

CHAIRMAN
Martin P. Honigberg

COMMISSIONERS
Kathryn M. Bailey
Michael S. Giaimo

EXECUTIVE DIRECTOR
Debra A. Howland

STATE OF NEW HAMPSHIRE



PUBLIC UTILITIES COMMISSION
21 S. Fruit St., Suite 10
Concord, N.H. 03301-2429

TDD Access: Relay NH
1-800-735-2964

Tel. (603) 271-2431

FAX No. 271-3878

Website:
www.puc.nh.gov

NHPUC 10MAY19PM4:14

May 10, 2019

Debra A. Howland
Executive Director
New Hampshire Public Utilities Commission
21 S. Fruit St., Suite 10
Concord, NH 03301

Re: DW 18-099, Town of Derry
Petition for Approval of Franchise Expansion in the Town of Londonderry and Approval of
MSDC Rates for Lorden Commons
Revised Staff Recommendation

Dear Ms. Howland:

Subsequent to Commission Staff's (Staff) previous recommendation, filed on October 25, 2018, in the above-mentioned docket, Staff discovered further issues requiring examination. With the cooperation of the Town of Derry (Derry or the Town), Staff conducted two additional technical sessions and propounded additional discovery. Staff intends for this recommendation to replace Staff's October 25, 2018 recommendation.

On June 22, 2018, Derry filed a franchise expansion petition to provide water service into a limited area of the Town of Londonderry, known as Lorden Commons, pursuant to RSA 374:22. Derry also requested authority to charge the new customers outside its municipal boundaries a rate higher than 15 percent above that charged to its municipal customers, and exemption from Commission regulation, pursuant to RSA 362:4 III-a(b). Derry, specifically, requested authority to charge those non-municipal customers the prevailing rate for the Merrimack Source Development Charge (MSDC), set by Manchester Water Works (MWW). Derry's municipal customers pay a lesser MSDC charge, per a 2013 wholesale water agreement with MWW.

After review, Staff concluded the Town possesses the requisite technical, managerial, and financial skills necessary to provide water service in the proposed franchise area. Staff noted that Derry satisfied the New Hampshire Department of Environmental Services (DES) requirements of suitable and available water, pursuant to RSA 372:22(III). Staff recommends Commission approval of Derry's franchise expansion petition, as it would be consistent with the public good, per RSA 374:26.

Staff, furthermore, contends it is consistent with the public good for Derry to charge non-municipal customers an MSDC rate that is 15 percent greater than the MSDC rate it charges its

municipal customers, per 362:4, III-a(b). Staff, finally, argues that Derry should remain exempt from Commission regulation. Based upon the following analysis, Staff recommends the Commission approve Derry's Petition.

Background

Derry is a municipal corporation, duly established and existing under RSA 31. The Town operates a water department and waterworks that provides potable water service to 15,000 residents, institutions, and businesses in Derry, and a limited area of Londonderry. Lorden Commons, located in Londonderry, is within close proximity to the Derry town line. Lorden Commons' owner, Lorden Commons, LLC (Lorden), completed construction of Phase 1 of 4, consisting of 50 residential homes served by private wells, as authorized by the Town of Londonderry Planning Board. Phases 2, 3 and 4 will contain up to 83 additional homes. Due to local growth ordinances, these additional homes will be constructed over four years.

After examining four options for supplying water to the additional homes in Phases 2 – 4, Lorden requested, and Derry agreed to provide, public water from Derry's nearby main. Attachment A, Supplemental Staff 1-1. Derry now seeks to expand its franchise and provide water service in and around Lorden Commons.¹ The 83 homes in Phases 2 – 4 will be served pursuant to a water supply agreement between Lorden and Derry. Attachment B.

Lorden has agreed to construct a main and waterworks for the additional homes in Phases 2 – 4 and connect that to Derry's 12-inch water main on Old Manchester Road. *Id.* Once completed and inspected by Derry, the Town will accept and assume full ownership of the main and water works with the exception of the individual service lines connecting the curb stop to the customers' meters. *Id.* Derry is amenable to serving the Phase 1 homes, and additional homes along the path of the main to Lorden Commons, at the Town's discretion. *Id.* and Attachment C, Staff 3-2 at 2.

Derry has the support of the Town of Londonderry and MWW. Derry, however, acknowledges it must still obtain final approvals from the Town of Londonderry and the DES.

Derry explains that adding new customers to its water system will increase revenues, and allow it to spread utility expenses amongst a greater number of customers, which will dampen future rate increases. Derry expects to assess all new, non-municipal customers the same rates, charges, and fees for service as those applied to its municipal customers, except for the MSDC Rates.

The MSDC is a capacity charge, additional to regular water usage rates. *See Pennichuck East Utility, Inc. & Pennichuck Water Works, Inc.*, Order No. 26,076 at 2 (November 17, 2017) (describing history of MSDC). MWW currently supplies water to Derry pursuant to a 2013 wholesale water agreement. That wholesale agreement allows Derry to purchase water from MWW but prohibits Derry from distributing that water capacity to new customers outside of its municipal boundaries.

As a result of Lorden's request, MWW and Derry negotiated an additional 2018 wholesale water agreement specifically for the proposed franchise area. The 2018 wholesale agreement

¹ *See* Direct Testimony of Thomas A. Carrier, Attachment A, Exhibit A (June 22, 2018) (Tax map providing description of proposed franchise area).

increased the water capacity of the 2013 wholesale water agreement by 28,000 gallons per day (GPD). That 2018 agreement, however, set the MSDC charge of the new capacity at the then-current MSDC rate of \$3.57 per gallon. That rate, specifically applied to non-municipal customers, is greater than the rate a Derry municipal customer pays due to Derry having unused MSDC capacity resulting from its prior wholesale contracts with MWW. This unused capacity allows Derry to charge municipal customers an MSDC that has remained unchanged since January 2005. Attachment D, Staff 1-5. The difference in those municipal and non-municipal customer MSDC rates, however, is greater than 15 percent, thereby invoking RSA 362:4 and the possibility of Commission regulation of Derry’s municipal water system. Attachment E, Staff 1-7.

Analysis

I. Franchise Expansion

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 will grant a request for franchise authority if it finds that it is for the public good. RSA 374:26. In determining whether a proposed franchise is for the public good, the Commission assesses, among other things, the managerial, financial, and technical expertise of the petitioners. *Hampstead Area Water Company, Inc.*, Order No. 26,153 at 4 (June 26, 2018).

Derry currently serves approximately 15,000 residents, institutions, and businesses. Derry’s water department is staffed by five full-time employees and one part-time employee, with four additional employees that are available to assist that department. Attachment F, Staff 1-13. The DES is satisfied with the suitability and availability of water to serve the proposed franchise, pursuant to RSA 374:22, III. Furthermore, the Commission has previously found that Derry possesses the requisite managerial, technical, and financial capabilities to provide water service in franchise expansions.² Based on its review of the record, Staff concludes that Derry possess the requisite managerial, technical and financial capabilities.

In addition, Staff reviewed the other water source options as presented in Exhibit A, and agrees that extending the water main from the Derry town line (Option 4) is the most economical choice, and therefore advantageous to end users.

Option 3 (Direct Connection with MWW):	Approx.	\$1,120,540
Option 4 (Direct Connection with Derry):	Approx.	\$ 320,066
Savings:	Approx.	\$ 800,474

Based on the aforementioned, Staff concludes the Commission should permit Derry’s franchise expansion, pursuant to RSA 374:22, as it would be consistent with the public good, as required by RSA 374:26.

² See *Consumers New Hampshire Water Company, Inc.*, Order No. 22,173 (May 29, 1996) (finding that as Derry “currently owns and operates municipal water facilities throughout its municipal boundaries serving over 3,000 customers we are confident it possess the managerial, financial and technical expertise to competently provide service to the customers of Scobie Pond and Beacon Hills.”).

