

STATE OF NEW HAMPSHIRE

PUBLIC UTILITIES COMMISSION

July 8, 2010, 2010 - 7:02 p.m.
A. Crosby Kennett Middle School
176 Main Street
Conway, New Hampshire

NHPUC AUG04'10 AM 9:55

RE: DW 09-267

LAMPLIGHTER MOBILE HOME PARK:

Residents of Lamplighter Mobile Home Park
filed with the Commission a Request
for Determination that the Lamplighter
Mobile Home Park is a public utility
under New Hampshire law, and for the
Commission to take action through its
regulatory and oversight authority to
prevent the Park from charging unjust,
unfair, and unreasonable rates, fees
and costs. (*Prehearing conference*)

PRESENT: Chairman Thomas B. Getz, Presiding
Commissioner Clifton C. Below
Commissioner Amy L. Ignatius

APPEARANCES: Reptg. Petitioner Residents of Lamplighter
Mobile Home Park:
Douglas L. Patch, Esq. (Orr & Reno)

Reptg. Lamplighter Mobile Home Park:
Anna G. Zimmerman, Esq. (Bianco Prof. Assn.)
James J. Bianco, Jr., Esq. (Bianco P.A.)

Reptg. PUC Staff:
Marcia A. B. Thunberg, Esq.
Mark Naylor, Director/Gas & Water Division

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

ORIGINAL

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P R O C E E D I N G

CHAIRMAN GETZ: Good evening, everyone.

We're going to open the prehearing conference in Docket DW 09-267. My name is Tom Getz. I'm the Chairman of the Public Utilities Commission. On my left is Commissioner Amy Ignatius and on my right is Commissioner Clifton Below. I'll explain briefly how the proceeding will proceed tonight. I'm going to give a little of the procedural history for the record. We have a court reporter, Mr. Patnaude, who's going to be preparing a transcript. This is a formal procedural hearing as part of an adjudicated case to be conducted by the Public Utilities Commission in response to a petition. After I get done with the procedural history, we're going to take appearances from the attorneys that are representing parties in the case, and that would be from the Petitioner, from the Park, and then also from Staff.

After we take appearances for the record, there will be an opportunity for each of the parties to state their position in the case. And, that will include the opportunity to speak to issues about process and to make oral argument with respect to the motions, the motion to dismiss and the objection, and to include in that issues related to the underlying argument

{DW 09-267} [Prehearing conference] {07-08-10}

1 of law with respect to whether Lamplighter Mobile Home
2 Park is a public utility subject to our jurisdiction.

3 After we have finished with that part of
4 the proceeding, hearing from the parties, there will be an
5 opportunity for public comments. Anyone who wants to make
6 a public comment should fill out one of the forms that
7 have been provided. Just make sure that Staff gets those
8 forms, and then we'll provide the opportunity for parties
9 to make a public comment.

10 Because of the way the sound system is
11 set up, all of the parties, and when we get to any of the
12 public comments, will have to be made at the podium to my
13 right. Water is available to my left, if anyone is going
14 to need it. And, I don't think there's any other
15 administrative matters, so I'll move onto the procedural
16 history.

17 On December 18, 2009, certain residents
18 of the Lamplighter Mobile Home Park filed with the
19 Commission a request for a determination that the
20 Lamplighter Mobile Home Park is a public utility under New
21 Hampshire law. The residents also ask that the Commission
22 take action to prevent the Park from charging unjust,
23 unfair, and unreasonable rates, fees and costs. On
24 February 25, the Park filed a Motion to Dismiss and

1 asserting that it is not a public utility subject to our
2 jurisdiction. And, on March 5th, the Lamplighter
3 residents filed an objection to the Motion to Dismiss.

4 We filed an order of notice on March 19,
5 which originally set a prehearing conference for May 13.
6 That prehearing conference was rescheduled to this
7 evening.

8 And, so, at this time I will turn to the
9 parties for appearances. Again, if you could speak loudly
10 so Mr. Patnaude can hear you give the appearances.

11 MR. PATCH: Thank you, Mr. Chairman and
12 Commissioners. My name is Doug Patch. I'm with the law
13 firm of Orr & Reno. I'm appearing here tonight on behalf
14 of the Petitioners. And, seated with me at the table
15 tonight are Tom Moughan and Mike Leary.

16 CHAIRMAN GETZ: Good evening.

17 MR. BIANCO: For the record, my name is
18 James Bianco. I'm an attorney in Concord, and we
19 represent Lamplighter Mobile Home Park.

20 MS. ZIMMERMAN: And, I'm Anna Zimmerman.
21 I'm also an attorney in Concord with Attorney Bianco's
22 firm. With us at counsel's table is Denise Rodney, the
23 Park Manager for the Lamplighter Mobile Home Park.

24 CHAIRMAN GETZ: Good evening.

1 MS. THUNBERG: Good evening,
2 Commissioners. My name is Marcia Thunberg. And, I'm a
3 Staff attorney with the Public Utilities Commission. And,
4 attending the prehearing today with me is Mark Naylor, who
5 is the Division Director of the Gas and Water Division.
6 Thank you.

7 CHAIRMAN GETZ: Okay. Good evening.
8 Mr. Patch, if you would like to make your opening
9 statement and arguments.

10 MR. PATCH: Good evening. Thank you
11 again. On behalf of the Petitioners, we want to indicate
12 how much we appreciate the fact that all three
13 Commissioners, members of the Staff, have made the trip to
14 Conway tonight to hear arguments as part of the prehearing
15 conference on the Motion to Dismiss and other related
16 issues. So, we appreciate that very much.

17 Our basic argument to the Commission
18 tonight is that it would be premature to grant the Park
19 owner's Motion to Dismiss. We believe there are a number
20 of facts that need to be discovered and established, and,
21 once they have been established, there are a number of
22 legal issues that will need to be addressed. Granting a
23 motion to dismiss at this point in time, from our
24 perspective, will not allow a full airing of the facts and

1 the legal issues before the decision is made on
2 jurisdiction. As I'm sure you'll hear tonight, the Staff
3 has asked discovery questions. They have asked questions
4 of the Park owner, but the Petitioners have not had an
5 opportunity to do so, and we believe there are a number of
6 other questions that need to be asked and answered. We
7 are also still hopeful that postponing that decision, and
8 establishing a discovery and a briefing schedule before
9 you make your decision, would buy time for a discussion
10 among the parties. Although we have expressed a
11 willingness to sit down and discuss the issues with the
12 owner, they have not taken us up on that to date. And,
13 frankly, we see no prejudice to either party to your
14 postponing the decision on the motion to dismiss. We
15 think that would protect the due process rights of
16 everyone involved. And, obviously, from our perspective,
17 particularly those of the Petitioners.

18 Is this annoying? Am I talking too much
19 into the microphone here?

20 CHAIRMAN GETZ: Well, Mr. Patch, let me
21 ask you this. What type of discovery do you think would
22 be necessary?

23 MR. PATCH: Well, I wanted to walk you
24 through a few of the facts. And, I think, once you hear

1 some of these facts, you will realize that there are still
2 a number of questions to be answered. So, Mr. Chairman,
3 if you will just bear with me for one minute, I think I
4 can get to that.

5 Obviously, the petition arose because of
6 a concern about unjust, unfair, unreasonable rates
7 associated with sewer services. If you haven't been to
8 the Park yet, since you're this close, I would urge you to
9 take the opportunity to drive up to the Park and take a
10 ride through. As you see from the map, it's a pretty
11 sizeable park. And, we wanted to make sure you had a
12 visual on the map. But I don't think there's anything
13 quite as good as taking a ride through the Park and
14 getting a sense for what the Park is like. So, we would
15 urge you to do that, if you have the time to do that.

16 There are people in this Park who are
17 right on the edge, who live on fixed incomes, and who the
18 proposed rate increases will affect in a way that they may
19 have to leave the Park. And, so, that's, obviously, what
20 gave rise to the petition that was filed. It serves about
21 220 homes. The Park owns the land. The residents lease
22 the land, but they own the homes placed on the land and
23 hooked up to various services. The Park purchases water
24 from the Conway Village Fire District. There is a master

1 meter. The Park distributes the water to the tenants
2 through pipes owned by the Park on its property, and each
3 home is separately metered. Each home pays a flat monthly
4 fee and a metered rate for the water it uses during the
5 month. The water charges are a separate line item on each
6 customer's bill.

7 As you well know, the Park is preparing
8 to construct an interconnection with the District's sewer
9 system. They started charging residents for this in
10 January of this year. There are about 80 homeowners on
11 the east side of the Park. If you look at the map that I
12 handed out, it's to the right side of that map. There's a
13 transmission corridor that runs down through there.

14 MS. THUNBERG: Mr. Chairman, may I ask
15 that Attorney Patch identify the map for the record, so
16 that we have a date, a description, and a title. Thank
17 you.

18 MR. PATCH: This is a map, which, in the
19 lower left-hand corner indicates that it's a "Town of
20 Conway Planning Board" map. It refers to "Major/Minor
21 Subdivision Approval". It has a "PB S08-03 File" number
22 on the left-hand side. And, it is a map which we will
23 represent of the Park that is the subject of this
24 proceeding.

1 And, as I was saying, that you can see
2 the transmission corridor that runs sort of the upper
3 left-hand, sort of diagonally down. To the right of that
4 is the east side of the Park, which has approximately 88,
5 maybe 90 homeowners, that will not be served by the sewer
6 project. But they are already paying for it through the
7 increase in rates.

8 As an indication of some of the
9 discrepancies of the underlying factual issues, I think it
10 would help to take you through a brief description of what
11 the owner has had to say about the sewer project. In
12 fact, what the Park owner has said has changed a number of
13 times over the last ten months. As an example, in
14 September of 2009, in a newsletter to the residents, in
15 that newsletter the owner said there was a guarantee there
16 would be another rent increase in 2010 to cover a number
17 of things, including, and I'm quoting now, "the mandated"
18 -- "mandated sewer connection effort (\$1.1 million capital
19 improvement...that's \$30/\$30/\$30 over three years by
20 itself)." This is Attachment D to the Petition that was
21 filed with the Commission.

22 On October 23, 2009, the owner sent a
23 notice of rent increase to the tenants, and that notice
24 said, and I'm quoting, "You are undoubtedly aware that

1 Conway Village Fire District is in the process of
2 installing a sewer system upgrade and wastewater treatment
3 plant expansion. Lamplighter is obligated" -- "obligated
4 to connect the front (western) half of the Park (133
5 existing units plus 1 existing community building) to the
6 Conway Village Fire District municipal sewer." This is
7 Attachment C to the Petition.

8 At a meeting in December, a
9 representative of the owner, Mr. Beers, told the tenants
10 that the \$30 increase starting January 1, 2010 was
11 intended to pay for the sewer project, and that there
12 would be increases of \$30 more in 2011, and 30 more in
13 2012. So, by 2012, residents in the Park would see a \$90
14 per month increase over what they were paying in December
15 of 2009. That's about a thousand dollars, \$1,080 more per
16 year, if I do the math right. And, what he said was, it
17 was all due to the cost of the sewer project.

18 Then, after the Petition was filed with
19 the PUC in December of '09, Mr. Beers sent a letter to the
20 residents, again, after the Petition had been filed, dated
21 February 5th, saying that the rate increase that started
22 in January of 2010 was not exclusively a result of the
23 sewer work completed or planned, and also said that they
24 did not yet know the full amount of what the sewer system

1 will cost and what the impact would be on future rent.

