

**STATE OF NEW HAMPSHIRE  
PUBLIC UTILITIES COMMISSION**

**DW 13-249**

**CITY OF PORTSMOUTH**

**Petition to Extend Sewer Service in the Town of Rye**

**Order *Nisi* Approving Franchise Extension**

**ORDER NO. 25,618**

**January 8, 2014**

**I. BACKGROUND**

On August 30, 2013, the City of Portsmouth filed a petition pursuant to RSA 362:4, III(a), RSA 374:22 and RSA 374:26 to extend sewer service to properties in the Town of Rye under the terms of an *Intermunicipal Agreement Between the City of Portsmouth, New Hampshire and the Town of Rye, New Hampshire for Sewer Line Extension* (Agreement).

Portsmouth provides sewer service to approximately 6,400 customers, receives bulk wastewater from Rye and Newcastle, and serves two commercial properties in Greenland as approved by Order No. 24,865 (June 20, 2008). Agreement at 1. The petition, Agreement, and subsequent docket filings, other than any information for which confidential treatment is requested or granted by the Commission, is posted to the Commission's website at

<http://www.puc.nh.gov/Regulatory/Docketbk/2013/13-249.html>.

The Rye properties at issue are on Sagamore Road, Elwyn Road, and Pioneer Road and are presently served by Portsmouth's water system. Agreement at 3; *see* Exhibit 1 to the Agreement, a map titled *Sagamore Road Municipal Sewer Expansion*. The properties are close to existing Portsmouth sewer mains and will be connected to Portsmouth's system at no cost to Portsmouth or Rye. A third party has agreed to pay for the sewer extension to Lot 21 on the

above-referenced map, and other customers have the option of connecting at their own cost. Agreement at 2. Once connected, Portsmouth will assume ownership, operation and maintenance of the new sewer lines. *Id* at 2-3.

The Agreement requires Portsmouth to provide Rye customers with the same level of service and bill them at the same rates as Portsmouth customers. *Id* at 3. Portsmouth's rates and fees are set annually during its budget process consistent with Portsmouth's rate study, *Id.* at 1, and Portsmouth affirmed that it has the capacity to accept the additional effluent, Petition at 3. Rye supports the petition. Agreement at 1. The Agreement is conditioned on Commission approval. *Id* at 4.

## **II. POSITION OF STAFF**

On December 17, 2013, Commission Staff filed a letter recommending that the Commission approve the petition. Staff reported that it reviewed Portsmouth's filings and discovery responses and concluded that Portsmouth demonstrated it has the managerial, financial and technical capabilities to serve the new area in Rye. Staff also stated that Portsmouth's provision of sewer service outside the City should remain exempt from Commission regulation because Portsmouth will provide service to the new Rye customers under the same terms and conditions as provided to customers within Portsmouth's city limits.

## **III. DISCUSSION**

A municipality that provides sewer service outside its corporate boundaries generally becomes a "public utility" subject to Commission oversight. RSA 362:2, I. Nonetheless, a city providing sewer service outside its boundaries is not considered a public utility if it charges "such customers a rate no higher than that charged to its customers within the municipality," and provides "service equal to that served to customers within the municipality." RSA 362:4 III(a).

Based on our review of the petition, exhibits, and Staff's recommendation, we find that Portsmouth's proposed extension meets the rate and service requirements of RSA 362:4, III(a) and thus Portsmouth's sewer system will remain unregulated.

Regardless of whether Portsmouth is a utility, an otherwise exempt municipal corporation must nonetheless satisfy the franchise requirement of RSA 374:22. That is, before Portsmouth can provide sewer service "in any town in which it shall not already be engaged in such business," Portsmouth must first "obtain[ ] the permission and approval of the commission." RSA 374:22, I. The Commission exercises its authority under RSA 374:22 by assessing the managerial, technical, financial, and legal expertise of the petitioner. *Lower Bartlett Water Precinct*, 85 NH PUC 635, 641 (2000). The Commission also 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). Based on the record in this case, we find that Portsmouth has the required capabilities to provide sewer service to the Rye customers and we find that the proposed expansion is for the public good.

Although the Commission may grant permission to expand a franchise without a hearing when all interested parties are in agreement, RSA 374:26, this docket also involves Portsmouth's continued exemption from regulation under RSA 362:4, III(a), so we will approve Portsmouth's petition on a *nisi* basis, which affords any member of the public who does not support the Commission's determination to submit written argument why the petition should not be approved.

**Based upon the foregoing, it is hereby**

**ORDERED *NISI***, that subject to the effective date below, and pursuant to RSA 374:22 and 374:26, Portsmouth is authorized to extend sewer service into that area on Sagamore, Elwyn and Pioneer Roads in the Town of Rye as shown in Exhibit A to the Agreement; and it is

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


**FURTHER ORDERED**, that Portsmouth shall cause a summary 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 to the Rye Town Clerk, such publication to be no later than January 20, 2014 and to be documented by affidavit filed with this office on or before February 7, 2014; and it is

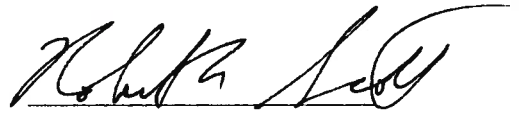
**FURTHER ORDERED**, that all persons interested in responding to this Order *Nisi* be notified that they may submit their comments or file a written request for a hearing which states the reason and basis for a hearing no later than January 27, 2014 for the Commission's consideration; and it is

**FURTHER ORDERED**, that any party interested in responding to such comments or request for hearing shall do so no later than February 3, 2014; and it is

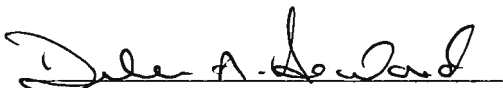
**FURTHER ORDERED**, that this Order *Nisi* shall be effective February 7, 2014, unless the Petitioner fails to satisfy the publication obligation set forth above or the Commission provides otherwise in a supplemental order issued prior to the effective date.

By order of the Public Utilities Commission of New Hampshire this eighth day of  
January, 2014.

  
Amy L. Ignatius  
Chairman

  
Robert R. Scott  
Commissioner

Attested by:

  
Debra A. Howland  
Executive Director