

THE STATE OF NEW HAMPSHIRE
PUBLIC UTILITIES COMMISSION

Docket No. DW 13-0171

IN RE: EASTMAN SEWER COMPANY, INC.

Sale of Assets and Liabilities to Village District of Eastman

Response to Staff Letter of November 6, 2013

Affirm the Procedural Schedule noticed August 5, 2013

Addition of a third set of Intervenor Discovery Requests to the Aug. 5, 2013 Agenda

Request that Future Meetings be Recorded

Request Participation of the Office of the Consumer Advocate

We agree with the thoughts that Phil Schaefer expressed in his letter of November 8. At the October 31 PUC meeting the Intervenors addressed the fact that what one person hears is not what another person hears and that this is human behavior. It was this fact which we think necessitates recording sessions. Robert Logan stated that in his experience (of chairing several hundred meetings in the past 20 years), it was standard practice and participants in those meetings recognized that when “they listened to the recording” they not only heard things they did not remember but also heard statements that were different from what they had thought before they listened.

In Mr. Naylor's November 6, 2013 correspondence he states “*Staff does not believe there is any legal impediment to the transaction, and Staff believes that the Village District of Eastman possesses the managerial, technical and financial capabilities to own and operate this public utility.*” To us as Intervenors this is a judgment statement. How has Staff assessed the managerial, technical and financial capabilities of the VDE? When Staff reviewed Mr. Logan's pre-filed testimony, did it also review the VDE public meeting documents as part of that assessment? Was it determined that the 3/20/13 and

4/3/13 VDE meetings were capably handled, managed and documented?

In reviewing the VDE—ESC/ECA contract did Staff assess the “sell-back clause” in the Purchase and Sale Agreement at \$1--ONE DOLLAR to ECA? Is this in the Public interest?

Did Staff review the two meetings held by the ECA/ESC/VDE Boards (11/17/12 and 7/24/13) to determine if they were in compliance with State Laws regarding Public Meetings? On November 17, 2012, the ECA/ESC/VDE held a meeting called a Community Open Forum to discuss the potential sale of ESC to the VDE. Two VDE Commissioners participated in that meeting. For example, if Staff had reviewed the announcement (see attached) of the November 17th Meeting/Forum, it would have noted on the announcement that the announcing parties INCLUDED the VDE Commissioners. It is our understanding that by the VDE Commissioners announcing that meeting, it was a Public Meeting subject to NH Right to Know Laws and Meeting Regulations. In ECA Board President’s (Mr. Goldman) response to Ms. Geraldine Logan’s Request Set #1b-7, he included the following statement: *“Forums which are facilitated by ECA are held for Eastman owners and individuals who reside in the community (i.e. long-term.). These forums are intended to foster a free exchange of questions, thoughts and suggestions. A set of “standing rules” would likely inhibit that exchange. The ECA Board has not established rules for forums that it hosts or sanctions. Minutes are not taken nor is there any formal documentation of what is said.....As you have indicated we are a private organization and are not subject to rules of the Right to Know law.”* There is considerable evidence that both the November 17 and the July 24 meetings did not conform to the Public Meeting Requirements as expressed in the NH ATTORNEY GENERAL’S MEMORANDUM ON NEW HAMPSHIRE’S RIGHT-TO-KNOW LAW, RSA CHAPTER 91-A, dated 7/15/2009. In that document it states in the section labeled: IV. MEETINGS

A. What Constitutes a Meeting of a Public Body?

2. When members of a public body constituting a quorum find themselves

together either coincidentally or when gathering for a purpose other than discussing or acting upon a matter or matters over which the public body has supervision, control, jurisdiction or advisory power, communications between the members shall not be used to circumvent the spirit and purpose of the Right-to-Know law. RSA 91-A:2-a,

(Two VDE Commissioners were at the November 17 meeting)

Further on in the AG's MEMORANDUM it states in:

D. Meeting Procedures

2. Basic Meeting Requirements

c. Any person shall be permitted to use recording devices including, but not limited to, tape recorders, cameras, and videotape equipment at such meetings. RSA 91-A:2

g. Minutes are a permanent part of the body's records and must be written and open to public inspection not more than five business days after the meeting. RSA 91-A:2, II. There are no exceptions to this requirement for the minutes of open meetings.

Both the 11/17/12 and 7/24/13 meetings were held at the ECA South Cove facility, a location ECA governance has declared private to ECA MEMBERS ONLY. Having the meeting at that location did not allow VDE members who are not ECA members or the public to participate.

The November 17, 2012 Meeting (held by VDE/ESC/ECA Boards) did not conform to the aforementioned standards. All that exist from that meeting is a Q & A document jointly authored by VDE Commissioner Wood and ESC President Brad Moses. No source is stated as to the document contents nor is a source known to be available to the Public, nor did the other two VDE Commissioners sign the document. The document does not meet NH State minutes requirements for public bodies. As of November 10, 2013 there are no posted minutes on this meeting on the VDE website.

At the October 31, 2013 PUC Technical Session we heard Staff express that they could not find reason or evidence that the sale was not in the public interest or for the public

good. An Intervenor asked what is the definition of public interest/public good? Staff did not provide a definition of 'public interest' or 'public good,' but only provided copies of prior rulings. Surely, if one of the prime criteria for considering sale of a utility is whether it is in the public interest, all parties must be able to refer to an understandable explanation of what is meant by 'the public interest.' We ask for that definition/explanation to be shared with Intervenors.

Recently several VDE members are asking if members of ECA governance have violated Chapter 644:4 Title LXII of the Criminal code. Emails have been written on the Eastman listserv regarding the unacceptable communications of ECA governance. Other VDE members have expressed fear and are retracting membership in the Coalition while others are choosing to be silent. Is it not in the Public Interest and Public Good to have a complete review of the Joint Petitioners and some governance members' behaviors, meetings and communications over the past 18 months to review whether inappropriate and/or illegal actions or deeds occurred? Failing to properly address these matters prior to a finding on PUC DW13-171 could be viewed as "the end justifies the means". Would that be in the Public Interest or Public Good?

Respectfully submitted,

Robert F. Logan

Geraldine D. Logan

November 11, 2013

From: Eastman Notices <notices@eastmannh.org>
Subject: Forum on proposed merger of Sewer Company and Village District of Eastman
Date: November 7, 2012 11:25:15 AM EST
To: rlogannh@yahoo.com
Reply-To: notices@eastmannh.org



**Special Community Open Forum
Saturday, November 17th
9 a.m. at South Cove Activity Center**

The Eastman Sewer Company and the Village District of Eastman are proposing a merger. Both wish to stress that this is an important educational and informational meeting to discuss the rationale for the merger and to get feedback. The close proximity of the sewer system to our lake and the need to upgrade a 30+year-old system make this a community issue, not just a sewer-user issue.

While only about a third of households in Eastman are connected to the sewer system and are (and will continue to be) responsible for the expense associated with its operations and capital improvement projects, the long-term health of the system requires some capital projects that may affect the land usage within Eastman.

Come join us for a presentation and question-and-answer period, and learn about this merger and the vital capital improvement projects.

**Eastman Sewer Company Board of Directors and
Village District of Eastman Commissioners**