

STATE OF NEW HAMPSHIRE
PUBLIC UTILITIES COMMISSION

April 16, 2009 - 10:09 a.m.
Concord, New Hampshire

NHPUC MAY05'09 PM 2:59

RE: DW 08-086
EASTMAN SEWER COMPANY:
Notice of Intent to file a Petition for
Financing and Rate Schedules.
(Hearing regarding financing)

PRESENT: Chairman Thomas B. Getz, Presiding
Commissioner Clifton C. Below
Commissioner Graham J. Morrison

Connie Fillion, Clerk

APPEARANCES: Reptg. Eastman Sewer Company:
Stephen P. St. Cyr
Brian Harding

Reptg. PUC Staff:
Marcia A. B. Thunberg, Esq.

Court Reporter: Steven E. Patnaude, LCR No. 52

ORIGINAL

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 BRIAN HARDING
 MARK A. NAYLOR

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P R O C E E D I N G S

CHAIRMAN GETZ: Okay. Good morning, everyone. We'll open the hearing in docket DW 08-086. On August 18, 2008, Eastman Sewer Company filed revised tariff pages designed to increase annual revenues by \$56,386, or 46 percent. It also sought authorization to borrow \$238,850, in order to finance system improvements. We issued an order on September 18 suspending the tariff pages pending investigation. And, we approved a procedural schedule on November 5, that set hearing dates for temporary rates, for a hearing on the financing, and a hearing on permanent rates. We issued an order on temporary rates on December 30. And, the hearing today concerns the financing issues. And, we have a Settlement Agreement that was filed on April 10.

Can we take appearances please.

MR. ST. CYR: Good morning. My name is Stephen P. St. Cyr, and with me today is Brian Harding, representing Eastman Sewer Company.

CMSR. BELOW: Good morning.

CHAIRMAN GETZ: Good morning.

CMSR. MORRISON: Good morning.

MS. THUNBERG: Good morning, Commissioners. Marcia Thunberg, on behalf of Staff. And,

[WITNESS PANEL: St. Cyr|Harding|Naylor]

1 with me today is Mark Naylor, Doug Brogan, Jim Lenihan,
2 and Jayson LaFlamme. And, with respect to the Settlement
3 Agreement, it is Staff's intent to have a panel of the
4 Company representatives and Mr. Naylor to present the
5 Settlement Agreement.

6 CHAIRMAN GETZ: Okay. Thank you. Is
7 there anything we need to address before we hear from the
8 panel?

9 MR. ST. CYR: No.

10 CHAIRMAN GETZ: Then, hearing nothing,
11 if we could please proceed.

12 (Whereupon **Stephen P. St. Cyr, Brian**
13 **Harding**, and **Mark A. Naylor** were duly
14 sworn and cautioned by the Court
15 Reporter.)

16 MS. THUNBERG: Mr. St. Cyr, when you're
17 ready, I'd like to start with you please.

18 WITNESS ST. CYR: I'm ready.

19 **STEPHEN P. ST. CYR, SWORN**

20 **BRIAN HARDING, SWORN**

21 **MARK A. NAYLOR, SWORN**

22 **DIRECT EXAMINATION**

23 BY MS. THUNBERG:

24 Q. Okay. If you could please state your name and business

[WITNESS PANEL: St. Cyr|Harding|Naylor]

1 address for the record.

2 A. (St. Cyr) My name is Stephen P. St. Cyr. Business
3 address is 17 Sky Oaks Drive, Bidderford, Maine.

4 Q. And, can you please describe what your company does or
5 what services your company provides?

6 A. (St. Cyr) The company provides accounting, tax,
7 management, and regulatory services, primarily to
8 utilities.

9 Q. And, do you consider this work to be within your area
10 of expertise?

11 A. (St. Cyr) Yes.

12 Q. And, can you please describe what services you provided
13 to Eastman Sewer Company?

14 A. (St. Cyr) The company provided, provided and prepared
15 the initial rate filing, the initial financing and rate
16 filing, including the financial schedules, the
17 testimony, the proposed rate change and the rate
18 schedules themselves.

