

**STATE OF NEW HAMPSHIRE  
PUBLIC UTILITIES COMMISSION**

**EASTMAN SEWER COMPANY, INC.  
DW 08-086**

**PETITION FOR FINANCING AND TEMPORARY AND PERMANENT RATES**

**SETTLEMENT AGREEMENT ON FINANCING**

**I. INTRODUCTION**

Eastman Sewer Company, Inc. (ESC) is a regulated utility that provides sewer service to 533 residential customers and two commercial customers in the Town of Grantham. On June 24, 2008, ESC filed a notice of its intent to file rate schedules, and on August 18, 2008 ESC filed revised tariff pages designed to increase its annual revenues by \$56,386, or 46.28%, over its current authorized level of rates. ESC requested that \$33,241 of the \$56,386 be applied to its capital reserve fund to finance system improvements. ESC's petition also requested authorization, pursuant to RSA 369, to borrow \$238,850 from either a bank or from the Eastman Community Association (ECA) in order to finance system improvements. ECA owns all of the capital stock of ESC. The loan would be for a 10 year term at an interest rate of 7%. ESC's petition also requested temporary rates. The proposed temporary rates would increase ESC's revenues by \$20,960 or 18.74%. Because ESC proposed no increase to its capital reserve fund for temporary rates, the overall bill impact of temporary rates to a residential customer is approximately 17.20%.

On September 18, 2008, the Commission issued Order No. 24,896, which suspended the taking effect of ESC's proposed tariff pages, pending investigation and decision thereon; scheduled a prehearing conference for October 29, 2008 to address procedural matters regarding ESC's requests; and ordered the company to publish notice of the hearing. On October 6, 2008, ESC provided notice to all customers by mailing a summary of the Commission's Order No. 24,896 to all its customers.

On October 29, 2008, ESC amended its filing. Citing an increase in the estimated costs of the capital improvements, ESC now proposes to borrow \$344,534 on the same terms as indicated earlier. As a result of this increased borrowing, ESC proposes to increase its rates to recover additional revenues in the amount of \$73,653, or an overall increase of 60.45%. ESC did not change its temporary rate request in light of these amendments.

The prehearing conference was held as scheduled on October 29, 2008. There were no requests for intervention. Staff and ESC met in a technical session after the prehearing conference and developed a proposed procedural schedule which Staff filed on October 30, 2008. The Commission approved the schedule by a Secretarial Letter dated November 5, 2008. That procedural schedule called for a review of ESC's temporary rates first, culminating in a hearing on December 17, 2008. The schedule then called for review of ESC's request for financing, with a hearing set for April 16, 2009. Finally, the schedule calls for a review of ESC's permanent rate request, with a final hearing on rates scheduled for either June 2, 2009, or July 16, 2009, depending on whether Staff files testimony.

On December 11, 2008, Staff and ESC filed a settlement agreement on temporary rates. The temporary rate hearing was held as scheduled on December 17, 2008. On December 30, 2008, the Commission issued its order No. 24,927 approving the settlement on temporary rates, and providing for an increase of 18.74% in rates to Eastman's customers for the pendency of the proceeding.

During January and February, Staff conducted discovery on ESC's request for financing. Staff and ESC conducted a conference call on March 11, 2009 to narrow the issues and to explore the possibility of settlement. On April 10, 2009, Staff and ESC filed this settlement agreement with respect to ESC's request to acquire financing for certain capital improvements to its sewer plant.

