

THE STATE OF NEW HAMPSHIRE
BEFORE THE
PUBLIC UTILITIES COMMISSION

ORIGINAL	
P.U.C. Case No.	DW 13-171
Exhibit No.	9
Witness	Panel 1
DO NOT REMOVE FROM FILE	

DW 13-171

IN RE EASTMAN SEWER COMPANY, INC.

Sale of Assets and Liabilities to VILLAGE DISTRICT OF EASTMAN

STIPULATION AGREEMENT

I. PARTIES TO THE AGREEMENT.

This Stipulation Agreement (Stipulation) is entered into between the Eastman Sewer Company, Inc.; (Sewer Company) the Village District of Eastman (Village District); the Eastman Community Association (Association) (together, Joint Petitioners) and the Staff (Staff) of the New Hampshire Public Utilities Commission (Commission) (Settling Parties), with the intent to resolving all of the issues in the above-captioned proceeding. As set forth below, there are three intervenors in this matter: Eastman Sewer Users Coalition, represented by James Van Dolah and Philip Schafer; Geraldine Logan; and Robert Logan. These intervenors oppose the petition and have not joined in this Stipulation.

II. PROCEDURAL HISTORY.

Petitioners Sewer Company, Village District, and the Association, filed a joint petition with the Commission seeking approval of the Association's sale of the Sewer Company to the

Village District, and seeking confirmation that the Sewer Company would then be exempt from further regulation. At the August 1, 2013 prehearing conference, the Commission granted the motions to intervene of Robert Logan, Geraldine Logan, and the Eastman Sewer Users Coalition (Coalition). On August 6, 2013, the Commission also approved a procedural schedule providing for discovery, testimony, technical sessions, and a final hearing in March 2014. That schedule was revised following a technical session, tentative settlement, and motions by the intervenors which established a third set of discovery for intervenors, intervenor testimony, a new deadline to file a settlement agreement, and a hearing date of January 21, 2014 at 9:00 a.m.

III. STIPULATED FACTS

In consideration of the foregoing, the Settling Parties agree to certain facts and conclusions and respectfully request the Commission issue a final order containing the following findings of fact and conclusions:

A. The Sewer Company is a for-profit corporation organized and existing under the laws of the State of New Hampshire and a wholly owned subsidiary of the Association. The Sewer Company is a regulated public utility that owns and operates a sewer system exclusively within the corporate boundaries of the Village District, as shown on Exhibit 1 of the joint petition. The Sewer Company's principal place of business is in Grantham, New Hampshire with a mailing address of P.O. Box 470, Grantham, NH 03753-0470.

B. The Village District is a municipal corporation 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 P.O. Box 990, Grantham, NH 03753-0990. The Village District was established in 1981 and provides water service to the Eastman Community

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and does not provide water service outside the Village District's corporate boundary. It is also authorized to operate a waste water facility pursuant to RSA Chapter 52.

C. The Association is a not for profit corporation organized and existing under the laws of the State of New Hampshire, and Section 501(c)(4) of the Internal Revenue Code, having a principal place of business in Grantham, New Hampshire with a mailing address of PO Box 53, Grantham, NH 03753-0053. The Association owns all of the stock of the Sewer Company.

D. The joint petitioners have entered into a purchase and sale agreement relative to the transfer of all of the assets and liabilities of the Sewer Company to the Village District. This agreement is conditioned upon approval of the Commission. See, Exhibit 2 of the petition.

E. The assets and liabilities of the Sewer Company to be transferred to the Village District 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 the Sewer Company and will be assumed by the Village District, books and records (both paper and electronic) pertaining to the Sewer Company's operation, permits held by the Sewer Company 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

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system within the Eastman development. These sewer services will be entirely owned and operated by the Village District as a municipality within its municipal corporate boundaries.

F. After the transfer, the present shareholders of the Sewer Company will have no further connection with the provision of sewer services except to provide continuity as set forth below.

G. The Joint Petitioners intend to continue to employ Water System Operators, Inc., Joseph P. Damour, President, 405 Flanders Road, P.O. Box 69, Henniker, NH 03242, to operate the system as an independent contractor. (Exhibit 3 of the petition)

H. The Village District held a Special Meeting on January 9, 2013 and voters voted in the affirmative for Article 1 and 2.

Article 1: "To see if the Village District of Eastman will vote to authorize the Village District of Eastman Commissioners to negotiate and proceed with the acquisition of the Eastman Sewer Company, inclusive of all assets, liabilities and real property interests, and to then continue operations of the Eastman Sewer Company as a newly created separate division of the Village District, with a separate budget for that operation."

Article 2: "To see if the Village District of Eastman voters will adopt New Hampshire Revised Statutes Annotated 149-I in its entirety." (RSA 149-I pertains to the construction and maintenance of sewers.) See, Exhibit 4 of the petition.

I. On March 21, 2013, the Village District of Eastman voted to approve numerous articles, including: Article 10, to purchase for one dollar, the Eastman Sewer Company; Article 2 to raise up to \$280,000 to pay debt associated with the Sewer Company; Article 11 to establish a water budget; Article 4, 5, 6, 7, 12, and 14 relating to capital reserve funds; Article 3

for \$753,557 for a potable water budget; Article 8 authorizing the Village District to negotiate with lending institutions; and Article 9 authorizing the receipt of grant funds from the Department of Environmental Services (DES).

J. The DES has approved the suitability of the sewer system, and confirmed the transferability of this permit. See, Exhibits 5 and 6 of the petition.