II. Authority to Charge Higher MSDC Rates and Exemption from Commission Regulation

The “commission may exempt a municipal corporation from any and all provisions of [RSA 362] except the franchise application requirements of RSA 374, and may authorize a municipal corporation to charge new customers outside its municipal boundaries at 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.” RSA 362:4, III-a(b). Derry proposes charging all non-municipal customers the same rates faced by its municipal customers, save for the MSDC rate. The MSDC rate applied to non-municipal customers in the proposed franchise area is above 15 percent greater than the MSDC rate faced by Derry’s municipal customers.

A. MSDC Background

The MSDC revenues, originally approved by the Commission in 1987, are to be used by MWW to construct facilities to develop the Merrimack River as a supplemental water supply source. *Manchester Water Works*, Order No. 18,628 (April 6, 1987). Initially, the MSDC was a one-time charge assessed to customers requesting new service connections from MWW in new franchise areas outside Manchester. *Id.* In 1991, the Commission approved expanding the MSDC to all new service connections requested by MWW customers regardless of location. *Manchester Water Works*, Order No. 20,332 (December 12, 1991). Ultimately, the Commission conditionally exempted MWW from regulation in 2003. *Manchester Water Works*, Order No. 24,138 (March 14, 2003).

Typically, MWW sells water capacity to other utilities and municipalities by a wholesale water contract. The wholesale water contracts set water capacity limits and charge a per-gallon MSDC based on the contracted capacity. *See* Order No. 26,076 (describing Pennichuck East Utility, Inc.’s, and Pennichuck Water Work, Inc.’s, wholesale water contract with MWW). All other customers receiving water service from MWW without a wholesale contract, MWW imposes a one-time MSDC based on the customer’s required meter size (MSDC Meter Rate).³ The MSDC Meter Rate can be expressed as the MSDC per gallon rate times a specific gallon per day (GPD) limit.

Derry applies a similar MSDC Meter Rate for its new municipal customers, last approved by Derry’s town Council in January 2005 and based on MWW’s MSDC Meter Rates effective July 1, 2004, which, except for the greater-than two-inch services⁴, were subsequently increased 3 percent effective January 1, 2005. Attachment G, Staff 1-5. Derry’s current tariff sets the following MSDC Meter Rates: ¾ inch at \$721; 1 inch at \$2,069; 1 ½ inch at \$5,429; 2 inch at \$9,589; and installations 3 inches and larger at \$2.36 per gallon per day.⁵ *Id.* Derry applied the 5/8 inch MWW rate as its 3/4 inch rate as Derry’s service size and meter connections are strictly 3/4 inch or greater. Attachment H, Staff 1-4.

³ *See* https://www.manchesternh.gov/Portals/2/Departments/water_works/WTR_RateSchedule.pdf, at Page 33 (indicating MSDC charge as a “one-time charge based on the size of the water meter” and includes the following 2019 rates: 5/8 inch at \$1,093; ¾ inch at \$2,248; 1 inch at \$3,132; 1 ½ inch at \$8,215; 2 inch at \$14,507; and installations 3 inches and larger at \$3.68 per gallon, per day).

⁴ Derry has indicated both greater than 2 (Staff 1-5) and 3 inch (Derry’s current Tariff) services are subject to the \$2.36 per gallon rate.

⁵ Derry’s current water rates can be found at https://www.derrynh.org/sites/derrynh/files/uploads/2017_revised_water_rates_and_fees.pdf.

Derry indicated the MSDC it pays to MWW for its water supply originated with their 1998 wholesale water agreement. Attachment I, Staff Tech 1 at 1. In that agreement, Derry secured an increase to their 1983 contracted water capacity of 2.1 million gallons per day (MGD), to a new total of 3.3 MGD. *Id.*⁶ The increased capacity of 1.2 MGD was now subject to the MSDC charge. *Id.*

Derry requested the increase as it anticipated an approximate 3 percent increase in water usage each year over the next 15 years. *Id.* at 4. Derry applied that anticipated growth as the basis for the 1.2 MGD increase in the 1998 contract. *Id.* The Town agreed to buy the new capacity in 1998 at the MSDC rate of \$1.14 per gallon; however, in lieu of a single payment, Derry and MWW agreed that Derry would pay for this increased capacity over 15 years, paying for a portion of the increased capacity each year, to coincide with the growth. *Id.*

In 2005, MWW increased its MSDC per gallon rate to \$2.43, with an anticipated 3 percent annual increase. *Id.* at 1. That same year, Derry and MWW revised their 1998 wholesale water contract. *Id.* The revised contract reduced Derry's anticipated capacity from 3.3 MGD to 2.9 MGD. *Id.* That concurrently reduced the capacity subject to the MSDC from 1.2 MGD to 800,000 gallons. *Id.* The remaining capacity to be purchased was redistributed over 2005 to 2012, the remaining years of the 1998 wholesale contract. *Id.* Derry agreed, furthermore, to pay for remaining capacity based on the anticipated MSDC Rate over the next 7 years beginning with the 2005 payment based on the then current MSDC Rate of \$2.43 per gallon and terminating in a final MSDC Rate of \$2.99 per gallon. *Id.*

In 2013, with the completion of the 1998 agreement, Derry and MWW entered into another wholesale agreement. The 2013 agreement reaffirmed the average daily flow at 2.9 MGD, and a maximum daily flow at 4.0 MGD. Per the 2005 revision of the 1998 wholesale contract, Derry made the final payment on its agreement in 2012. *Id.* at 2, 6. It is Staff's understanding that Derry is not obligated to purchase any further capacity for municipal customers from MWW at this time.

B. Application of MSDC Rate to Non-Municipal Customers by Derry

Although Derry has indicated it has sufficient water capacity (MSDC Credits) from their 2005 water agreement to service the known customers in the proposed franchise area, MWW required Derry to purchase new capacity specifically for the proposed franchise. Petition, Page 8, Line 20. Therefore, Derry and MWW entered into an additional 28,000 GPD wholesale contract in 2018. Derry, then, proposed charging the new non-municipal customers to recoup the cost associated with the 2018 wholesale contract, in addition to any water capacity overages. Through discovery, Staff identified the possibility of Derry charging non-municipal customers different MSDC rates from each other. To support a finding in the public good, Staff conducted further discovery. Staff, ultimately, classified non-municipal customers of this proposed franchise into two categories: Lorden Commons Phases 2-4 customers (Lorden Wholesale Customer); and all other non-municipal customers in this proposed franchise (Non-Wholesale Customers).

⁶ While Staff Tech 1 response states the capacity increased to "3.2 MGD" in the text on page 1, further language in the response and the supporting provisions of Derry's contract with MWW indicate the actual capacity purchased was 3.3 MGD.

1. Lorden Wholesale Customer

Lorden and Derry proposed a wholesale contract, securing 28,000 GPD, to provide service to the 83 homes in Phases 2 – 4. Attachment B. Lorden agreed to pay Derry the MSDC rate associated with the 28,000 GPD capacity, prior to activation, in stages. *Id.* To supply the 25 homes in in Phase 2, Lorden agreed to pay Derry for a portion of the 28,000 GPD. *Id.* Per the proposed contract, Lorden will pay \$31,004.00 for 8,425 gallons, at the current MWW volumetric MSDC rate, which equates to \$3.68 per gallon.⁷ *Id.* As homes are constructed and water service requested, MWW will charge Derry, per its 2018 wholesale contract. Derry, in turn, will charge Lorden the current, effective, volumetric MSDC rate per gallon, multiplied by 337 GPD per home, representing the estimated average new home daily gallon rate of consumption.⁸ That arrangement will account for all of the Lorden Commons Phases 2 – 4 homes sharing in the cost of the 28,000 gallon capacity.

Per Derry's current tariff, municipal customers requesting a service connection 2 inches and greater are subject to a \$2.36 per gallon MSDC rate. Attachment G, Staff 1-5. Effective January 1, 2019, MWW's published rates establish the MSDC at \$3.68 per gallon for services greater than three inches. Attachment J. The proposed connection to the franchise area is greater than 3 inches. Attachment K. Therefore, each Lorden Commons Phase 2 – 4 home will be paying an MSDC per gallon rate greater than 15 percent of Derry's municipal MSDC per gallon rate. That difference requires Commission authorization and allows for the possibility of Commission regulation per RSA 362:4 III-a(b). Staff, nonetheless, believes it to be inequitable to directly compare the lower MSDC rates set by Derry, effective since 2005, enabled by Derry's foresight to pre-pay for MSDC capacity, with current per gallon MWW MSDC rates. That argument is furthered by MWW's increase of the MSDC by 3 percent each year. Staff especially highlights that Derry is contractually-prohibited by MWW from applying its lower, municipal customer rates to non-municipal customers.

