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STATE OF NEW HAMPSHIRE

PUBLIC UTILITIES COMMISSION

August 1, 2013 - 10:08 a.m.
Concord, New Hampshire

NHPUC AUG16'13 PM 1:08

RE: DW 13-171
EASTMAN SEWER COMPANY, INC.:
Joint Petition to Approve Sale of Assets
and Liabilities to Village District of
Eastman. (Prehearing conference)

PRESENT: Commissioner Michael D. Harrington, Presiding
Commissioner Robert R. Scott

Sandy Deno, Clerk

APPEARANCES: Reptg. Eastman Sewer Company, et al:
Jay C. Boynton, Esq.

Reptg. the Village District of Eastman:
H. Bernard Waugh, Jr., Esq.

Reptg. Eastman Sewer Users Coalition:
Michael L. Donovan, Esq.

Robert Logan, *pro se*

Geraldine Logan, *pro se*

Reptg. PUC Staff:

Michael Sheehan, Esq.

Marcia A. Brown, Esq.

Mark Naylor, Director/Gas & Water Division

Jayson Laflamme, Gas & Water Division

Robyn Descoteau, Gas & Water Division

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

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P R O C E E D I N G

CMSR. HARRINGTON: Good morning.

MR. BOYNTON: Good morning.

CMSR. HARRINGTON: We're here this morning for the prehearing conference for Docket DW 13-171, Eastman Sewer Company. It's a Joint Petition for approval of the sale to the Village District of Eastman and exemption from further regulation. On June 13th of this year, Eastman Sewer Company, the Village District of Eastman, and the Eastman Community Association filed Joint Petitions seeking approval of the sale of assets and liabilities of Eastman Sewer to the Village District and exemption from further regulations by the Commission.

Eastman Sewer is a regulated utility with approximately 537 customers in a limited area of the Town of Grantham. The Village District is a municipal district organized under state law and owns and operates a water supply and distribution system with about 1,300 connections. The Association is a not-for-profit corporation and currently owns all the corporate stock of Eastman Sewer.

Okay. I guess we start with the notification of an affidavit attesting to the publication and distribution of the order of notice. That was

1 presented on July 19th. And, so, that detail is taken
2 care of.

3 We'll move to appearances, I guess.

4 MR. BOYNTON: Good morning, sir. My
5 name is Jay Boynton. I'm an attorney. I represent the
6 Petitioners in this matter. I have several gentlemen with
7 me who -- shall I introduce them?

8 CMSR. HARRINGTON: Sure.

9 MR. BOYNTON: Okay. Bob Fairweather is
10 one of the District commissioners for the Village District
11 of Eastman; Brad Moses is Chair of the Eastman Sewer
12 Company; Jim Donoghue is a Eastman Sewer commissioner --
13 Eastman --

14 MR. DONOGHUE: Company Board member.

15 MR. BOYNTON: Eastman Sewer Company
16 Board member. And, behind me, Brian Harding is the
17 General Manager of the Eastman Sewer Company and Assistant
18 General Manager of the ECA; Bill Weber is the District
19 Manager for the Village District for the Village District
20 of Eastman. Bernie Waugh is an attorney representing
21 parts of these entities. He is here to assist this
22 morning, and has not filed an appearance, except a letter
23 that he submitted.

24 MR. WAUGH: Correct. My client is the

1 Village District of Eastman.

2 CMSR. HARRINGTON: Is that all or are
3 you going to introduce the rest of the people?

4 MR. BOYNTON: Those are all of my folks.

5 CMSR. HARRINGTON: Okay. Thank you.
6 Just going around the room then.

7 MR. DONOVAN: Thank you. I'm Attorney
8 Michael Donovan. I have a practice here in Concord, a
9 solo practice, mostly in municipal law. I represent the
10 Eastman Sewer Users Coalition, which has filed a motion to
11 intervene, which I understand has not been objected to.
12 And, with me today are the two leaders of the Coalition,
13 Phillip Schaefer, to my immediate right, and Jim Van Dolah
14 next to him. Thank you.

15 CMSR. HARRINGTON: Good morning. Sir?

16 MR. LOGAN: My name is Bob Logan. I'm a
17 member of the VDE. I'm also a long-term resident at
18 Eastman. And, I'm representing myself.

19 MS. LOGAN: Hi. I'm Geraldine Logan.
20 And, I'm a resident of the Eastman Community Association,
21 have been for a long time, 40 years. And, I represent
22 myself as well.

