

DW 01-176

HOOKSETT VILLAGE WATER PRECINCT

Petition for Exemption

Order Nisi Granting Exemption from Regulation

O R D E R N O. 23,839

November 9, 2001

I. BACKGROUND

The Petitioner, Hooksett Village Water Precinct (HVWP), filed on October 23, 2001 a request for exemption from public utility regulation for a single service extension to the Sullivan Tire company. The proposed extension is on Route 3-A at the town line of Hooksett and Bow. HVWP will read and maintain the Sullivan Tire meter as it would with any other customer.

In support for an exemption, attorneys for Sullivan Tire filed with the Commission, on September 12, 2001, the Proposed Water Line Plan and Profile as well as a letter from the NH Department of Environmental Services-Water Division approving the project. Sullivan Tire submitted amended plans on September 26, 2001. Additional information was provided subsequently in response to inquiries by Commission Staff.

The Town of Bow Planning Board approved Sullivan Tire's application on June 11, 2001, issuing decisions on the Site Plan Review, Aquifer Protection Conditional Use Permit,

and Wetlands Protection Conditional Use Permit. A modified approval was issued July 14, 2001 with conditions relating to site grades and sediment and erosion control.

II. COMMISSION ANALYSIS

HVWP's request to supply water to a growing business just yards from its precinct boundary requires us to turn to multiple statutory provisions to satisfy our review responsibilities.

Pursuant to RSA 362:4, municipal corporations furnishing water service outside their municipal boundaries shall not be considered a public utility for purposes of accounting, reporting, or auditing functions with respect to said service. RSA 362:4,III sets forth criteria for maintaining municipal unregulated status:

(a) if serving customers outside its municipal boundaries, charging such customers a rate no higher than that charged to its customers within the municipality, and serving those customers a quantity and quality of water service equal to that served customers within the municipality. Nothing in this section shall exempt a municipal corporation from the franchise application requirements of RSA 374.

RSA 374:22, I, in turn, requires a utility extending a line in a town in which it is not already engaged in such business, to obtain Commission approval of the franchise expansion. HVWP has submitted a request for an exemption from such franchise requirement. From the documents submitted, it

is apparent that the Town of Bow does not oppose this extension to serve Sullivan Tire. We note in particular the Town of Bow has issued four approvals in connection with the Sullivan Tire project.

RSA 374:22, III, requires a water company to satisfy the requirements of the Department of Environmental Services concerning the suitability and availability of water for the applicant's proposed water utility. Accordingly, we note the file contains two approvals from the Department of Environmental Services, dated September 11, 2001 and October 17, 2001.

Pursuant to RSA 374:26, the Commission may grant permission to expand a franchise without a hearing if it appears that all interested parties are in agreement. Here, while it appears that all interested parties are in agreement, we will nonetheless afford interested parties an opportunity to exercise the due process rights conferred by RSA 374:26. Accordingly, we are issuing this decision as an Order Nisi. In light of the above facts, we find that the requested exemption is in the public good. We will therefore grant the requested exemption, but note our ability to revisit that exemption should future conditions so warrant.

Based upon the foregoing, it is hereby

ORDERED NISI, that the request by Hooksett Village Water Precinct for exemption from regulation for a single service extension to the Sullivan Tire company, located on Route 3-A in Bow at the town line of Hooksett and Bow, is hereby **APPROVED**; and it is

FURTHER ORDERED, that the Petitioner shall comply with RSA 362:4 III (a), which requires it charge Sullivan Tire rates no higher than rates charged customers inside the Hooksett Village Water Precinct franchise area and provide the same quantity and quality of water service provided customers inside the Hooksett Village Water Precinct franchise area; and it is

FURTHER ORDERED, that the Petitioner shall cause a copy of this Order Nisi to be published once in a statewide newspaper of general circulation or of circulation in those portions of the state where operations are conducted, and shall send a copy of this Order by first class mail to Sullivan Tire, such publication and mailing to occur no later than November 19, 2001, and to be documented by affidavit filed with this office on or before November 26, 2001; and it is

FURTHER ORDERED, that all persons interested in responding to this petition be notified that they may submit their comments or file a written request for a hearing on this matter before the Commission no later than November 27, 2001; and it is

FURTHER ORDERED, that any party interested in responding to such comments or request for hearing shall do so no later than November 30, 2001; and it is

FURTHER ORDERED, that this Order Nisi shall be effective December 7, 2001, unless the Commission provides otherwise in a supplemental order issued prior to the effective date.

By order of the Public Utilities Commission of New Hampshire this ninth day of November, 2001.

Thomas B. Getz
Chairman

Susan S. Geiger
Commissioner

Nancy Brockway
Commissioner

Attested by:

Claire D. DiCicco
Assistant Secretary