

**STATE OF NEW HAMPSHIRE
PUBLIC UTILITIES COMMISSION**

DW 11-139

LORDEN COMMONS SEWER COMPANY, LLC

Petition for Approval of New Franchise Area

Order *Nisi* Granting Petition

ORDER NO. 25,253

July 22, 2011

I. BACKGROUND

On June 13, 2011, Lorden Commons Sewer Company, LLC (LCSC) filed a request for a sewer franchise in the northeastern portion of the Town of Londonderry. The franchise is proposed to provide sewer service to a proposed residential subdivision known as Lorden Commons. The petition and subsequent docket filings, other than information for which confidential treatment is requested of or granted by the Commission, is posted to the Commission's website at <http://www.puc.nh.gov/Regulatory/Docketbk/2011/11-139.html>.

The proposed development is to be constructed by Chinburg Builders, Inc. (Chinburg) and will consist of single family, three bedroom homes. An initial 50 homes will be built in Phase I over a two year period beginning in the fall of 2011. Additional phases are expected to add 82 homes over an ensuing three to four year period. Initial sewer service is anticipated in spring of 2012. The requested franchise area comprises the entire development and consists of Map 16, Lot 38 prior to its subdivision into individual house lots.

The sewer system is to be owned and operated by the petitioner, LCSC, of which Chinburg is the sole member. The system will collect sewage from the development and deliver

it, by gravity and force main, into the City of Manchester sewer system for treatment and disposal under an existing wastewater Intermunicipal Agreement between the City and Town. The Town will in turn bill LCSC quarterly in accordance with the terms of its own Sewer User Charge Ordinance and “An Agreement for Sewer Services Related to the Lorden Commons Subdivision” (Agreement). The Agreement, between the Town and the Chinburg, was approved by the Londonderry Town Council by Resolution 2011-09 adopted May 16, 2011. The Resolution authorized the Town Manager to execute all necessary documents to grant access to the municipal sewer system to Chinburg and LCSC.

LCSC will bill its individual customers in the development rates to be determined in a rate case expected to be filed with the Commission in the near future. LCSC’s customers will not receive a sewer bill from any other entity. Prospective customers will be notified of; (1) the existence of and the private nature of the sewage disposal system provided by LCSC; and (2) sewage disposal fees payable to LCSC. Customer notification will be accomplished through disclosures in the Purchase & Sale Agreement, the Public Offering Statement, the subdivision’s Declaration of Covenants, Conditions and Restrictions, and notice in each individual deed.

In addition to Chinburg’s development, construction and property management experience, LCSC will rely on third party expertise to carry out its operational and ownership responsibilities in relation to the sewer system. Jones & Beach Engineers, Inc. will provide design and engineering services. Scherbon Consolidated, Inc. will construct a sewer pump station and be responsible for operation and maintenance of the overall sewer system, including emergency response. St. Cyr & Associates will provide management and administrative services including accounting, customer billing and relations, and oversight of the Scherbon contract.

The petitioner submitted information that in its view demonstrates the requisite expertise possessed by each of these entities.

There are no other sewer entities in the area capable of providing service. Other options such as onsite treatment were considered but determined to be infeasible. The NH Department of Environmental Services (NHDES) has approved the proposed service through issuance of a Wastewater Connection Permit on May 3, 2011. LCSC will be granted the necessary easements for installation, maintenance, and repair of the various sewer facilities.

On July 20, 2011, Staff filed a recommendation that the Commission approve LCSC's franchise request. Staff stated that it had reviewed the filing and had conducted discovery, which it attached to its recommendation.

II. COMMISSION ANALYSIS

Pursuant to RSA 374:22, “[n]o person or business entity shall commence business as a public utility within this state . . . without first having obtained the permission and approval of the commission.” The Commission grants requests for franchise authority upon a finding that it is for the public good pursuant to RSA 374:26. In determining whether a franchise is for the public good, the Commission assesses the managerial, technical, and financial abilities of the petitioner. *See, Lower Bartlett Water Precinct*, Order No. 23,562, 85 NH PUC 635, 641 (2000).

Having reviewed LCSC's filing and Staff's recommendation, we find that LCSC's request to provide sewer service to prospective customers in the Lorden Commons subdivision is for the public good. The record demonstrates that LCSC has or will have access to the requisite managerial, technical, and financial abilities to obtain the requested franchise. LCSC will secure

the proper easements and access to the sewer system. LCSC did not request rates in the current filing as it expects to do so in a separate filing in the near future.

RSA 374:26 authorizes the Commission to grant requests for franchise authority without a hearing “when all interested parties are in agreement.” Here, there are not yet any customers, and Staff, LCSC, Chinburg, the Town of Londonderry and NHDES have all indicated their support of the proposal by LCSC to operate the Lorden Commons sewer system.

Notwithstanding this apparent agreement, we will approve LCSC’s petition on a *nisi* basis in order to ensure that all interested parties receive notice of the proposed franchise and rates and have an opportunity to request a hearing.

Based upon the foregoing, it is hereby

ORDERED *NISI*, that subject to the effective date below, the franchise request of Lorden Commons Sewer Company, LLC in the Town of Londonderry is hereby APPROVED; and it is

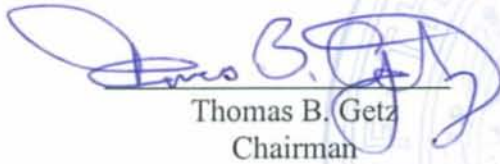
FURTHER ORDERED, that Lorden Commons Sewer Company, LLC shall cause a copy of this Order *Nisi* to be published once in a statewide newspaper of general circulation or of circulation in those portions of the state where operations are conducted, such publication to be no later than August 1, 2011 and to be documented by affidavit filed with this office on or before August 22, 2011; 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 August 8, 2011 for the Commission’s consideration; and it is

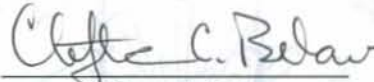
FURTHER ORDERED, that any party interested in responding to such comments or request for hearing shall do so no later than August 15, 2011; and it is

FURTHER ORDERED, that this Order *Nisi* shall be effective August 22, 2011, unless Lorden Commons Sewer Company, LLC fails to satisfy the publication obligation set forth above or the Commission provides otherwise in a supplemental order issued prior to the effective date.

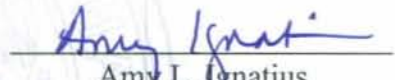
By order of the Public Utilities Commission of New Hampshire this twenty-second day of July, 2011.



Thomas B. Getz
Chairman




Clifton C. Below
Commissioner



Amy L. Ignatius
Commissioner

Attested by:



Debra A. Howland
Executive Director