19 Q. And, Mr. St. Cyr, you filed prefiled testimony in this
20 docket, is that correct?

21 A. (St. Cyr) Yes.

22 Q. And, if you were asked those same questions today,
23 would your answers be the same as in those prefiled
24 questions -- or, in the prefiled testimony?

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[WITNESS PANEL: St. Cyr|Harding|Naylor]

1 A. (St. Cyr) Yes.

2 Q. And, would you adopt that testimony as part of your
3 testimony today?

4 A. (St. Cyr) Yes.

5 Q. And, with respect to your testimony today, is it
6 correct that you're only going to be testifying as --
7 or, primarily going to be testifying as to the finance
8 portion of this docket?

9 A. (St. Cyr) That is correct.

10 Q. And, Mr. Harding, if I could just have you state your
11 name and your business address for the record.

12 A. (Harding) My name is Brian Harding. Business address
13 is Eastman Community Association. It's 33 Draper Road,
14 in Grantham, New Hampshire.

15 Q. And, you are employed by the Eastman Community
16 Association?

17 A. (Harding) Yes, I am. I'm the Assistant General Manager
18 for the Eastman Community Association, which owns the
19 Eastman Sewer Company. And, an additional
20 responsibility that I have is I am the General Manager
21 for the Sewer Company.

22 Q. Thank you for anticipating my next question, which was
23 going to be "describe the relationship between Eastman
24 Community Association and Eastman Sewer Company". Can

[WITNESS PANEL: St. Cyr|Harding|Naylor]

1 you please just remind us how many customers Eastman
2 Sewer Company provides service to?

3 A. (Harding) Eastman has 535 customers; 533 of those are
4 residential and 2 commercial.

5 Q. And, Mr. Naylor, if I could just move onto you please,
6 and just have you state your name for the record.

7 A. (Naylor) Yes. Mark Naylor.

8 Q. And, by whom are you employed?

9 A. (Naylor) The New Hampshire Public Utilities Commission.

10 Q. And, can you please describe what your responsibilities
11 are with the Public Utilities Commission?

12 A. (Naylor) Yes. I'm the Director of the Gas and Water
13 Division.

14 Q. And, can you please describe your involvement with this
15 docket?

16 A. (Naylor) Yes. I've reviewed the filing, and assisted
17 in discovery, and helped to prepare the Settlement
18 Agreement that we are presenting today.

19 Q. And, Mr. Naylor, with respect to the Settlement
20 Agreement that you just referenced, I'd like to show
21 you a document and have you identify it for the record
22 please.

23 A. (Naylor) This is the Settlement Agreement that Eastman
24 Sewer and the Commission Staff filed on April 10th.

[WITNESS PANEL: St. Cyr|Harding|Naylor]

1 Q. And, you're familiar with the terms of this document?

2 A. (Naylor) Yes, I am.

3 Q. And, Mr. St. Cyr, I'd like to show you the same
4 document, and ask you if you are familiar with the
5 terms or did you prepare this document?

6 A. (St. Cyr) I was involved in the preparation, and I am
7 familiar with the document.

8 Q. Okay. And, Mr. Harding, I have the same question for
9 you.

10 A. (Harding) I am familiar with the document, and worked
11 with Steve St. Cyr, reviewing the document, to verify
12 the fact that all the terms were as discussed.

13 MS. THUNBERG: Thank you. And,
14 Mr. Chairman, this document has been provided to you.
15 And, by agreement, the Company and Staff wish to have this
16 marked for identification as "Exhibit 6".

17 CHAIRMAN GETZ: So marked.

18 (The document, as described, was
19 herewith marked as **Exhibit 6** for
20 identification.)

21 BY MS. THUNBERG:

22 Q. Mr. St. Cyr, I have a question to you regarding the
23 Settlement Agreement. And, in particular, on Page 3,
24 in the financing terms, do you have an opinion whether

[WITNESS PANEL: St. Cyr|Harding|Naylor]

1 Eastman is in need of financing?

2 A. (St. Cyr) Yes.

3 Q. And, can you please describe why?

4 A. (St. Cyr) The Company needs to borrow the money in
5 order to make the necessary improvements. The
6 Company's rates are not such that they would be able to
7 generate that kind of cash internally. And, the
8 Company's capital reserve is not sufficient in order to
9 replace the significant improvements. Without this
10 financing, they wouldn't be able to make the planned
11 improvements.

