

**STATE OF NEW HAMPSHIRE**

**BEFORE THE**

**PUBLIC UTILITIES COMMISSION**

**Docket No. DW 18-\_\_\_\_\_**

**TOWN OF DERRY**

**PETITION FOR APPROVAL OF FRANCHISE EXPANSION IN THE TOWN OF  
LONDONDERRY  
AND  
APPROVAL OF MSDC RATES FOR LORDEN COMMONS**

The Town of Derry (“Derry”) requests Commission approval, pursuant to RSA 374:22 to expand the provision of water service into a limited area in the Town of Londonderry, New Hampshire to provide service to a development known as Lorden Commons. Derry also requests Commission approval, pursuant to RSA 362:4, III-a(b), to charge Lorden Commons rates for the Merrimack Source Development Charge (“MSDC”) that differ from the MSDC rates Derry secured from Manchester Water Works in a 2013 agreement. In support of this request, Derry states as follows:

**Franchise Request**

1. Derry is a municipal corporation, duly established and existing under RSA chapter 31, and operates a water department and waterworks that provides potable water service to 15,000 residents, institutions, and businesses in the Town of Derry.
2. Derry also provides water service in a limited area in the Town of Londonderry between, generally, Ash Street and Nashua Road. The Commission previously approved Derry’s provision of water service to customers in a limited area of Londonderry in light of well water contamination in the area. See, *Town of Derry*, Docket No. DE 82-283, Order Nos. 15,920 (October 6, 1982) and 16,239 (March 2, 1983).

3. Lorden Commons, LLC (“Lorden”) is a real estate holding company which owns a large tract of land located to the west of Old Derry Road in the Town of Londonderry, New Hampshire, within close proximity to the Derry/Londonderry town line, and, importantly, in close proximity to Derry’s water system.

4. The Town of Londonderry Planning Board approved Phase I of Lorden’s proposed subdivision (“Lorden Commons”) with individual, private wells providing water to the lots. This phase has been constructed and consists of 50 homes. Lorden has requested, and Derry has agreed, to provide water service to eighty-three (83) homes proposed in phases 2, 3, and 4 of Lorden’s development. Derry is also amenable to serving existing homes along the route of the water main in the event local contamination threatens the wells serving these existing homes. The proposed franchise area serving Lorden and the potential existing homes is depicted in the attachment to the proposed Derry-Lorden water agreement. See, Testimony of Thomas Carrier, Attachment A, Exhibit A. Testimony Attachment B sets forth the franchise boundary as recorded in the Rockingham County Registry of Deeds at Book 5340, Page 0985 and as depicted within Town of Londonderry Tax Map 16.

5. Derry acknowledges that final approval of phases 2, 3, and 4 from the Town of Londonderry and approvals from the New Hampshire Department of Environmental Services (“NHDES”) must also be obtained prior to commencing service to the proposed franchise area.

6. Pursuant to RSA 374:22, III, the NHDES has confirmed that Derry satisfies the requirements of the NHDES concerning the suitability and availability of water for the proposed franchise area. See Testimony Attachment E.

7. According to the agreement between Derry and Lorden Commons, the water infrastructure in the proposed franchise will be built to appropriate standards, including

specifications contained in CHAPTER Puc 600. Lorden is also obligated to construct the water infrastructure according to Derry's *Water Main Specifications* and all applicable tariff provisions. See, Testimony Attachment D.

8. Derry believes it possesses the requisite technical, managerial, and financial capability to operate a water utility in the proposed franchise area because it provides water service to existing customers, complies with State and Federal water quality laws, and the Commission has previously found Derry to possess such capabilities in *Re Consumers New Hampshire Water Company, Inc.*, Docket No. DE 95-359, Order No. 22,173 (May 29, 1996).

9. Derry has the support of the Town of Londonderry and Manchester Water Works ("MWW") for the proposed franchise request. See, Testimony Attachment F.

10. Derry believes expansion into the proposed franchise area is in the public good because it will provide reliable, potable water to the Lorden development. It will offer an alternative water source for existing homes along the route of the water main in the event those homes' wells become contaminated. In addition, the expansion will add revenues to Derry and allow Derry to spread utility expenses among more customers which will have a dampening effect on future rate increases. Derry believes the proposed franchise expansion is in the public good because its cooperation with the Town of Londonderry in addressing Lorden's water supply needs is evidence of regional cooperation among water utilities. See, 2000 N.H. Laws Ch. 64 (New Hampshire legislature's investigation of regulatory barriers to regional cooperation).