2 The Park owner's attorney, Mr. Bianco,
3 sent a letter to the residents dated March 29th, in which
4 he said "The Park's owners have asked us", Bianco
5 Associates, "to convey that it may not be necessary to
6 increase the rents in the next year." And, then, finally,
7 there is a letter that was sent in June, June 4th, to
8 Mr. Moughan, and this may have gone to all residents, I'm
9 not sure, but this again is from the Bianco Professional
10 Association. "We can categorically say that a \$30 per
11 year rental increase for the next two years for the sewer
12 systems alone is not going to happen."

13 So, I think, if you look to these facts,
14 back to your question, Mr. Chairman, if you look at these
15 facts, to me there are a number of things related to the
16 sewer project that would need to be established in the
17 record. Is it mandated? Is it obligated? Is it not?
18 What are the fees that are being collected? How much of
19 the fees that are being collected being used for sewer?
20 What's being proposed going forward? What's the plan?
21 You know, again, a number of different representations.
22 There are a lot of questions, I think, that the
23 Petitioners would like to have answered. And, I think it
24 would be very important for the Commission to have those

1 kind of facts before it before it makes that
2 determination.

3 CHAIRMAN GETZ: Mr. Patch, are you going
4 to address the *Zimmerman* issue?

5 MR. PATCH: I am.

6 CHAIRMAN GETZ: And, could you, while
7 you're doing that, explain how those additional facts bear
8 on the decision we would make?

9 MR. PATCH: Yes. It is clear that all
10 the residents are being billed now for a sewer project
11 that may or may not be mandated, and it's not currently
12 operating. And, it's unclear whether or when it will be
13 operating. What is clear is that the sewer project, if
14 completed, would only benefit certain residents, not all
15 of them.

16 The motion to dismiss, which Bianco
17 Associates filed with the Commission, cites the *Zimmerman*
18 decision of the New Hampshire Supreme Court. It also
19 cites to the *Interlakes* and the *Holiday Acres* decisions
20 that have been issued in prior years by the Public
21 Utilities Commission. And, these decisions definitely
22 raise legal questions about the Commission's jurisdiction.
23 I think it is clear, however, that each one of those
24 decisions is very fact-specific and can be distinguished

1 from this case. These types of cases tend to be very
2 fact-intensive. And, so, therefore, establishing the
3 facts, from our perspective, is critical. A discovery and
4 briefing schedule would give that a full and fair
5 opportunity.

6 As an example, the *Zimmerman* decision,
7 which involved telephone service, and hinges on the "to
8 the public" language in 362:2. It was a landlord/tenant
9 relationship, but the tenants were businesses. The
10 decision, in fact, specifically refers to the fact that
11 Zimmerman offered shared tenant services and that tenants
12 may lease premises equipment from Zimmerman. The tenants
13 here do not have the option when it comes to water and
14 sewer. In fact, a number of them aren't even really going
15 to be benefiting from that sewer, obtaining that service.
16 *Zimmerman* interpreted RSA 362:2. One of the statutes at
17 issue here is 362:4. And, that statute says "every
18 company by reason of the ownership or operation of any
19 water or sewage disposal system or part thereof shall be
20 deemed to be a public utility." That's what the first
21 sentence of 362:4 says. It doesn't say "the Company has
22 to be serving the public." That's what it says. I think
23 you need to look at those words very carefully.

24 And, if you look at the *Interlakes* and

1 the *Holiday Acres* decisions, they were both ones where the
2 Commission was presented with a settlement. There were no
3 parties contesting what was done by the PUC. In fact, the
4 *Holiday Acres* situation dealt with a fact pattern where
5 the Company had been regulated as a public utility prior
6 to the settlement that was approved by the Commission. In
7 that Settlement Agreement, the parties had requested an
8 exemption from regulation, and the Settlement Agreement
9 was approved by the Commission. Now, to me, when a
10 company needs an exemption, that suggests to me that on
11 its face, absent the exemption, it would be subject to
12 regulation. This is all by way of saying that these cases
13 need to be reviewed and analyzed very carefully, but once
14 all of the facts in this situation are known and on the
15 table. And, unfortunately, that's not the case right now.

16 And, a couple of other facts, I think
17 related to the water situation. I mean, as I said before,
18 there is a base monthly charge, there are individual
19 meters, and there's a meter charge. It's my understanding
20 that the water meters were installed around 2007. I think
21 there are questions about charges associated with the
22 conversion to meters at that time, and whether the owner
23 violated 205-A:6. That's a statute that says, "if the
24 owner shifts responsibility for payment of water or sewer

1 or any other utility service to the tenant, the owner
2 shall be responsible for the cost incurred in the
3 conversion, including the cost of installation of utility
4 meters, except as permitted by the PUC. Well, what
5 happened at that time? Was permission obtained from the
6 PUC? Were those costs passed onto customers? It's
7 oftentimes very difficult to sort that out, because the
8 rate increases that are imposed on residents are
9 oftentimes couched in terms of -- it's for sort of a
10 litany of things, and including sewer and, in this case,
11 including water. So, again, I think there are a number of
12 factual questions that are interrelated with the legal
13 questions.

14 If, in fact, the owner is a public
15 utility, then by charging the residents for costs
16 associated with construction of the sewer project before
17 it is completed and providing service to customers, it
18 would be violating RSA 378:30-a, the anti-CWIP statute.
19 The underlying premise of that statute is that it's unfair
20 to expect customers to pay for the construction of a
21 project until it is used and useful, until it is providing
22 service to customers. Well, that's what's happening here.
23 They have been paying since January, and they have been
24 paying \$30 more a month. And, depending on which of those

1 different statements I read to you before, all of them
2 agree that at least some portion of that \$30, and some of
3 them were that all of it was for sewer. Well, if they
4 aren't seeing the benefits of it, if there is no service
5 actually being provided, then clearly the spirit of the
6 anti-CWIP statute is being violated.

7 As the Commission said in the order of
8 notice that was issued on March 19th in this docket, this
9 filing raises issues related to 362:2 and 362:4 and
10 whether the Park is a regulated public utility and whether
11 the Commission has jurisdiction over utility-related costs
12 included in park rents. And, as the Commission further
13 noted, and I'm quote now, "In order to make the legal
14 determination that the Park is or is not a public utility,
15 a factual record must be created." That is exactly what
16 the Petitioners are saying; give us a chance to ask data
17 requests, to establish facts, to brief the legal issues.
18 Please do not dismiss at this point in time.

19 I don't know, again, we brought the map,
20 we encourage you to see the Park. And, we very much
21 appreciate you coming tonight. I would be happy to answer
22 any questions you may have.

23 CHAIRMAN GETZ: Two things I would like
24 to follow up on. First, in the beginning of your remarks

1 you set forth characterizing a set of facts, which I
2 believe you drew from other documents of the publicly
3 available documents from the Park and that you appended to
4 the Petition. Do I take it that your position is that
5 those facts are insufficient of themselves for us to
6 render a decision one way or the other?

7 MR. PATCH: Yes. Because I think there
8 is a lot of information about the company, about the rates
9 being collected, about "is the project mandated?" About
10 "how much of the money that's being collected now is going
11 to that project?" And, "what's being done on the project
12 now?" There are a lot of questions like that that need to
13 be answered. And, actually, all of the facts that I
14 pointed out to you are from correspondence, some of which
15 is in the record, some of which is not. Some of it's in
16 correspondence that have come in since. But a couple of
17 them were at least appended to the Petition we submitted.

18 CHAIRMAN GETZ: And, the other
19 procedural question is, is there any conceivable obstacle
20 to proceeding on a set of stipulated facts, rather than
21 discovery?

22 MR. PATCH: I don't see any obstacle to
23 that, as long as we were given a full and fair opportunity
24 to do discovery first. We have not had that opportunity

1 yet. We'd like to have that. And, once we have that, I
2 don't see an obstacle to that. And, certainly, I mean,
3 we're willing to sit down with the Park owner and try to
4 arrive at that, and with the Staff. And, you know, and be
5 happy to try to do that. But I just think that we need
6 that opportunity to do data requests before we can
7 honestly do that, because we just don't know the answers
8 to some of the questions.

9 CMSR. IGNATIUS: Mr. Patch, on the legal
10 issue of "what constitutes a public utility", did you say
11 that your reading of RSA 362:4 defines "water companies"
12 and doesn't use the phrase "service to the public" governs
13 and that you don't look to the definition of "public
14 utility" that's in 362:2 that does refer to "service to
15 the public"?

16 MR. PATCH: That's an argument that I
17 think can be made with a straight face. We haven't done a
18 thorough research. We haven't prepared a brief. But, in
19 reviewing that statute the other day, that was one of the
20 arguments that I thought was at least worth presenting to
21 you tonight. We would like the opportunity to flesh that
22 out in a brief. But, yes, that is part of the argument.

23 CMSR. IGNATIUS: And, you also mentioned
24 the *Holiday Acres* case. In that situation, it involved a

1 mobile home park in another part of the state. There was
2 a provision of service outside of the park itself, was
3 there not?

4 MR. PATCH: Yes. I believe in Pembroke,
5 I think, it was providing water.

6 CMSR. IGNATIUS: So, other -- So, in
7 addition to the park residents, there was service to the
8 public who were not part of the park residents?

9 MR. PATCH: Yes, that's right.

10 CMSR. IGNATIUS: Do we have a situation
11 like that here? Are you aware of any service outside of
12 the park boundaries here?

13 MR. PATCH: I'm not. And, other
14 petitioners indicate that's not the case as well.

15 One other request. If we could have the
16 map marked as an exhibit, I think that might be helpful?

17 CHAIRMAN GETZ: Yes. We'll mark for
18 identification as "Exhibit 1" the map that was prepared by
19 the Town of Conway Planning Board, dated September 10,
20 2008.

21 (The map, as described, was herewith
22 marked as **Exhibit 1** for identification.)

23 MR. PATCH: Thank you.

24 CHAIRMAN GETZ: Thank you. Ms.

1 Zimmerman.

2 MS. ZIMMERMAN: Actually, I have a --
3 good afternoon, Chairman and Commissioners. I have a
4 couple of exhibits as well. So, if it's all right, I'll
5 hand those out now, so I won't be walking away from the
6 microphone throughout the discussion and give those to
7 you.

8 CHAIRMAN GETZ: Please.

9 (Atty. Zimmerman distributing
10 documents.)

11 MS. ZIMMERMAN: What I've provided you
12 with is a series of documents which I'll identify for the
13 record and ask if we can mark as exhibits in this matter.
14 The first is an October 23rd, 2009 letter to the tenants.
15 This was a notice that our client, the Lamplighter Mobile
16 Home Park, sent out notifying them, advising them of the
17 rental increase that was to occur on January 1st.

18 The second is a series of letters,
19 communications back and forth, between our office and the
20 residents. Attorney Patch referenced several of these
21 letters in his presentation. And, I thought it might be
22 helpful for the Commission to have the full amount. I've
23 redacted the addresses on them. They were simply sent to
24 every resident within the Park whose address we had, and

1 everyone we were aware of got those. There was reference
2 to Mr. Moughan having received one, that's correct, but
3 they did go to everyone as well.

4 And, then, finally, hopefully maybe to
5 clear up the issue on the sewer project, is a purchase and
6 sale agreement between Lamplighter Mobile Home Park and
7 the Town regarding the property, which has given rise to
8 the current plans to set up the sewer.

