

STATE OF NEW HAMPSHIRE
BEFORE THE
PUBLIC UTILITIES COMMISSION

Charles Evans and Evans Family, LLC

Docket No. DW 24-068

Petition for Franchise and Exemption from Regulation

SETTLEMENT AGREEMENT

A. OVERVIEW

1. As noted in the Commission’s order opening this adjudicative proceeding, this matter involves petitioners who are landowners and developers in the Town of Londonderry (“Town”) and who are constructing a gravity fed sewer main extension to serve their small commercial and industrial development. One lot in the development has been sold thus far. This development is not yet directly served by public sewer and for that reason, the petitioners are constructing a sewer main extension to bring the Town’s sewer service to the development.

2. The design plans for the sewer main extension have been approved by both the Town and the N.H. Department of Environmental Services. Once finally constructed and in use, the Town will receive and treat the wastewater conveyed by the Petitioner’s sewer main extension.

3. In filing a petition for exemption from regulation, the developers aver that they possess the managerial, technical, financial, and legal expertise to construct and operate the sewer main extension and that their provision of sewer service to their small development qualifies for exemption from rate regulation because the number of businesses that will be served by the sewer main extension will be well fewer than the 75-customer threshold RSA 362:4 allows the

Commission to exempt. At present, construction is underway to install the sewer main extension through the development; however, the sewer main is not expected to be in actual service until the first quarter of 2025.

B. PROCEDURAL HISTORY

1. On April 29, 2024, Charles Evans and Evans Family, LLC (collectively, the “Petitioners”) filed with the N.H. Public Utilities Commission (“Commission”) a Verified Petition for Franchise and Exemption from Regulation seeking: (1) to be granted a limited franchise to operate a sewer main extension pursuant to RSA 374:22 and RSA 374:26; and (2) to be exempt from regulation as a utility pursuant to RSA 362:4 because it will serve fewer than 75 customers. In support of their petition, the Petitioners filed survey plans, proposed easement deeds, a map of the limits of the Town’s sewer system, property tax cards, and state and local permits.

2. On April 30, 2024, the Commission acknowledged the Petitioner’s filing and assigned Docket No. DW 24-068 to the proceeding.

3. On May 6, 2024, the N.H. Department of Energy (“Department”) filed a notice of appearance.

4. On May 24, 2024, the Commission issued hearing guidelines and an order commencing an adjudicative Proceeding. The Commission ordered the Department to file no later than June 21, 2024 a recommendation on disposition of the proceeding by order *nisi*. The Commission afforded interested parties an opportunity to file petitions to intervene. The Commission also ordered the Petitioners to publish a copy of the order on its website or in a newspaper of general circulation and to file an affidavit documenting that publication with the Commission no later than May 29, 2024.

5. On May 30, 2024, the Petitioners filed an affidavit of publication along with a copy of the order posting on its website.

6. On June 20, 2024, the Department filed a preliminary recommendation stating that it did not have a position on the filing at this time, that the Department would engage in discovery to obtain further understanding and clarification, and that the Department and Petitioners would file a proposed procedural schedule in the near future.

7. On July 11, 2024, the Petitioners and Department filed a proposed procedural schedule to govern the proceeding. The procedural schedule included two rounds of discovery, two technical sessions, and a deadline of September 20, 2024, to file a settlement agreement or report of the Department.

8. On July 24, 2024, the Commission issued a procedural order and approved the procedural schedule.

C. OWNERS OF THE DEVELOPMENT

1. The Petitioners, Charles Evans and Evans Family, LLC, are the developers and owners of contiguous land at 11 Sanborn Road and at the corner of 280 Rockingham Road/14 Page Road in Londonderry, New Hampshire. (One commercial lot at 13 Page Road has already been purchased by Rhino Page Road Owner, LLC (“RHINO”). RHINO is not related to the Petitioners. Combined, these various properties constitute the “Development” as well as the limits of the requested franchise.

2. The Development has no current sewer service and thus the Petitioners are constructing a sewer main extension from 11 Sanborn Road, where the closest Town sewer main is located, through the 280 Rockingham Road lot, to Page Road. This sewer main extension will bring wastewater from the Development to the Town’s sewer system on Sanborn Road. A map of

the location of the Town's sewer system was attached to the petition as Attachment C.

3. As part of the sale of 13 Page Road to RHINO, the Petitioners agreed to bring the sewer main extension to RHINO's property boundary. This interconnection will connect RHINO to the Town's sewer system on Sanborn Road.