Staff initially took pause to the assignment of an average daily consumption of 337 gallons per each new home constructed in Phases 2 – 4. That average is greater than the average daily consumption imbedded in MWW's current 5/8 inch MSDC Meter Rate of approximately 297 gallons per day.⁹ Staff, however, alleviated this concern through the following. First, the average Phase 2 – 4 per home charge of \$1,240 (337*\$3.68) is approximately 13 percent greater than MWW's 5/8 inch MSDC Meter Rate of \$1,093 (297*\$3.68). That 13 percent difference is within the 15 percent buffer afforded by RSA 362:4 III-a(b).

Second, Lorden Commons Phases 2 – 4 is located in a rural setting, where the typical water usage has a greater chance to be higher than a typical customer located within the municipal limits of the City of Manchester and therefore it is expected the average daily uses between these two very different customer settings will be different.

⁷ While the proposed contract remains silent on the per gallon cost, Staff calculated the charge as follows:
\$31,004/8,425 gallons = \$3.68 p/g.

⁸ Staff further notes that the 2018 wholesale water contract between MWW and Derry will need to be updated to reflect the current MSDC per gallon charge. Direct Testimony of Thomas A. Carrier, Attachment F, Page 2 of 3, Paragraph 4a.

⁹ Staff concluded that the average consumption associated with a 5/8 inch meter, using the MSDC Meter Rate, is approximately 297 GPD (\$1,093 (MSDC Meter Rate for 5/8 inch meter)/\$3.68 (MSDC per gallon charge)).

In addition, while the average daily consumption of 337 gallons per home is higher, and results in a higher MSDC, \$1,240 compared to \$1,093¹⁰, the MSDC per gallon rate itself is not any greater; and according to the Lorden and Derry agreement, the MSDC per gallon rate will mirror the rate set by MWW, thereby ensuring the percentage difference will not exceed the 15 percent threshold. Attachment B at 28.

Staff, furthermore, supports that Lorden, as the developer, is free to enter into a contract with Derry to secure the future water rights for Phases 2 – 4. As noted, service provided by Derry is the most cost effective option available to Lorden. The Phases 2 – 4 customers would be without potable water, or at the very least, be faced with much higher water service costs if another option had been chosen. Lastly, the developer ultimately bares the risk of recovering water capacity costs, presumably through home sales in an unpredictable and sometimes volatile real estate market.

As such, the resulting difference in the MSDC Meter Rates faced by the Lorden Wholesale Customer will not result in an unjust or unreasonable charge. *See* RSA 378:7 (granting authority in the Commission to set just and reasonable rates). Thus, the Commission should approve the Lorden Wholesale Customer charge as it is within the public good, under RSA 362:4 III-a(b).

2. Non-Wholesale Customers

Derry proposed to charge all customers outside Phases 2 – 4, the Non-Wholesale Customers, a one-time MSDC, equivalent MWW's MSDC Meter Rate, published on MWW's website. *See n.3 above* (detailing MWW's current MSDC Meter Rate and its citation) and Attachment J. A comparison of Derry's 2019 municipal MSDC Meter Rate of a 3/4 inch meter (\$721) with MWW's 2019 MSDC Meter Rate of a 5/8 inch meter (\$1,093) yields an approximately 51¹¹ percent difference. Attachment E.¹² That difference, again, requires Commission authorization and allows for the possibility of Commission regulation per RSA 362:4 III-a(b). The charge to the Non-Wholesale Customers, while 51 percent greater than a charge faced by a municipal customer, is the equivalent charge any other new customer that requests service from MWW directly would face. Staff notes, again, that it would be inequitable to penalize Derry because of its foresight in pre-purchasing MSDC capacity, enabling it to freeze its municipal MSDC rates for over a decade. Staff further supports authorization of this charge as Derry assured Staff it would pay MWW the MSDC Meter Rate payments for each new customer in the same fiscal year that it receives such payment, which is controlled by Derry's annual Water Budget. Attachment C, Staff 3-2 at 2.¹³

Staff also discussed its concern that customers, both the Lorden Wholesale and Non-Wholesale customers, could be subject to paying the MSDC more than once. That concern surfaced after noting the language included in Derry's contract with MWW, which states that exceeding the 28,000 GPD capacity would result in further charges, due upon demand. Derry assuaged Staff's

¹⁰ Staff concluded that the average consumption associated with a 5/8 inch meter, using the MSDC Meter Rate, is approximately 297 GPD (\$1,093 (MSDC Meter Rate for 5/8 inch meter)/\$3.68 (MSDC per gallon charge)).

¹¹ Attachment E represents MWW 2018 MSDC Rates, equating to a 43% difference compared to Derry's Rates.

¹² Staff notes Derry does not have a 5/8 inch charge, but that its 3/4 inch charge is equivalent. Attachment H.

¹³ Derry will charge MWW's current meter rate, which can be found on MWW's website, as cited above. Attachment C at 2.

concern by its commitment to bear the risk of payment for any additional capacity necessary. *Id.* Thus, new customers in the proposed franchise area will be subject to only one MSDC.

As such, the resulting difference in the MSDC Meter Rates faced by the Lorden Wholesale Customer will not result in an unjust or unreasonable charge. *See* RSA 378:7 (granting authority in the Commission to set just and reasonable rates). Thus, the Commission should approve the Non-Wholesale Customer charge as it is within the public good, RSA 362:4 III-a(b).

C. Exemption from Commission Regulation

Staff, furthermore, supports Derry's request for exemption from Commission regulation pursuant to RSA 362:4 III-a(b). Generally, the Commission approves exemption for municipalities charging the same rates. *See City of Somersworth*, Order No. 25,712 (August 28, 2014); *City of Portsmouth*, Order No. 25,618 (January 8, 2014); and *Lower Bartlett Water Precinct*, Order No. 25,290 (November 18, 2011) (orders finding the rate falls below a 15 percent difference and approving exemption). But-for the MSDC charge triggering a greater-than 15 percent difference, all other charges faced are the same as those faced by municipal customers. In addition, Staff notes that the Commission has approved exemption in the past based on unique circumstances and unusual facts. *See Riverside Water Works, Inc.*, Order No. 24,713 at 7 (December 15, 2006) (finding unusual facts that continuing to apply the current rates faced by an acquired franchise, which resulted in a 15 percent greater rate than the purchaser's own rates, warranted exemption). Staff considers those similar, unusual circumstances exist in the instant docket.

Staff contends that it would be an undue hardship upon Derry, both from a regulatory and administrative perspective, if regulated by the Commission. Staff considers Derry as a competent water utility, suited for this franchise expansion. As such, Staff recommends that the Commission grant Derry exemption from regulation, pursuant to RSA 362:4 III-a(b), as it is within the public good.

Summary

The Commission has previously found that Derry possesses the requisite expertise to competently operate and maintain the proposed Lorden Commons franchise expansion. Staff recommends that the Commission should find the same again and permit Derry's franchise expansion, pursuant to RSA 374:22, as it would be consistent with the public good, as required by RSA 374:26.

Staff, furthermore, recommends that the Commission find special circumstances exists, and authorize Derry to charge the higher MSDC rate to the new, non-municipal customers. Staff also recommends that Derry be granted exemption from Commission regulation. Those findings would both be consistent with the public good requirement of RSA 362:4 III-a(b).

If you have any further questions regarding this matter, please do not hesitate to contact me.

Sincerely,

A handwritten signature in black ink, appearing to read 'A. J. Leone', with a long horizontal flourish extending to the right.

