

EASTMAN SEWER COMPANY

Joint Petition for Approval of Stock Transfer

Order Approving Stock Transfer

O R D E R N O. 23,608

December 22, 2000

APPEARANCES: Devine, Millimet & Branch, Frederick Coolbroth, Esq., for the Eastman Community Association; Tony Hanslin for Eastman Sewer Company; Thomas G.Wade for the Eastman Community Association; Myron L.Cummmings and Donato Ian, customers of Eastman Sewer and Lynmarie Cusack, Esq., on behalf of the Staff of the New Hampshire Public Utilities Commission.

I. INTRODUCTION & BACKGROUND

On July 21, 2000, Eastman Sewer Company (Company) and the Eastman Community Association (Association or ECA) located in Grantham, New Hampshire filed a Joint Petition for Approval of the Transfer of all of the Stock of the Sewer Company to the Association with the New Hampshire Public Utilities Commission (Commission). An Order of Notice was issued setting a prehearing conference for August 29, 2000. The Order of Notice indicated that the filing raised issues under RSA 374:30 and whether the Association had the financial, operational and managerial ability to own the system. The petition asks for approval for the transfer of all outstanding stock consisting of 1,600 common shares to the Association.

The Company currently provides service within the Eastman development to approximately 336 condominium units, 200 single family homes and two commercial customers, the Eastman Visitor Center and the Association. The overall

development consists of among other things 850 single family homes, 336 condominium units, 410 vacant lots, an 18-hole golf course, community center and recreation buildings. The sewer customers are a subset of the entire Association.

At the Prehearing Conference the Joint Petitioners explained the substance of the petition and indicated that the Association would not seek any acquisition premium associated with the stock transfer. Additionally, the Association represented that its desire was to continue to be regulated by this Commission. At the close of the Prehearing Conference the Chairman of the Commission requested that the Parties and Staff meet in a technical session and submit a proposed procedural schedule for the remainder of the docket.

By Commission Letter dated October 9, 2000, late filed motions to intervene submitted by Mr. Myron L. Cummings on September 26, 2000, and Mr. Donato Ian on September 28, 2000 were granted.

In accordance with Commission Order No.23,547, a settlement conference was held on October 30, 2000 and a Hearing on the merits of the Joint Petition was held on November 16,2000.

II. POSITION OF THE PARTIES

A. JOINT PETITIONERS

At the Hearing on the merits witnesses Tony M. Hanslin, President of the Eastman Sewer System and Mr. Thomas G. Wade, General Manager of the Eastman Community association,

summarized their prefiled testimonies. By virtue of the knowledge, skill and ability of the existing employees to carry out the association's wide range of responsibilities, Mr. Wade averred the Association possesses the financial, managerial, and technical ability to operate the Sewer System and will continue to provide adequate and reliable service should the Commission approve the transfer of stock to the ECA.

The witnesses further summarized the terms and conditions contained in an executed Stock Purchase Agreement Between the Stockholders of Eastman Sewer Company, Inc., Seller And Eastman Community Association, Buyer (Agreement) identified as Exhibit I in this proceeding. A change was made to the Agreement by the parties and discussed by Mr. Wade. On page 2, Section 2.02 the figure \$95,000 was amended downward to \$75,000 which is the amount the buyer (ECA) is to pay the seller, the Eastman Sewer Stockholders.

Additionally, Mr. Hanslin made modest changes to the reference to plant and equipment on pages 2 and 3 of his testimony identified as Exhibit 2. Mr. Hanslin further summarized a physical description of the sewer system and its operation under the New Hampshire Department of Environmental Services. Mr. Wade made no changes to his testimony identified as Exhibit 3, but summarized his testimony as to how the ECA is structured and how the management of the Sewer System would be undertaken by the existing Staff of the ECA.

Mr. Wade testified that the ECA had the resources to

perform the functions of the sewer system and in addition would contract with Water Systems Operators, Inc. of Henniker, NH for technical management and employee training. The witness also summarized a Supplemental Filing by Eastman Community Association submitted on September 15, 2000 Regarding Proposed Affiliate Contracts, including a Proposed Services agreement submitted as Exhibit 4 to the Petition. The witness offered a change to Section 4. A, which deleted a phrase contained in the original submission which read, "and a reasonable return on investment," That phrase was stricken so there would be no return on investment for services rendered. In response to concerns raised by the intervenors, the witness agreed not to use capital reserve funds on the irrigation system.