23 MR. SHEEHAN: Good morning. Mike
24 Sheehan. I represent the Staff of the PUC. And, present

1 with me is Marcia Brown, Counsel, and Staff members Mark
2 Naylor, Jayson Laflamme, and Robyn Descoteau.

3 CMSR. HARRINGTON: Good morning. Well,
4 speaking of interventions, we might as well take that
5 issue up right now. I understand that there's been a
6 couple of Petitions to Intervene, and that the Joint
7 Petitioners are not contesting that, but they're looking
8 for a list of the members. Maybe you could speak on that
9 part of the Petition from July 30th.

10 MR. BOYNTON: Thank you. Attorney
11 Donovan and I spoke this morning. He has agreed to
12 provide that list by the end of next week, Friday of next
13 week.

14 CMSR. HARRINGTON: Okay. That resolves
15 that issue then.

16 MR. BOYNTON: And, just to be clear on
17 it -- I'm sorry.

18 CMSR. HARRINGTON: No, go ahead. Go
19 ahead.

20 MR. BOYNTON: We don't object to the
21 status of intervention, but we do oppose allegations, and
22 we reserve the right to speak to the merits and offer
23 evidence.

24 CMSR. HARRINGTON: That was very clear

1 in your notice. Okay.

2 (Commissioner Harrington and
3 Commissioner Scott conferring.)

4 CMSR. HARRINGTON: Okay. We will grant
5 the interventions, conditional upon providing that list to
6 the Petitioners. And, that will be for the Eastman Sewer
7 Users Coalition, and as well as Mr. and Mrs. Logan, I
8 guess, who are -- were you filing as intervenors or not?

9 MR. LOGAN: We are filing as
10 intervenors.

11 CMSR. HARRINGTON: Yes.

12 MR. LOGAN: We're filing as ourselves.

13 CMSR. HARRINGTON: Right. But as an
14 intervenor, as an individual?

15 MS. LOGAN: Right.

16 MR. LOGAN: Yes.

17 CMSR. HARRINGTON: Yes. We're just
18 going to -- we're going to grant all of them is what I'm
19 saying.

20 MR. LOGAN: Okay.

21 CMSR. HARRINGTON: Okay. Maybe we can
22 just have the parties give their initial position then.

23 MR. BOYNTON: You provided a very
24 succinct summary of where we were, but I'll review it

1 briefly.

2 There is a Joint Petition filed by the
3 Eastman Sewer Company, the Village District of Eastman,
4 and the Eastman Community Association. The Eastman
5 Community Association owns all of the stock of the Eastman
6 Sewer Company. It is a private for-profit corporation,
7 and has been subject to PUC oversight for some time.

8 Agreement has been reached for the sale
9 of all of the assets from the Eastman Sewer Company to the
10 Village District of Eastman. We have filed a petition
11 with multiple exhibits. The list of exhibits will
12 summarize our position, I believe. The first exhibit was
13 a survey map outlining the geographical area covered by
14 the Eastman Sewer Company. We filed a copy of the
15 Purchase and Sales Agreement, which was dated May 29th.
16 We filed a copy of the contract for operation by a
17 licensed operator for the Sewer Company. We filed votes,
18 copies of votes by the Village District of Eastman, both
19 to approve the transfer and to authorize financing by the
20 requisite statutory vote. So, the voters have, in fact,
21 approved both the transfer and authorized the financing.
22 Financing has been arranged so that the new entity, the
23 Village District, can take over the financing. There is a
24 current Groundwater Discharge Permit also, Exhibit 5, and

1 e-mails confirming the permit process and the
2 transferability of the state permits.

3 There are also two additional pieces of
4 correspondence relative to this transaction, a letter from
5 Attorney Cirone and correspondence from the Village
6 District of Eastman to the Grantham Board of Selectmen.

7 So, in summary, we've got a physical
8 entity, with assets. We have a Purchase and Sales
9 Agreement for the transfer of those assets, which has been
10 approved by the voters. The voters have also approved a
11 financing to take over the current debt. We have an
12 existing groundwater permit that is transferable to the
13 new entity. And, we are ready to go. We believe we've
14 met all of the statutory requirements, everything is in
15 place, and we are seeking a Board approval of this
16 transfer.

17 This morning I received petitions from
18 Eastman Sewer Company customers, some of whom are
19 registered voters in Grantham and some of whom are not.
20 But they were given to me. And, I've not had an
21 opportunity to make multiple copies, but I feel that they
22 are statements from individuals who would not seek to
23 intervene at this point, but would be permitted to be
24 heard pursuant to Puc Rule 203.18. So, having them in

1 hand, I feel an obligation to present them, even though
2 I'm not prepared to make multiple copies. So, there are
3 120 signatures on two separate documents. Those documents
4 identify the petitioners who are not registered voters,
5 but who are customers, and petitioners who are registered
6 voters, and also customers.

