

THE STATE OF NEW HAMPSHIRE
BEFORE THE
PUBLIC UTILITIES COMMISSION

ORIGINAL	
N.H.P.U.C. Case No.	DW 13-171
Exhibit No.	6
Witness	Panel 1
DO NOT REMOVE FROM FILE	

DW 13-171

IN RE EASTMAN SEWER COMPANY, INC
Sale of Assets and Liabilities to the VILLAGE DISTRICT OF EASTMAN

TESTIMONY of Phillip C. Schaefer

Now comes Phillip Schaefer, a resident of Eastman, member of the Eastman Community Association (ECA) and co-owner with his wife of a house that connects to the sewer system known as the Eastman Sewer Company (ESC). He represents the Eastman Sewer Users' Coalition, which asserts that the sale of ESC to the Village District of Eastman (VDE) is not in the public interest because the VDE has not shown evidence of the managerial knowledge or capability to add management of a sewer utility to its existing responsibilities of managing a water utility.

Question #1: Has the ECA been transparent and fair in its dealings with the sewer users?

Answer #1: The ECA has not been responsible to the sewer users because it has been involved in self-dealing (awarding the work to its own staff at its own benefit), causing the ESC to pay, among other things, real estate taxes for which ESC was not responsible by contract, and by obliging ESC to pay a significant portion of the legal and appraisal costs of the proposed sale, though the ESC nor its customers have any interest in the transaction and, furthermore, the ECA was committed to pay those costs as stated in the MOA of March 20, 2013 (attachment A).

The basis of a case brought to the PUC must rely on the facts. The ECA and ESC are truly one and the same because the ECA owns all of the ESC shares, the ECA Board controls appointments to the ESC Board, and the ECA Assistant General Manager acts as Manager of the ESC. ECA/ESC in its statements to the Eastman community and to the PUC have established a pattern of questionable credibility, which by extension should discredit its pleadings.

Question #2. Has the ECA shown good faith and honesty in its dealings with the PUC?

Answer #2. In PUC's Order 24,368 (attachment B), the ESC was ordered to and agreed to initiate a 10-year project to inspect and map ESC's sewer lines at a projected cost of \$15,000 annually. Furthermore, ESC was ordered to provide the PUC with an annual progress report and to advise the PUC if the project were interrupted. The ESC agreed to the conditions of the order, which allowed a rate increase in excess of what staff had recommended. ESC has admitted that it never filed a progress report and it did not advise the PUC when it interrupted the inspection program in response to question 2 of dataset 1 (attachment C) from the ESUC, "To the best of our knowledge, no reports which detail this work have been submitted to the PUC by ESC, nor any notification for the years in which this work was not conducted." Furthermore, the ECA has not provided any acceptable progress reports (only copies of invoices) and no map of the system. What the ECA did, i.e. violate the agreement, only months after consenting to it, is an example of how lightly it views its relationship with the agency charged with protecting the rights of consumers. ECA's failure to comply with this Order for almost a decade conveys little respect for the PUC.

Question #3. Has the ECA been transparent and honest with members of the Eastman Community?

Answer #3. To the community, ECA has presented numerous misstatements for the apparent purpose of influencing voters. At the Nov 14, 2012 public forum, there were five such misstatements, all aligned to persuade voters to support the sale of the sewer company to the water district: (attachment D, slides 10, 12, 16, 19, 24).

- 1) “There would be only 107 voters...” In fact more than 150 sewer users voted in the special election of August 2012, and far more could have! (slide 10)
- 2) “VDE would appoint a sewer board “(slide 12). This was the ECA speaking and only the VDE Commissioners can speak to appointing a sewer board. In fact, in their response to Data Request No. Schaefer/Van Dolah 1-1 (VDE) (attachment E), they have indicated that they are not certain of appointing such a board. This gives the appearance that the ECA is manipulating the VDE.
- 3) “The PUC has given preliminary support for the process of ...” (slide 16). No such support was possible because no application to the PUC had been filed by November 14, 2012.
- 4) “In October 2012, ESC provided VDE with a letter summarizing a meeting with DRA which outlines the process for a precinct tax that could be assigned to properties served by the sewer.” (slide 19) This is significant because as a tax it could be deducted on federal income taxes. This was categorically incorrect and misleading. However, it could have influenced voters who itemize their deductions on their federal tax filings.

- 5) “In 2011 the TSS (total suspended solids) limit for spray irrigation was lowered from >30 mg/L to >10mg/L” (Slide 24). This is wrong twice: first, the DES **raised** (relaxed) the limit from 5 mg/L to 10mg/L and it was <5mg/L to <10mg/L (not greater than but less than). This error shows a lack of understanding of the technical issues related to operating a sewer system.

These were not random errors, some supporting their contentions, some contrary to their positions. They were all framed to convince potential voters of the rectitude of ECA’s proposals. Recall that the first vote in January 2012 passed by only 11 votes out of 209. Had it failed, this proceeding would not have been necessary. Two of the erroneous statements (4 and 5 above) were corrected in the sewer company board agenda of April 2013 (attachment F) but only after the elections (January and March), when they could no longer influence voters.