12 Q. Okay. Mr. Harding, I'd like to move onto you please.
13 I don't know if you have a copy of the Settlement
14 Agreement in front of you?

15 A. (Harding) I do.

16 Q. And, on Page 3, the Settlement Agreement describes the
17 capital improvements. And, could you please describe
18 what capital improvements are going to be subject to
19 the financing -- or, actually, let me strike that
20 question. Can you please describe what the proceeds of
21 the financing are going to be funding?

22 A. (Harding) They will be funding needed capital
23 improvements, improvements that have been identified in
24 a recent engineering study that we had done as

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[WITNESS PANEL: St. Cyr|Harding|Naylor]

1 critical, critical in the near future to complete, to
2 ensure the continued efficient operation of the sewer
3 system. And, the first project was at one of our pump
4 stations, West Cove B. And, in fact, we did already
5 replace two pumps there, because the existing pumps
6 were failing. That was the first of the cited capital
7 improvements.

8 The second takes place at what we refer
9 to as our "headworks". And, we have a planned
10 replacement of that entire facility, and two of the
11 components of that replacement involve replacing a
12 grinder that is there, also installing an influent flow
13 meter and a pH meter, to both measure the level of flow
14 into the headworks and the pH balance of the influent.
15 And, that is actually per DES requirements that that be
16 done. That is the second of the identified capital
17 improvements.

18 The third section, also related to the
19 headworks, is the replacement of the building that
20 houses or protects those components, as well as
21 replacing electrical components within that building.

22 The fourth identified capital
23 improvement is at what we refer to as our "West Cove A
24 pump station". And, the plan is to replace the pumps

1 there, as we did at West Cove B, and the generator and
2 some electrical components and transfer switch. That's
3 the fourth planned capital improvement.

4 And, the fifth one that's identified,
5 also at West Cove A, is the installation of an overflow
6 structure, should there be a catastrophic system
7 failure, which we have experienced recently more than
8 once, allows the effluent to flow into this overflow
9 structure and buy us enough time to respond and correct
10 the problem.

11 Q. Can you speak to the timing of these proposed
12 construction projects?

13 A. (Harding) The plan actually is to start as soon as
14 possible, assuming that we receive approval from our
15 Council to borrow the money, and that Council meeting
16 is scheduled for June 27th. So, the plan would be to
17 execute the borrowing as soon after as possible, and
18 start the projects no later than mid July. And, that's
19 at the -- all of the work described at the headworks,
20 so that's Projects 1 -- or, actually, 1 is already
21 completed. So, that would be Projects 2 and 3 as
22 described in the Settlement Agreement would be done
23 first, started by mid July and completed hopefully no
24 later than the end of August. And, then, the planned

[WITNESS PANEL: St. Cyr|Harding|Naylor]

1 work at West Cove A would take place hopefully in early
2 September, and be completed before the winter weather
3 sets in sometime in November.

4 Q. And, with respect to Project Number 5 that we have
5 listed on the Settlement Agreement, "West Cove A
6 Overflow Structure", that would also be a September
7 construction project, is that correct?

8 A. (Harding) That's the intent.

9 Q. Okay. So, 4 and 5 you are describing as a single
10 project then?

11 A. (Harding) They would take place simultaneously, that's
12 correct.

13 Q. Now, you mentioned "Council approval", and I'd like to
14 just have you turn farther back into the Settlement
15 Agreement to the Lake Sunapee Bank commitment letter
16 that's attached.

17 A. (Harding) Yes.

18 Q. And, specifically, on Page 8, Paragraph Number 24,
19 there are conditions precedent listed. And, underneath
20 there is "Council Approval". If you could just
21 describe why this is necessary?