Mr. Wade also testified that sewer company will have a board of Directors comprised of two members appointed by the ECA Board of Directors and three ECA members who are also sewer users. He also reiterated that should the Commission grant the request that a pending rate increase before the Commission would be withdrawn.

B. INTERVENORS

Messrs. Donato Ian and Myron Cummings, customers of the sewer system provided oral testimony. Mr. Ian commended Mr. Hanslin and Mr. Wade for their presentation. Originally the witness stated that he had some concerns but that those had been resolved during the course of the investigation of the Stock Transfer. He stated that he had no quarrel with either the technical, management or financial ability of the

ECA to take the system over. Therefore, he as an intervenor does not oppose the transfer of ownership of the Eastman Sewer System to ECA.

Mr. Cummings, however, discussed two concerns regarding the transaction. First, Mr. Cummings addressed his unease over the numbers in a proposed budget based upon historical information. This concern, he commented, was allayed after discussions with the Chairman of ECA, who promised that the numbers would be changed to reflect a more accurate budget once precise expenses were known. The second concern articulated dealt with time cards and the accounting of actual work performed.

This concern was addressed by Mr. Wade who indicated a willingness to work with the Commission Staff to set up books and records so there will be a paper trail on the work being done on the system by the ECA employees.

C. STAFF

The Staff of the Public Utilities Commission did not offer any witnesses to testify at the hearing. However, Counsel for Staff did cross examine the witnesses representing the Joint Petitioners regarding ECA's financial, managerial and technical ability to operate the sewer system, the spray irrigation system and its use of treated effluent on the golf course, and the contractual relationship between Water Systems Operators and the Sewer System.

Based upon the prefiled testimony, the oral testimony and the discovery in the case, Staff had no

objection to the Joint Petition.

III. COMMISSION ANALYSIS

This Commission possesses the statutory authority to allow an entity to engage in business as a public utility when the Commission finds that the exercise of the right, privilege, or franchise is in the public good. RSA 374:26. Additional statutory authority permits a public utility to transfer to another its stock when this Commission finds that transfer to be in the public good. RSA 374:30.

Based on the evidence in the record of this proceeding, we find that the Eastman Community Association possesses the managerial, technical and financial ability to continue to provide adequate and reliable service to the customers currently being served by the Eastman Sewer Company, Inc.

The Eastman Community Association presented evidence of its ability to operate the sewer system in a manner consistent with the public good. In an effort to address customers' concerns, the Association agreed to certain conditions. For example, Exhibit 5 provides changes to the composition of the board of directors of the sewer company and indicates that the Association Board will appoint sewer customers to the board who are residents for "most of the year." Additionally, the Association agreed with the intervenors that any capital reserve would not exceed \$250,000. If the reserve exceeded that amount, the Association would ask the Commission for a rate reduction to

eliminate collection of those funds. See Transcript, November 16, 2000, p. 36. We believe these additional commitments by the Association are also in the public good.

Commission Staff expressed no real concern over the transfer as described by the petitioners. We, therefore, would agree that the Association appears to have the available resources to perform the functions of a sewer company. We, however, caution the Association to comply with our rules and standards for separate accounting given the affiliate relations that exist.

Based on the foregoing, it is hereby

ORDERED, That the Joint Petition for Approval of the Transfer of all the Stock of Eastman Sewer company, Inc. to Eastman Community Association is hereby APPROVED; and it is

FURTHER ORDERED, Eastman Community Association submit a request to withdraw Eastman Sewer Company's stayed rate case, DW 99-038, within fourteen days of the date of the issuance of this Order.

By order of the Public Utilities Commission of New
Hampshire this twenty-second day of December, 2000.

Douglas L. Patch
Chairman

Susan S. Geiger
Commissioner

Nancy Brockway
Commissioner

Attested by:

Claire D. DiCicco
Assistant Secretary