## **II. TERMS OF AGREEMENT**

### **A. Financing**

Staff and ESC (the settling parties) agree that ESC has received a commitment letter from Lake Sunapee Bank (the bank) to borrow \$380,000 on a ten year term. This commitment letter is attached as Attachment A. These funds will be used to finance certain capital improvements as detailed in Eastman's initial filing and as further described below, and to repay \$30,000 in short-term loans made by ECA. These loans were needed by ESC in order to fund its operations until it was able to seek rate relief and permanent financing in this proceeding. Under the terms of the commitment letter, ECA will provide a guarantee of the loan, pending approval of the ECA Council at its June 27, 2009 meeting. ESC will pay interest during the first year "construction phase" of the loan at a rate of prime minus one-quarter percent on any outstanding balance of funds drawn. This rate will be adjusted quarterly and as of March 24, 2009, this rate was 3%. For the remaining nine years of the term, ESC will pay interest at a fixed rate of 5.5% and will be required to make monthly payments of principal and interest sufficient to retire the loan in full at the end of the nine year period.

### **B. Capital Improvements**

The settling parties agree that the capital improvements to be completed using the loan funds are as detailed in ESC's initial and revised filings and further detailed in discovery. ESC contracted with CLD Consulting Engineers to complete an analysis of the system and provide recommendations for capital improvements. In March of 2008, CLD issued a report indicating over \$500,000 of needed capital upgrades or replacements over a period of several years. ESC has determined to move ahead at this time with certain of these improvements. These capital improvements include the: 1) West Cove B Pump Station, now completed at a cost of \$7,209; 2) Grinder, Influent Flowmeter and ph

Meter, estimated cost of \$75,486; 3) Headworks Modification, including building, site work, design engineering, estimated cost of \$135,192; 4) West Cove A pump station, pump replacement, generator & transfer switch, estimated cost of \$66,846; and 5) West Cove A overflow structure, estimated cost of \$59,800. As set forth in ESC's initial filing in this proceeding, these capital improvements are necessary due to the age of the sewer system and to meet current permit requirements. The settling parties agree that these capital improvements are necessary for the provision of safe and adequate service and that moving ahead with these upgrades at this time represents prudent utility management.

**C. Rate Treatment of the Improvements**

The settling parties agree that the rate treatment of the capital improvements to be acquired or constructed with this financing will be considered in the final phase of this proceeding. A settlement agreement will be filed by the settling parties on or before May 15, 2009 which will convey the recommendation of the settling parties. It is anticipated that the settling parties will recommend a permanent rate increase based on ESC's test year, such permanent rate increase to be reconciled with temporary rates previously approved. It is also anticipated that the settling parties will recommend a step adjustment to rates which will take into consideration the additional capital improvements completed with the proceeds of the financing. The settling parties anticipate that such a step adjustment would take effect once the capital improvements are completed and are in-service.

**III. GENERAL CONDITIONS**

The making of this agreement shall not be deemed in any respect to constitute an admission by any party that any allegation or contention in these proceedings is true or valid.

This agreement is expressly conditioned upon the Commission's acceptance of all its provisions, without change or condition, and if the Commission does not accept said provisions

in their entirety, without change or condition, the agreement shall at ESC's or Staff's option, exercised within thirty days of such Commission order, be deemed to be null and void and without effect and shall not constitute any part of the record in this proceeding nor be used for any other purpose.

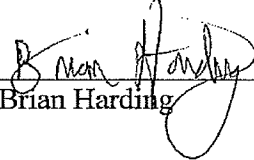
The discussions which have produced this agreement have been conducted on the explicit understanding that all offers of settlement relating thereto are and shall be confidential, shall be without prejudice to the position of any party or participant representing any such offer or participating in any such discussion, and are not to be used in connection with any future proceeding or otherwise.

IN WITNESS WHEREOF, the parties have caused this agreement to be duly executed in their respective names by their fully authorized agents.

EASTMAN SEWER COMPANY, INC.

Dated: April 9, 2009

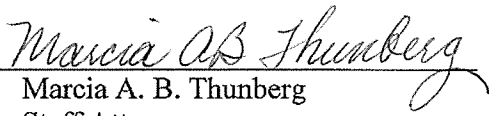
By: \_\_\_\_\_

  
Brian Harding

STAFF OF PUBLIC UTILITIES COMMISSION

Dated: April 10, 2009

By: \_\_\_\_\_

  
Marcia A. B. Thunberg  
Staff Attorney



March 24, 2009

Mr. Brian Harding  
General Manager  
Eastman Sewer Company, Inc.  
P.O. Box 470  
Grantham, New Hampshire 03753

Dear Brian,

I am pleased to confirm that Lake Sunapee Bank has approved the Eastman Sewer Company's request for construction and permanent funding for a upgrades to the existing system.

