

**STATE OF NEW HAMPSHIRE
PUBLIC UTILITIES COMMISSION**

DW 08-036

CITY OF PORTSMOUTH

Petition to Extend Sewer Service in Town of Greenland

Order *Nisi* Granting Petition

ORDER NO. 24,865

June 20, 2008

On March 10, 2008, the City of Portsmouth filed a petition pursuant to RSA 362:4, III(a) to extend sewer service to two properties in Greenland, referenced on Greenland tax map R-21 as lots 44 and 54. Portsmouth currently provides sewer service to approximately 6,200 customers and receives bulk wastewater from Rye and Newcastle.

The first property is a truck stop at the intersection of Greenland and Ocean Roads, currently owned by Siegel Limited Partnership (Siegel) and operated by TravelCenters of America, LLC. The facility's septic system failed in 1997, leading the Department of Environmental Services (DES) to urge connection to the Portsmouth sewer system. As a result, the facility's former operator, Travel Ports of America (Travel Port), constructed approximately 6,000 feet of sewer force main discharging to Portsmouth's facilities, under an agreement between Travel Port, Siegel, and Portsmouth. Greenland consented to the connection at that time but did not seek Commission approval.

The second property, containing 55.95 acres, is the site of a proposed mall located along the route of the existing Travel Port force main. The property abuts Portsmouth and is owned and being developed by PDNED Greenland LLC, also known as Packard Development

(Packard). Packard requested extension of service to this property as a preferred environmental solution over a septic system, particularly given its proximity to wetland and estuarine areas.

Portsmouth has entered into 30-year agreements with Travel Port and Packard. Under the agreements, Portsmouth will charge the same sewer rate as it charges customers within Portsmouth. It will also charge capital improvements charges which are similar in nature to those applied to other private developments within Portsmouth. These charges are intended to cover the cost of upgrades to the city's sewer infrastructure associated with increased flows. Travel Port will pay \$300,000 over a ten-year period. Packard will pay \$1,000,000 over ten years and, commencing in the eleventh year, Packard will pay a charge equal to one tenth of its sewer volumetric charge. Service to both properties will be provided on the same terms and under the same regulations as are applied inside the city. Rates and fees are set annually during the budget process consistent with Portsmouth's rate study, last performed in 2006.

Portsmouth affirms it has the capacity to accept the additional effluent from this franchise expansion. Greenland and DES both support Portsmouth's franchise expansion. On June 11, 2008, Commission Staff filed a letter recommending the Commission approve the petition.

Pursuant to RSA 362:4 III (a), a municipal corporation furnishing sewer service outside its municipal boundaries is not considered a public utility when charging rates no higher than those charged to customers within its boundaries and providing service equal to that provided within the municipality. The statute requires such a municipal corporation to comply with the franchise application requirements of RSA 374:22.

In exercising its authority under RSA 374:22, the Commission assesses the managerial, technical, financial, and legal expertise of the petitioner. *Lower Bartlett Water Precinct*, 85 NH

PUC 635, 641 (2000). In addition, the Commission scrutinizes franchise petitions to ensure they are consistent with the orderly development of the region. *Pennichuck Water Works, Inc.*, 72 NH PUC 589, 593 (1987). The Commission may grant permission to expand a franchise without a hearing, pursuant to RSA 374:26, when all interested parties are in agreement.

Having reviewed Portsmouth's filing and Staff's recommendation, we find that Portsmouth has the requisite capability to provide service to the Greenland customers. We find that Portsmouth's above-described expansion is for the public good and we will approve it on a *nisi* basis to allow opportunity for public comment. We further find that Portsmouth meets the rate and service requirements of RSA 362:4, III(a) and is not considered a regulated public utility.

Based upon the foregoing, it is hereby

ORDERED *NISI*, that subject to the effective date below, and pursuant to RSA 374:22 and 26, the City of Portsmouth is authorized to extend sewer service into a limited area of Greenland consisting of Greenland tax map R-21, lots 44 and 54; and it is

FURTHER ORDERED, that except for franchise application requirements, Portsmouth is exempt from Commission regulation in accordance with RSA 362:4, III (a); and it is

FURTHER ORDERED, that Portsmouth shall file with the Commission a final version of its sewer agreement with Packard once ratified; and it is

FURTHER ORDERED, that Portsmouth 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, with a copy mailed to the Portsmouth City Clerk and

the Greenland Town Clerk, such publication to be no later than June 30, 2008 and to be documented by affidavit filed with this office on or before July 21, 2008; and it is

FURTHER ORDERED, that all persons interested in responding to this Order *Nisi* be notified that they may submit their comments or file a written request for a hearing which states the reason and basis for a hearing no later than July 7, 2008 for the Commission's consideration; and it is

FURTHER ORDERED, that any party interested in responding to such comments or request for hearing shall do so no later than July 14, 2008; and it is

FURTHER ORDERED, that this Order *Nisi* shall be effective July 21, 2008, unless Portsmouth fails to satisfy the publication obligation set forth above or 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 twentieth day of June, 2008.

Thomas B. Getz
Chairman

Graham J. Morrison
Commissioner

Clifton C. Below
Commissioner

Attested by:

Lori A. Normand
Assistant Secretary