

STATE OF NEW HAMPSHIRE
PUBLIC UTILITIES COMMISSION

NH PUC 21SEP18 PM 12:02

September 6, 2018 - 10:06 a.m.
Concord, New Hampshire

RE: DW 18-099
TOWN OF DERRY - PETITION FOR APPROVAL
OF FRANCHISE EXPANSION IN THE TOWN OF
LONDONDERRY AND APPROVAL OF MSDC
RATES FOR LORDEN COMMONS
(*Prehearing Conference*)

PRESENT: Chairman Martin P. Honigberg, Presiding
Commissioner Kathryn M. Bailey
Commissioner Michael S. Giaimo

Sandy Deno, Clerk

APPEARANCES: Reptg. Town of Derry
Marcia A. Brown, Esq. (NH Brown Law)

Reptg. PUC Staff:
Lynn Fabrizio, Esq.

Court Reporter: Susan J. Robidas, NH LCR No. 44

**CERTIFIED
ORIGINAL TRANSCRIPT**

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P R O C E E D I N G S

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2 CHAIRMAN HONIGBERG: Good morning,
3 everyone. We're here in Docket DW 18-099,
4 which is a petition from the Town of Derry
5 for approval of a franchise expansion into a
6 portion of the town of Londonderry. We're
7 scheduled for a prehearing conference, to be
8 followed by a technical session of the
9 parties. Before we do anything else, let's
10 take appearances.

11 MS. BROWN: Sorry for the delay. I
12 thought I was on the other side of the room.
13 Marcia Brown, with N.H. Brown Law,
14 representing the Town of Derry. And to my
15 immediate right is Tom Carrier, who is the
16 deputy director of public works for Derry and
17 oversees the provision of or the operations
18 of the sewer system and water system in
19 Derry. And to his right is Jayson Lopez, who
20 is the project manager with Keach-Nordstrom,
21 obviously associated with the project. And
22 to his right is Paul Kerrigan, who is the
23 chief operating officer of Chinburg
24 Properties and is affiliated with the Lorden

1 Commons development and also the Lorden
2 Commons Sewer, which is a regulated public
3 utility. Thank you.

4 MS. FABRIZIO: Good morning, Mr.
5 Chairman and Commissioners. Lynn Fabrizio,
6 on behalf of Staff. Today with me at the
7 table are Jayson Laflamme, assistant director
8 of the Gas and Water Division, and Anthony
9 Leone, utility analyst with the Gas and Water
10 Division.

11 CHAIRMAN HONIGBERG: Is there
12 anything we need to do or know before we hear
13 the preliminary positions of the parties?

14 [No verbal response]

15 CHAIRMAN HONIGBERG: I didn't think
16 so. Ms. Brown, why don't you start us off.

17 PRELIMINARY STATEMENTS

18 MS. BROWN: Good morning. Thank
19 you for your time. As stated in the
20 petition, Derry seeks approval of a franchise
21 footprint outside of its corporate bounds in
22 a small section of Londonderry. Derry also
23 seeks approval to charge a Merrimack source
24 discharge -- I'm sorry -- Merrimack source

1 development charge that is 15 percent higher
2 than its existing MSDC charge, and also
3 requests the Commission allow Derry to remain
4 exempt for general rate regulation.

5 In support of its managerial,
6 technical and financial expertise, Derry has,
7 in the petition, identified where the
8 Commission has previously found it to possess
9 the requisite managerial, technical and
10 financial expertise, and that was in 1982
11 when it first expanded into the town of
12 Londonderry. And that expansion was to
13 address local contamination. And then in
14 1996, Derry took over the Beacon Hill and
15 Scobie Pond franchise areas during the
16 break-up of the Consumers New Hampshire Water
17 Company in Derry. And in this particular
18 situation, Derry is amenable to providing the
19 Lorden Commons development with water and
20 seeks franchise approval.

21 Now, as I said earlier with the
22 appearances, the Commission is familiar with
23 this development, in that the Lorden Commons
24 Sewer Company was formed to serve this

1 development. The franchise boundary which is
2 denoted in green in one of the exhibits to
3 the testimony is the exact footprint of the
4 water supply to the development. But then
5 you will also see in that chart a map, a red
6 area of the map, and that is an area that
7 makes sense, between the town of Londonderry
8 and Derry, for Derry to also serve in the
9 event there is a need to supply homes along
10 that stretch, again, with an eye towards a
11 potential creep of the Auburn Road Super Fund
12 Site contaminant plume.

13 CHAIRMAN HONIGBERG: Ms. Brown,
14 before you continue, I have that map in front
15 of me. From which direction would that plume
16 be coming if I'm looking at that map?