- 1.) Borrower: Eastman Sewer Company, Inc.  
(hereinafter referred to as "Borrower")
- 2.) Guarantor: Eastman Community Association  
(hereinafter referred to as "Guarantor")
- 3.) Purpose of Loan: Borrower represents and warrants that the Loan will be used solely for commercial purposes, to wit: Provide construction and permanent financing in the amount of \$350,000.00 for for upgrades to essential capital equipment within the Eastman sewer system, and \$30,000.00 to payoff an existing loan to Guarantor.
- 4.) Loan Amount: \$380,000.00
- 5.) Origination Fee: \$500.00, Waived
- 6.) Loan Description: The Lender proposes a single loan facility with one closing that will suffice for both the construction phase and the permanent financing phase of the Association's request. The detail is as follows:
- 7.) Interest Rate: Construction Phase  
Prime minus ¼% (currently 3.00%) adjusted quarterly.  
  
Permanent Phase  
The rate will be fixed at 5.50% for the remaining term of the loan.
- 8.) Term: Construction Phase  
One year or completion of the project, whichever occurs first.

Permanent Phase

Nine (9) years. Maturity of the Loan will be ten (10) years from origination.

- 10.) Repayment Terms: Interest will be due monthly, during the Construction Phase, based on principal advanced and outstanding. At the end of the Construction Phase or the completion of the project, whichever occurs first, the loan will automatically term out for nine years with principal and interest due monthly in an amount that will payoff the subject loan within the term of the loan.
- 11.) Collateral: The Bank will require to hold a first security interest in all fees and assessments of the Eastman Sewer Company, Inc., now due or to become due.
- 12.) Commitment Expiration:  
This Commitment will expire and become void if the countersigned copy of this commitment is not received by Lake Sunapee Bank (the "Lender") before 5:00 p.m. EST on **June 30, 2009**.
- 13.) Late Penalty: Any payment received more than fifteen (15) days after its due date shall be subject to a charge of five (5%) percent of the total monthly payment due.
- 14.) Default Rate: Upon default under the Loan Documents, the interest rate on the Loan will increased up to (18%) percent.
- 15.) Prepayment: During the term of the Loan, the Borrower shall have the right to prepay the principal in whole or in part at any time without penalty.
- 16.) Loan Disbursement:  
Upon request for each disbursement during the Construction Phase, the General Contractor will provide lien releases for each requested disbursement at the time the disbursement is made or at the time of the next and each subsequent disbursement, due to the Mechanics Lien Law requirements in the State of New Hampshire.
- 20.) Financial Statements:  
Within one hundred twenty (120) days following the close of each fiscal year of Borrower, Borrower shall furnish to the Lender an accountant prepared financial statement for the prior fiscal year, and federal income tax returns, all certified by Borrower as the case may be and in form satisfactory to the Lender.  
  
Borrower shall provide Lender, upon Lender's request, with any other financial information or reports concerning Borrower, Guarantor and/or Borrower's business operations that Lender may, from time to time, require during the term of the Loan.
- 21.) Escrow: Escrow is not required for taxes or insurance.

22.) Ownership of Borrower:

If Borrower is a trust, corporation, partnership, or other entity, present corporate stockholders and officers, or general and limited partners, trustees and beneficiaries, as the case may be, may not change, in any manner, from those set forth in the Loan Application from the date hereof until the loan is paid in full without the Lender's consent. At closing, Borrower will submit (a) with respect to corporations, a list of all stockholders and officers and the shares held by each; or (b) with respect to partnerships, a list of all general and limited partners and the interest in the partnership held by each; or (c) with respect to trusts, the names of all trustees and beneficiaries and the percentage of beneficial interests held by each, the same to be certified as correct by the Secretary, a general partner or trustee of Borrower, as the case may be; and (d) any sale of the trust, corporation, partnership or other entity will be construed as an alienation of the Lender's mortgage and note, and all sums due under the note will become due and payable upon demand by the Lender.