9 If I can, I'd like to address primarily
10 a couple of the issues that Attorney Patch has raised, but
11 let me give you a brief background first of what the
12 status is and how the Park's water and sewer work.

13 CHAIRMAN GETZ: Okay. Before we do
14 that, let's take care of the procedural matters.

15 MS. ZIMMERMAN: Okay.

16 CHAIRMAN GETZ: Are you intending to ask
17 for the Water Survey Results to be marked as an exhibit?

18 MS. ZIMMERMAN: Yes. I'm sorry. That
19 was the last one, the water survey results, and I'll
20 explain what those are later.

21 CHAIRMAN GETZ: Okay. Then, we'll mark
22 for identification as Exhibits 2, 3, 4, and 5, the
23 documents as described by counsel.

24 (The documents, as described, were

1 herewith marked as **Exhibit 2** through
2 **Exhibit 5**, respectively, for
3 identification.)

4 MS. ZIMMERMAN: What happens within the
5 Park is right now the sewage services are all done through
6 septic systems throughout the Park. There are issues, some of
7 those, a lot of those septic systems are 30 years old, a
8 lot of them are being pumped on a regular basis. And,
9 certainly, my client is looking at what is going to happen
10 down the road with regard to hooking up to the septic
11 systems that's now being offered by the Town. At this time, that
12 actual -- no actual construction has started. And, as far
13 as what is actually going to happen, and if that
14 construction is going to happen, we're still looking at
15 that.

16 Lamplighter has always felt that it was
17 important for them to act in partnership with the tenants
18 here, to provide the tenants with what is ultimately going
19 to be best for them in the long run, and we're looking at
20 those options. As the Commission will notice with the
21 Purchase and Sale Agreement, move away from the
22 microphone, it includes numerous provisions, such as a
23 waiver of hook-up fees, which will ultimately have a
24 significant value to the Park. It also allows for

1 immediate gallons of flow per day that is available at
2 this time, which is not generally available within the
3 Town, at least that's our understanding. And, certainly,
4 there's been discussion on both sides about "can we get
5 out of this contract? Are there options that might be
6 available to not hook up?" That's possible as well. We
7 have not fully explored that.

8 But the Park's first concern, before it
9 looked at those issues, is deciding "is that even what's
10 really best for the residents?" "What are the options?"
11 "What are the long-term costs?" "What are the -- if you
12 put in, if we replace this with septic systems, are we
13 looking at raised systems that aren't going to be
14 attractive?" "Is there options for those?" So, there's a
15 lot of questions about the sewer system. And, right now,
16 there is no sewer system. Right now, there are septic
17 serving all these homes. And, I bring that up, because I
18 think there really are two issues. Attorney Patch has
19 referenced the statute that pertains to just water
20 companies, but the sewer really doesn't fall within that.
21 The sewer is a straight question of "is this a public
22 utility under 362:2?"

23 The water is a little bit different, but
24 incredibly similar to *Holiday Acres*. I'm very familiar

1 with the Holiday Acres Park. As the Commissioner noted,
2 the exception referenced in *Holiday Acres* was that there's
3 -- I think it's 13 homes, but there's a series of homes on
4 Chester Turnpike that were outside of the park. And, the
5 Commission granted an exception for those homes, saying
6 "Look, under the circumstances, we're not going to
7 regulate those. We're going to grant that exception."
8 But the Commission also found, on Page 7 of its decision,
9 "given the current circumstances under which Holiday Acres
10 will provide services to its tenants and the standards of
11 the *Appeal of Zimmerman* that we discussed earlier, we find
12 that Holiday Acres' provision of water and wastewater
13 service to tenants is not within the purview of the
14 Commission's jurisdiction." That was though mentioned,
15 that was "not within the purview of the Commission." And,
16 what happened in Holiday Acres, as I understand it, is
17 they were originally running off of wells. And, they came
18 before the Commission, asked to be a regulated utility,
19 and then later, when the Commission found it was not
20 within their purview, they had switched to a system that's
21 almost exactly like what Lamplighter uses currently,
22 although it included both water and sewer. They were
23 basically passing on the charges directly from the water
24 and sewer to the town.

1 What Lamplighter does with regard to
2 water, and we've produced these documents to Staff, and I
3 we're going to introduce them into the record later, so I
4 won't do that at this time, but there is a base charge
5 each quarter from the Conway Village Fire District, that
6 is divided up among all the hook-ups in the Park. And, by
7 "all the hook-ups", I mean the office bears its share,
8 hook-ups of the utility buildings bear their share, every
9 hook-up. So, every hook-up, even if it's a park that
10 doesn't have a resident, even if we're not collecting rent
11 on it, that's all divided up. Obviously, if there is no
12 rent, Lamplighter assumes that charge.

13 CHAIRMAN GETZ: Ms. Zimmerman, let me
14 ask you a question about the language that you quoted from
15 *Holiday Acres*. Would you agree that it's within the
16 Commission's purview to determine, based on the facts,
17 whether an entity is or is not a regulated utility?

18 MS. ZIMMERMAN: Well, I think you get
19 the initial say on whether or not it's -- the initial
20 determination on whether or not it's a regulated utility;
21 certainly, it's subject to appeal. But, yes. Initially,
22 that is the first step which you all need to determine.

23 On the water system, what then happens
24 with the base charges, we've got the base charge that's

1 shared equally, everyone here has a water meter on their
2 individual home. And, based on what the Conway Village
3 Fire Department is billing us for water, everybody gets
4 billed for that same amount based on their actual usage.
5 There's no mark-up. There's no -- you know, we don't
6 included Denise's time, we don't include the maintenance
7 man's time for reading the meters, we don't include the
8 billing expenses. None of that, there's no administrative
9 charges. It's just a straight pass-through of their
10 actual usages.

11 I think maybe what a lot of people don't
12 realize here, in bringing the petition, if we are
13 regulated, as the Commission knows, we're actually allowed
14 to make a profit on those things. But that's never been
15 our goal. Our goal has been, with regard to water, is to
16 be fair, and to try to do the most economically
17 responsible thing we can with regard to those charges. If
18 people are summer residents, and you'll notice there was a
19 reference to "a lot of people being on fixed incomes", and
20 I'm sure there are people who are on fixed incomes. Nine
21 of the 17 initial petitioners in this case gave addresses
22 that were out-of-state. This is a second home for them.
23 So, there's a very wide variety of people within the Park.
24 And, we try to be sensitive and fair to everyone. The

1 people who aren't here all the time don't want to be
2 paying full water bills when they're not even using their
3 water. We consider the conservation effect. If we bill
4 people just for their individual water use, we don't have
5 problems with people wanting to water their lawns all day,
6 waste water unnecessarily. And, certainly, if they choose
7 to do that, then they're the ones responsible for those
8 charges.

9 But there is, again, there is no
10 mark-up. The only time the water bill changes is when we
11 get notice from Conway Village Fire District that the
12 rates are going to go up. And, at that point, the 60 days
13 notice requirements that we're required to give under
14 205-A is given. And, those rates then kick in at the new
15 rate. The result is that during that period of time the
16 Park absorbs any difference. The other result is that, to
17 the extent there's any leakage, service costs, anything
18 like that, between the main meter that runs to the Park,
19 the main meters, there's two of them, to the residents,
20 that's all borne by the Park. That's not billed, that's
21 not shared, that's not distributed out. That's just part
22 of the Park's regular bill. We think the system is fair.

23 We did understand that there's two PUC
24 rules that regulate this matter and interpret 205 -- I'm

1 sorry, interpret the RSAs. The first is 602.13, and that
2 one is referring to water service, and seems to imply that
3 362.2 and 362.4 really do need to be read in conjunction.
4 I understand Attorney Patch's position on that. But that
5 rule specifically says that interpreting both of those
6 statutes together, a water service, a utility has to be
7 providing it to the public. And, specifically exempts
8 "any landlord supplying water to the tenants for services
9 is included in the rental fee."

10 So, with regard to the sewer, there is
11 no separate line item. I mean, there -- it simply doesn't
12 fall within that definition any way, and that's the same
13 with the 362:2, which is the only one that actually
14 applies to the sewer. But, more than that, it has to be
15 -- it has be made to the public, which it's not, it's made
16 only to the tenants, just as *Zimmerman* discussed, and it
17 has to be included in the rental fee.

18 Our position was then, and if the
19 Commission thinks that the fact that this is billed
20 separately, although that was how it was done in *Holiday*
21 *Acres*, if that was the concern that the Commission had,
22 and that was going to be the deciding factor on whether or
23 not we're regulated or not, we'll simply roll it back into
24 the rent. My client is okay with doing that. They don't

1 want to do that, because that's not what the people here
2 want, or at least the people who responded. We did send
3 out a survey, and you have that in front of you. We got a
4 total of 54 residents who responded, and I've included
5 every one of the responses we got. Of those, 50 said that
6 they wanted the water to continue to be billed separately,
7 and they did not want a change in that system. There were
8 a variety of comments from those who did it. There was
9 one woman who said she liked having the water billed
10 separately, and then crossed out that she "didn't want the
11 bill structure to change." I'm a little unclear what
12 exactly she would like specifically, but she also didn't
13 like it differently. And, there was a total of three
14 residents out of the 54 that answered, and we limited it
15 to one per household, who said they wanted to go back to
16 the old system.

17 What happened in 2007, when we put in
18 these meters, is that we rolled the rent back by \$10 to
19 help compensate for the change. And, I think the average
20 water bill is in the vicinity of \$12 last year. I don't
21 have an average for this year yet, but it was right around
22 that last year. In 2007, estimating about \$10, we rolled
23 that back from the rent, so that there wasn't just an
24 extra increase for that.

1 So, and that brings us to those rules.
2 Because the rule on the water exempts landlords, and I
3 understand Attorney Patch has questions about
4 representations that were being made, things like that. I
5 don't think any of those questions that I heard had to
6 deal with the water issue. So, looking at just the water
7 issue, the only question in my mind, the only argument
8 that can be made for jurisdiction is if this is somehow
9 not included in the rent because it is billed as a
10 separate line item. It's a direct pass-through, there's
11 not a profit. We've done it because we think it's the
12 best for the tenants, what the residents have indicated to
13 us they want. It gives them their control of their water
14 bills, and it's something we would like to continue to do.
15 But, if the upshot of this proceeding is that we have to
16 roll it in, then that's what we'll do.

17 The second issue is the sewer system.
18 As of right now, there is no sewer system. But, if we
19 look at those same regulations, under 602.13, as I said
20 deals with water, but 702.09 of the Commission rules deals
21 with the rules for sewer utilities. And, this doesn't
22 look to 362:4, this looks only to 362:2. And, it's very
23 clear, it has to be -- the sewage disposal has to be for
24 the public. And, again, the landlord supplying the sewer

1 is exempt, as long as it's included in the rental fee.
2 Right now, there is no separate charge for sewer. That's
3 never happened.

4 Now, I am sure -- I am sure that you
5 probably never had a staff person who said something you
6 wish they had not said afterwards. But there were
7 definitely some things in this case that were said that
8 probably should not have been said. There were premature
9 comments made by one of the employees at the Park, and the
10 comments of this "30/30/30" that we've heard about are
11 just -- they're simply not accurate. We met with the
12 tenants. We had a discussion with the tenants. The first
13 letter went out to them, and this is all in your packet,
14 on February 24th, 2010. We said "Look, we understand you
15 have some comments. We'll try to get to the bottom of
16 this. We'll try to figure out what has to be done, what's
17 going to get done, so we can get you some answers.

