

**STATE OF NEW HAMPSHIRE
PUBLIC UTILITIES COMMISSION**

DW 24-068

CHARLES EVANS AND EVANS FAMILY, LLC

Petition for Franchise and Exemption from Regulation

Order Approving Settlement Agreement

ORDER NO. 27,065

October 16, 2024

Charles Evans and Evans Family, LLC (collectively, the Petitioners) requests the Commission grant them a public utility franchise, pursuant to RSA 374:22 and 26, and an exemption from regulation, pursuant to RSA 362:4, for delivery of sewer service to one proposed known commercial customer and limited possible future customers. In this order, the Commission approves the parties' settlement agreement which establishes that the Petitioners possess the financial, legal, managerial, and technical expertise to own and operate the proposed sewer utility and to provide sewer utility service within the proposed franchise area. Furthermore, because the proposed sewer utility will supply less than 75 customers, it is exempt from rate regulation under RSA 362:4, I.

The petition and subsequent docket filings, other than information for which confidential treatment is requested of or granted by the Commission, are posted to the Commission's website at <https://www.puc.nh.gov/Regulatory/Docketbk/2024/24-068.html>.

I. PROCEDURAL HISTORY & BACKGROUND

On April 29, 2024, the Petitioners filed a petition to establish a sewer utility franchise to construct a gravity fed sewer main extension to serve their small

commercial and industrial development. *See* Petition at ¶4. Further, the Petitioners requested that their sewer utility be exempt from regulation due to its limited size. *See* Id at ¶14.

The Commission acknowledged receipt of the petition on April 30, 2024. The New Hampshire Department of Energy (DOE) filed its appearance on May 6, 2024. No petitions for intervention were received. On May 24, 2024 the Commission issued an order commencing an adjudicative proceeding. The parties proposed procedural schedule, received on July 11, 2024, was adopted by the Commission on July 24, 2024. The procedural schedule provided a September 20, 2024 deadline for the filing of either a DOE technical statement or a proposed settlement. The proposed settlement was received at the Commission on September 20, 2024.

II. FACTS

The Petitioners are landowners and developers in the Town of Londonderry (the Town). As part of this development, the Petitioners sold a non-residential lot that contained a 75,000 square foot warehouse.¹ *See* Petition at ¶3. Part of the negotiated sale of the lot included the installation of utilities; including but not limited to, sewer utilities. *See* Id.

The Petitioners commissioned a survey for the proposed sewer main extension. *See* Id at ¶4. The survey concluded that to bring service to 13 Page Road, the Petitioners must construct a sewer main extension from the Town's sewer line on Sanborn Road and run the line across Petitioner's property on 280 Rockingham Road to Page Road. *See* Id and Attachment G to Petition.

The Petitioners anticipate developing additional lots adjacent to the proposed sewer main extension such that there may be up to two or three future sewer

¹ The lot is depicted as 13 Page Road

customers. *See Id* at ¶15. In preparation for development and management of the sewer main extensions, the Petitioners have hired legal experts to draft easement deeds. The easement deeds will ensure the ability to access the property to maintain and operate the sewer facilities. *See Id* at ¶17. The Petitioners have also hired civil engineers to design the sewer main extension to comply with the requirements of the Town. *See Id* at ¶18. The expected life of the sewer main is 100 years. *See Id*. The Petitioners understand that future maintenance and repair of the sewer main extension would be their responsibility. *See Id*. The Petitioners are working with the Town and the NH Department of Environmental Services to ensure that the proposed sewer line complies with Town and State regulations. *See Id* at ¶20.

The Town, not the Petitioners, will be treating the wastewater delivered by the sewer main extension. Accordingly, the purchaser of 13 Page Road will be a customer of the Town and will be billed per the charges adopted by the Town and take service according to the terms and conditions in the Town Sewer User Charge Ordinance. If the wastewater is industrial wastewater, the purchaser will be responsible for complying with the Town's discharge permit requirements as set forth in the Sewer Use and Permitting Regulations Ordinance for industrial discharge permits. *See Id* at ¶22.

III. SETTLEMENT AGREEMENT

The Settlement Agreement explains the proposed franchise service area is limited to about 50 acres of the three parcels included in the development. *See* Settlement attachment 1 at 14. The proposed sewer extension will be gravity fed and require no pump station or additional equipment, thus lowering the required maintenance and operational concerns. Being a gravity fed system further limits the number of potential connections to the system, as other lots are not within the

elevation range of the proposed gravity fed sewer main. *See Id* at 17. Both the Town and the New Hampshire Department of Environmental Services have approved the design plans for the sewer main extension. The Petitioners plan to contract out for any needed repairs to the sewer main. *See Petition* at Page 9.