### **MSDC**

11. Derry obtains a portion of its water supply from MWW. As the Commission is aware, MWW received Commission approval to impose a one-time charge to new customers to fund the cost of constructing facilities necessary to develop the Merrimack River as a source of

supplemental water supply. *Manchester Water Works*, Docket DR 86-80, Order No. 18,628 (1987); and *Manchester Water Works*, Docket No. DR 91-113, Order No. 20,332 (1991). This charge is the Merrimack Source Development Charge (“MSDC”). The MSDC is included in MWW’s tariff on file with the Commission and usually changes (increases) each year. The MSDC charge appears in wholesale water agreements involving water supply from MWW. Derry has such an agreement with MWW which involves the purchase of MSDC Max ADF capacity credits from MWW. See, Testimony Attachment G, Derry Wholesale Water Agreement (“2013 Agreement”), dated March 26, 2013. The rates for those MSDC credits are reflected in Derry’s rate schedules.

12. Under Section 201.4 of the 2013 Agreement, “Derry may only use or distribute water purchased from MWW pursuant to this Agreement within the Derry jurisdictional limits as now or hereafter duly constituted, and may not directly or indirectly resell nor supply the water outside the limits of Derry without the express written consent of MWW.”

13. Because service to Lorden is outside of Derry’s municipal limits, Derry sought MWW’s consent, pursuant to Section 201.4. As illustrated in Testimony Attachment F, MWW provided its consent so long as new customers served by Derry outside its municipal limits pay the same MSDC rate MWW charges other new customers.

14. The rate Derry charges its existing customers under the 2013 Agreement consist of:

Meter Size .....	MSD Charge
3/4 inch.....	\$ 721.00
1 inch.....	\$ 2,069.00
1 1/2 inch.....	\$ 5,429.00
2 inch.....	\$ 9,589.00

For installations 3” and larger, the charge will be \$2.36 per gallon, per day. See

Testimony Attachment C.

MWW’s present MSDC rates are:

Meter Size .....	MSD Charge
5/8 inch.....	\$ 1,061.00
3/4 inch.....	\$ 2,182.00
1 inch.....	\$ 3,040.00
1 1/2 inch.....	\$ 7,975.00
2 inch.....	\$14,084.00

For installations 3” and larger, the charge will be \$3.57 per gallon, per day.

The new MSDC rates for new customers located outside Derry will be greater than fifteen (15) percent higher than those charged to Derry’s existing customers, thereby triggering RSA 362:4.

15. Pursuant to RSA 362:4, III-a(b), “[t]he commission may exempt a municipal corporation from any and all provisions of this title except the franchise application requirements of RSA 374, and may authorize a municipal corporation to charge new customers outside its municipal boundaries a rate higher than 15 percent above that charged to its municipal customers, if after notice and hearing, the commission finds such exemption and authorization to be consistent with the public good.”

16. Derry believes it is in the public good for it to charge MWW’s existing and prevailing MSDC rates to its new Derry customers because the MSDC rates secured in the 2013 Agreement do not apply to the new franchise customers; MWW’s MSDC rates apply to all new customers within MWW’s service territory; and it is fair and equitable for the MSDC rate to be the same for all new customers regardless of whether the new customers take water service directly or indirectly from MWW. In addition, the Commission has recently found it in the public good to allow MWW’s MSDC rates to apply to all new customers of non-MWW customers. See, for example, Pennichuck Water Works, Inc. and Pennichuck East Utility, Inc.’s recent tariff changes to charge MWW’s prevailing MSDC rates. See Docket Nos. DW 17-119 and DW 17-120 and Order No. 26,076 (November 17, 2017).

WHEREFORE, Derry respectfully requests the Commission:

A. Approve Derry's request to provide water service to and charge rates (with the exception of Derry's present MSDC rates) in a limited area in the Town of Londonderry known as Lorden Commons, potential existing homes in phase 1, and potentially along the route of the water main, as noted above;

B. In lieu of Derry's present MSDC rates, authorize Derry to charge MWW's MSDC rates to customers within the proposed franchise area;

C. Allow Derry to remain exempt from Commission regulation pursuant to RSA 362:4;

D. Issue an Order *Nisi* approving Derry's requests; and

E. Grant such other and further relief as may be just and reasonable.

Respectfully submitted,

TOWN OF DERRY

By its Attorney,

Date: June 21, 2018

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Certificate of Service

I hereby certify that a copy of the foregoing petition and supporting materials have been provided by electronic means to the Office of the Consumer Advocate.

Date: June 21, 2018

Marcia A. Brown  
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