Anthony J. Leone
Utility Analyst, Gas & Water Division

cc: service list

Town of Derry
DW 18-099

Petition for Approval of Franchise Expansion in Londonderry and
Approval of MSDC Rates for Lorden Commons

Responses to Staff Data Requests – Set 1

Date Request Received: 9/12/18

Date of Response: 9/24/18

Date of Supplemental Request: 10/11/18

Date of Supplemental Response: 10/18/18

Request No. Staff 1-1

Witness: Jason Lopez

Keach-Nordstrom Assoc., Inc. on behalf of
Lorden Commons, LLC and

Paul Kerrigan, Lorden Commons, LLC

REQUEST: Please briefly explain the different options for supplying water to Phases 2-4 of the Lorden Commons development in Londonderry and why the installation of new water mains was chosen rather than another supply option.

SUPPLEMENTAL REQUEST: Please provide a comparison of the costs Lorden Commons, LLC would have to pay if it connected to Manchester Water Works for water supply and as compared to the costs to connect to the Town of Derry.

RESPONSE:

There were four options of water supply explored to serve Phases 2, 3 and 4 of Lorden Commons.

- Option 1 was to serve each of the 83 proposed single-family homes with a private well. This option drew opposition from a few residents in Phase 1, and abutters to the project, during the public hearing process. Two Consultant Review Engineers working on behalf of the Town of Londonderry questioned whether the aquifer would have enough water to supply 83 new homes, in addition to the 50 home previously approved in Phase 1. There was also concern about the proximity of the development to a “Superfund Site” to the north. The Applicant was encouraged to investigate other options.
- Option 2 was to serve the proposed homes with an on-site community water system supplied by deep bedrock wells. This option presented the same concerns about the quantity of water available in the aquifer as was raised in Option 1, and for that reason was put aside.
- Option 3 explored connecting to one of four potential connection point along the Manchester Water Works (MWW) system. In a meeting with MWW three of the connection point were dismissed, because MWW stated “cross country connections” would not meet their requirements nor those of the State. The one available option remaining to connect to a MWW line would have required Lorden to extend the main from Auburn Road 3,800 feet along Old Derry Road. This option would serve 83 homes in Lorden Commons and a maximum of 20 homes along Old Derry Road. It was confirmed that this option would involve ledge removal and disruption to the existing roadway base, therefore the Town of

Londonderry advised they would require Lorden to fully reconstruct the road. Collectively, these requirements made it cost prohibitive.

- Option 4 explored the ability to extend the Town of Derry watermain 1,400 feet along Old Derry Road to serve the project. This option would serve 83 homes in Lorden Commons and the ability for the future connection of 10 homes along Old Derry Road and 59 homes in two adjacent existing developments. After much research and planning it was determined to be a viable option. This option was presented to the appropriate Departments and Boards at the Town of Derry and Londonderry who both support this line extension.

Further detail and the timeline about this process is explained in the August 30, 2108 outline by KNA. (Attachment Staff 1-1 KNA Timeline).

SUPPLEMENTAL RESPONSE:

Lordens decision to pursue Option 4 over Option 3 was based solely on a construction cost comparison. Lorden received construction estimates for both Options 3 and 4 as outlined in the Response above. The construction cost for Option 3 to extend the MWW water main from Auburn Road to the southerly most property corner on Old Derry Road, as required by MWW, totaled \$1,120,540.00. The construction cost for Option 4 to extend the Derry water main from the town line to the proposed road, Clover Lane, totaled \$320,066.00. The additional construction costs of \$800,474.00 to connect to the 83 homes to MWW (from the Auburn Road intersection) would result in an additional expense of \$9,644 added to each home. The \$800,474.00 difference represents the delta between the two suppliers.

DW 18-099 Derry-Lorden Agreement
Attachment to Staff 3-2

**WATER SUPPLY AGREEMENT BETWEEN
TOWN OF DERRY & LORDEN COMMONS, LLC**

This Water Supply Agreement Between Town of Derry & Lorden Commons, LLC is made this ____ day of _____, 2019 (“Agreement”) by and between the **TOWN OF DERRY**, a New Hampshire municipal corporation and **LORDEN COMMONS, LLC**, a New Hampshire limited liability company (together, the “Parties”).

RECITALS

The Town of Derry (“Derry”) through its Water Department manages and maintains certain water facilities and equipment to deliver municipal water to Derry residents and a limited number of customers located in abutting towns.

Manchester Water Works (“MWW”) sells Derry a specific volume of water in accordance with the Derry Wholesale Water Agreement, dated March 26, 2013, (“Wholesale Agreement”) which restricts Derry from reselling that water outside its jurisdiction without permission from MWW.

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.

The Town of Londonderry Planning Board approved phase 1 of Lorden’s subdivision with individual, private wells providing water to the lots. This phase has been constructed and consists of 50 homes (“Existing 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 Commons.

Derry has negotiated and secured up to 28,000 gallons per day (“GPD”) from Manchester Water Works to increase Derry’s maximum permitted average daily flow (“Max ADF”) to serve Lorden Commons.

Final approval of phases 2, 3, and 4 from the Town of Londonderry, approval of Derry’s provision of water service in the Town of Londonderry from the New Hampshire Public Utilities Commission (“NHPUC”), and approval from the New Hampshire Department of Environmental Services (“NHDES”) are conditions precedent to the commitments contained herein.

Now, therefore, and in consideration of the Parties’ mutual promises and covenants set forth below, the Parties, their representatives, successors, and assigns agree as follows:

ARTICLE I. Definitions

1. “Derry” means the Town of Derry, a New Hampshire, a municipal corporation with a mailing address of 14 Manning Street, Derry, New Hampshire, 03038.

2. "Franchise Area" means the green-shaded and red-shaded area within the Town of Londonderry shown on Exhibit A attached to this Agreement.
3. "Lorden" means Lorden Commons, LLC.
4. "Lorden Commons" means the residential subdivision located to the west of Old Derry Road in the Town of Londonderry that is being developed by Lorden. The development consists of 50 lots in phase 1, 58 total lots in phases 2 and 3, and 25 lots in phase 4.
5. "MWW" means Manchester Water Works.
6. "MSDC" means the Merrimack Source Development Charge, a capital charge assessed by MWW used to develop new water sources to expand municipal water service to meet growing demand.
7. "Waterworks" means water mains, hydrants, facilities, storage vessels, pipes, supply, distribution, treatment, pumping, master meters, customer meters, curb stops, customer service lines, and other devices and equipment used to transmit water.
8. "Water" means potable water supplied for domestic use meeting the standards set by the State of New Hampshire and the U.S. Environmental Protection Agency.

ARTICLE II. Obligations of Parties

The following obligations shall bind the Parties to this Agreement:

TOWN OF DERRY

9. Derry shall apply for and secure all necessary approvals from the Derry Town Council and MWW, allowing Lorden to extend a 12" water main located on Old Manchester Road at the Derry/Londonderry town line, to Lorden Commons in Londonderry in accordance with Derry's *Water Main Specifications; Town of Derry, NH Water Rates and Fees*; and the plans submitted by Keach Nordstrom Associates, Inc. ("KNA") approved by the Town of Derry and attached as Exhibit B.
10. Derry agrees to prepare and submit all applications for permits and approvals required from NHPUC, NHDES, and other governmental bodies to enlarge its water system.
11. The provision of service by Derry within Lorden Commons shall be in accordance with Derry's approved rates, fares, and charges, this agreement, any wholesale water supply agreements, and any applicable state and federal laws.
12. After inspection by Derry and after Lorden constructs the Waterworks according to Derry's specifications, with the exception of individual customer service lines connecting the curb stop to the customer's meter, Derry agrees to accept and assume full ownership

of all the Waterworks installed by Lorden within Lorden Commons and along Old Derry Road to the point of interconnection with Derry's water system and to assume full responsibility for operation, maintenance, and repair of same.

13. Derry agrees to inspect all Waterworks installed by Lorden, retain copies of those inspections and any calibration reports associated with those inspections, and make those reports available to Lorden upon request during normal business hours as may be required.
14. Derry agrees to inspect all Waterworks for compliance with its specifications within a reasonable time, provided Lorden satisfies all Derry's permit and construction requirements.
15. With the exception of the Existing Homes, Derry agrees to provide water service to homes in Lorden Commons at the expected pace of 25 homes in 2019, 25 homes in 2020, 25 homes in 2021, and 8 homes in 2022.
16. Derry agrees to provide water service to the Existing Homes within Lorden Commons who may no longer be served by private wells and who are approved by the Town of Derry to be connected to the Derry public water system.
17. Derry will charge Existing Homes connecting to Derry's system the MSDC in effect at the time service is requested using a calculated GDP per home that is based on the meter size used to serve that home.
18. Derry agrees to provide water service that meets the water quality standards and criteria set by the State of New Hampshire and the United States Environmental Protection Agency.
19. If requested or required, Derry shall test and certify as to the accuracy of any metering device at any time in accordance with the Town of Derry's terms of service.