7 CMSR. HARRINGTON: Have you had an
8 opportunity to share those with the other parties?

9 MR. BOYNTON: I've not had an
10 opportunity to do anything with them, except receive them.
11 Essentially, they do not support the creation of a new
12 separate sewer district as proposed and discussed in the
13 intervenors' documents.

14 If the Commission prefers, I can simply
15 hold them and file them with the requisite copies. But,
16 having them in hand as originals, I felt an obligation to
17 present them to you.

18 CMSR. HARRINGTON: Do the other parties
19 care to comment on that, the intervenors or Staff?

20 MR. DONOVAN: For the intervenors, we
21 certainly would like to have a copy of those petitions.
22 And, I would suggest that, since we have said we would
23 submit the membership list for the Coalition by the end of
24 next week, that they be required to file that

1 electronically with all the parties by the end of the
2 week.

3 MR. SHEEHAN: And, that's acceptable to
4 Staff as well.

5 MR. DONOVAN: In word process form, so
6 we can read -- I'm sorry. In word process form, so we can
7 read the names, which may not be legible.

8 CMSR. HARRINGTON: Excuse me.

9 MR. SHEEHAN: I'm sorry. And, that's
10 acceptable to Staff as well.

11 CMSR. HARRINGTON: Okay. So, why don't
12 we do that. Why don't you hold them, and then submit them
13 to the other parties. Is that okay with you?

14 MR. BOYNTON: We're fine with that.
15 Thank you.

16 CMSR. HARRINGTON: Okay. Did you have
17 anything else, sir?

18 MR. DONOVAN: Yes. By the end of the
19 week, next week, is what --

20 CMSR. HARRINGTON: Yes. That would be
21 fine, the end of next week.

22 MR. BOYNTON: That's where we are.

23 CMSR. HARRINGTON: Okay. Thank you very
24 much.

1 MR. WAUGH: The Village District has no
2 separate statement, as Mr. Boynton represents all of the
3 Joint Petitioners, including the Village District.

4 I did -- I think, Mr. Chairman, I did
5 want to point out, or at least ask a question about what I
6 think is an error in the order of notice. Namely, on Page
7 2, in the middle of the page, it refers to "RSA
8 Chapter 38". And, it's my understanding that RSA
9 Chapter 38 applies to water companies and gas and
10 electric, but not to sewer. And, the statutory reference
11 for sale of sewer assets I believe should be 149-I:4.

12 CMSR. HARRINGTON: Staff care to comment
13 on that?

14 MR. SHEEHAN: No immediate comment.
15 We'll certainly check. And, if that's an appropriate
16 correction, we will make that correction.

17 CMSR. HARRINGTON: Thank you.

18 MR. DONOVAN: We have a comment. We
19 would suggest that some of the due diligence requirements
20 that are written into Chapter 38 represent state policy,
21 which should apply in this scenario, notwithstanding the
22 independence of RSA Chapter 149.

23 CMSR. HARRINGTON: Okay. I think we'll
24 have to take that under advisement and then we'll get back

1 to you on that, as far as the applicability of Chapter 38.

2 Would you like to make an opening
3 statement for the intervenors?

4 MR. DONOVAN: Yes, I would. I appear
5 for the first time before the PUC. And, I interpreted the
6 order as requiring a written preliminary statement. So, I
7 have prepared my remarks in writing. And, I have twenty
8 copies. I would like to read them into the record, but
9 I'd gladly also supply them to anyone who would like to
10 follow along. If the Commission would like, I could --

11 CMSR. HARRINGTON: Yes. If you'll just
12 hand them out to the parties then.

13 MR. DONOVAN: Sure. Would you like them
14 as well?

15 CMSR. HARRINGTON: Yes, please.

16 (Atty. Donovan distributing documents.)

17 MR. DONOVAN: And, I'll just leave half
18 of them on one side and half on the other. Thank you.

19 Several members of the Eastman Sewer
20 Users Coalition petitioned the Grantham Board of Selectmen
21 pursuant to RSA Chapter 52 to establish a new village
22 district for the purposes of the construction and
23 maintenance of main drains and common sewers allowed by
24 RSA 52:1, Subparagraph (e), and the operation and

1 maintenance of sewage and waste water treatment plants
2 pursuant to RSA 52:1, Subparagraph (f). The petition
3 requested district's boundaries coterminous with the
4 boundaries of the franchise granted by the PUC to the
5 Eastman Sewer Company on November 2nd, 1989. The Grantham
6 Board of Selectmen granted the petition and called a
7 meeting of the voters within those boundaries for August
8 17th, 2013. And, the district that the selectmen called
9 was slightly different from the district that is -- was
10 petitioned.