22 A. (Harding) Because the Sewer Company is owned by the
23 Association, it is governed by the Association's
24 covenants and restrictions. And, those covenants and

[WITNESS PANEL: St. Cyr|Harding|Naylor]

1 restrictions stipulate that any borrowing, any taking
2 on of debt must be approved by the Eastman Community
3 Association Council, which is an 87-member body, that
4 has to approve any large-scale purposes -- purchases,
5 any changes in the covenants, any significant actions
6 that affect the Community. So, even though the Sewer
7 Company would be borrowing the money, the Eastman
8 Community Association would have to guarantee the loan,
9 because the Sewer Company simply doesn't have the
10 assets or credit history, if you will, to go off on its
11 own or the authority to borrow the funds. So, the
12 Eastman Community Association would have to guarantee
13 the loan. And, in discussing that planned borrowing
14 with our attorney, the attorney stated that
15 guaranteeing the loan is essentially the same as
16 borrowing the money itself. And, therefore, the
17 Eastman Community Association Council would have to
18 approve that borrowing. And, the meeting at which that
19 is planned to take place is June 27, 2009.

20 Q. Mr. Harding, do you have any indication as to how the
21 Council will rule at this June 27th meeting?

22 A. (Harding) We do. We had a Council meeting just a
23 couple of weeks ago, on April 4th. The President of
24 the Sewer Company, John Mueller and myself reviewed or

[WITNESS PANEL: St. Cyr|Harding|Naylor]

1 previewed the planned projects with the Council,
2 discussed it. And, afterward, the Council Chairman
3 asked for what is called a "sense of the Council", an
4 indication, not a formal vote, but an indication of the
5 Council's willingness to support the planned request at
6 the June 27th meeting. And, for the Council members
7 who were present, and I believe it was 75 of the 87
8 counsel members, it was unanimous. There was not a
9 single dissenting vote or any indication that there
10 would be any opposition to the planned request.

11 Q. Thank you, Mr. Harding. Mr. St. Cyr, I'd like to move
12 on with you please. In your prefiled testimony, and
13 specifically that was Exhibit 1, at Page 13, you have a
14 list of these same projects that are listed in the
15 Settlement Agreement. And, they have cost estimates
16 that differ from what is in the Settlement Agreement.
17 And, I don't -- I'm assuming that you are appropriate
18 to respond to why the difference exists. But, if
19 you're not, I assume you'll defer to Mr. Harding.

20 A. (St. Cyr) I can address that. The Company actually put
21 the projects out to bid back in the fall. And, as a
22 result of the feedback that they got from the
23 contractors that were bidding on it, they realized the
24 headworks project specifically came in at about

[WITNESS PANEL: St. Cyr|Harding|Naylor]

1 \$100,000 more than they had originally estimated. So,
2 the revision that the Company filed in October, and I
3 believe it was October 29, 2009 [2008?] filing, updated
4 the financial schedules for the increase primarily in
5 the cost associated with the headworks project.

6 Q. And, with those updated schedules that you filed, is it
7 still your opinion that this financing is going to be
8 -- this financing package is sufficient to cover those
9 construction projects?

10 A. (St. Cyr) At the same time that we increased the cost
11 estimate, we also increased the amount of the
12 financing, and that's now what's before the
13 Commissioners as part of this Settlement.

14 Q. Is there, other than the construction projects, does
15 the financing cover anything else?

16 A. (St. Cyr) In addition to the roughly 350,000 of
17 construction projects, there is an additional 30,000
18 for the repayment of a short-term advance by the
19 Eastman Community Association.

20 Q. Can you describe this short-term advance please?

21 A. (St. Cyr) The short-term advance was required primarily
22 to meet operating expenses. The Company, in its lead
23 up to filing this particular petition, it realized that
24 its rates were not adequate, not only to cover these

[WITNESS PANEL: St. Cyr|Harding|Naylor]

1 projects, but also to cover their operating expenses.
2 And, made the decision to go ahead and file for the
3 financing and the rate increase. But, during this
4 process, in order to meet its operating expenses, it
5 has had to borrow money from the Association.

6 Q. Mr. Naylor, I'd like to turn to you please. And, with
7 respect to the \$30,000 loan that Mr. St. Cyr was just
8 describing, has the Commission approved this loan to
9 the Company?

10 A. (Naylor) No, it has not.

11 Q. And, do you have an opinion as to whether this loan was
12 necessary?

13 A. (Naylor) Yes, it certainly appears that it was
14 necessary. And, we felt that, since the Company was
15 requesting this \$30,000 from the Lake Sunapee Bank as
16 part of the financing package, we felt it was
17 appropriate to include it in this case at this time.

