requirement of \$31,984, based on a test year ending December 31, 2012. Exh. 3 at 5. We find this revenue requirement to be reasonable and we approve it. The revenue requirement is based on a rate base of \$10,999, an overall rate of return of 9.6%, and an operating income requirement of \$1,056. *Id.* The rate base is significantly lower than the proformed plant in service of \$616,423. *Id.* at 7. This is because Lorden's owner has contributed utility plant costing \$606,284. *Id.* Contributed plant is not

subject to a return and thus is booked as Contribution in Aid of Construction (CIAC), which Lorden has agreed to do. *See* NH PUC Uniform System of Accounts for Water Utilities, Puc 610.02(j). Although Lorden will not earn a return on that amount, it will earn a return on the remaining \$10,999. Lorden testified, and the settling parties all agreed, that the plant is in service, used, and useful. Hearing Transcript of April 23, 2014 (4/23/14 Tr.) at 16. Lorden testified that the pump station was delivered and installed in June of 2013 and that the system was “substantially up and ready at that point in time.” *Id.* Lorden also testified that it is currently serving three customers. *Id.* at 27.

Lorden’s capital structure is 100% equity. Consequently, the overall rate of return is the same as Lorden’s cost of equity. *Id.* at 20. The Settling Parties derived the cost of equity from the most recent water company case where this issue was litigated. *Id.* at 19-20. The Commission approved a 9.6% cost of equity for Aquarion Water Company, Inc., last summer. *See Aquarion Water Company, Inc.*, Order No. 25,539 (June 28, 2013). We find that this cost of equity is appropriate for Lorden.

This is the first time Lorden has requested that the Commission approve a revenue requirement. Lorden has not previously provided sewer service. As a result, the Settling Parties recommend operation and maintenance expenses in rates that are based on a combination of known and estimated expenses for calendar year 2012. Exh. 3 at 9. Staff testified that the Settling Parties based the estimated expenses on an analysis of two other similar regulated sewer utilities in the same geographic area as Lorden. 4/23/14 Tr. at 14-15. Staff testified that one of the sample sewer utilities also sends sewage to the City of Manchester and thus was particularly relevant. *Id.* at 15. Staff tested the reasonableness of the estimated expenses by comparing them on a per-customer basis. *Id.* at 14. We find that this approach to determining estimated

operating expenses is reasonable and that it ensures that Lorden's operating income is appropriate.

We note that Lorden will not collect its authorized revenue requirement in the first years of operation, because Lorden does not expect full build out to occur for a few more years. As Lorden testified, setting rates based on full build-out is the only equitable way of charging customers. *Id.* at 31. Otherwise, the first customer would be paying the cost of operating the entire system until other customers are added. *Id.* Some of Lorden's expenses mitigate Lorden's potential losses under this circumstance. For instance, the Town of Londonderry charges Lorden \$96 a quarter per residential unit for sewer disposal services. Lorden testified that this cost is a pass through to customers. *Id.* at 28. As such, Lorden will incur this expense coincident with its ability to collect it from customers. Notwithstanding the initial period of potential losses, we find the revenue requirement is just and reasonable.

In conclusion, we find the plant included in rate base is prudent, used, and useful pursuant to RSA 378:28. We find the rate of return to be just and reasonable. We find the revenue requirement is just and reasonable and that it is sufficient to allow Lorden an opportunity to earn a return on its investment in future years. Accordingly, we approve the recommended revenue requirement.

B. Rates, Fees, and Tariff

As stated above, Lorden will provide unmetered, residential sewer service to 50 customers when Phase I is fully developed. Lorden will not be providing service to industrial or commercial customers. Given the uniformity of Lorden's customer base, the Settling Parties divided the revenue requirement equally among the 50 customers. This produced an annual customer rate of \$639.68, or \$159.92 per quarter. We find that this rate design is reasonable and equitable to customers. We find that the customer rates are just and reasonable.

The Settling Parties also request approval of other fees. They recommend a bad check fee equivalent to the amount Lorden's bank charges, a collection fee of \$50.00, and an interest rate of 1% per month on outstanding amounts due. Lorden also requested approval of collection fees and approval of a \$100.00 fee if it has to place a lien on a customer's property. Having reviewed the fees, we find them reasonable. The bad check fee is a pass-through fee based on the amount Lorden is charged by its bank. *Id.* at 36. Lorden realizes no profit from this fee. The 1% per month interest rate on past due amounts is the same rate as that imposed by the two sample sewer utilities as well as by the Town of Londonderry. *Id.* at 34. Lorden testified that the fee for the lien is based on the hourly cost of its accountant to process a lien. *Id.* at 36-37. We find the justification for this fee is reasonable. With respect to collection fees, we note that N.H. Code Admin. Rule Puc 1203.11(s) already authorizes a utility such as Lorden to use a third party to conduct collection activities. If the collection is associated with a court action, then jurisdiction for awarding collection fees would be with that court, and not with this Commission. Accordingly, we will not rule on these fees. In conclusion, we approve the bad check fee, \$50 collection charge, \$100 lien fee, and 1% monthly interest on past due amounts.