11 It is the position of the Coalition that
12 approval by the PUC for the sale of the assets of the
13 Eastman Sewer Company to the Village District of Eastman
14 is not for the public good, because the petitioned sewer
15 district, if approved by the voters on August 17th, 2013,
16 would be a more equitable and more appropriate entity to
17 operate the Eastman sewerage and sewage treatment works
18 than the Village District of Eastman.

19 Our first position is that equity
20 mandates a separate and independent sewer district.
21 Petitioners and other customers of the Sewer Company at
22 present enjoy the protection of the PUC governance over
23 Eastman Sewer Company's sewer rates and capital
24 expenditures. Upon sale of the assets of the Sewer

1 Company to the Village District of Eastman, that
2 protection will no longer exist. Instead, the operating
3 and capital budgets of the Eastman sewerage and resulting
4 sewer user charges will be controlled by the 1,530
5 resident voters of the Village District of Eastman, of
6 only -- of whom only 280 are sewer users.

7 Petitioners maintain that they are
8 entitled to a fair and equitable assessment of sewer user
9 and capital recovery charges. Once the Eastman sewerage
10 is controlled by the voters of the Village District,
11 petitioners and other sewer users will have their
12 operating, maintenance and capital recovery rates
13 controlled by a majority of voters who have no direct
14 interest in the Eastman sewerage. The intent, as
15 expressed by the commissioners of the Village District of
16 Eastman, is to allocate all costs associated with the
17 Eastman sewerage against the sewer users, even though some
18 costs could be allocated against all properties in the
19 Village District via a property tax, and even though the
20 Village District before this Commission is asserting that
21 its control of the sewerage will benefit the entire
22 Village District of Eastman.

23 There are statutory provisions, which,
24 when that benefit is larger than the group of users, and

1 I'm ad libbing here from my written statement, there are
2 statutory provisions that do allow municipalities to
3 contribute to the capital costs, and not just by vote of
4 the municipality meeting, and not just allocate those
5 costs totally to the sewer users. And, that is done in
6 situations where the sewer system benefits more than just
7 the users, which is what they're alleging here, but
8 they're trying to pass it all onto the sewer users.

9 Our second position today is that the
10 concerns about the capabilities of a new district are
11 misplaced. Those are the concerns that Attorney Waugh
12 filed on behalf of the Village District of Eastman on June
13 27th. It's important to note that, if the Village
14 District of Eastman had not voted by 11 votes on January
15 9th, 2013 to acquire the assets of the Sewer Company, the
16 Sewer Company's backup plan was to go to the Grantham
17 Board of Selectmen to petition a second village district
18 composed only of the properties that were sewer users;
19 exactly what my clients have done. And, the verification
20 of that is found in the minutes, among other places, in
21 the minutes of the January 9th special meeting of the
22 Village District, the comments of Commissioner Woods. So,
23 in fact, we're merely here advocating what was the backup
24 plan of the Sewer Company anyway.

1 Regarding the concerns about facilities
2 located within the Town of Springfield, all sewer users
3 live within the boundaries of the district petitioned to
4 the Town of Grantham by several Coalition members. If the
5 new district is approved on August 17th, it will be a
6 municipality under New Hampshire law. As is commonly
7 known, a municipality may own real estate and improvements
8 in another municipality. Examples of that are the Keene
9 Airport located in Swanzey, and the Berlin Airport located
10 in Milan. Hence, there would be nothing unlawful, unusual
11 or unworkable for the new district to own sewage treatment
12 facilities located outside its boundaries. All of the
13 customers are inside the boundaries of the petitioned
14 district.

15 Regarding the organization of the new
16 district, if the new district is established on
17 August 17th, the voters will also elect officers at that
18 time. Absent a superior court order, it's true that the
19 new district could not have its first annual meeting until
20 after January 2nd, but that's only four and a half months
21 away.

