

DW 02-024

TOWN OF GORHAM WATER AND SEWER COMMISSION

Petition to Provide Water Service to a Business Located  
Partially in the Town of Shelburne

Order NISI Approving Request to Provide Service and Granting  
Exemption from Regulation

O R D E R    N O.    23,952

April 19, 2002

**I. BACKGROUND**

The Petitioner, Town of Gorham Water and Sewer Commission (Gorham or the Town), filed on January 25, 2002, a request for exemption from public utility regulation for a service extension which would provide potable water to the Town and Country Motor Inn (the Inn), a business located partially in the Town of Gorham and partially in the Town of Shelburne. The Town avers that it has been providing fire protection service to the Inn since 1974, and now wishes to provide full water service at the same rate as charged to its existing water customers within Gorham.

On March 7, 2002, Staff of the Commission advised the Town that RSA 374:22, I, requires a utility extending a line in a town in which it is not already engaged in business to obtain Commission approval of the franchise expansion, and that the instant petition appeared to satisfy that requirement. However, the Staff further advised the Town

that, since the Commission's files did not contain any acknowledgment from the Town of Shelburne that water service would be extended to the Inn, a letter to that effect would be required. In addition, the Staff advised the Town that RSA 374:22, III, requires a water utility to satisfy the requirements of the Department of Environmental Services (DES) with respect to the suitability and availability of water, and that a communication from DES indicating such satisfaction would be required. On March 27, 2002, the Commission received a letter from DES indicating that the Town satisfied DES requirements concerning the suitability and availability of water for its proposed use. On April 5, 2002, the Commission received a letter from the Town of Shelburne acknowledging that service would be provided to the Inn and that the Selectmen of the Town of Shelburne support the provision of potable water to the Inn.

## **II. COMMISSION ANALYSIS**

The Town of Gorham's request to provide potable water to a business located partially in an adjacent town requires us to turn to multiple statutory provisions to satisfy our review responsibilities.

Pursuant to RSA 362:4, municipal corporations furnishing water service outside their municipal boundaries

shall not be considered a public utility for purposes of accounting, reporting, or auditing functions with respect to said service. RSA 362:4,III sets forth criteria for maintaining municipal unregulated status:

(a) if serving customers outside its municipal boundaries, charging such customers a rate no higher than that charged to its customers within the municipality, and serving those customers a quantity and quality of water service equal to that served customers within the municipality. Nothing in this section shall exempt a municipal corporation from the franchise application requirements of RSA 374.

In addition, RSA 374:22, I, as noted, requires a utility extending a line in a town in which it is not already engaged in such business, to obtain Commission approval of the franchise expansion. The instant petition satisfies this requirement. Further, the letter received from the Selectmen of the Town of Shelburne makes it clear that the Town of Shelburne does not oppose this extension to serve the Town and Country Motor Inn.

RSA 374:22, III, requires a water company to satisfy the requirements of the Department of Environmental Services concerning the suitability and availability of water for the applicant's proposed water utility. Accordingly, we note the file contains a letter from DES indicating that the Town meets such requirements.



Pursuant to RSA 374:26, the Commission may grant permission to expand a franchise without a hearing if it appears that all interested parties are in agreement. Here, while it appears that all interested parties are in agreement, we will nonetheless afford interested parties an opportunity to exercise the due process rights conferred by RSA 374:26. Accordingly, we are issuing this decision as an Order Nisi. In light of the above facts, we find that the requested exemption is in the public good. We will therefore grant the requested exemption, but note our ability to revisit that exemption should future conditions so warrant.

**Based upon the foregoing, it is hereby**

**ORDERED NISI**, that the request by the Town of Gorham Water and Sewer Commission for exemption from regulation for a single service extension to the Town and Country Motor Inn located on the town line of Gorham and Shelburne, is hereby **APPROVED**; and it is

**FURTHER ORDERED**, that the Petitioner shall comply with RSA 362:4 III (a), which requires it charge the Inn rates no higher than rates charged customers inside the Town of Gorham franchise area and provide the same quantity and quality of water service provided

customers inside the franchise area; and it is

**FURTHER ORDERED,** that the Petitioner shall cause a copy of this Order Nisi to be published once in a statewide newspaper of general circulation or of circulation in those portions of the state where operations are conducted, such publication to be no later than April 29, 2002 and to be documented by affidavit filed with this office on or before May 13, 2002; and it is

**FURTHER ORDERED,** that all persons interested in responding to this petition be notified that they may submit their comments or file a written request for a hearing on this matter before the Commission no later than May 6, 2002; and it is

**FURTHER ORDERED,** that any party interested in responding to such comments or request for hearing shall do so no later than May 13, 2002; and it is

**FURTHER ORDERED,** that this Order Nisi shall be effective May 20, 2002, unless the Commission provides otherwise in a supplemental order issued prior to the effective date.

By order of the Public Utilities Commission of  
New Hampshire this nineteenth day of April, 2002.

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Thomas B. Getz  
Chairman

Susan S. Geiger  
Commissioner

Nancy Brockway  
Commissioner

Attested by:

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Kimberly Nolin Smith  
Assistant Secretary