The terms of the settlement agreement proposed by the Petitioners and the DOE are as follows:

1. The proposed sewer utility in the proposed franchise area should be approved.
2. The proposed utility service to be provided to 13 Page Rd. and proposed other future commercial/industrial customers are deemed to be within the utility service under RSA 362:2 and RSA 362:4 and that said sewer service being provided for members of the undifferentiated public.
3. 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. 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. The proposed sewer franchise shall be exempt from regulation and the exemption is consistent with the public good.
6. Pursuant to the authority granted the Commission in RSA 374:26, that Commission approval of franchise requests shall be granted "without hearing when all interested parties are in agreement".

See Settlement Agreement at 8-9.

IV. COMMISSION ANALYSIS

A. Request to Establish Public Utility Franchise

The Commission has jurisdiction to regulate the quality and safety of public utilities including sewer systems. *See RSA 362:2 and RSA 362:4*. The Petitioners are proposing to place into service a sewer main extension that will service properties in

the Town of Londonderry. An entity is deemed a public utility when it owns or operates any portion of any water or sewage disposal system for the public.

In this case, the Petitioners will own and be responsible for the operation and maintenance of the sewage main extension proposed in the petition and because there is not a relationship exemption between utility owner and customer, as outlined in the exemptions under Puc 702.08 that would exempt the system from status as a public utility they are servicing, the proposed utility will fall under the definition of public utility. The Commission shall grant the requests to establish a sewer public utility when it finds the granting of such authority would be for the public good. In making that determination, the Commission focuses on the managerial, technical and financial expertise of the petitioner. *See Lower Bartlett Water Precinct*, Order No. 23,562 (October 2000).

The Commission finds that Petitioners have demonstrated that they possess the managerial, technical, financial, and legal expertise to construct and operate the proposed sewer main extension. The Petitioners have prior experience constructing sewer and drainage facilities in New Hampshire. *See Attachment to Settlement at 23*. The Petitioners have built prior systems located in the Town of Londonderry and elsewhere, they have prepared easements for the sewer main extension, and they have retained a civil engineering firm to design the sewer main to meet the technical requirements of the Town. *See Petition at ¶18*.

B. Request to Exempt the Sewer Utility from Regulation.

The parties have indicated that total resolution of this matter necessitates finding that the sewer utility is exempt from regulation.

Concerning exemption of regulation, RSA 362:4 allows for the exemption from regulation any public utility owning or operating a sewage disposal system if the


system serves less than 75 consumers and the commission finds such an exemption to be consistent with the public good. The system proposed will serve 1 lot, with plans to only include 3 lots in the actual franchise service area. See Petition at ¶ 14.

The Commission finds that exemption from regulation is in the public good. There are no rates attached to the proposed sewer utility. If exemption from regulation was not granted, the Petitioners would be forced to pass on the cost of regulation to its limited customer base. The sewer utility customers will be billed by the Town for utility services. The Petitioners have taken affirmative action steps in the planning of the sewer utility to ensure an ability to provide maintenance in the future. Even if exempt from regulation per RSA 362:4, increases in the size of the Petitioners sewer utility will require approval per RSA 374:26. For the reasons outlined, exemption is approved.

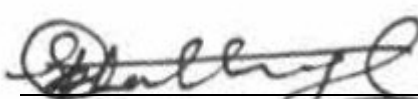
Based upon the foregoing, it is hereby

ORDERED, that the Petition for franchise and exemption from regulation is **GRANTED**.

By order of the Public Utilities Commission of New Hampshire this sixteenth day of October, 2024.



Daniel C. Goldner
Chairman



Pradip K. Chattopadhyay
Commissioner

Service List - Docket Related

Docket#: 24-068

Printed: 10/16/2024

Email Addresses

ClerksOffice@puc.nh.gov
douglas.brogan@gmail.com
mab@nhbrownlaw.com
Energy-Litigation@energy.nh.gov
robyn.j.descoteau@energy.nh.gov
paul.b.dexter@energy.nh.gov
treetopair@gmail.com
jayson.p.laflamme@energy.nh.gov
amanda.o.noonan@energy.nh.gov
ocalitigation@oca.nh.gov
Matthew.C.Young@energy.nh.gov