LORDEN COMMONS, LLC

20. Lorden shall reimburse Derry for all reasonable attorney fees, regulatory expenses, and out of pocket costs incurred to secure the above-described regulatory approvals.
21. Lorden shall submit plans to Derry, the Town of Londonderry, NHDES, and other agencies as may be required for approval to effectuate this Agreement.
22. Lorden shall pay for all costs associated with KNA preparing plans attached as Exhibit B as well as all engineering support during the construction, installation, and inspection of the Waterworks.
23. Upon request by Derry, Lorden shall deliver a bond to secure its completion of the Waterworks shown on Exhibit B.

24. Lorden agrees to pay for all costs associated with the construction of the Waterworks including the payment of inspection fees to the Town of Derry. Such inspection fees will be set aside in escrow in accordance with the rules and regulations of Derry's planning board.
25. Lorden agrees to construct the Waterworks within Lorden Commons and from Lorden Commons to the point of interconnection with Derry's water system on Old Derry Road in accordance with Derry's *Water Main Specifications*, customary engineering practices, State and local rules and regulations, and the *Town of Derry, NH Water Rates and Fees*.
26. Lorden shall install a meter pit at or near the Derry and Londonderry town line or as may be determined by Derry pursuant to Derry's *Water Main Specifications* and *Town of Derry NH, Water Rates and Fees*.
27. Lorden agrees to convey the Waterworks, with the exception of customer service lines connecting the curb stop to the customer's meter, to Derry, free and clear of any and all liens.
28. Lorden agrees to pay Derry the MSDC fees associated with the increased Max ADF according to the following schedule:
 - a) In 2019, prior to the activation of the Derry-Londonderry Old Derry Road interconnection, Lorden agrees to pay Derry \$31,004.00 for 8,425 gallons of MSDC capacity at the current volumetric MSDC rate, for 25 homes.
 - b) Future Connections. After 2019, and prior to the installation and connection of any home within phases 2, 3 and 4 to Derry's public water system, Lorden will pay Derry for the MSDC capacity associated with each additional home (using the calculated GPD per home of 337) times the MSDC rate in existence at the time the customer's service is sought.
29. Lorden agrees to not extend water service to the Existing Homes unless Lorden obtains express written consent from Derry.

ARTICLE IV. General Provisions

30. Notices. All notices and other writings sent pursuant to this Agreement shall be addressed to the parties as follows:

Town of Derry
Attn: Thomas A. Carrier
14 Manning Street
Derry, NH 03038

Lorden Commons, LLC
Attn: Paul Kerrigan
3 Penstock Way
Newmarket, NH 03857

With copies to:

Keach-Nordstrom Associates, Inc.
10 Commerce Park No. Suite 3
Bedford, NH 03110

Panciocco Law, LLC
Attn: Patricia M. Panciocco
One Club Acre Lane
Bedford, NH 03110

31. Amendment. This Agreement may be modified only by a written amendment; executed with the same formality as this Agreement.
32. Assignment. No assignment by either party of its rights or duties under this Agreement shall be binding on the other party unless the other party consents.
33. Waiver. Failure of either party to exercise any right under this Agreement shall not be deemed a waiver of such right.
34. Effective Date. The terms of this Agreement are subject to approval by the NHPUC, NHDES, and the Town of Londonderry Planning Board and shall become effective immediately upon the passage of the last appeal date.
35. Duration. This Agreement shall remain in effect and binding until such time as all obligations of the Parties have been met, all lots within phases 2, 3, and 4 of Lorden Commons eligible to be developed have been connected Derry's public water system, except that Derry shall remain obligated to own and operate the Waterworks (with the exception of individual customer service lines connecting the curb stop to the customer's meter) and provide water service to the lots within Lorden Commons.
36. Construction. This Agreement, except where the context clearly indicates otherwise, shall be construed as follows: definitions include both singular and plural and pronouns include both singular and plural and include both genders.
37. Governing Law. This Agreement shall be governed by the laws of the State of New Hampshire.
38. Termination. With the exception of payment by Lorden of the 2019 MSDC fees, the Parties may terminate this Agreement by mutual consent.
39. Breach. In the event either party breaches the covenants or duties imposed by this Agreement, the non-breaching party shall provide the offending party written notice of the claimed violation and allow a thirty (30) day cure period. In the event the breach is not remedied, the non-breaching party shall be entitled to immediately terminate this Agreement by written notice to the non-breaching party. The remedy provided within this paragraph shall not preclude either party from pursuing other remedies available at law or in equity.

40. Severability. If any clause or provision in this Agreement is held invalid or unlawful, by a Court of competent jurisdiction, its remaining provisions shall remain enforceable.

41. Dispute Resolution. The Parties shall first attempt to resolve any dispute with regard to the terms of this Agreement between themselves informally by negotiation between themselves or by non-binding mediation as described herein. Either party may initiate non-binding mediation by giving the other party written notice of the need to mediate setting forth a list of no more than 3 names and qualifications of neutrals who the initiating party believes would be qualified as a mediator for the dispute. Within 15 calendar days after the delivery of the mediation notice, the receiving party shall provide notice to the initiating party designating a person to serve as the mediator from among 3 persons listed by the initiating party. If no response is received, the initiating party may select the neutral from among the list of 3. The mediator shall schedule the mediation session within 2 weeks of being contacted. The parties shall make themselves available to attend the mediation session as scheduled by the mediator. The mediation shall be conducted according to the procedures determined by the mediator selected. All disclosures, discussions, and any determinations or proposals by the mediator made pursuant to this mediation clause is confidential and shall be treated as compromise and settlement negotiations and both parties hereby stipulate and agree shall not be offered or be admissible as evidence in any other proceeding. The expenses of the mediation shall be shared by the parties equally.

In Witness whereof, this Agreement is executed in multiple counterparts each of which shall be deemed an original this _____ day of _____, 2019.

TOWN OF DERRY

Witness

By: David Caron
Its: Town Administrator
Duly Authorized

LORDEN COMMONS, LLC

Witness

By:
Its:
Duly Authorized

<END OF DOCUMENT>

**Town of Derry
DW 18-099**

Petition for Approval of Franchise Expansion in Londonderry

Responses to Staff Data Requests – Set 3

Date Request Received: 12/26/18

Date of Response: 1/9/19

Supplemental Response 4/8/19

Request No. Staff 3-2

Witness: Thomas Carrier

REQUEST: Attachment A, Exhibit A, of the Testimony of Thomas Carrier, Page 4, Section 28 of the Water Supply Agreement Between Town of Derry and Lorden Commons, LLC, states the following regarding the MSDC charge: a) 2018. Prior to the activation of the Derry-Londonderry Old Derry Road interconnection, Lorden agrees to pay Derry \$30,077.25 (25 homes at 337 GPD times current MSDC rate of \$3.57/GPD).

a) Please describe how the amount of 337 GPD was achieved. By Staff's calculation, this results in a per home MSDC charge of \$1,203.09. Per Company Response to Staff 1-8, most residential properties will have a 5/8" meter. Per MWW current tariff, the charge for a 5/8" meter is \$1,061.

b) Please explain how Derry justifies this increased charge when someone outside of the Lorden Commons Phase II-IV development could tie on to the water system and pay the MWW tariffed rate based on the meter size?

c) Does Derry anticipate using the same 337 gallon average use per home in securing future capacity for the other homes within the proposed franchise? If not, what average would be used? What average does Derry believe is appropriate? Why? Please explain how this difference in charge is within the public good.

d) In the event the 28,000 capacity is exceeded, will Derry go back to customers and collect for the MSDC overage?