23.) Assumability: The Loan is not assumable.

24.) Conditions Precedent:

At least seven (7) days prior to Closing of the Loan, Borrower, at its own expense, shall provide to the Lender, or Lender's Counsel, the following, each of which shall constitute conditions precedent to the Lender's obligation to close the Loan:

Evidence of Authority:

If the Borrower is a corporation, partnership, trust or other entity, appropriate authorizing resolution, together with an opinion of Borrower's Counsel that Borrower is validly existing and in good standing under the laws of the jurisdiction of its incorporation or formation, as the case may be, duly qualified in New Hampshire, with adequate power to enter into the Loan; that the Loan Documents, when executed, shall be valid and binding obligations of Borrower enforceable according to their terms; that there is no pending or threatened litigation that might adversely affect Borrower's ability to repay the Loan; that the Loan and the use of the Property as described above will not violate or be in conflict with or constitute a default under any law, judgment, order obligation, guarantee, indebtedness, note, bond, indenture, or other agreement to which Borrower are a party or by which the Property may be bound; and the amounts received by the Lender as interest under the Note constitute lawful interest which is not usurious.

Borrower is also to provide Lender's counsel a Certificate of Good Standing certified by the State of New Hampshire.

Council Approval:

The Loan is subject to a Guaranty from the Eastman Community Association. Borrower must provide to lender a copy of the minutes from the association meeting, scheduled for June 27, 2009, evidencing the member/board approval for the ECA to Guaranty the subject loan.

Permits and Contracts:

Copies of all permits, licenses, approvals and consents from the appropriate governmental or private authorities or agencies necessary for the full use, occupancy, and enjoyment of the Property.

Contractor Agreement:

A copy of the signed contract between the Borrower and the General Contractor, acceptable to the Lender in both form and substance at its own discretion. The Contractor will be required to sign an Assignment of Construction Contract Agreement prior to the first construction disbursement.

Plans and Specs:

The Borrower shall provide the Lender with a complete set of plans, specifications, and disbursement schedule for the construction project, satisfactory in form and substance to the Lender, at its sole discretion.

Payoff Statement:

The Borrower shall provide to Lender a statement from Eastman Community Association indicating the amount owed and required to payoff the Borrower's Loan, estimated to be \$30,000.00. Said statement shall be in form and substance satisfactory to the Lender, at its sole discretion.

- 25). Revisions of Plans: No material deviations from the approved final plans and specifications may be made without prior written approval of the Lender.
- 26). Imbalance: In the event that the cost of construction is increased for any reason, so that it becomes evident to the Lender that the funds of the Loan available to the Borrower will not fully pay the cost of renovation, then the Borrower, at the request of the Lender, shall advance sufficient sums of money to provide for the full payment of the cost of construction.
- 27). Loan Documents: At or before Closing, Borrower shall execute and deliver the following documents, all in form and content satisfactory to the Lender and Lender's counsel:
- (a) Note
  - (b) Corporate Resolution
  - (c) Guaranty Agreement
  - (d) Construction Loan Agreement
  - (e) Insurance as follows:
    - Comprehensive General Liability Insurance covering the Property in amount of no less than \$1,000,000 Bodily Injury and/or Property Damage Liability per occurrence, including builder's risk insurance during the construction of the Property.
  - (f) Such other documents, instruments, assignments, certificates, affidavits and agreements as the Lender in its discretion shall require.

28.) Accuracy and Completeness of Application:

By acceptance hereof, Borrower and Guarantor hereby represent and warrant that the information set forth in Borrower's/Guarantor's Loan Application is true, accurate and complete as of the date thereof and that there has been no material change in any of the information contained therein.