17 MS. BROWN: On the exhibit you will
18 see a descriptive paragraph. That is in the
19 vicinity of the landfill.

20 CHAIRMAN HONIGBERG: Okay. Thank
21 you.

22 MS. BROWN: This project is not
23 insignificant. It is a project to construct
24 83 additional homes, but in phases in this

1 area.

2 In support of its managerial,
3 technical and financial expertise, the Town
4 also obtained its suitability and
5 availability letter from the Department of
6 Environmental Services. So that is already
7 in the record, or in the filing.

8 With respect to agreements, it may
9 get a little bit complicated, but there are
10 multiple water supply agreements providing
11 service to this area, one being that the town
12 of Derry gets some water from Manchester
13 Water Works, and that's under a 2013
14 agreement. But there is a caveat in that
15 agreement, as explained in the petition, that
16 Derry cannot serve outside of its corporate
17 limits unless it has Manchester Water Works
18 approval. In seeking that approval, it
19 necessitated an additional water supply
20 agreement, where Manchester Water Works has
21 agreed to provide the volumes necessary to
22 serve this development, but seeks to charge
23 the present MSDC charge. And so Derry seeks,
24 in approving this MSDC charge -- essentially,

1 it's going to be a pass-through of the
2 Manchester rate to the customers in this
3 proposed Londonderry area.

4 There is also an agreement between
5 Lorden Commons and Derry as to what assets
6 are going to be constructed and how those
7 assets will be conveyed, including easements
8 that will be conveyed to Derry once they are
9 constructed. We wanted to update the
10 Commission because the filing was made back
11 in June. There have been some additional
12 approvals that have occurred. To supplement,
13 the Town of Derry Planning Board has approved
14 the contract -- the construction of the
15 project, but with conditions, and one of the
16 conditions precedent is PUC approval of the
17 public water source; so, in effect, Lorden
18 Commons cannot proceed with any construction
19 of its assets for the water system until it
20 gets PUC approval. It has the wetlands
21 approval from DES. It has also obtained
22 approval from the Army Corps for this
23 project, and it also has its alteration of
24 terrain permit. So I'm not trying to --

1 knowing that the Commission has a lot of work
2 ahead of it, it would be appreciated by the
3 developer if we could get a relatively quick
4 turnaround and approval of this franchise
5 request.

6 So, with that, Staff -- or the Town
7 of Derry looks forward --

8 CHAIRMAN HONIGBERG: You went to
9 the other side of the room again, didn't you.

10 MS. BROWN: -- looks forward to
11 working with Staff and any other parties in a
12 technical session after this and is available
13 to answer any questions you have. Thank you.

14 CHAIRMAN HONIGBERG: Ms. Fabrizio.

15 MS. FABRIZIO: Thank you, Mr.
16 Chairman. Staff has reviewed the filing, and
17 at this point we've identified the major
18 issue in the case to be the Town's request to
19 remain exempt from Commission regulation
20 under RSA 362:4, III-a, given the Merrimack
21 source development charge that you've heard
22 about. And the Town proposes to pass this
23 charge through to each of its Londonderry
24 customers. And per the statute, we need to

1 examine the magnitude of that charge and the
2 difference in the rates charged to the Derry
3 customers versus the new Londonderry
4 customers. In that respect, we do have a few
5 questions to clarify certain facts within the
6 petition, which we will go over with the
7 Company during our technical session this
8 morning, and we do intend to engage in some
9 discovery on this matter. And we will also
10 work with the Company today to develop a
11 procedural schedule, which we will submit
12 shortly to the Commission for its review.
13 Thank you.

14 CHAIRMAN HONIGBERG: All right. If
15 there's nothing else, we will leave you to
16 your technical session and thank you for what
17 you've done this morning.

18 (Hearing adjourned at 10:15 a.m.)
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C E R T I F I C A T E

I, Susan J. Robidas, a Licensed
Shorthand Court Reporter and Notary Public
of the State of New Hampshire, do hereby
certify that the foregoing is a true and
accurate transcript of my stenographic
notes of these proceedings taken at the
place and on the date hereinbefore set
forth, to the best of my skill and ability
under the conditions present at the time.

I further certify that I am neither
attorney or counsel for, nor related to or
employed by any of the parties to the
action; and further, that I am not a
relative or employee of any attorney or
counsel employed in this case, nor am I
financially interested in this action.

Susan J. Robidas, LCR/RPR
Licensed Shorthand Court Reporter
Registered Professional Reporter
N.H. LCR No. 44 (RSA 310-A:173)

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