The Settling Parties filed an original tariff to govern the terms of service. Exh. 4. Lorden testified that it modeled its tariff after the approved tariffs of two regulated sewer utilities. 4/23/14 Tr. at 34. Having reviewed the terms, we find them reasonable and approve them. We note that Lorden has yet to describe its service area, and we order Lorden to provide that description as part of its compliance tariff.

C. Effective Date

The Settling Parties recommend that the Commission approve the customer rates and other charges and fees, effective for all service rendered on or after January 7, 2014. We find

that this effective date is reasonable. Lorden testified that all known and prospective customers were notified of Lorden's rate filing by that date. *Id.* at 32-33. Lorden filed its rate schedules on November 21, 2013. Lorden filed an affidavit with the Commission stating it mailed a notice to the Town Clerk of the Town of Londonderry on January 6, 2014, and a notice to two known customers and four prospective customers on January 7, 2014. We find that the January 7, 2014, effective date is consistent with *Appeal of Pennichuck Water Works*, 120 NH 562, 567 (1980), in which the Court held that the earliest date on which rates may take effect, when billing is on a service-rendered basis, is the date on which the utility files its underlying request for its permanent rates. For these reasons, we approve the January 7, 2014, effective date.

D. Rate Case Expenses

Pursuant to the settlement agreement, Lorden agrees to file documentation of its rate case expenses no later than 15 days from the date of the final order in this proceeding. The Commission's administrative rules authorize utilities to file for rate case expenses. *See* N.H. Code Admin. Rules Chapter Puc 1900. A utility seeking recovery of rate case expenses shall file its request for recovery along with all supporting documentation no later than 30 days after the Commission's final order. N.H. Code Admin. Rules Puc 1905.02. Although Lorden agreed to file its documentation within 15 days, Rule 1905.02 provides Lorden 30 days to comply. Accordingly, we will allow Lorden 30 days to file its rate case documentation. We will defer ruling on the recovery of rate case expenses until after Lorden makes its filing.

E. Conclusion

Having reviewed the record, including the settlement and evidence presented at hearing, we find that the revenue requirement proposed by the Settling Parties is reasonable and will produce just and reasonable rates. We find that the terms of the settlement represent an appropriate balancing of ratepayer interests and the interests of Lorden's investors under current

economic circumstances and are consistent with the public interest. We further find that Lorden's investments in rate base used to serve its customers are prudent, used, and useful.

Accordingly, as modified in our analysis, we adopt and approve the terms of the settlement agreement.

Based upon the foregoing, it is hereby

ORDERED, that the terms of the settlement agreement are hereby adopted and APPROVED as discussed herein; and it is

FURTHER ORDERED, that Lorden is authorized to collect from customers permanent rates, as discussed herein, effective for service rendered on or after January 7, 2014; and it is

FURTHER ORDERED, that Lorden shall file with the Commission a final accounting of its rate case expenses no later than thirty days after the date of this order; and it is

FURTHER ORDERED, that Lorden file with the Commission a compliance tariff, including a description of its service area as discussed above, within fourteen days of the date of this order.

By order of the Public Utilities Commission of New Hampshire this thirteenth day of June, 2014.



Robert R. Scott
Commissioner



Martin P. Honigberg
Commissioner

Attested by:



Lori Davis
Assistant Secretary

SERVICE LIST - EMAIL ADDRESSES - DOCKET RELATED

Pursuant to N.H. Admin Rule Puc 203.11 (a) (1): Serve an electronic copy on each person identified on the service list.

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FILING INSTRUCTIONS:

- a) Pursuant to N.H. Admin Rule Puc 203.02 (a), with the exception of Discovery, file 7 copies, as well as an electronic copy, of all documents including cover letter with: DEBRA A HOWLAND
EXEC DIRECTOR
NHPUC
21 S. FRUIT ST, SUITE 10
CONCORD NH 03301-2429
- b) Serve an electronic copy with each person identified on the Commission's service list and with the Office of Consumer Advocate.
- c) Serve a written copy on each person on the service list not able to receive electronic mail.