18 We sent them a follow-up letter on March
19 5th, 2010. On March 13th, Attorney Bianco and Robert Best
20 from our office came up and met at the Conway Grand Hotel
21 with any tenants who wished to attend. I think about 33
22 tenants chose to attend that meeting. So, we wanted to
23 make sure that we got the contents of the meeting that was
24 going on out to everyone. So, we sent a follow-up letter

1 on March 29th. I think this is the first letter that
2 Attorney Patch quoted you part of, but not all of. At the
3 top of the second page, he's correct, that we noted "the
4 Park's owners have asked us to convey that it may not be
5 necessary to increase the rents in the Park next year."
6 Again, we're trying to give the residents an idea of what
7 the long-term -- what they can look at as their looking
8 ahead on their rents, what they can contemplate. The rent
9 currently is \$385 a month. And, for their budget
10 purposes, we wanted to make that available to them. We
11 also said clearly that "Previous statements by Lamplighter
12 personnel regarding a \$30 increase...and the year after
13 were simply premature as all the facts were not available
14 at that time."

15 We then understand that there was some
16 ongoing communications within the Park among some of the
17 tenants who have brought this action that we had never
18 said that "the 30/30/30 wasn't going to happen", that that
19 was ongoing. So, we felt a need to respond to that
20 further. And, that was the June 14th letter -- or, the
21 June 4th letter, I'm sorry. We say in that letter, and I
22 don't know how much clearer we can be, but that we
23 categorically say that "a \$30 per year rental increase for
24 the next three years for the sewer systems alone is not

1 going to happen." On top of that, though, we say "our
2 client has also confirmed that there will be no annual
3 rental increase in January of 2011." They have committed
4 to that. They're not going to increase the rent next
5 year. "And that any rental increase in 2012 should not
6 exceed \$15 per month." The only exception to those
7 forgoing statements, and this was set out in the letter,
8 too, was that, obviously, if we roll the rent -- the water
9 charges back into the base fixed rent, there would have to
10 be a corresponding adjustment there. But, as far as the
11 overall rent, that's what they have committed to do. And,
12 I'm not sure what else they can do. I mean, we have tried
13 to hear the concerns, we have tried to reach out to
14 everyone, we welcome feedback. We have come up here and
15 had meetings with people. We've made these, you know,
16 concessions and clarifications with regard to what's going
17 to happen with rent. We've tried to assure people that
18 the "30/30/30" that was represented previously is not
19 going to happen. Like I said, just I'm at a little bit of
20 a loss of what else can be done. We've talked about the
21 possibility for settlement. And, in the end, I don't know
22 that there is -- there is more that can be done. I mean,
23 we've made a significant amount of representations and
24 promises, and we're going to stand by those. But there's

1 not a lot of additional that can be done.

2 And, as is noted in the letter of
3 October 23rd, there were multiple reasons for the rent
4 increase this year. Rent is within the purview generally
5 -- I'm sorry, not "rent", the Rule 205-A address the
6 governing of manufactured housing parks. And, if there's
7 a problem with the rules and action being taken, it's the
8 Manufactured Housing Board that has jurisdiction over
9 those. This very issue has been brought up with the
10 Manufactured Housing Board before. I don't know if you
11 have this. If you need it, I have extra copies of this
12 here. But there was case, *Mark Leach versus Langley Brook*
13 *Realty*, Docket Number 001-02, which is a hearing on
14 April 22nd, 2002, in Concord. It's referenced in the
15 October 23rd letter, where the Manufactured Housing Board
16 heard this very issue, and said this "is a capital
17 improvement". This is "not a violation of 205-A". And,
18 this is allowed to happen. In that case, it was a water
19 system that was getting put in and a sewage system. So,
20 if the Commission would like copies of those?

21 (Atty. Zimmerman distributing
22 documents.)

23 MS. ZIMMERMAN: But, clearly, as this --
24 as the Commission has found in the past, when looking at I

1 think it was the *Interlakes* case I believe it was first
2 noted, there have been multiple opportunities for the
3 Legislature to change, change the law, the 362:2 or any
4 other provision of that chapter, if they wanted to, to
5 bring manufactured housing parks within your purview.
6 That's never happened. The consistent position of the
7 Commission since 1996 is that there's no jurisdiction over
8 this matter. And, there's nothing in this case that would
9 change that, certainly with regard to the sewer. Again,
10 even if the sewer is connected in the future, we're not
11 building a wastewater plant. We're not treating sewer.
12 We're not doing anything like that. We're just trying to
13 do what would be best for the Park and best for the
14 tenants in the long run.

15 If you look at the *Zimmerman* case, which
16 was referenced earlier, I don't think it is that
17 different. I've already talked about how *Holiday Acres*,
18 in my view, is almost identical. They pass on the sewer
19 charges, they pass on the water charges, they come
20 directly from the town. There's no profit, no
21 administrative charges incorporated. But *Zimmerman* is
22 very similar also. *Zimmerman* did deal with telephone
23 services. There is some indications that, although it's a
24 little unclear from the record in the case, exactly how

1 discretionary it was or not for the customers to sign up
2 for the telephone services. But the basis for the holding
3 was that you are not providing utilities "to the public",
4 if you're providing them to tenants. If you're providing
5 to people who chose to come to you, chose to enter into a
6 relationship with you as a tenant of a situation. And,
7 that's what's happening here.

8 CHAIRMAN GETZ: Does that case speak to
9 the issue of whether the Zimmerman tenants had other
10 telephone options?

11 MS. ZIMMERMAN: I don't recall it saying
12 that whether they did or not. Let me check that. But
13 that certainly was not the basis of the holding. The
14 basis of the holding was this focus on whether or not it
15 was being offered to the public. And, that's consistent
16 with this Commission's rules, which specifically, again,
17 exempt landlords when it's included in it, in rent, and
18 consistent with the statute that references that need to
19 be held out to the public. There was a question, I think
20 that was correctly answered, that there is no one outside
21 the Park who gets these services. That the hook-ups are
22 all residents of the Park. The office -- you know, the
23 Park infrastructure, I guess, so to speak, we are not
24 providing it outside the boundaries of the Park.

1 And, again, that's similar with
2 *Interlakes*, too. *Interlakes* was before the *Zimmerman*,
3 but, since *Interlakes* was made reference in the *Holiday*
4 *Acres* decision, looking back in *Interlakes* again, you've
5 taken the position in the past that there is no
6 jurisdiction. A change at this time would have, there are
7 some park owners out here potentially, would have, I mean,
8 you'd be taking jurisdiction over multiple mobile home
9 manufactured housing parks throughout the state. There is
10 many, many of them. Many of them are owned by citizens,
11 community associations who bought the parks. I think the
12 jurisdiction would apply to even those, because many of
13 those have members who are not members of the association,
14 even if that exception applies, but who actually rents
15 from the association.

16 So, you're talking about, in the motion,
17 what the Petitioners are asking you to do is to deviate
18 from many years' precedents and to basically open up
19 jurisdiction beyond what it is intended by the statute,
20 beyond what's intended by your rules, and beyond what any
21 prior decisions have done, with a very, very widespread
22 effect throughout the state for multiple citizens.

23 CMSR. BELOW: Ms. Zimmerman, why do you
24 say that RSA 362:4 concerning water companies as public

1 utilities is not relevant to the question with regard to
2 the sewage disposal potentially?

3 MS. ZIMMERMAN: Well, when I look at
4 362:4, and when I -- especially when I compare that to Puc
5 Rule 702.09, 702.09 looks only at 362:2, when talking
6 about public utilities in the context of sewer, and 362:4,
7 the RSA itself, talks about the "ownership or operation of
8 a water or sewage system or part thereof", but we are not
9 actually operating any of the disposal system. We're
10 simply moving that out to the Conway Village Fire
11 District, having them do that disposal for us. And,
12 again, the Commission rules and 362:2 clearly indicate
13 that the "to the public" aspect of that and the exemption
14 for landlords still applies.

15 CMSR. BELOW: So, it's your contention
16 that a pipe connecting multiple private residences to a
17 sewage treatment plant is not part of the sewage disposal
18 system?

19 MS. ZIMMERMAN: I think there's an
20 argument that there's not. I think, more importantly,
21 362:4 and 362:2 need to be read in conjunction with each
22 other. And that, again, the rules addressing those,
23 specifically 702.09, certainly suggest that that's the
24 proper application of those two statutes together, where

1 it specifically mentions the "to the public" and the
2 exemption for landlords.

3 CMSR. BELOW: Is there any significance
4 do you think to the sentence that refers to "If the whole
5 of such water or sewage disposal system shall supply a
6 less number of consumers than 75, each family, tenement,
7 store, or other establishment being considered a single
8 consumer, the Commission may exempt any such water or
9 sewer company from any and all provisions of this title",
10 and it goes on. But the question is, the statute
11 references "less than 75 tenements" as potentially exempt.
12 I'm wondering if you have any view on why there's a
13 reference to "tenement" in the statute?

14 MS. ZIMMERMAN: My view on that would be
15 that that would allow for people who had a smaller
16 community, 75 people or less, to potentially actually
17 charge for the sewer services they were providing, whether
18 that was -- and however that was being done and still seek
19 the exemption. Again, in our case, we're not charging for
20 that. There's not a separate -- it's not billed outside
21 of the rent. It has not been billed outside of the rent
22 in the past.

23 CMSR. BELOW: Okay. Thank you.

24 CMSR. IGNATIUS: Ms. Zimmerman, can I

1 ask you to maybe help us on a couple of factual issues or
2 confirm a couple of things or disagree with me. At
3 present, is there a mandate that the Park connect to the
4 sewer facilities of the Village District?

5 MS. ZIMMERMAN: I think that becomes a
6 contractual issue. If there's a mandate, it's as a result
7 of the contract that you have before you, that we entered
8 into, "we", the Park, entered into with the Conway Village
9 Fire District, exchanging and selling a small part of the
10 land so they could put a pump station; in exchange for
11 that getting the right to have them hold a certain amount
12 of flowage, if we did hook up, flowage which is not
13 otherwise available potentially, and waiving the hook-up
14 fees for up to the entire Park. Again, is there a way to
15 get out of that contract? Because that's been raised.
16 Should we all do that? Should we pursue that? I don't
17 know the answer to that today. And, that would ultimately
18 be something that the superior court, I suspect, would
19 have to decide.

20 But, again, we're not sure that that's
21 what we want to do, because we really think it's important
22 to look at the overall system and say to all the tenants
23 here, "in the long run, are we better, you know,
24 continuing to use septics or pursuing the hook-up?" The

1 hook-up would or has the potential to include the entire
2 Park. Right now, it's the front half of the Park, which
3 is the -- I guess we use "mandated" per that term. I
4 think the original "mandate" notion, the use of that word,
5 came from the fact that, again, the gentleman who had
6 referenced the "30/30/30" increases was under the
7 impression that everyone within a certain distance had to
8 hook up, and that that would have included our whole park.
9 It looks like that probably would have included just a
10 very little bit, if any of it, and that was certainly a
11 misunderstanding I believe on his part when he was making
12 those statements.

13 But, pursuant to that agreement, I mean,
14 that agreement I guess speaks for itself. And, what
15 happens in the long run with it, whether or not there
16 would be breaches on either side or it can be changed is
17 just unknown at this time.

18 CMSR. IGNATIUS: Well, when the Park
19 sent out the letter October 23rd, 2009 that you gave us a
20 copy of, Exhibit 2, it refers to this as a "mandated
21 capital improvement".

