

DW 00-153

EASTMAN SEWER COMPANY

Joint Petition for Approval of Stock Transfer

Order Denying Motion for Rehearing

O R D E R N O. 23,654

March 16, 2001

APPEARANCES: Devine, Millimet & Branch, Frederick Coolbroth, Esq., for the Eastman Community Association; Tony Hanslin for Eastman Sewer Company; Thomas G.Wade for the Eastman Community Association; Myron L.Cummmings and Donato Ian, customers of Eastman Sewer and Lynmarie Cusack, Esq., on behalf of the Staff of the New Hampshire Public Utilities Commission.

I. PROCEDURAL HISTORY

On December 22, 2000, the New Hampshire Public Utilities Commission (Commission) issued Order No. 23,608 approving the transfer of 100% of the stock of Eastman Sewer Company (Company) to Eastman Community Association (ECA). The order was released after notice, hearings and deliberations on the matter. Order No. 23,608 discusses the procedural history of the case through the deliberations. This order continues the history from after the issuance of Order No. 23,608 through to the present.

On January 22, 2001, Phillip Schaefer, a Grantham, New Hampshire resident and customer on the sewer system submitted a letter dated January 19, 2001, "appealing" Order

No. 23,608.¹ In the letter Mr. Schaefer claims that that the Commission did not "appropriately consider" a previous letter he drafted and had submitted at the November 16, 2000 hearing. In response to Mr. Schaefer's January 19, 2001² letter the Company and the ECA, jointly filed an objection with this Commission on January 24, 2001.

The Company and the ECA contend that Mr. Schaefer's letter fails to state good reason for the Commission to reconsider its action in the case. They further assert the Schaefer "appeal" "letter fails to state any ground upon which the Commission's Order can be deemed unreasonable or unlawful."

II. NOVEMBER 16, 2000 LETTER

Mr. Schaefer's November 16, 2000 letter was presented at the hearing by Staff counsel who indicated that she was asked to provide it to the Commission as part of the hearing.³ Staff counsel additionally asked that the letter be marked as an Exhibit for Identification. Hearing Transcript,

¹ Mr. Schaefer did not seek intervention in the docket. Pursuant to Puc Rule 203.03 individuals who are not parties to a proceeding but who have an interest in the proceeding may appear before the commission for the purpose of stating their positions for the record.

² The letter dated January 19, 2001 was not received by this Commission until January 22, 2001, one day beyond the time limit for filing motions for rehearing. RSA 541:3 requires motions for rehearing to be filed within 30 days of a decision. The request could be rejected on that basis alone, however we will review the merits of the request.

³ Mr. Schaefer was not present at the hearing to offer the letter himself.

p. 4. Counsel for the joint petitioners commented that it was his understanding that the letter would be "taken as a public statement." Id., p. 5. The Chairman confirmed that the statement would be treated as such and marked it as an exhibit. The letter was subsequently marked as Exhibit No. 6 and admitted as part of the record.

The November 16th letter focused on four issues that Mr. Schaefer believed were problems that had to be resolved prior to any approval of the transfer of stock. The issues concerned the spray irrigation system, capital reserve account, operating expenses and operating revenues. Mr. Schaefer concluded his letter by suggesting the remedies he proposed be adopted and that the Commission order the Company "owners to determine whether an association of sewer users might be formed to purchase the company."

III. COMMISSION ANALYSIS

In a letter dated January 19, 2001, Mr. Schaefer indicated he was "appealing" the December 22, 2001 order of this Commission approving the stock transfer. We will treat Mr. Schaefer's letter as a motion for rehearing pursuant to RSA 541:3. As a person directly affected by this Commission's action Mr. Schaefer may apply for rehearing even though he was

not a party or intervenor in the case. Puc Rule 203.04 (a), RSA 541:3.

This Commission will grant such a motion if in our opinion there is good reason for the rehearing stated in the motion. RSA 541:3. Mr. Schaefer asserts that this Commission did not properly consider his November 16, 2000, letter. We disagree.

In evaluating any case this Commission reviews the entire record before making a decision on the merits. Our rules allow us to utilize our experience, technical competence and specialized knowledge in evaluating any evidence before us. Puc Rule 203.10(m). It is also in our discretion to accord evidence the weight we believe it deserves. Here, Exhibit 6 was placed into evidence by staff counsel. The proponent of the exhibit was not in attendance at the hearing. Therefore, the evidence was not given under oath or affirmation. Additionally, as the joint petitioners point out in their objection to the request for rehearing, the proponent was not available for cross-examination. We, thus, considered the statement as we would any public comment.

Moreover, we believe the issues presented by Mr. Schaefer that had bearing on the transfer of stock petition before us were addressed during the hearing. A considerable

amount of testimony was presented regarding the spray irrigation system and the handling of repairs, maintenance and expense. Hearing Transcript pp. 19, 29-30, 37-39, 54-59. Furthermore, there was discussion on the license agreement related to the spray irrigation system. We heard that the ECA and not the sewer company would assume full responsibility for the spray irrigation system. *Id.*, p. 30. We also were presented with testimony related to the going forward expenses of the company and in fact heard an intervenor indicate that his concerns relating to the expenses were alleviated. *Id.*, p. 60.

We do not believe it is necessary to address each piece of the record in an order for us to have appropriately considered it in making a decision. Simply because we failed to mention an exhibit does not mean that we did not consider that exhibit. For these reasons we find that there is no good reason to grant the request for rehearing.

Based upon the foregoing, it is hereby

ORDERED, that the request for rehearing is DENIED.

By order of the Public Utilities Commission of New
Hampshire this sixteenth day of March, 2001.

Douglas L. Patch
Chairman

Susan S. Geiger
Commissioner

Nancy Brockway
Commissioner

Attested by:

Thomas B. Getz
Executive Director and Secretary