28.) Termination:

The Lender shall have no obligation to close the Loan if any of the following occur prior to the date of Closing:

(a) any Borrower/Guarantor shall have been adjudicated bankrupt, insolvent, or a trustee or receiver shall have been appointed for all, or any substantial portion of the Property; or

(b) any Borrower/Guarantor shall have filed a petition of bankruptcy or same has been filed against it; or

(c) there shall have been a material misrepresentation or omission or failure to disclose made by the Borrower/Guarantor herein or in the Borrower's/Guarantor's Loan Application or a material adverse change in either the financial condition or ownership of any Borrower/Guarantor.

(d) terms and conditions as outlined herein have not been met by the Borrower/Guarantor in full compliance and satisfaction of the Lender at its sole discretion.

29.) Indemnification and Expenses:

The Loan shall be made without cost to the Lender. All expenses connected with the Loan, including without limitation, your attorney fees, the cost insurance premiums and charges, and Lender's attorney fee estimated at \$500.00 shall be due and payable at or prior to Closing by the Borrower/Guarantor, and Borrower/Guarantor hereby agree to pay such fees and expenses, and to hold harmless and to indemnify the Lender against claims of broker's, arising in connection with the execution of this Commitment by the Lender or the consummation of the Loan, whether or not this Commitment is terminated for any reason.

30.) Assignability:

This Commitment shall not be assignable by the Borrower/Guarantor without prior written approval of the Lender.

31.) Time:

Time is of essence of each and every term, condition and provision of this Commitment.

32.) Modification:

This Commitment may be amended only in writing executed by the Borrower and Guarantor and accepted by the Lender.

33.) Entire Agreement:

This Commitment constitutes the entire obligation of the Lender, and supersedes any and all prior discussions or correspondence relating to the Loan, and no

covenant, promise, agreement or undertaking of any kind or nature, not specifically set forth herein, shall be binding upon the Lender.

- 34.) Intent of Parties: It is the intent of all parties to this Commitment that the terms and conditions expressed herein shall survive the Closing of the Loan and shall constitute agreements of the parties governing the Loan are to remain in full force until the repayment in full of the principal balance of this Loan plus all accumulated interest and other associated costs.
- 35.) Notice Requirements: Borrower and General Contractor agree to comply with all mechanics lien law requirements including the posting of notice for disbursements as well as Lender's name and address, which is providing financing, for the South Cove, Eastman Community project during construction phase. This requirement will continue until the date of project completion and acceptance by the Borrowers and the issuance of a Certificate of Occupancy by the City of Eastman, NH.
- 36.) Acceptance: This Commitment shall remain open for your acceptance until **June 30, 2009** and shall be void if a countersigned original of this commitment evidencing acceptance by the Borrower and Guarantor of all the terms and conditions hereof is not delivered to the Lender by this date.
- 37.) Closing: Closing shall take place at the Office of the Lender, or a mutually determined location. If this Loan is not closed in full compliance with the terms and conditions of this Commitment by July 30, 2009, the Lender may, at its option, terminate its obligations contained herein.
- 38.) Compliance: The undersigned Borrower and Guarantor, in consideration of the Lender disbursing funds for the Closing of the Loan, agree, if requested by the Lender or someone acting on behalf of the Lender, to fully cooperate and adjust for errors in any and all Loan Documents deemed necessary or desirable in the reasonable discretion of the Lender. The undersigned Borrower /Gurantor does hereby so agree and covenant in order to assure that the Loan Documents executed at Closing will conform and be acceptable in the market place in the instance of transfer, sale or conveyance by the Lender of its interest in and to the Loan.
- 39.) Borrower's Counsel Review: In executing this Commitment Letter and agreeing to be bound by its terms, the Borrower and Guarantor hereby acknowledge and affirm that they have had full and fair opportunity to consult with their own legal and accounting experts, if any, concerning the terms and conditions hereof.
- 40.) Jury Trial Waiver: The Borrower and Guarantor do hereby waive trial by jury in any litigation in any court with respect to, in connection with, or arising out of:
- a. The Commitment Letter, Note, Loan Documents, or any other instrument or documents delivered in connection with the Loan; or

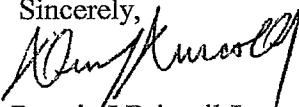
- b. The validity, interpretation, collection or enforcement thereof; or
- c. Any other claim or dispute however arising between the Borrower, and the Lender.