RESPONSE:

a) There are many variables in comparing Derry's rate structure with MWW's MSDC that make it hard to compare apples-to-apples. The capacity necessary for a home is determined by the size and type of meter. The rate Derry charges customers to recover the pre-payment of the MSDC differs from MWW's current MSDC rates and are based on customer meter size (and therefore equivalent flow capacity).

For large users, (which MWW considers the Derry franchise connection in Londerry to be) MWW applies a per gallon rate, which, **in 2018, was \$3.57/gpd** of flow capacity.

A MWW single-family residential service is typically a 5/8 inch Neptune meter. Flow capacity specification for this meter is 20 GPM. MWW's MSDC, based on this 5/8 inch meter size, is

\$1,061. At MWW's per-gallon rate of \$3.57/gpd, this equates to 287.2 gpd/single family residential service.

In comparison, a Derry single family residential service is typically a 5/8 x 3/4 inch Badger meter. Flow capacity specification for this meter is 25 GPM. Derry's MSDC based on the 3/4 inch (smallest meter service Derry permits) is \$721. At Derry's per-gallon rate of \$2.36/gpd, this equates to 305.5 gpd/single family residential service.

Derry's per-gallon rate is set to recover the pre-purchase of MSDC credits and was more fully described in response to Staff Tech 1 dated 10/18/18. **For 2019, MWW's MSDC rate has increased to \$3.68/GPD.**

Derry has estimated Max ADF and MSDC capacity needed for Lorden Commons (28,000) by using its 5/8 x 3/4 inch Badger meter with a flow capacity of 25 GPM times 1.25 that used by MWW customers. If Lorden Commons, LLC's pre-purchase of the Max ADF of 28,000 gpd is fully allocated to the 83 homes, this equates to 337 gpd per home. This per-home gpd falls in between MWW's 287.2 gpd for 5/8 inch and 611.2 gpd for 3/4 inch services.

b) Derry is charging MWW's MSDC rates and does not set the MSDC rate. Therefore, Derry is not in a position to "justify" how MWW set the past MSDC rates it charged Derry under the wholesale water supply agreements or the current MSDC rates. See also, response to a).

c) **Yes, for phases 2, 3, and 4 of the proposed development for which the MSDC capacity was pre-purchased.**

For future connections by Existing Homes and customers along Old Derry Road, Derry will charge MWW's per-meter MSDC charges, which themselves are based on a pre-determined GPD. Derry will collect from customers the same set MSDC charge as what MWW charges Derry. Derry does not know when these new customers will seek to take service and how many that will be.

It should also be noted that Derry, as a municipal corporation is organized under New Hampshire law to conduct business on a fiscal year basis. As such, Derry is governed by annual budgets. Receipt of customer MSDC payments and payment of MWW's MSDC invoice will be through Derry's annual Water Budget in the fiscal year in which the charge or payment arises.

d) **Derry does not plan to collect any MSDC "overage" from customers. Derry has secured sufficient capacity for the completion of the known water needs of the proposed franchise, therefore the risk of exceeding the 28,000 GPD is unlikely. However, if an overage occurs, Derry will bear the risk of paying that difference.**

Public water was a required condition of approval for the Lorden development by the Town of Londonderry Planning & Economic Development Department and the quantity needed was known. See Derry's response to Staff 1-3. Lorden Commons, LLC has informed Derry that NHPUC approval is the final approval needed for this project.

At present, it is difficult to quantify the future water needs of Existing Homes and residents along Old Derry Road because Derry does not know: 1) when the water need will occur; and 2) how many customers will request water. In addition, as Staff is aware, MWW and area municipalities are entering into a Southern New Hampshire Regional Water Interconnection agreement which may provide additional supply connections. Only after these variables become known, can Derry respond. In the meantime, Derry will have water infrastructure nearby, as requested by the Town of Londonderry.

Town of Derry
DW 18-099

Petition for Approval of Franchise Expansion in Londonderry and
Approval of MSDC Rates for Lorden Commons

Responses to Staff Data Requests – Set 1

Date Request Received: 9/12/18
Request No. Staff 1-5

Date of Response: 9/24/2018
Witness: Thomas Carrier

REQUEST: Ref. Petition Page 4, Paragraph 14:

Please explain how Derry calculates the current MSDC it charges to Derry residents.

RESPONSE: Derry does not calculate the current MSDC. The MSDC is calculated by Manchester Water Works and filed with the Commission each year.

Derry's current MSDC charges were approved by the Derry Town Council in January 2005 and were based upon the rates set by Manchester Water Works effective July 1, 2004. MWW's Board of Directors also approved an annual 3% increase effective each January 1, which Derry passed on to new customers within its franchise area as follows:

	<u>MWW MSDC</u> <u>Effective 7/1/2004</u>	<u>Derry Water MSDC</u> <u>Effective 3/1/2005</u>
5/8 inch	\$700	N/A
¾ inch	\$1,365	$\$700 + 3\% = \721
1 inch	\$2,009	$\$2,009 + 3\% = \$2,069$
1 ½ inch	\$5,271	$\$5,271 + 3\% = \$5,429$
2 inch	\$9,310	$\$9,310 + 3\% = \$9,589$
>2 inch	\$2.36 per gallon	\$2.36 per gallon

Derry has not yet applied the 3% increase to meters greater than two inches because as of 2005, Derry had pre-purchased 2.64 MGD of MSDC capacity. Whereas our maximum average daily flow has not exceeded this amount, we have not since increased the MSDC for our customers. As to the new customers in proposed franchise area, they will pay MWW's present MSDC rate.

Town of Derry
DW 18-099

Petition for Approval of Franchise Expansion in Londonderry and
Approval of MSDC Rates for Lorden Commons

Responses to Staff Data Requests – Set 1

Date Request Received: 9/12/18	Date of Response: 9/24/2018
Date of Supplemental Request: 10/11/18	Date of Supplemental Response: 10/18/18
Request No. Staff 1-7	Witness: Thomas Carrier

REQUEST: Please detail the difference, as a percentage, in the MSDC that the Town of Derry proposes to charge customers in the requested franchise compared to the MSDC charged to residents within the Town of Derry's municipal borders.

SUPPLEMENTAL REQUEST: Please detail the difference, as a percentage, in the MSDC that Lorden Commons, LLC would pay if it connected directly to Manchester Water Works instead of to the Town of Derry.

RESPONSE:

<u>Derry's Current MSDC Rates</u>	<u>MWW Current MSDC Rates</u>	<u>Diff</u>	<u>MWW Charge to Lorden Commons</u>	<u>Diff.</u>
5/8 inch N/A	\$1,030	N/A	\$1,030	0%
3/4 inch \$721	\$1,030*	+43%	\$1,030	0%
1 inch \$2,069	\$2,951	+43%	\$2,951	0%
1 1/2 inch \$5,429	\$7,743	+43%	\$7,743	0%
2 inch \$9,589	\$13,674	+43%	\$13,674	0%
>2 inch \$2.36 per gallon	\$3.47 per gallon	+47%	\$3.47 per gallon	0%

* Derry will charge MWW's 5/8-inch rate for the 3/4-inch customers because Derry does not allow 5/8-inch services and the meter capacity is 5/8 inch.

SUPPLEMENTAL RESPONSE:

See above.

Town of Derry
DW 18-099

Petition for Approval of Franchise Expansion in Londonderry and
Approval of MSDC Rates for Lorden Commons

Responses to Staff Data Requests – Set 1

Date Request Received: 9/12/18
Request No. Staff 1-13

Date of Response: 9/24/2018
Witness: Thomas Carrier

REQUEST: Re: Carrier Testimony, Page 8 of 9, Lines 1-3:

Please describe the present certifications and licenses possessed by the Town of Derry Water Department's 5 full-time and 1 part-time employees.

