

THE STATE OF NEW HAMPSHIRE

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November 6, 2013

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

Re: DW 13-171 Eastman Sewer Company  
Joint Petition to Approve Sale of Assets and Liabilities to Village District of Eastman  
Staff Response Regarding Revised Procedural Schedule

Dear Ms. Howland:

Staff is writing to respond to the requests of the intervenors in the docket, Eastman Sewer Users Coalition and Mr. and Mrs. Logan, to “affirm” the procedural schedule originally approved by the Commission on August 5, 2013. A number of items in the two letters referencing actions of Staff require correction and/or clarification.

Clearly ESUC and Mr. and Mrs. Logan misunderstood the procedural schedule particularly as regards discovery. Both parties expected an additional round of data requests to be served upon the joint petitioners. In the revised schedule submitted on October 31 and approved on November 5, another round of discovery is provided for to accommodate this misunderstanding. If both parties wish to revert to the original schedule approved August 5, the next step in the proceeding is not additional discovery but Staff and intervenor testimony. Both ESUC and Mr. and Mrs. Logan asked for additional discovery, and the revised schedule provides for it.

ESUC states that the position taken by Staff at the October 31 technical conference/settlement conference has “tainted” the Staff and “brings into question” Staff’s ability “to render a fair decision going forward.” Mr. and Mrs. Logan suggest that taking a position has “biased” the Staff. Staff disagrees. After our review of the filing in this matter and the consideration of the two rounds of discovery, Staff believes the proposed transaction should be approved. Staff does not believe there is any legal impediment to the transaction, and Staff believes that the Village District of Eastman possesses the managerial, technical and financial capabilities to own and operate this public utility. Stating our position at the settlement conference does not “taint” Staff in any way.

Both intervenors suggest that the decision to revise the procedural schedule was dictated by Staff. Both stated “staff then asserted that the Procedural Schedule would be revised.” These

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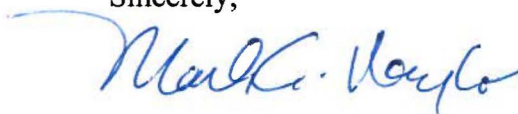
representations are not accurate. Staff recommended revising the schedule specifically so that the intervenors would have an opportunity to submit a third round of data requests; under the existing procedural schedule no further discovery upon the Joint Petitioners was scheduled. Further, the representation by both parties that “staff greatly accelerated the schedule” is also inaccurate. The original schedule called for a settlement hearing on December 5. Staff felt that, to remedy the misunderstanding of the intervenors as to additional discovery, moving the hearing to January would allow time for that discovery and also time for testimony to be filed by the intervenors. ESUC and Mr. and Mrs. Logan did not object to the revised procedural schedule subsequently filed by Staff and approved by the Commission until their letters were filed on November 6.

As to the issue of recording the technical session, Staff explained to ESUC and to Mr. and Mrs. Logan the purpose of technical sessions in the Commission’s typical process. Staff explained that data which parties consider important can be sought in writing through discovery, and that technical sessions were informal meetings to discuss generally the issues in the case. Staff further explained how settlements often arise in proceedings before the Commission and that often there can be a settlement without all parties in agreement. Staff did not refuse to have the technical session recorded, but informed the intervenors that the request would cause the technical session to be rescheduled to allow for a court report to appear. Further, the Joint Petitioners opposed any additional delay for that purpose. The revised schedule submitted by Staff on October 31 and approved by the Commission November 5 entirely preserves the rights of the intervenors to present a case before the Commission that opposes the transfer of the sewer utility to the VDE.

In summary, Staff believes the procedural schedule approved on November 5 provides adequate opportunity for the intervenors to explore the issues of the docket, conduct discovery, present testimony, and present their views to the Commission. Staff recommends the Commission keep in place the schedule approved on November 5.

Please advise if there are any questions regarding this.

Sincerely,



Mark A. Naylor  
Director, Gas and Water Division

Cc: docket service list