The ECA also raised false voter concern by causing them to think that the sewer lines were an imminent threat to the lake and therefore to the whole community. The focus of their attention was the sewer line that parallels the lake on the west side within less than 100 feet from the water’s edge. They provided no evidence that the line was in danger and no engineering studies that would give cause for alarm. Clearly this unsubstantiated allegation was intended to influence the voters. The ECA raised a red herring to cause fear amongst the voters, but when it came to showing evidence, they consulted someone who is licensed as a sewer system operator, but not as an engineer (attachment G). ECA has tried to mislead voters and now it is trying to do the same to the PUC.

The ECA raised the concerns of voters as to the borrowing ability of a potential separate sewer district by supporting the ‘estimate’ of William Weber, the general manager of the ESC. Weber alleged that the assessed value of all the properties of all sewer users was \$60,000,000, which would limit borrowing capacity of a separate sewer district to \$600,000, not enough to implement the ECA/ESC’s proposed solution to the problems highlighted by the NH DES. We have previously provided evidence that the collective assessed valuation is over twice what Weber alleged (attachment H). Yet, without checking or correcting Weber’s erroneous estimate, the ECA/ESC supported Weber’s number because it fit ECA’s goal – to convince the voters that selling to the VDE was the only viable solution. Failing to validate a position just because it supported ECA’s goals raises again the issue of credibility of the ECA.

Question #4. Has the ECA dealt fairly with the ESC with respect to the financial management of ESC’s funds?

Answer #4. No, it has in many cases caused the ESC to pay to ECA funds for which ESC should not have been assessed. Another example of ECA’s failure to follow PUC Orders and prior contracts is exemplified in the financial accounting of the irrigation system. According to Order (DW 00-153), “the ECA would assume full responsibility for the spray irrigation system.” If the ECA truly does own the irrigation system, one has to ask why it obliges the sewer company to pay the property tax (attachment I) on the irrigation system. Again, ECA’s credibility is brought into question, in this case claiming, “ECA owns it, but the sewer company pays the taxes!” In responding to interrogatory 3-3, which called for an explanation of why the ESC was being obliged by ECA to pay taxes for which it was not contractually obligated (attachment J), Mr. Harding stated,

“Note – the request to specify which items on the tax assessment cards were attributed to the Sewer Company was not answered, since (as indicated above) this was not the basis on which ESC’s portion of annual taxes was calculated.”

Yet in the lease contract (DE 94-069), the precise method of attributing the real estate taxes is included:

"7. Taxes and Utilities. Licensee shall pay all real estate taxes levied or assessed on or **with respect to the Premises** (emphasis added). Licensee also shall pay all personal property taxes, including inventory taxes, levied or assessed in respect of the personal property and trade fixtures on the Premises belonging to the Licensee or persons, firms or corporations other than Licensor."

ECA’s one-sided recasting of the contract to some unwritten “basis” has resulted in diversion of at least \$25,000 from ESC to itself, just on this item (taxes) alone. Further, ECA obliges ESC to pay taxes on the land (76+ acres), which ECA owns. Again, the ESC is not contractually obligated to pay real estate taxes on the land. The diversion of tax monies from ESC to ECA is quite significant.

When there was manual labor to be done (mowing, sanding, snow plowing, painting), ECA failed to solicit competitive bids (attachment K); rather it kept that work for its own workers and may have charged uncompetitive rates to the detriment of ESC customers. Furthermore, in the work bills provided (a sample are in attachment L) there is no identification of the location being cared for. Was it the 76+ acres that ECA owned? Were the roads being plowed and sanded Eastman roads, or just the access drive to the sewer plant? Therefore it is not possible to determine whether the sewer company was actually responsible for paying for the work done.

ECA wishes to sell the assets of a company it owns. It stands to reason that the ECA and the VDE, the putative purchaser, should assume the costs of this transaction, including all legal fees. This is not a rate case that might result in the PUC granting a temporary increase to recover the cost of the case itself. In this case the ECA, without approval from the PUC, simply took from the ESC half of its rightful costs of appraisal and half its legal costs (attachment M). This is a clear case of transferring funds for which it had questionable right. These inappropriate transfers need to be reversed.

Question #5. Is the VDE qualified and committed to assuming the responsibility of managing the sewer company?

Answer 5. The VDE has not provided any personal commitments from the commissioners that they are willing and have the time to assume this additional responsibility. They have not committed to creating an advisory sewer board, so won't or can't provide the names and qualifications of the potential members of that group. The general manager has not provided any evidence of the background that would qualify him to manage a sewer district. He has not given evidence of being licensed to manage or operate a sewer operation at any level. He has not presented evidence that he is even now pursuing courses in sewer operations. Finally, no evidence has been presented that the water district staff is qualified to participate in operating a sewer processing facility.

Conclusion

In summary, there are many valid questions that need to be answered before considering this transaction, not the least of which is how much money should the ECA restore to the ESC. It

would do great harm to the customers of the ESC if this transaction were concluded before the financial status was corrected. For this reason alone it is not in the public interest to approve this transaction.

ECA's pattern of misstatements casts great doubt on its whole submission. It may be legal to win a public election by misstating the facts, but this Commission should not fall into the trap of believing the proponents at face value. Consumer's must be protected.

The VDE is working practically at full capacity just to maintain the water utility. There was a recent leak in the system, which they could not find, so they appealed to the users by email for their assistance in locating the leak. They do not have the excess capacity to handle an additional function. The Commissioners have not made any commitment to assume the added responsibility. It is not in the public interest to turn this utility over to a body that is not committed and may not even have the time to give to this function.

Respectfully submitted,


Phillip C. Schaefer

Dated: December 19, 2013