18 Q. Now, Mr. Naylor, had the Company come in and
19 specifically asked for financing approval for that
20 \$30,000 loan, what would Staff's recommendation be as
21 to whether the Commission should approve it or not?

22 A. (Naylor) I think it's clear we would support it. The
23 Company is charging rates to its customers that are the
24 same rates initially set quite a few years ago. So,

[WITNESS PANEL: St. Cyr|Harding|Naylor]

1 it's clear that its current rates are inadequate to
2 support operations.

3 Q. Mr. Naylor, with respect to the proceeds of the
4 financing, does Staff have an opinion as to the
5 necessity of the capital improvements?

6 A. (Naylor) Yes, we do.

7 Q. And, what is that?

8 A. (Naylor) It's clear that these improvements are
9 necessary. Staff has reviewed what the Company has
10 proposed, reviewed the recommendations of the Company's
11 engineering consultant. And, in fact, Mr. Brogan, of
12 my staff, paid a site visit to the Company. And, it's
13 clear that the Company needs to move ahead with these
14 projects.

15 Q. And, Mr. Naylor, if I could just have you turn to the
16 Settlement Agreement, on Page 3 in particular describes
17 the financing terms. And, if you could just please
18 briefly describe them for the record.

19 A. (Naylor) The Company has a commitment from Lake Sunapee
20 Bank to borrow \$380,000 on a ten year term. The loan
21 will, during the construction phase, accrue interest at
22 a lower rate. And, the construction phase is the first
23 year of the loan. And, for the remaining nine years,
24 the Company will be required to make payments of

[WITNESS PANEL: St. Cyr|Harding|Naylor]

1 principal and interest at a fixed rate of five and a
2 half percent.

3 Q. And, Mr. Naylor, do you have an opinion as to whether
4 this proposed financing is consistent with the public
5 good?

6 A. (Naylor) I believe it is, yes.

7 Q. And, does Staff recommend the Commission approve this
8 financing?

9 A. (Naylor) Yes, we do.

10 Q. Mr. Naylor, do you know when the Lake Sunapee Bank
11 commitment expires?

12 A. (Naylor) It expires, according to the commitment
13 letter, June 30th of 2009.

14 Q. And, that's after the Council vote to approve the
15 financing, correct?

16 A. (Naylor) That's correct.

17 Q. And, Mr. Naylor, is there going to be or is there any
18 proposed rate impact for this financing at this time?

19 A. (Naylor) No. This proceeding has been structured
20 primarily to meet the needs of the Company. We have
21 the -- The Commission has already approved temporary
22 rates for the Company in this docket. We're now
23 considering the financing. And, I believe there's a
24 hearing in June for the permanent rates. And that, as

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[WITNESS PANEL: St. Cyr|Harding|Naylor]

1 we indicate on Page 4 of the Settlement Agreement, we
2 anticipate that the recommendation of the settling
3 parties, the Company and the Staff, will be a permanent
4 rate increase, based on the Company's test year. And,
5 that rate increase will be reconciled with temporary
6 rates. And, then, make a provision for a step
7 adjustment later this year, so that the Company can
8 adjust rates to account for the capital improvements
9 that will be constructed, as described earlier by
10 Mr. Harding.

11 Q. Mr. Naylor, do you -- I am finished with my questions
12 to you. Do you have anything additional that you wish
13 to add?

14 A. (Naylor) No, I don't.

15 Q. And, Mr. St. Cyr, I'll give you an opportunity, since
16 you're representing the Company, do you have anything
17 additional you wish to add?

18 A. (St. Cyr) No, I don't.

19 Q. And, Mr. Harding?

20 A. (Harding) I just wish to thank the Commission for
21 consideration of the Sewer Company's request.

22 CHAIRMAN GETZ: Thank you.

23 Commissioners, Staff has no further questions.

24 BY CMSR. MORRISON:

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[WITNESS PANEL: St. Cyr|Harding|Naylor]

1 Q. Mr. Harding, are you in compliance with all DES
2 regulations at this point?

3 A. (Harding) Technically, I do not believe we are. The
4 DES regulation to measure the influent flow and the pH
5 level of the influent is a part of our current
6 Groundwater Discharge Permit. The DES is aware that we
7 plan these projects and to come into full compliance.
8 But, technically, right now we are not in compliance.