D. ROUTE OF SEWER MAIN EXTENSION

1. The proposed route of the sewer main extension will run from 11 Sanborn Road, across 280 Rockingham Road, to Page Road. Although 11 Sanborn Road is presently connected to the Town's sewer system, 11 Sanborn Road is needed for the franchise because the sewer main extension connects to the Town's system across the 11 Sanborn Road property. The survey plans depicting the route were attached as Petition Attachment D but have been updated in response to the Department's discovery at Attachment 1, DOE 1-8(c). Wastewater conveyed by the sewer main extension will be transported from the Development to the Town's sewer system for treatment.¹ The Petitioners will not be treating the wastewater. Because the sewer main extension has been designed to be gravity fed, no pump stations are needed. See Attachment 1, DOE 1-6.

2. The Petitioners have designed the sewer main extension to comply with the Town's sewer main Resolution 2009-18 (attached as Petition Attachment H) and expect the Town to accept ownership of the sewer main once the conditions are met, namely, when the sewer main extension is transporting 50% of the design flow. Petition at para. 11.

E. REQUESTED FRANCHISE FOOTPRINT AND EXPERTISE OF PETITIONERS

1. The Petitioners request a limited franchise footprint to encompass the 11 Sanborn

¹ The Town of Londonderry contracts with the City of Manchester and Town of Derry for treatment of its wastewater. Wastewater from this section of Rockingham Road is sent to the City of Manchester's wastewater treatment facility for treatment under a wholesale agreement between the Town and City of Manchester.

Road, 280 Rockingham Road/14 Page Road, and 13 Page Road. This requested franchise is denoted on Petition Attachment G, "Service Territory". The Petitioners have no plans to expand the sewer main extension beyond the Development. Petition at para. 29. The Petitioners are not in any discussions with other abutters to the proposed franchise area because those abutters either have their own septic system or are connected to the Town's sewer system. See Attachment 1, DOE 1-5.

2. In their petition, the Petitioners included a table of parcels representing the Development as well as other abutting parcels that could conceivably connect to the gravity fed system. See Petition at para. 5. The Town required the Petitioners to conduct a study of what area could potentially be served by the gravity fed system in the event the Town took over the system. The Petitioners conducted that study in the early 2000's. The study results determined the size of the mains presented in the Petitioner's engineering plans (Petition Attachment D) for the Development even though the Petitioners have no intension of providing service to the full extent of the Town's drainage study area.

3. The Petitioners included draft easement deeds with the petition as Petition Attachment I. The Petitioners state that easement deeds will provide the requisite legal capability to own and operate the sewer main extension. Petition at para. 17. The proposed easements will be recorded in the registry of deeds. The deed description will match the easement shown on the final sewer main extension plans approved by the Town and will run from the Town's existing sewer main on Sanborn Road, across 280 Rockingham Road, to Page Road and RHINO's property at 13 Page Road. *Id.*

4. The Petitioners have retained a civil engineering firm to design the sewer main extension to meet the technical specifications required of the Town's Resolution 2009-18.

Petition at para. 18. The sewer main extension will consist of about 3,545 linear feet of PVC and is expected to have a 100-year useful life. *Id.* and Settlement Attachment 1 (Response to DOE 1-8).

5. The simplicity of the gravity fed sewer main extension delivering wastewater to the Town of Londonderry for treatment will pose very limited maintenance and operational concerns. In the event repairs and maintenance are necessary, the Petitioners will contract out for those repairs and maintenance and will have access to the main via the service road in the easement. *Id.*

6. The Petitioners state they have demonstrated financial capabilities to own and operate the sewer main by virtue of having hired and secured technical expertise to advise them in the design and permitting of the sewer main extension. Petition at para. 24.

F. TOWN OF LONDONDERRY SEWER REGULATIONS

1. Any industrial wastewater will be regulated by the Town of Londonderry's sewer use, permitting, and charge ordinances, which are attached hereto as Settlement Attachment J Revised, to replace the original Petition Attachment J that was incomplete.

2. The Petitioners state that any customers using the sewer main extension will be customers of the Town and will be subject to the Town's sewer use, permitting, and charge ordinances. The complete set of sewer ordinances are attached as Settlement Attachment J Revised. Thus, customers using the sewer main extension will be customers of the Town and will receive a sewer bill from the Town. Petition at 26.

G. REGULATORY APPROVALS OF SEWER MAIN EXTENSION

1. On February 6, 2024, the Petitioners received preliminary approval from N.H. Department of Environmental Services ("NHDES") for the design of the sewer main extension

and for authority to connect to the Town's sewer system. See Petition Attachment K, *Sewer Connection Permit*.

2. On February 27, 2024, the Petitioners received preliminary approval from the Town for the sewer main extension design plans. See Petition Attachment L.