41). Governing Law: This Commitment and the Loan Documents to be delivered pursuant hereto shall be governed by and construed accordingly under the laws of the State of New Hampshire.

Any provision of any of the Loan Documents which is prohibited or unenforceable in any jurisdiction shall, as to such jurisdiction, be reformed and construed so that it will be valid, legal and enforceable to all maximum extent permitted by law and shall not invalidate the remaining provisions therefore or affect the validity or enforceability of such provisions in any other jurisdiction.

If the terms and conditions outlined above are acceptable, please sign and return the original copy of this letter to my attention at One Bond Street, Woodstock, Vermont 05091. Should you have any questions or concerns, call me at 802-234-7310.

Sincerely,



Dennis J Driscoll Jr  
Assistant Vice President  
Commercial Loan Officer

Terms and conditions are hereby accepted and agreed to this \_\_\_\_\_ day of \_\_\_\_\_, 2009.

Borrower:

By and duly authorized to sign on behalf of the **Eastman Sewer Company, Inc.**

\_\_\_\_\_

Guarantor:

By and duly authorized to sign on behalf of the **Eastman Community Association.**

\_\_\_\_\_

BRIAN HARDING  
EASTMAN SEWER COMPANY INC  
PO BOX 470  
GRANDTHAM NH 03753

STEPHEN P ST CYR  
STEPHEN P ST CYR & ASSOC  
17 SKY OAKS DR  
BIDDEFORD ME 04005

Docket #: 08-086      Printed: April 10, 2009

**FILING INSTRUCTIONS:**    **PURSUANT TO N.H. ADMIN RULE PUC 203.02(a),**  
**WITH THE EXCEPTION OF DISCOVERY, FILE 7 COPIES (INCLUDING COVER LETTER) TO:**  
DEBRA A HOWLAND  
EXEC DIRECTOR & SECRETARY  
NHPUC  
21 SOUTH FRUIT STREET, SUITE 10  
CONCORD NH 03301-2429

PURSUANT TO N.H. ADMIN RULE 203.09 (d), FILE DISCOVERY

DIRECTLY WITH THE FOLLOWING STAFF

RATHER THAN WITH THE EXECUTIVE DIRECTOR

LIBRARIAN  
NHPUC  
21 SOUTH FRUIT ST, SUITE 10  
CONCORD NH 03301-2429

BULK MATERIALS:

Upon request, Staff may waive receipt of some of its multiple copies of bulk materials filed as data responses. Staff cannot waive other parties' right to receive bulk materials.

JIM CUNNINGHAM  
NHPUC  
21 SOUTH FRUIT ST, SUITE 10  
CONCORD NH 03301-2429

JAYSON LAFLAMME  
NHPUC  
21 SOUTH FRUIT ST, SUITE 10  
CONCORD NH 03301-2429

JAMES LENIHAN  
NHPUC  
21 SOUTH FRUIT ST, SUITE 10  
CONCORD NH 03301-2429

MARK NAYLOR  
NHPUC  
21 SOUTH FRUIT ST, SUITE 10  
CONCORD NH 03301-2429

MARCIA THUNBERG  
NHPUC  
21 SOUTH FRUIT ST, SUITE 10  
CONCORD NH 03301-2429

AMANDA NOONAN  
CONSUMER AFFAIRS DIRECTOR  
NHPUC  
21 SOUTH FRUIT ST, SUITE 10  
CONCORD NH 03301-2429