K. The Village District is in position to meet the needs of the Sewer Company's customers now and in the future. Virtually all of the sewer customers are already served by the Village District for water. The Village District has demonstrated that it is capable of reliable and safe municipal operations and has the necessary technical, managerial, and financial resources to operate and enhance, as necessary, these systems.

L. "To promote the continuity, the Village District will continue to use Water System Operators to operate the system." The Sewer Company will continue to exist as a corporate entity until all issues pertaining to the transfer of the Sewer Company to the Village District have been resolved.

M. The Sewer Company is an existing, approved sewer system.

N. Subsequent to the Annual Meeting and the vote of the Village District approving this transfer, twelve voters petitioned the Grantham Selectmen to establish a separate Village District for the operation and maintenance of a sewage and wastewater treatment plant. This vote to establish a separate village district failed by a margin of greater than three to one.

IV. STIPULATED TERMS

The Settling Parties agree to the following terms and respectfully request the Commission adopt and approve the terms.

A. Sale of System

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1. The Settling Parties agree that it is in the public interest for the assets and liabilities of the Sewer Company to be sold to the Village District, consistent with the joint petition and the purchase and sale agreement filed in this docket. The Village District will provide these services only within its municipal corporate boundaries.
2. The Joint Petitioners agree to hire Water Systems Operators, Inc., a certified operator and existing operator of the sewer system, to operate the system.
3. The Settling Parties agree that the Village District has the requisite capabilities to handle any repair or capital improvements to the system.
4. The Settling Parties agree that the Village District possesses the requisite capabilities to handle service complaints, billing, and other administrative matters. The Settling Parties agree that the Village District has the requisite capabilities to conduct regular, monthly Board meetings and regularly-scheduled Annual Meetings or Special Meetings. Sewer customers will be incorporated into the existing structure of the Village District.

B. Exemption from Regulation

1. The Settling Parties agree that, after transfer of the assets from the Sewer Company, the system will be exempt from regulation pursuant to RSA 362:2, RSA 362:4 and Puc 602.16. As such, the Village District will not file a tariff with the Commission but the Village District will make the terms of service and charges available to customers. Terms of service and charges will be available as part of information presented at Village District annual meetings. Information on terms of service and charges will also be available

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on the Village District website and, when appropriate, included with mailings to customers as part of the billing process.

2. The Settling Parties agree that the Village District will continue to comply with all DES requirements.

C. Other

1. The signatories seek an Order approving the transfer of the assets of the Sewer Company and exemption from regulation after the transfer under any and all provisions of Title XXXIV, Public Utilities of the N.H. Revised Statutes Annotated. The Settling Parties agree that RSA 362:2, 362:4, and Puc 602.16 support the Sewer Company not being a regulated public utility after the transfer.

2. The Settling Parties agree that, pursuant to RSA 374:28, it is in the public good for the Commission to determine that it is expedient for the Sewer Company after the transfer of the assets to cease operations and to no longer continue as a regulated public utility.

3. The Settling Parties agree that, in the event that the Commission grants the petition and authorizes the transfer of the assets and liabilities of the Sewer Company to the Village District, the rates presently on file regarding service provided by the Sewer Company should be deemed to no longer apply.

4. The Settling Parties agree that for purposes of completing a full record in this proceeding that the joint petition with petition exhibits, testimony, discovery responses and this Stipulation should be entered as full exhibits in this proceeding and that said exhibits be marked accordingly.

V. OTHER GENERAL CONDITIONS.

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The signatories acknowledge that resolution of any specific issue in this Stipulation does not indicate any Parties' or Staff's agreement to such resolutions for purposes of any future proceeding, nor does reference to any other document bind any party or Staff to the contents of, or recommendations in, such document for purposes of any future proceedings.

The making of this Stipulation shall not be deemed in any respect to constitute an admission by any party that any allegation or contention in these proceedings is true or valid.

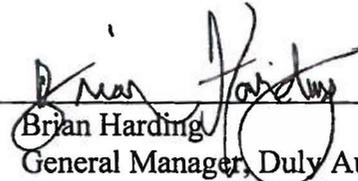
The Settling Parties agree that the Commission's acceptance of this Stipulation does not constitute continuing approval of or precedent regarding, any particular principle or issue in this proceeding.

The terms of this Stipulation shall inure to the benefit of, and be binding upon, the successors of the Eastman Sewer Company, Inc., the Village District of Eastman, and the Eastman Community Association.

IN WITNESS WHEREOF, the Settling Parties have caused this Stipulation to be duly executed in their respective names by their authorized agents.

EASTMAN SEWER COMPANY, INC.

Date: 1/16/14

By: 
Brian Harding
General Manager, Duly Authorized

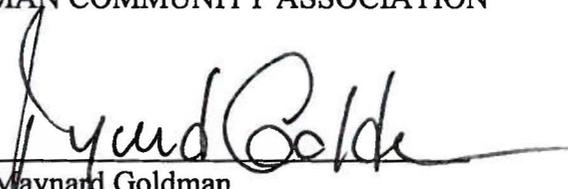
VILLAGE DISTRICT OF EASTMAN

Date: 1/16/14

By: 
William Weber
District Manager, Duly Authorized

EASTMAN COMMUNITY ASSOCIATION

Date: 1/16/14

By: 
Maynard Goldman
President, Board of Directors, Duly Authorized

STAFF OF THE PUBLIC UTILITIES COMMISSION

Date: 1/16/14

By: 
Marcia A. Brown
Staff Attorney