22 MS. ZIMMERMAN: Yes.

23 CMSR. IGNATIUS: Is that not the Park's
24 position of that?

1 MS. ZIMMERMAN: The Park's position is
2 that there is a purchase and sale agreement that says we
3 need to hook up. Whether or not that can be breached or
4 changed, "mandate" is probably a stronger word than should
5 have been used, it should have been "contractually
6 obligated" at that time. Whether or not, if there's a way
7 out of that, whether or not the Town is able to or is, you
8 know, reaching all its requirements, which might let us
9 change that, and whether or not we can reach any
10 agreements on that, that's a different issue. But, again,
11 we got a lot of benefit from that contract as well. I
12 mean, a waiver of all the hook-ups has a significant
13 value, when you're talking about, you know, 270 plus
14 homes. And, what we -- the one thing we don't want to do
15 is go full steam ahead, "we're not doing this", "we're
16 going to get out of this contract", when we don't know
17 that that's the best thing for the residents.

18 CMSR. IGNATIUS: Is there any
19 construction related to the sewer service currently taking
20 place?

21 MS. ZIMMERMAN: No. I mean, we have,
22 you know, regular maintenance, pumping of, you know,
23 septic systems. The routine is that septic systems get
24 replaced, that always happens, but not with regard to the

1 sewage itself, no.

2 CMSR. IGNATIUS: Is there any charge
3 currently being included in the rent related to the
4 possible interconnection to the sewer service?

5 MS. ZIMMERMAN: There is no itemized
6 charge related to that. There is no -- we have never sat
7 down and said "We're going to do this portion. This is
8 what's related to that, this is what's not related to
9 that." There is nothing in the rent that's being budgeted
10 to that. There were multiple increases, taxes, things
11 like that that went up that are set forth. The other
12 things that were spent in the Park that year, and that's
13 part of what's allowing us and believe we can, to say
14 "look, if we look at what we're bringing in, what we can
15 project we can bring in rent over the next two years, when
16 we look at what our costs are going to be, that's going to
17 allow us to not have another increase next year."

18 So, the long run of that, I guess the
19 answer is "no". But it's never been broken out or set
20 aside or anything allocated to that.

21 CMSR. IGNATIUS: The current rent is
22 \$385 a month?

23 MS. ZIMMERMAN: Yes.

24 CMSR. IGNATIUS: And, the letter that

1 was sent out October 23rd says that "the rent increase due
2 to the sewer would bring it to a total of \$385 per month."
3 How do you square those two statements that seem
4 inconsistent?

5 [Applause]

6 MS. ZIMMERMAN: Well, what the --

7 CHAIRMAN GETZ: Let me ask you please to
8 not applaud. This is a formal judicial proceeding.
9 You'll have your opportunity to comment later whether you
10 are for or against any party in this proceeding.

11 MS. ZIMMERMAN: What the letter actually
12 says, we're required by 205-A to give a general
13 description of the reasons for the rental increase. And,
14 again, if there is a belief there's any violation of the
15 rule under 205-A and how we do that, as far as rules
16 violations, that can be brought to the Manufactured
17 Housing Board. But what it says is it references "Please
18 note that we are aware" -- I'm sorry, I'm looking one
19 down. "You are undoubtedly aware that Conway Village Fire
20 District is in the process of installing a sewer system
21 upgrade and wastewater treatment plant. Lamplighter is
22 obligated to connect the front (western) half of the Park"
23 per the agreement "(133 existing units plus one existing
24 community building) to the...sewer."

1 But then it goes on, two paragraphs
2 down, to say "Further note that during this calendar year
3 to date there have been considerable efforts completed
4 addressing tree removals, storm water drainage, electrical
5 and septic system improvements, in addition to increases
6 in taxes, insurances, and legal fees. As a result,
7 Lamplighter Mobile Home Park" -- Lamplighter Park monthly
8 rent per lot will increase \$300.00 [\$30.00?] per month to
9 \$385."

10 So, there was never, in that letter,
11 which was the normal notice of the increase, there was
12 never the representation that this \$30 was related only to
13 the sewer. And, in fact, there is no breakdown or
14 indication that there's anything specific to that, but
15 that that's certainly an upcoming expense that they were
16 aware of and looking forward to.

17 CMSR. IGNATIUS: And, you're correct in
18 that it does not say effectively that it's related to the
19 sewer, that it says that all of these other things are
20 happening, doesn't really identify the numbers, in terms
21 of cost. There has been reference to someone talking
22 about it being a "\$30 month increase because of the
23 sewer". And, where does that come from?

24 MS. ZIMMERMAN: You know, I can't

1 speculate on what he was thinking or where he thought
2 that. He's a park manager from Maine, who was here
3 helping out during some transition times we had as Denise
4 was starting out and learning the ropes and moving into
5 her Park Manager position. I think he was looking at what
6 he projected the cost of the connection to be. And, just
7 so we're clear, there have been no bids on this, there are
8 no formal plans on this. I, mean he said something he
9 shouldn't have said. So, it certainly would have made
10 everything a lot easier if he hadn't; we might not be here
11 today. But he, I think, looked at those costs and thought
12 to himself "Gosh, this is going to cost a bunch", and
13 didn't think through what it's really going to cost, how
14 we're going to pay for that and to finance, what the
15 process was, what's going to happen, and no one has
16 answered those questions yet.

17 But, honestly, if there's no
18 jurisdiction, you know, we're kind of putting the cart
19 ahead of the horse there, when we start looking at, you
20 know, do we need to present how we're going to do that and
21 get an answer to that, and I couldn't answer those
22 questions if you asked me. Not because I don't want to,
23 but because we just haven't gotten to that point of
24 looking at what would it cost. He shouldn't have said it.

1 And, we tried very hard, we met with the residents to tell
2 them that, to tell them it was a premature statement, to,
3 you know, try to clarify from the attorney's office what
4 was happening, and, you know, we're the ones who talked
5 directly with the Park's owner. He owns multiple parks
6 here in this state. He's involved with Holiday Acres,
7 which you may be aware, multiple local managers, multiple
8 employees around the state. He's very involved with
9 what's going on here. He's the Regional Manager, who I
10 think is coming up later this month. You know, we've had
11 -- tried to communicate with the residents, tried to be
12 concerned and really are trying to look out for what's
13 best for them. It's not just a matter of "Great, let's
14 run ahead and do something." But, really, what's the best
15 long-term interest for the Park.

16 CMSR. IGNATIUS: Finally, let me ask you
17 the same question I asked Mr. Patch. Are you aware of any
18 provision of service to anyone that you would connect to
19 outside of the Park property itself?

20 MS. ZIMMERMAN: No. There is no one
21 else. As I said, it's purely the residents of the Park
22 and, you know, the Park's own infrastructure, it's
23 community clubhouse, its maintenance building, that sort
24 of thing.

1 CMSR. IGNATIUS: And, if the
2 interconnection were made, do you anticipate that any
3 adjoining properties next to the Park, across the street
4 from the Park, would be interconnected --

5 MS. ZIMMERMAN: You mean for sewer?

6 CMSR. IGNATIUS: -- through your
7 facilities?

8 MS. ZIMMERMAN: No. I mean, that's
9 certainly not our intent. I'm not -- you know, I'm not
10 aware of anything that would cause that to happen. It's
11 not a situation like Holiday Acres, where we've got some
12 deeded -- deed restrictions on the property around it
13 that's been sold out, something like that. You know, if
14 there's an anomaly out there that I'm not aware of, I'm
15 not aware of it. But, as far as the water at least,
16 that's never happened. And, when we looked at who would
17 be hooked up, it was purely the Park.

18 CMSR. IGNATIUS: I know that you had
19 said that there were some materials that you had provided
20 to the Staff, and maybe you'll be getting to that, but if
21 there is identification from the District itself on what
22 the actual charges are that are imposed on the Park that
23 in turn are passed through?

24 (Atty. Zimmerman distributing

1 documents.)

2 CMSR. IGNATIUS: Thank you.

3 MS. ZIMMERMAN: What we included in
4 this, and I'll run through it briefly with you, is a
5 couple of different specific documents. The Community
6 Rate Schedule that shows what the water service charge is
7 effective April 1st, 2010. That's Staff 1-1. If you skip
8 ahead to Staff 1-7, this is where it talks about the
9 Conway Village Fire District charges to the Park. And,
10 there are two invoices attached from the first quarter of
11 2010. I totaled them, I totaled them in the response, and
12 the total charges being "\$4,114.00 per quarter", and then
13 a "\$3.50 per 1000 gallon" charge, and those bills are
14 provided.

15 If you skip ahead to Staff 1-10, we
16 provide the breakdown of exactly how that \$4,114.00 charge
17 is broken down and distributed among the different meters,
18 and then how the residents are billed. Basically, we took
19 the charge, divided it by three, so it was a monthly
20 charge, instead of a quarterly charge. Again, we figured
21 the residents would prefer to have a small amount spread
22 out over three months, instead of a big water bill every
23 three months that the Park has to handle. And, then, we
24 go around each month and we read the water meters. There

1 is also included, behind 1-10, a sample of the water bill,
2 just so that the Commission can see how that is done, done
3 and distributed.

4 The one thing I will point out, because
5 it's a little strange, and I'll tell you I don't entirely
6 understand it myself, but the two water bills, you'll
7 notice that the base charge for the 8-inch meter is much
8 larger, obviously, than the base charge for the 2-inch
9 meters. In fact, you all probably do understand this, you
10 can probably explain it to me better than I can, but the
11 water usage on the 8-inch meter is lower. That's because,
12 as I understand it, the 8-inch meter kicks in at peak load
13 times only when the 2-inch is not sufficient. So, that's
14 -- you have to look at those two bills together and get
15 the total water bill. It seems a little counterintuitive
16 that the higher charge is the one that has the lower water
17 bill, but that's the way it's billed to us by the Water
18 District, and those are combined to be passed on.

19 CHAIRMAN GETZ: Well, let me take care
20 of one administrative matter. We'll mark for
21 identification as "Exhibit Number 6" the May 12, 2010
22 letter from Ms. Zimmerman to Staff containing the answers
23 to Staff data requests.

24 (The document, as described, was

1 herewith marked as **Exhibit 6** for
2 identification.)

3 CMSR. BELOW: Let me ask, Ms. Zimmerman,
4 do you know when the Conway Village Fire District's Phase
5 I Water and Wastewater Improvements Project is expected to
6 become operational?

7 MS. ZIMMERMAN: I do not. I have
8 looked, I have tried to find that online. The closest I
9 found was a projection from like a year and a half ago
10 that someone was talking about it potentially being done
11 by the end of the 2010 or Fall 2010. I have no idea if
12 it's on schedule, if that's happening. We've received no
13 notice from them in that regard.

14 CMSR. BELOW: Okay. Thank you.

15 CHAIRMAN GETZ: Ms. Zimmerman, let me
16 follow up on Commissioner Ignatius's question about
17 Exhibit 2, the October 23, 2009 letter, and I what to
18 understand how -- well, first of all, let me say, I don't
19 know at this point whether this is, in fact, relevant to
20 our determination or not, but I want to understand what
21 your position is with respect to how this letter should be
22 read. So, it says under "Specifying the date of
23 implementation", and then it sets out an "Explanation for
24 the increase", talks about the sewer project, talks about

1 how that sewer project wouldn't be prohibited under the --
2 under 205-A. And, then, it lists, it says "Further note
3 that during this calendar year" all these other things
4 happened, and then it says "monthly rent [is going to]
5 increase [by] \$30 per month." What I didn't under -- is
6 it your position that the \$30 does not include anything
7 for this potential sewer project?