3. Prior to being placed in service, the sewer main will be inspected by NHDES as well as the Town. Petition at para. 20. See, RSA 485-A:4; RSA 147; N.H. Admin. R. CHAPTER Env-Wq 700 and in particular PART Env-Wq 704, Design of Sewerage; Town of Londonderry Sewer Use Ordinance (Title IV, Health, Safety & Welfare, Chapter IX); and Town of Londonderry Sewer Use and Permitting Regulations Ordinance (Title IV, Health, Safety & Welfare, Chapter IX).

4. At all times, the Town, and State through the NHDES, will maintain regulatory oversight to ensure that the sewer main extension continues to provide safe and adequate service as is required by RSA 374:1. Petition at para. 21.

H. CUSTOMERS WILL BE BILLED BY TOWN OF LONDONDERRY

1. The Petitioners themselves do not intend to bill customers for the use of the sewer main extension because the cost of the sewer main is being borne by the Petitioners as part of the commercial development of their property. *Id.* As such, there will be zero rate base. Petition at para. 29.

2. According to responses to the Department's data requests, construction of the sewer main extension is about two-thirds complete across the Development. The Petitioners anticipate completing construction to RHINO's property line at 13 Page Road in mid-fall of 2024 but that they do not expect there to be any flow until early 2025 after RHINO completes construction on its building in the first quarter of 2025. See Settlement Attachment 1 (responses

to DOE 1-1 and DOE 1-2). The Petitioners do not anticipate serving any residential customers . See Settlement Attachment 1 (response to DOE 1-3).

I. TERMS OF THIS SETTLEMENT AGREEMENT

1. The Department does not take exception to the Petitioners' request to provide sewer service in the proposed franchise area: 11 Sanborn Road, 280 Rockingham Road/14 Page Road, and 13 Page Road. These lots are represented on the Town's current tax maps as: Map 15, Lot 164; Map 17, Lot 45; and Map 17, Lot 27, respectively, as illustrated on Petition Attachment G.

2. The Department and Petitioners recommend the Commission find that the proposed service to RHINO and proposed other future commercial/industrial customers within the Development area to be utility service under RSA 362:2 and RSA 362:4 that said sewer service is to members of the undifferentiated public.

3. The Department and Petitioners recommend that the Commission find that the Petitioners have the requisite financial, legal, managerial, and technical expertise to own and operate the sewer main extension and to provide sewer utility service within the proposed franchise area.

4. The Department and Petitioners recommend the Commission find that so long as the Petitioners' sewer main supplies "a less number of consumers than 75", that it qualifies for exemption from rate regulation under RSA 362:4, I.

5. Pursuant to the authority granted the Commission in RSA 362:4, I, the Department and Petitioners recommend that the Commission "find such exemption consistent with the public good" and grant the Petitioners' request for exemption from rate regulation for the proposed sewer franchise area.

6. Pursuant to the authority granted the Commission in RSA 374:26, that Commission approval of franchise requests may be granted “without hearing when all interested parties are in agreement”, the Department and Petitioners recommend the Commission find that all parties are in agreement and grant the Petitioners’ franchise request without hearing.

7. Should the Commission wish to issue an order *nisi*, the Department and Petitioners recommend that the Commission order notice by first class mail to the NHDES, Town, RHINO, and any prospective purchasers² under contract to purchase in the Development and that said order *nisi* be set to take effect as soon as is practicable.

J. CONDITIONS

1. The Department and Petitioners expressly condition their support of this agreement upon the Commission’s acceptance of all its provisions, without change or condition. If the Commission does not accept the provisions in their entirety, without change or condition, any party hereto, at its sole option exercised within 15 days of such Commission order, may withdraw from this agreement, in which event it shall be deemed to be null and void and without effect and shall not be relied upon by any party to this proceeding or by the Commission for any purpose.

2. The Commission’s acceptance of this agreement does not constitute continuing approval of, or precedent regarding, any particular principle or issue in this proceeding, but such acceptance does constitute a determination that the adjustments and provisions set forth herein in their totality are just and reasonable and consistent with the public interest.

3. The discussions that produced this agreement have been conducted on the explicit understanding that all offers of settlement relating thereto are and shall be confidential, shall be without prejudice to the position of any party or participant representing any such offer or

² At the time of this settlement agreement, the Petitioners state that there are no present prospective purchasers under contract to purchase in the Development.

participating in any such discussion, and are not to be used in connection with any future proceeding or otherwise.

IN WITNESS WHEREOF, the Petitioners and the Department have caused this agreement to be duly signed by their respective fully authorized representatives.

Charles Evans and Evans Family, LLC

Date: September 20, 2024


By its Attorney, Marcia A. Brown

N.H. Department of Energy

Dated: September 20, 2024


By its Attorney, Matthew C. Young