RESPONSE:

- Employee #1, Primary Water System Operator: Certified Backflow Inspector; Water Distribution Grade III; Water Treatment Grade II; Commercial Driver's License B w/ tanker endorsement
- Employee #2, Utilities Crew Chief: Certified Backflow Inspector; Water Distribution Grade II; Water Treatment Grade I; Commercial Driver's License B w/ tanker endorsement
- Employee #3, Utility Worker: Certified Backflow Inspector; Water Distribution Grade II; Water Treatment Grade I; Commercial Driver's License B w/ tanker endorsement; MA Hoisting License; Public Weigh Masters License
- Employee #4, Utility Worker: Certified Backflow Inspector; Water Distribution Grade I; Water Treatment Grade I; Commercial Driver's License A w/ tanker endorsement
- Employee #5, Utility Worker: Certified Backflow Inspector; Water Distribution Grade II; Water Treatment Grade I; Commercial Driver's License A w/ tanker endorsement; Solid Waste License 4
- Employee #6, Part-Time, Laborer

(Water and Wastewater Divisions combine resources as needed) The following persons/people are available to assist in Water Division Operations.

- Employee #7, Utility Assets Coordinator; Water Distribution Grade III, Water Treatment Grade II
- Employee #8, Mechanical Electrical Technician II: Master Electrician, CDL -B w/ tanker Endorsement
- Employee #9, Mechanical Electrical Technician I: Master Electrician
- Employee #10, Chief Wastewater Treatment Plant Operator & Lab Director: Certified Drinking Water Lab for Microbiology; WW Treatment Operator II, CDL B w/ tanker endorsement

Town of Derry
DW 18-099

Petition for Approval of Franchise Expansion in Londonderry and
Approval of MSDC Rates for Lorden Commons

Responses to Staff Data Requests – Set 1

Date Request Received: 9/12/18
Request No. Staff 1-5

Date of Response: 9/24/2018
Witness: Thomas Carrier

REQUEST: Ref. Petition Page 4, Paragraph 14:

Please explain how Derry calculates the current MSDC it charges to Derry residents.

RESPONSE: Derry does not calculate the current MSDC. The MSDC is calculated by Manchester Water Works and filed with the Commission each year.

Derry's current MSDC charges were approved by the Derry Town Council in January 2005 and were based upon the rates set by Manchester Water Works effective July 1, 2004. MWW's Board of Directors also approved an annual 3% increase effective each January 1, which Derry passed on to new customers within its franchise area as follows:

	<u>MWW MSDC</u> <u>Effective 7/1/2004</u>	<u>Derry Water MSDC</u> <u>Effective 3/1/2005</u>
5/8 inch	\$700	N/A
¾ inch	\$1,365	$\$700 + 3\% = \721
1 inch	\$2,009	$\$2,009 + 3\% = \$2,069$
1 ½ inch	\$5,271	$\$5,271 + 3\% = \$5,429$
2 inch	\$9,310	$\$9,310 + 3\% = \$9,589$
>2 inch	\$2.36 per gallon	\$2.36 per gallon

Derry has not yet applied the 3% increase to meters greater than two inches because as of 2005, Derry had pre-purchased 2.64 MGD of MSDC capacity. Whereas our maximum average daily flow has not exceeded this amount, we have not since increased the MSDC for our customers. As to the new customers in proposed franchise area, they will pay MWW's present MSDC rate.

Town of Derry, NH Water Rates and Fees

Revised February 7, 2017

The following charges shall be applied by the Utility for services rendered:

- (b) Up-to-date billing on ownership change (includes meter reading) \$15.00
- (d) Turn-on service request by customer during Utility's regular working hours (includes initial shut-off and service restoration) \$36.00
- (e) Emergency request by customer to turn on or shut off water service other than during the Utility's regular working hours. \$49.12/HR up to 3 hour minimum charge.
- (f) Customer requested meter testing shall be the actual cost per test but not less than \$30.00 except at no cost should the meter be found to over-register.

13. Service Disconnection

Upon request by the customer for termination of service, the Town of Derry shall, in its sole discretion, determine if the disconnection poses risk or liability to either the Town or the public. If it determines risk or liability is possible, the Town may, at the Customer's expense, take such actions as may be appropriate to reduce the risk or liability.

4. Merrimack Source Development Charge

This charge is to recover payments made by the Town of Derry to Manchester Water Works for the development of the Merrimack River as a second source of supply.

RATES:

The one-time charge will be based on the size of the water service entering the building that is required to meet flow requirements at the installation.

Meter SizeMSD 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. The flow, gallons/day, will be determined by the Town of Derry. For installations where an oversized service is necessary due to pressure considerations, the charge will be based on the size of the meter required under normal pressure conditions, as determined by the Utility.

TERMS

Bills for this service shall be rendered in advance and payment shall be received before service is installed or service upgraded.

**Town of Derry
DW 18-099**

Petition for Approval of Franchise Expansion in Londonderry and
Approval of MSDC Rates for Lorden Commons

Responses to Staff Data Requests – Set 1

Date Request Received: 9/12/18
Request No. Staff 1-4

Date of Response: 9/24/2018
Witness: Thomas Carrier

REQUEST: Ref. Petition Page 4, Paragraph 14:

Please explain the absence of the 5/8" meter charge from the list of current MSDC charges to Derry residents.

RESPONSE:

The Town of Derry MSDC is based on water service size at the meter connection. Derry's minimum specifications for water service size is 3/4 inch. While the Derry meter has an internal size of 5/8 inch, the service size and meter connections are 3/4 inch. Therefore, the Town applies the MWW's 5/8 inch rate for our 3/4 inch customers.

Town of Derry
DW 18-099

Petition for Approval of Franchise Expansion in Londonderry and
Approval of MSDC Rates for Lorden Commons

Responses to Staff Data Requests – Tech 1

Date Request Received: 10/11/18
Request No. Staff Tech 1

Date of Response: 10/18/18
Witness: Thomas Carrier

REQUEST: Please explain whether, and if applicable, how, current Derry customer rates include repayment of any pre-paid MSDC.

RESPONSE:

The Merrimack River Source Development Charge (MSDC) was incorporated into the Derry & Manchester Water Works Wholesale Water Agreement when the contract was renewed in 1998. Derry's original 1983 contract with MWW provided Derry with 2.1 MGD of capacity. The 1998 Agreement increased that capacity to 3.2 MGD. The MSDC applied only to the difference between the 2.1 and 3.2, or 1.2 MGD. In lieu of a lump sum payment for this added capacity, Derry and MWW agreed to a annual payment plan. A copy of the plan at the original \$1.14/GPD rate is attached. Derry adopted its own MSDC charge for its new customers and used the same rates as MWW. Although the Derry Water Enterprise Fund budget included revenue from the newly adopted MSDC charge, a significant portion of the annual MSDC payment was subsidized by the Derry rate payers. The water rates were not increased to offset this new expense but rather the added expense was absorbed into the budget through a reduction in capital expenses and extra revenues from increased water usage. The Derry Water Rates in 1998 were: Base Charge of \$12.76 plus \$1.73 per 100 cft.

After 13 years without a water rate increase, and following the loss of 2 of Derry's largest water users, and increases in MWW's wholesale water usage rate, Derry, in 2003, increased its retail rates to: base Charge \$19.65 and \$1.83 per 100 cft. The Derry water user rates continued to subsidize the MSDC payments.

In 2005, MWW increased the MSDC from \$1.14 to \$2.43/GPD with annual increases of 3% each January. Rather than increase the Derry MSDC rate, Derry revised its Wholesale Agreement with MWW and to allow payment of the higher rates by reducing the total purchased capacity from 3.2 to 2.9 MGD. A copy of that payment plan is attached. Rates were not increased as a result of MWW's rate increase.

Concurrently, however, MWW was increasing Derry's wholesale water usage rate by 35% over 3 years, necessitating another increase in 2005 to Derry's retail water rates from \$1.94 to \$2.04 per 100 cft.

Derry's last MSDC payment to MWW was in 2012. Derry will collect the MSDC charge from new and expanding users until it reaches the purchased capacity and those revenues will continue to be recognized as general water fund revenues.