8 MS. ZIMMERMAN: Our position is that
9 there has never been a specific amount allocated out, set
10 aside for that. And, certainly, looking at what was going
11 to happen in the future was contemplated by my client, is
12 they looked at "What are we looking at maybe we need to
13 do?" "What are the issues that are going to be coming
14 up?" And, they wanted to bring that to everyone's
15 attention. But there were multiple other costs as well
16 that justified the increase. As I said before, looking
17 ahead now through the next, you know, projecting out 24
18 months, they have looked at, "Okay, if this is what we're
19 bringing in, this is what our expenses are, this is what
20 we believe taxes, things like that, are going to go up."
21 They have been able to make, based on, the determination
22 that they will not need to do a rental increase next year.
23 So, it's become sort of a overall "looking at what happens
24 in two years, and what are we going to be able to do or

1 not be able to do?"

2 Certainly, as I said, obviously, they
3 discussed the fact that this was something they were
4 looking at as a capital improvement that they thought was
5 coming down the road. But, as far as, again, there have
6 been no estimates, proposals, bids, estimated start date,
7 anything like that. It was more a perspective, this is
8 something that is going to be coming up.

9 CHAIRMAN GETZ: Okay. Let's move on.

10 MS. ZIMMERMAN: Unless there's any more
11 questions, I think that pretty much covers our
12 presentation. In brief summary, these are services
13 provided to the Park, to our tenants, they're included in
14 the rent. Again, the only issue that I see even being
15 arguable is that, for jurisdiction, would be whether or
16 not somehow this charge for the water, because it's billed
17 separately, is therefore not included in the rent, even
18 though it is part of the rental charges everyone's advised
19 of.

20 Again, if the Commission takes the
21 position that that's the defining factor for the purposes
22 of the water, my client is perfectly willing to roll it
23 back into the rent. They don't have an objection to doing
24 so. The reason they have not done so is because they

1 don't -- the feedback they have gotten from the tenants,
2 that's not what the tenants want. And, we think it makes
3 good sense to encourage everyone to conserve water, and
4 have everyone, you know, pay for only what they're
5 actually using. We're not making any money on any of it.
6 We're not charging any administrative fees.

7 As the Commission is well aware, the
8 average charges for utilities are probably higher than are
9 regulated and are probably significantly higher than what
10 these tenants are currently getting charged, because we're
11 not making any profits on those funds. We think the facts
12 can be decided on the facts before the Commission. It's a
13 pretty straightforward matter of law, in particular with
14 your prior case law. We ask that this matter not be
15 continued for further discovery, and that the petition be
16 dismissed.

17 CHAIRMAN GETZ: Well, let me turn to
18 that, on process. I think you partly answered my
19 question, similar to what I posed to Mr. Patch. So, it's
20 your position that, based on what we've heard and seen,
21 that we have sufficient information to make a decision?

22 MS. ZIMMERMAN: I believe so, yes. And,
23 I didn't hear anything specific that was asked that we
24 might be able to provide that would change that.

1 CHAIRMAN GETZ: And, I guess my concern,
2 from a technical legal perspective is respect to the state
3 of the record. We have some statements of counsel. We
4 have some documents. We have now apparently some Staff
5 discovery. I don't feel I could make a decision tonight
6 whether we have sufficient facts to make a decision
7 tonight. Perhaps, if we go back, take this under
8 advisement and try to determine one way or another if
9 there are sufficient facts. And, if there are sufficient
10 facts, which answer is correct, whether Lamplighter is a
11 utility or not a utility.

12 But I'm concerned about efficiency of
13 the process. I don't -- I really don't want to go back
14 and go through this, conclude that we have insufficient
15 facts, and then start up the process again. I'm not
16 persuaded that this case needs extensive discovery, but it
17 does seem to me that it's feasible for the parties to come
18 up with a set of stipulated facts that then would be the
19 record on which we make a decision. Do you see that as
20 possible? Not possible?

21 MS. ZIMMERMAN: I think, potentially,
22 that could be possible. You would have to ask Attorney
23 Patch's opinion in that regard, because he might disagree
24 with me. But, when I read the Petitioners' objection to

1 our motion to dismiss, a lot of the focus, like on the
2 water meters, was "Well, Lamplighter says they're just
3 passing on the charges. We don't know that."

4 "Lamplighter says that this is a pass on, which is legal,
5 and they agree is legal, but we don't know that and we
6 don't know that we believe them."

7 What we have provided you tonight on the
8 fundamental issue of jurisdiction is the bills for the
9 water, how is the rate broken down, and that's in a sworn
10 statement from Ms. Rodney, the Park Manager, or sworn
11 discovery responses to Staff; copies of those bills,
12 copies of the rent, so that you can see for yourself
13 exactly how that's done and that there's not profit built
14 in there. There's not an administrative costs built in
15 there, there's no charges built in there.

16 On the sewer, I don't know what else
17 necessarily we could provide. I mean, I think the
18 stipulated facts, and I don't mean to be presumptuous
19 here, but it would be something along the lines of
20 "something was said and it was premature and shouldn't
21 have been said." It's been redacted, you know, we
22 retracted it, and you have the letters where we've sent
23 out what we intend the future to look like. And, again,
24 we're not -- we're the landlord, they're the residents.

1 My client is charging that within the rent for the water
2 and all that. It clearly, under the Commission rules, in
3 my view, exempts us from your purview.

4 But, certainly, and especially if there
5 are specific facts that the Commission will be looking at,
6 we could try to flesh those out with Attorney Patch. But
7 I don't know that there is a need for additional, I
8 certainly understand the need to go back and go through
9 the documents.

10 CHAIRMAN GETZ: I took Mr. Patch to be
11 saying that, I asked him a question about whether it's
12 conceivable that a set of stipulated facts could be drawn
13 up for us to base our decision on, and I think he agreed
14 that that was a possibility, although he wanted to do some
15 form of discovery. And, it seems to me that a technical
16 session, with this purpose of trying to put together a set
17 of stipulated facts, is something that's possible.

18 But let's put that aside for now,
19 because I think we're also asking, consistent with the
20 normal procedure, the Petitioner will get a chance to
21 speak last, after the Staff has spoken.

22 MS. ZIMMERMAN: Thank you.

23 CHAIRMAN GETZ: Oh. I'm sorry,
24 Ms. Zimmerman, one last thing. I guess, on Exhibit 6, I

1 don't know if you can help us with this. But on --

2 MS. ZIMMERMAN: Is that the letters?

3 CHAIRMAN GETZ: Well, no, on the
4 Community Fee Rate Schedule, there's something that looked
5 like that had been highlighted, but it's blacked out for
6 us.

7 MS. ZIMMERMAN: Oh. Oh, is it blacked
8 out?

9 CHAIRMAN GETZ: I think it was the way
10 the highlighting copied.

11 MS. ZIMMERMAN: I have a --

12 CHAIRMAN GETZ: If you could just get a
13 clean copy?

14 MS. ZIMMERMAN: Yes, I have copies with
15 me as well that I brought. Those are faxed copies. Let
16 me check mine, if they're clear. I had highlighted them
17 in what was provided to the Commission, so they would be
18 -- well, let me see if we're all looking at the same
19 thing. We're looking at the "Community Fee Rate Schedule
20 effective April 1st, 2010"? That one?

21 CHAIRMAN GETZ: And, just for the sake
22 of the record, I've noted that. Make sure that we get a
23 clean copy.

24 MS. ZIMMERMAN: Okay. Yes. I believe I

1 do have a clear copy to the one Staff had, and I will hand
2 that out in just a second, if you give me moment.

3 CHAIRMAN GETZ: No, that's fine. You
4 can do that afterwards. Ms. Thunberg.

5 MS. THUNBERG: Thank you, Mr. Chairman.
6 I just -- Staff is not going to take a position on the
7 motion to dismiss, and nor take a position on the request
8 for additional discovery. All the legal arguments have
9 already been made, and I don't want to be redundant.

10 But a couple of administrative things,
11 when we were taking -- when the Commission was receiving
12 exhibits, there was another exhibit, and I propose that it
13 be marked for identification as "Exhibit 7", it was a
14 decision from an agency.

15 CHAIRMAN GETZ: Well, you're talking
16 about the Board of Manufactured Housing decision, is that
17 what you're referring to or something like that?

18 MS. THUNBERG: It must be, I just didn't
19 write the agency of the decision, but it was another
20 document that was distributed to you.

21 CHAIRMAN GETZ: Okay. Well, I guess we
22 can either take administrative notice or mark it as an
23 exhibit. But, since we have it, we'll mark for
24 identification as "Exhibit Number 7" the decision of the

1 Board of Manufactured Housing in Docket 001-02, concerning
2 *Leach v. Langley Brook Realty*. It's a 2002 case.

3 (The document, as described, was
4 herewith marked as **Exhibit 7** for
5 identification.)

6 MS. THUNBERG: The only other matter
7 that Staff wanted to discuss is where the Commission ought
8 to go from here procedurally. And, Staff is certainly
9 willing to take a lead and work with the parties and
10 developing a stipulation of facts, which were referred to
11 and seems to be something that the parties would be
12 amenable. And, if we could set a deadline of 30 days from
13 the date of this hearing to produce that stipulation of
14 facts.

15 I don't know what other, that is, if the
16 Commissioners or if the Commission wished Staff to take
17 that role. Customarily, after a prehearing conference,
18 parties will meet in a tech session to present a
19 procedural schedule, and that kind of function is what
20 Staff is willing to perform here, starting out with a
21 stipulation of facts. And, if there can -- if there are,
22 if there is a dispute on the facts, perhaps a briefing,
23 and I notice that Attorney Patch had mentioned briefs, and
24 could be page-limited, following shortly after the

1 stipulation is filed. So, those are the only suggestions
2 that Staff has. Thank you.

3 CHAIRMAN GETZ: Thank you. Mr. Patch,
4 an opportunity to respond.

5 MR. PATCH: Thank you, Mr. Chairman.
6 I'll be very brief, because I think it will be more
7 important for you to hear from the residents.

8 But, first of all, one of the exhibits
9 that was offered, I don't know if you're going to strike
10 the identification and enter into evidence, but one is the
11 survey, and we haven't really had a chance to look at.
12 And, I just think, before that was entered into evidence,
13 we would like the chance to review that, and maybe ask
14 some questions about it, if we get to a point of a
15 technical session. The others I don't think we have an
16 issue with.

17 Your suggestion about a technical
18 session I think makes good sense. But I would urge you
19 that we be given the chance prior to that to submit
20 questions in writing to the Park owner, because I think
21 that would facilitate the technical session, if we had
22 questions submitted in writing, we saw the answers, and
23 then we went to the technical session, I think that would
24 work the best. And, then, it really is about the law

1 after that. So, I think the suggestion for a briefing
2 schedule would be good.

3 Beyond that, you know, despite some of
4 the things that counsel has indicated for the Park owner,
5 she seems to suggest that it was just somebody in December
6 making representations. But I urge you to look back at
7 the newsletter in September. Some of the things that were
8 said orally in December were put in writing in September,
9 and nothing really changed until the Petition was filed.
10 So, you, the Commission, are really important to this
11 process. Without the Petition having been filed, without
12 your intervention, I'm not sure this would have changed.
13 So, I would just urge you to stay involved long enough for
14 us to get the facts straight and to thoroughly brief the
15 law. Because I think that's made all the difference of
16 what's happened here. Things definitely changed after the
17 Petition got filed.