9 Q. I notice that your engineering consultants recommended
10 \$500,000 worth of activity, and you're going out for
11 \$380,000. What isn't being addressed at this time?

12 A. (Harding) What isn't being addressed at this time are,
13 basically, we plan on doing essentially the same work
14 at the West Cove B pump station that's planned at West
15 Cove A, replacing the generator there and the
16 electronics. Of course, the pumps there have already
17 been replaced. And, also, there are some needed work
18 at the aeration building, which is located near where
19 the headworks is, installing new pumps there, new
20 electronics, and essentially bringing all the
21 electronics up-to-date and allowing our contract
22 operator to monitor everything from off-site, and
23 actually be able to make -- diagnose problems without
24 actually having to be on site and to be able to respond

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[WITNESS PANEL: St. Cyr|Harding|Naylor]

1 as quickly as possible if there is a problem.

2 Q. So, why aren't you doing those things?

3 A. (Harding) The engineering study indicated a chronology
4 of the need for these projects. So, we're focusing on
5 the most immediate needs. And, the other ones are less
6 critical, although they will be necessary in time, it's
7 not something we have to do immediately. And, we don't
8 want to burden our customers with a huge increase in
9 the rates all at once.

10 Q. Who is your operator?

11 A. (Harding) Our operator is Water System Operators, out
12 of Henniker, New Hampshire, and Joe Damour is the
13 president of that organization.

14 CMSR. MORRISON: Okay. Thank you. No
15 more questions.

16 BY CHAIRMAN GETZ:

17 Q. Can you just refresh my memory, Mr. Harding, on the --
18 is says "535 customers; 533 are residential, two are
19 commercial, 336 are condos", and it says "197 other
20 residential". How many of these people are actually
21 members of the Association?

22 A. (Harding) They're all members of the Association.

23 Q. Okay.

24 A. (Harding) It's all within the confines of the Eastman

[WITNESS PANEL: St. Cyr|Harding|Naylor]

1 Community.

2 Q. Okay. And, the 87 Council members, how were they
3 selected?

4 A. (Harding) They are actually -- Eastman is broken up
5 into what's called "special places", similar to
6 counties in the state. And, each special place elects
7 their own Council representatives.

8 CHAIRMAN GETZ: Okay. That's all I
9 have. Anything further?

10 MS. THUNBERG: No thank you.

11 CHAIRMAN GETZ: Okay. Then, the
12 witnesses are excused. Thank you, gentlemen.

13 WITNESS HARDING: Thank you.

14 CHAIRMAN GETZ: Any objection to
15 striking identification and entering the exhibit into
16 evidence?

17 MS. THUNBERG: Staff has no objection.
18 I don't know if the Company wants to?

19 (No verbal response)

20 CHAIRMAN GETZ: Hearing no objection,
21 they will be admitted into evidence.

22 MR. ST. CYR: We were discussing the
23 "special places", sorry.

24 CHAIRMAN GETZ: We all -- well, never

1 mind. Is there anything we need to address before we have
2 an opportunity for a closing?

3 MS. THUNBERG: No.

4 CHAIRMAN GETZ: Ms. Thunberg.

5 MS. THUNBERG: Briefly, Staff
6 respectfully requests the Commission approve the
7 financing. As you are aware, this is a sequenced
8 proceeding to address all of the issues for the Company.
9 Appreciate your time, and we will stand on the testimony
10 that was provided today, as well as supplemented by the
11 testimony that Mr. St. Cyr had provided earlier in the
12 prefiled testimony. Thank you.

13 CHAIRMAN GETZ: Thank you. Mr. St. Cyr.

14 MR. ST. CYR: The Company supports the
15 Settlement Agreement, and, like Staff, would respectfully
16 request that you approve it. And, we appreciate your time
17 and working with Staff. Thank you.

18 CHAIRMAN GETZ: Okay. Thank you. Then,
19 we'll close the hearing and take the matter under
20 advisement. Thank you.

21 **(Whereupon the hearing ended at 10:37**
22 **a.m.)**

23

24