Attachment Staff Tech 1
Page 1 of 4

BOARD OF WATER COMMISSIONERS

C. ARTHUR SOUCY
President

DONALD P. PERKINS
Clerk

RAYMOND W. PROVENCHER
THEODORE L. GATSAS
THOMAS M. ROBERT
ROBERT A. CRUESS

Ex Officio
HON. RAYMOND J. WIECZOREK
Mayor

THOMAS M. BOWEN, P.E.
Director and Chief Engineer

ROBERT BEAURIVAGE, P.E.
Asst. Director



MANCHESTER WATER WORKS

281 LINCOLN ST., MANCHESTER, NEW HAMPSHIRE 03103-5093 Tel. (603) 624-6494

July 16, 1999

Derry Water Works
Dept. of Public Works
c/o Accounts Payable
40 Fordway
Derry, NH 03038

Re: Merrimack Source Development Charge (MSDC)

Dear Sir/Madam:

Enclosed please find a copy of the yearly schedule of the MSDC Payment Schedule for minimum annual payments for the years 1998 through 2012 for the Merrimack Source Development Charge per the Derry Wholesale Water Agreement dated May 27, 1998 (see Sec. 303 MSDC, pgs. 11 and 12 of the Agreement).

As indicated, the Town of Derry is responsible for a minimum payment obligation for 1999 in the sum of \$68,400.

Thank you for your consideration to the above.

Yours truly,

Philip W. Croasdale
Financial Division Manager

Enclosures

PWC:amp

If Derry's average daily flow exceeds its "desired capacity" as specified below in any particular year, Derry shall be entitled to such capacity up to its maximum 3.3 MGD provided Derry pays to MWW, within 60 days, applicable MSDC payments for the capacity used."

MSDC PAYMENT SCHEDULE

Year	Capacity Desired MGD at 3% Growth Rate	Incremental Capacity Subject to MSDC Gals	Annual MSDC Due
1 - 1998	2.18	80,000	\$ 91,200
2 - 1999	2.24	60,000	68,400
3 - 2000	2.31	70,000	79,800
4 - 2001	2.38	70,000	79,800
5 - 2002	2.46	80,000	91,200
6 - 2003	2.53	70,000	79,800
7 - 2004	2.61	80,000	91,200
8 - 2005	2.68	70,000	79,800
9 - 2006	2.76	80,000	91,200
10 - 2007	2.85	90,000	102,600
11 - 2008	2.93	80,000	91,200
12 - 2009	3.02	90,000	102,600
13 - 2010	3.11	90,000	102,600
14 - 2011	3.20	90,000	102,600
15 - 2012	3.30	<u>100,000</u>	<u>114,000</u>
		1,200,000	\$1,368,000

Section 304. Emergency Use. Should Derry require water from MWW in excess of the limits specified in Section 201.3, and MWW in its absolute discretion agrees to supply such water to Derry, Derry shall pay two (2) times the rate specified in Section 302.1 for each gallon

C. ARTHUR SOUCY
President

DONALD P. COUTURIER
Clerk

JAMES W. CRAIG
PATRICIA H. CORNELL
RICHARD M. BUNKER
LOUIS C. D'ALLESANDRO

Ex Officio
HON. ROBERT A. BAINES
Mayor

THOMAS M. BOWEN, P.E.
Director and Chief Engineer

ROBERT BEAURIVAGE, P.E.
Asst. Director



MANCHESTER WATER WORKS

281 LINCOLN ST., MANCHESTER, NEW HAMPSHIRE 03103-5093 Tel. (603) 624-6494

July 13, 2005

Mr. Thomas A. Carrier, W/WW Superintendent
Town of Derry
Dept. of Public Works
14 Manning Street
Derry, NH 03038

Re: Merrimack Source Development Charge (MSDC)

Dear Mr. Carrier:

Enclosed please find a copy of the amended MSDC Payment Schedule for minimum annual payments for the years 1998 through 2012 for the Merrimack Source Development Charge per the Derry Wholesale Water Agreement (Agreement) dated May 27, 1998 (see Sec. 303 MSDC, pgs. 11 and 12 of the Agreement).

Based on the amended schedule, The Town of Derry is responsible for a minimum payment obligation for 2005 in the sum of \$77,760. This and future MSDC payments will now be due annually on July 30th of each year.

7/30/05
CFC/6

Thank you for your consideration to the above.

Yours truly,

Philip W. Croasdale
Water Financial Administrator

Enclosure

MSDC PAYMENT SCHEDULE

rev 7/12/05

	YEAR	CAPACITY (mgd) (rounded)	ADDITIONAL MSDC CAP.	MSDC RATE / GAL	MSDC PAYMENT DUE
1	1998	2.18	80,000	\$ 1.14	\$ 91,200
2	1999	2.24	60,000	\$ 1.14	\$ 68,400
3	2000	2.31	70,000	\$ 1.14	\$ 79,800
4	2001	2.38	70,000	\$ 1.14	\$ 79,800
5	2002	2.46	80,000	\$ 1.14	\$ 91,200
6	2003	2.53	70,000	\$ 1.14	\$ 79,800
7	2004	2.61	80,000	\$ 1.14	\$ 91,200
8	2005	2.64	32,000	\$ 2.43	\$ 77,760 <i>FY06</i>
9	2006	2.68	37,000	\$ 2.50	\$ 92,500 <i>FY07</i>
10	2007	2.72	40,000	\$ 2.58	\$ 103,200
11	2008	2.75	34,000	\$ 2.66	\$ 90,440
12	2009	2.79	37,000	\$ 2.73	\$ 101,010
13	2010	2.83	37,000	\$ 2.82	\$ 104,340
14	2011	2.86	35,000	\$ 2.90	\$ 101,500
15	2012	2.90	38,000	\$ 2.99	\$ 113,620
			800,000		\$ 1,365,770

MERRIMACK SOURCE DEVELOPMENT CHARGE

RATE SCHEDULE – “MSDC”

CHARACTER OF SERVICE

The Merrimack Source Development Charge ("MSDC") is assessed in accordance with RSA 38:27 and RSA 38:28 for the purpose of constructing, acquiring, improving, enlarging and/or operating the Manchester Water Works' system. Specifically, all funds collected from the Charge will be utilized to develop the Merrimack River as an additional source of supply for the Water Works.

RATES

The one-time charge will be based on the size of the water meter that is required to meet flow requirements at the installation.

<u>Meter Size</u>	<u>MSD CHARGE</u>
5/8"	\$1,093
3/4"	\$2,248
1"	\$3,132
1½"	\$8,215
2"	\$14,507

For installations 3" and larger, the charge will be \$3.68 per gallon, per day. The flow, gallons/day, will be determined by the Utility. For installations where an oversized meter is necessary due to pressure considerations, the charge will be based on the size of the meter required under normal pressure conditions, as determined by the Utility. In accordance with the financial plan adopted by the Utility, the MSDC shall be increased 3% annually effective each January 1st.

TERMS:

Bills for this service shall be rendered in advance and payment shall be received before main and services are installed.

**Town of Derry
DW 18-099**

Petition for Approval of Franchise Expansion in Londonderry

Responses to Staff Data Requests – Set 3

Date Request Received: 12/26/19
Request No. Staff 3-3

Date of Response: 1/9/19
Witness: Thomas Carrier and Paul Kerrigan

REQUEST: The proposed interconnection consists of the addition of a 12” main. Please verify the size of the proposed water main as it crosses and travels through Londonderry and that this size service line be able to handle the water supply to all of the potential customers within the proposed franchise area in the event that every residence/business needed to tie onto Derry’s water system? This includes the 50 homes in Lorden Commons Phase I, the 83 homes in Lorden Commons Phases II-IV, and the undetermined amount of residents residing along the path of the main.

RESPONSE: The water line from the Derry town line to the Lorden Commons intersection is a 12” line and is sized to be adequate for a future interconnection for a secondary water supply between Derry and Manchester Water Works at Auburn Road as well as for additional customer connections. The 8” line that will serve the project was sized for all Phases, for domestic use and fire protection.

Executive.Director@puc.nh.gov
amanda.noonan@puc.nh.gov
anthony.leone@puc.nh.gov
Christopher.tuomala@puc.nh.gov
F.Ross@puc.nh.gov
jayson.laflamme@puc.nh.gov
mab@nhbrownlaw.com
ocalitigation@oca.nh.gov
pat@panciocolaw.com
robyn.descoteau@puc.nh.gov
steve.frink@puc.nh.gov