18 So, with that, I would urge you to see
19 what the residents have to say. Thank you.

20 CHAIRMAN GETZ: Ms. Zimmerman, I'll give
21 you an opportunity to, I guess, just address the issue
22 raised by Ms. Thunberg, and whether the Company would be
23 inclined to have a technical session and try to come up
24 with a set of stipulated facts, again, with a relatively

1 short turnaround?

2 MS. ZIMMERMAN: Well, we're certainly
3 willing to sit down with Staff and see if we can work out
4 some stipulated facts in the matter. I don't think
5 there's really that much to dispute. There may be a
6 dispute about understanding things that were said. But,
7 as far as the actual facts leading up to jurisdiction,
8 whether or not there is jurisdiction, how the system is
9 billed, I don't think that's something that requires
10 discovery, this has been ongoing for sometime. And,
11 certainly, my client would like to get this resolved as
12 soon as possible.

13 So, we are amenable to sitting down and
14 trying to work out some stipulated facts within the next
15 30 days. We would object to having some protracted
16 discovery prior to that, since the fundamental question of
17 whether or not there is jurisdiction I think has to be
18 addressed before we start getting into it in discovery and
19 producing documents.

20 May I make one comment with response to
21 the issue in rebuttal, the issue about the notes in
22 December? Okay. Those are attached as Exhibit D to the
23 Petition. And, again, along the lines of what we talked
24 about before, I would like the Commission to note that it

1 says "Combining the no rent-vacant lots, homes not [for
2 sale], tons of cost for tree work, landscaping, electrical
3 and the existing septic repairs", it does not say just
4 "this is for the system". Certainly, again, "30/30/30"
5 should not have been said, it's premature, and we're not
6 disputing that today.

7 CHAIRMAN GETZ: Let's go back to what
8 you said about discovery. I guess, as I understand your
9 position, you're prepared to sit down with the Company and
10 Staff to do some discovery, but through a technical
11 session.

12 MS. ZIMMERMAN: Right.

13 CHAIRMAN GETZ: Some preliminary
14 questions, which I think would probably be helpful to you
15 to have in advance, and also makes the technical session
16 more efficient, and then try to come up with a set of
17 stipulated facts to form the record.

18 MS. ZIMMERMAN: Right.

19 CHAIRMAN GETZ: But you said -- did you
20 say something about --

21 MS. ZIMMERMAN: The only thing is, we
22 would prefer to be able to start working immediately on
23 the stipulated facts, bringing the documents we can might
24 be help. I don't know what else we have. We don't want

1 to start a whole formal discovery proceeding at this
2 point. I mean, as far as -- especially as far as details
3 of what's going to happen with the sewer system, things
4 like that, because we don't know the answer to that. I
5 mean, if there is going to be written discovery questions
6 at this time, they're asking documents that we need to be
7 bringing for the stipulated facts, I think they need to be
8 limited to the issues that are related to jurisdiction,
9 since that's the fundamental burden we need to get over.

10 CHAIRMAN GETZ: Okay. Thank you.

11 MS. ZIMMERMAN: Thank you.

12 (Chairman and Commissioners conferring.)

13 CHAIRMAN GETZ: All right. Well, let me
14 just address the issue of the identifications, whether the
15 seven documents we've marked for identification should
16 become exhibits in this proceeding. I mean, typically, we
17 don't address that issue in a prehearing conference. It
18 doesn't sound like there's much debate about most of the
19 information. But, rather than make a ruling tonight, I
20 think that the parties would be better served by
21 determining which among those exhibits they want to be
22 part of the set of stipulated facts, and then that will be
23 the record that we will base that. So, we won't strike
24 the identifications and address the admissibility this

1 evening.

2 Is there anything else before we provide
3 the opportunity for public comment?

4 MR. PATCH: No.

5 CHAIRMAN GETZ: Okay. Hearing nothing
6 from the parties, Steve, how are you doing?

7 MR. PATNAUDE: Keep going.

8 CHAIRMAN GETZ: The first form I have is
9 from a Mr. Buco. Representative Buco.

10 REP. BUCO: Thank you, Mr. Chairman. My
11 name is Tom Buco. I serve as a State Representative from
12 this district, and I also happen to live in this Park.
13 And, I'd like to thank the Commission for bringing this
14 hearing here so that the residents can have their voice
15 heard.

16 I'll go directly to the -- to my
17 relevant point, which is the language of RSA 362:2, the
18 definition of "public utility". Because, in fact, The
19 Hynes Group does "own, operate, manage the equipment for
20 the conveyance of water for the public." Those are the
21 words right out of the RSA. And, you know, we have other
22 utilities in the Park. We have electricity maintained by
23 Public Service, we have cable TV, we have telephone, and
24 various fuel, heating fuel and propane providers

1 maintained by outside companies, but the water system is
2 maintained by the Park.

3 And, what I believe the residents of
4 this Park are looking for is simply to have the same type
5 of reasonable costs passed on after construction is
6 completed and this sewer project is actually providing
7 service to the consumers, as is stated in RSA 378:30-g, I
8 think, or "a". But, you know, it's reasonable that the
9 system be completed and be providing service before these
10 charges are passed on to residents. What we see now is
11 that the owners are trying to recoup the money up front
12 before the project is even completed.

13 And, so, I just fall back on that the
14 definition of "public utility", and say that, indeed, that
15 this Hynes Group owning and operating this water system
16 does fall into the language of RSA 362:2. Thank you.

17 CHAIRMAN GETZ: Thank you. Mr. Moughan.

18 MR. MOUGHAN: My name is Thomas Moughan.
19 I'm one of the Petitioners, with the committee that we
20 refer as the "Stop the Sewer Charges Committee". And, I
21 say that because I want the Commissioners to understand
22 that we are not opposed to a sewer project, *per se*, in
23 this Park. We take no position on that. What we are
24 opposed to and what we are challenging comes, we believe,

1 within your purview, which is to protect the public, and
2 we think we are the public, from unfair and unreasonable
3 charges for the utilities in our park.

4 And, I wanted to point out a couple of
5 things, and I'll do it as bullet form as best I can. One
6 of the big issues here, there was an issue with regard to
7 the *Holiday Acres*, and I read those rulings and those
8 orders, it's the commingling of funds that are received
9 from us, the residents, into the coffers of The Hynes
10 Group. There is no way, because of the lack of
11 transparency, to determine what is going to utilities and
12 what is not. We sincerely seek transparency in our
13 utility costs.

14 Attorney Zimmerman was very correct
15 early on, when she said that, if the gentleman had not
16 made the comments back in December that we would be
17 getting a 30/30/30 increase each of the next few years,
18 and we then did the math on that and realized the impact
19 that that would have on us as homeowners, we would not be
20 here. That, for us, was a clear indication that this
21 could well come under the jurisdiction of your Commission.

22 Let me explain a little bit about the
23 gentleman who made those remarks. His name is Gary Beers.
24 I don't know if Gary is here tonight?

1 (No verbal response)

2 MR. MOUGHAN: Gary is not here tonight.
3 Okay. Gary is the Senior Supervisor for the conglomerate
4 that owns Lamplighter Park. He is the manager, or was at
5 one time, of a park in Kittery, Maine, for the Hynes
6 Group. He supervises one of their parks in Standish,
7 Maine. And, he supervises this park in Conway,
8 Lamplighter Park. His title is "Area Supervisor" or
9 "Senior Supervisor". It's hard to pin down the title.
10 Mr. Beers was very much involved in this Park for the last
11 two years. He was involved in the negotiations with the
12 Fire District about purchasing a parcel in front of our
13 Park, which resulted in the purchase and sales agreement
14 that Mr. Bianco admits doesn't mandate the sewer project.
15 There is a contract there, but that contract is already
16 much a moot point. Because part of that contract that
17 Mr. Beers helped to deal, negotiate, was that the Conway
18 Village Fire District would retain a space, a volume of
19 space in its upgraded treatment facility to accommodate
20 volume from Lamplighter Park. That's no longer going to
21 happen. The Fire District has already made arrangements
22 to phase out that system and now they're going to pump all
23 the sewage from Conway Village up to the treatment
24 facility in North Conway, and they have made an agreement

1 to that effect. So, that part of that agreement is moot.

2 The other part in that purchase and
3 sales agreement, which, I'm sorry, I did not include in
4 our exhibits, because we did not come by this until March,
5 the other part of that is that the Conway Village Fire
6 District would waive hook-up fees to every lot in
7 Lamplighter Park as a concession, a concession that The
8 Hynes Group would tie in 133 homes. It's a win/win for
9 the Fire District. They get the revenue from us being
10 tied in. The Hynes Group gets a reason to explain why
11 they are going to have a sewer project.

12 The sewer project was never, and I want
13 to emphasize, it was never mandated by the Conway Village
14 Fire District. Myself and one other resident of the Park
15 approached the Conway Village Fire District Commissioners
16 back in March, with the engineers that were handling their
17 new project, the new sewer project in town was standing
18 right there, and I asked "is Hynes Group being mandated to
19 tie in that project?" They were befuddled. They said
20 "There's no mandate. Now, there is a contract that is
21 involved with this, but they were never mandated." I have
22 documents from the engineers of the project, and I'd be
23 happy to submit a written statement to that effect.

24 In fact, the only part, according to the

1 engineers of the project and the Conway Village Fire
2 District Commissioner, the only part of the Park that
3 would have been mandated to tie into the new sewer line
4 would have been our Community Center building, because
5 it's the only facility -- building within 100 feet of the
6 new sewer line on Route 16. The whole thing about
7 "mandated" is erroneous to say the least.

8 Next, Mr. Beers made very clear
9 statements at a meeting on December 5th, and you have my
10 sworn statement as an exhibit there. Now, this again, he
11 is the person that speaks for the owners of this Park, The
12 Hynes Group out of Vancouver, Canada. We never see them.
13 The Hynes person we see in the Park is Mr. Beers. And, he
14 made it very clear that day on December 5th that the
15 increase of \$30 for this year was only for the sewer
16 project, and even went onto say "it does not include any
17 regular, general maintenance operational costs." That
18 they were not going to increase the rent for operational
19 costs, and I'm paraphrasing what he said, but there are
20 people in this room that witnessed this as well.

21 We pushed Mr. Beers on his remarks, and
22 said "do you mean", I said this to him, "do you mean that
23 in each of the next three years we are going to see an
24 increase of \$30 each year, in other words, 30 this year,

1 60 next year, and 90 the third year, just for the sewer
2 project costs?" He answered in the affirmative, he said
3 "that's correct."

4 Now, Manager Denise Rodney, who is with
5 us this evening, wrote in her newsletter back in September
6 that it's a "mandated project". She said that it's going
7 to be a "30/30/30" at least, that's the exhibit that you
8 have before you, for this project. So, the history there
9 is pretty clear. It was unmistakable what we were being
10 told, not by someone who happened to come up from Kittery,
11 Maine, someone in the Park that I had met with personally
12 many, many times last year on Park issues. This was not
13 somebody who flew in by night and went back to Kittery.
14 We haven't seen Mr. Beers much lately. He's not here this
15 evening. I think there's a good reason for that.

16 I want to also emphasize that what we're
17 talking about here is fair and reasonable utility rates,
18 utility rates that are for the public good. There are
19 many people here who can talk to how the public is going
20 to be dealt "good" as a result of these rates that we've
21 been told are going to take place.

22 Now, the opposition here would say
23 "well, we've already backed off of that." They backed off
24 of that only -- only after we filed our Petition with the

1 PUC. There is nothing in what they say that isn't
2 qualified by words like "maybe" or "might not", and so
3 forth. Even the statement where they say "we are
4 authorized to say there will be no increase", and I'm not
5 sure which letter it is, "we are authorized there will be
6 no rental increase next year", to say that. It says "for
7 the sewer project alone". They could sell the Park next
8 month, and, by the way, this Park can be purchased right
9 now. A new owner could come in and do the very same thing
10 that The Hynes Group is doing right now. They could pass
11 on all of the costs, again, up to \$1.2 million, by
12 Mr. Beers's statement, any number of times, including the
13 finance costs of that. We see no place where The Hynes
14 Group is going to take that cost out of any capital
15 improvement fund. We're not even aware they have it, and
16 should we know that? We should know if they can actually
17 afford this project.

18 So, all of these questions that I bring
19 up here, who are these people who say this? Are they just
20 custodians or are they officials of the Company? They're
21 officials of the Company. Through disclosure, we want to
22 establish that.

23 The issue about water meters. This
24 committee, the Petitioners, has no position on that. As a

1 matter of fact, I think we all agreed that the current
2 metering system is best for conservation usage and for
3 fairness among the people in the Park. We raised it, you
4 know, in our original petition, because it's an indication
5 that they're operating as a public utility, and no other
6 reason.

7 Since we filed that Petition, we have,
8 we believe, opened up a can of worms, so to speak. We
9 find that there are -- there is considerable leakage
10 within the Park's water supply system, into the thousands
11 of gallons per month. Who pays for that? We don't think
12 the owners write a separate check for that from Canada.
13 That goes into that commingled account, and it comes out
14 of our rent payments. And, when they say they have to
15 raise the rents, how do we know they're not raising the
16 rents because of the cost of the lost water from the
17 leakage in the system? We believe we were charged for the
18 conversion from the system we had to the metered system.
19 We weren't charged individually. But who paid for the
20 contractor who spent months putting in the meters for 220
21 homes? Who pays for the meters? Who's paying for the
22 maintenance? We are, the tenants.

23 Living in a mobile home mark is a
24 different animal. Been there seven years now. And, I

1 think that's what, if I could get the Commission to
2 understand here, it is different than the *Zimmerman* case
3 in Wolfboro some years ago. Those were cases involving
4 business-to-business contracts. Every one that was cited
5 in the *Zimmerman* case was a business-to-business
6 relationship. It was not a business-to-consumer
7 homeowner, unlike hours.

8 In the *Holiday Acres* case, again, the
9 counsel for the owners would have you believe they're very
10 similar. There was no project amounting to \$1.2 million,
11 whatever it is, taking place there. And, there was no
12 opposition to the settlement that came out of that. You
13 don't need to have a treatment plant or a pumping station
14 to fall within the description of a "public utility". We
15 fall in it. We've got pipes, we've got all of this stuff
16 going on, and now we have the potential of a cost that's
17 unfair, unreasonable, and certainly is not helping the
18 public good of the people of this park.

19 And, just as a personal note, given the
20 rent increases that we were told would take place, before
21 the back step, before all this back walking took place, we
22 would be spending at least \$500 a month in rent next year,
23 lot rents. I'm out of there at that point, so are many
24 other people here. And, when we go to leave, we can't

1 sell our homes. We do own them, by the way. All we do is
2 rent the lot. We own our own homes. We can't sell our
3 homes and get these values back for them, because the
4 rents are so high, nobody wants to move in there. We
5 would have to sell in a fire sale, or, if you got a older
6 home, abandon it, cut your losses, and leave. I think
7 that says to me that speaks to the public good that is
8 part of your mission.

9 We need the opportunity to get answers
10 to all of those questions, to allow you to have a very
11 clear picture of what's going on here. Now, I think it's
12 wonderful that Attorney Zimmerman said that The Hynes
13 Group "wants the best thing for all of the these people
14 out here." Well, they should have asked us. They should
15 have said, "do you want a sewer project that's going to
16 cost you \$30 this year, an additional 60 next year, and an
17 additional 90 in three years?" Is that what you folks
18 want? I doubt it. They never asked us. They told us it
19 was "mandated", not true.

20 So, again, I could go on and on. I've
21 got so much going on up here, you know, after the last
22 seven months, it kind of rattles. But the residents here
23 and many others will get up and speak from their personal
24 circumstances and viewpoints. But we're counting on this

1 Commission to level the playing field for us, and deal
2 with a large corporation that owns 28 or 29 mobile home
3 parks around the country, that owns sales companies of
4 mobile homes, that can hire lawyers to represent them at a
5 whim. We went into this *pro se*, until we realized we were
6 going to have to be -- we were going to be confronting
7 Mr. Bianco with his expertise in these areas.

8 So, the people out here, they need
9 somebody to give us the same consideration that any other
10 individual in the State of New Hampshire gets through the
11 Public Utilities Commission, to acknowledge that we are
12 the public. We're not a business-to-business. We are
13 facing devastating increases. And, we need you to give us
14 the chance to establish more information to make that
15 possible for you to weigh your decision with as much
16 evidence as we can get you. Thank you. Thank you.

17 CHAIRMAN GETZ: Thank you. Gerard and
18 Barbara LaBrie.

19 MR. LaBRIE: Thank you, Mr. Chairman.
20 My name is Gerard LaBrie. I'm a resident of Lamplighter
21 Park. I live in what they call the "eastern" part of the
22 Park. I'm the guy who's not getting the sewer, but I'm
23 going to pay for it. And, I also would like to find out
24 if these meters have been -- if these water meters have

1 been certified --

2 (Court reporter interruption.)

3 MR. LaBRIE: Who certified these water
4 meters and how often they had to be certified? And, who
5 reads the meters? Is he a certified person that reads the
6 meters? And, is the meter that he uses to read the meter
7 correct? We don't know that for a fact. We don't think
8 that -- these meters were installed by four different
9 concerns.

10 Now, I don't know if there was any set
11 up for the water meters, but I'm a person that's going to
12 have to pay \$30 extra a month for sewage, and I'm not
13 going to have any. So, why should I have to pay \$30? But
14 the person who is going to get the sewage is going to pay
15 the \$30. So, there's something amiss, there's something
16 wrong here. My rent is going to be the same as a customer
17 who has sewage, and I don't think that's right.

18 That's all I have to say. Thank you.

19 CHAIRMAN GETZ: Thank you. And, I
20 guess, if there are any questions, probably that you think
21 need to be answered, I think working with Mr. Moughan and
22 Attorney Patch, to make sure that they're incorporated
23 into the data requests, and I guess that's a better way to
24 proceed.

1 So, Karen Umberger? Not sure if I got
2 that right.

3 REP. UMBERGER: That's correct. And, I
4 also would like to point out that I am a State
5 Representative from the Conway area. I do not live in
6 Lamplighter, but these folks are my constituents. And I
7 just wanted to let you know that.

8 I was very happy to see, and I hope that
9 everyone else here was, that there will be a technical
10 session to follow this meeting. And, that, hopefully,
11 during that time, between the folks at Lamplighter and the
12 owner of Lamplighter, that this situation can be worked
13 out.

14 As far as whether or not this should
15 become a public utility, excuse me, I do understand where
16 people of Lamplighter are coming from, in that they feel
17 that the owners have not been forthright about what is
18 going on and what will go on with the sewer. And, I also
19 understand, on the water side, that perhaps the reason for
20 the meters and the installation of the meters may not have
21 been thoroughly explained to the individual residents, and
22 why that is a necessity that is carried out in other parts
23 of the RSAs dealing with water through out the state, and
24 also the federal government providing loans and grants to

1 help out. So, there are some issues there that perhaps
2 the Park could have spoken to the Conway Village Fire
3 District Commissioners to get a clearer understanding of
4 exactly what the requirements are from the perspective of
5 the laws and rules that are established regarding how they
6 receive funds and what's required of all residents within
7 the -- not only within the Fire District, but within North
8 Conway, where I live, and any other water district that
9 receives federal funds.

10 So, I would suggest that at least that
11 area could be cleared up with the residents to at least
12 eliminate all of the questions and the comments that were
13 raised this evening dealing with the installation of the
14 meters.

15 Now, who installed them and all of that,
16 you know, I can't speak to that. But I certainly do
17 believe that there should be someone that can guarantee
18 that the meters are operating properly and that they're
19 being read correctly. I don't know what procedure they're
20 using for that or what their machines are, but I do think
21 that that is certainly something that should be done, in
22 order to provide confidence to the people that live in
23 Lamplighter that their charges are correct.

24 The other question that has not been

1 discussed tonight is "who owns the septic systems within
2 the Park?" In other words, and I don't know the answer to
3 that, whether The Hynes Group owns the septic systems, and
4 that is -- their maintenance is part of the rent, I don't
5 know. But that was never addressed, but as you change
6 from a septic system to a sewer system, that, obviously,
7 becomes something that should be important to the Park
8 owners. Because, for some number of years, someone has
9 been providing septic service to the Park. But, I'm
10 sorry, I don't know the answer to that question. And, I
11 do feel that that is something that could very well hinge
12 as to whether or not the PUC decides that they are, in
13 fact, a public utility.

14 So, I thank you very much for coming up
15 on this very warm day. And, I think it's cooling off
16 outside just a little bit. And, hopefully, your trip home
17 will be a little more comfortable than your trip up.
18 Thank you very much.

19 CHAIRMAN GETZ: Thank you.

20 Ms. Thunberg, are there any other sign-up sheets?

21 (No verbal response)

22 CHAIRMAN GETZ: Okay. Thank you. Well,
23 let me turn to this issue then. I guess it sounds like to
24 me that all three of the parties have agreed to undertake

1 a technical session and try to come up with a set of
2 stipulated facts. And, I just would suggest that, like we
3 fairly typically do in a technical session following a
4 prehearing conference, which I don't expect to actually
5 occur tonight, that, Ms. Thunberg, you report back in
6 writing to the Commission the agreement from the parties
7 as to a date for questions, a date for a technical
8 session, if there's a brief contemplated, but just to
9 report back to us in writing whether there's agreement on
10 what the next process steps will be, and whether we need
11 to confirm that or approve that in some regard.

12 MS. THUNBERG: Staff will take on that
13 role, but propose that we do that within seven days. Or,
14 I'm sorry, we propose that we have --

15 CHAIRMAN GETZ: Ms. Thunberg.

16 MS. THUNBERG: I thought I was speaking
17 loud enough. I would propose, though, that the Commission
18 suggest a time frame for us to come up with a proposed
19 procedural schedule. Right now, I'm thinking that --
20 Staff was thinking that it can work with the parties and
21 come up with a proposed procedural schedule within seven
22 days and report back to the Commission on that. And, I'm
23 seeing a nod of the head from Attorney Patch and from
24 Attorney Zimmerman. Thank you.

1 CHAIRMAN GETZ: Okay. Thank you. Okay.
2 Then, I think that takes care of the business we needed to
3 conduct this evening. So, we will close this prehearing
4 conference, await a report from the Staff, and take the
5 matters under advisement. Thank you, everyone.

6 (Whereupon the prehearing conference
7 was adjourned at 8:58 p.m.)
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