22 The assertion by the Sewer Company and
23 the Village District of urgency and hardship due to the
24 need to rapidly move forward with system upgrades is

1 specious. The Village District voted to acquire the
2 assets on January 9, yet it took another six months to
3 submit the Joint Petition to the PUC. Some upgrades, such
4 as a pond aeration system, have been recommended by the
5 operator for a decade, with no action taken by the Sewer
6 Company. Another few months of delay, because a new
7 district is established, is *de minimis* in this context.
8 Also, it's noted that no funds for system upgrades could
9 be approved by the Village District of Eastman until its
10 annual meeting on March 21st, 2014.

11 Regarding the concern about acquisition
12 of sewerage and sewage treatment works. At the first
13 annual meeting of the new district can vote to adopt the
14 provisions of RSA 149-A [149-I?], which is the statute
15 that governs sewage, just as the Village District of
16 Eastman has done. Such a vote would give the new district
17 all the powers of a mayor and aldermen of a city,
18 including the authority to acquire sewerage and sewer
19 treatment works.

20 The Sewer Company's assertion that it
21 will never sell its assets to the new district is
22 capricious, where, as noted above, its backup plan was to
23 form a similar district to the one the Coalition
24 petitioned, in the event that the Village District of

1 Eastman did not vote to acquire the assets. The Village
2 District's concern about entanglement in eminent domain is
3 merely speculative at this time.

4 Regarding adequate resources, the
5 Village District's assertion that the new district will
6 have inadequate resources to bond improvements due to the
7 one percent of assessed valuation limitation under
8 statutes is misplaced for two reasons. The representation
9 of only around \$60 million of valuation of sewer user
10 properties is incorrect. The Coalition has a spreadsheet,
11 which it will produce at the appropriate time, which
12 indicates assessed valuation of about 133 million, more
13 than twice what the prefiled testimony is indicating.
14 Secondly, per RSA 33:5, improvements to sewerage and
15 sewage treatment works ordered by the DES are exempt from
16 the one percent limitation anyway.

17 The discussions at meetings of the
18 Village District Commissioners during 2012 indicate that
19 the one percent limitation may inhibit the Village
20 District's ability to finance both sewer and water system
21 improvements in the future more so than it would impact
22 the ability of the new district. And, I cite, as an
23 example, the comments of Commissioner Fairweather at the
24 January 9th, 2013 special meeting.

1 To summarize on this point, while
2 getting a new village district up and running may be
3 complicated, it's not rocket science. Small towns and
4 small village districts run by dedicated selectmen and
5 commissioners exist throughout New Hampshire. It is
6 duplicitous for the Village District of Eastman to suggest
7 that commissioners of a new district will not be able to
8 capably organize and operate the Eastman Sewer Company
9 assets should a new district be able to acquire those
10 assets, when, in the beginning, that was the ECA's backup
11 plan anyway.

12 Thirdly, there is no benefit to the
13 VDE's non-sewer users resulting from sale of the assets to
14 the Village District of Eastman. The Village District of
15 Eastman is a water district. The Village District has not
16 specifically stated how the non-sewer users of the Village
17 District of Eastman will benefit from acquisition of ESC
18 assets. The proposition put forth by advocates of the
19 sale to VDE is that the benefit to the entire Village
20 District of Eastman derives from the protection the
21 sewerage provides to Eastman Lake, which benefits the
22 entire district, not just sewer users. That is specious,
23 because the Eastman Council, which is part of the Eastman
24 Community Association, voted not to enforce stringent

1 septic system rules to protect the lake, which has a lot
2 of old septic systems along it, and because the Eastman
3 Community Association and ESC officials have stated that
4 there will be no expansions of the sewer system in the
5 foreseeable future, even though dozens of properties along
6 the lake are not -- are not connected to sewers and rely
7 on old septic systems.

8 The party principally benefiting from
9 the approval of the Joint Petition is the Eastman
10 Community Association, which owns the stock of ESC. If
11 the Joint Petition is approved, the ECA will be able to
12 dump its responsibilities, including its responsibility as
13 a private utility for the future costs resulting from
14 deferred maintenance and deferred capital investment of
15 the company onto a public entity, which in many respects
16 is a mirror image of the Eastman Community Association,
17 and which will pass those on to the minority of VDE owners
18 who are sewer users.

19 Fourthly, the public benefits touted by
20 the Village District of Eastman would also accrue to the
21 new sewer district. And, to move things along, I'm just
22 going to skip over that. I'm just saying there's nothing
23 that a new district can't do that the Village District of
24 Eastman is saying they will do.

1 Fifth, the assertions that the majority
2 of sewer users favor the acquisition by the Village
3 District of the Eastman assets are not correct. And, this
4 was prepared before knowledge of any petition which we had
5 yet to examine. But there is no evidence up until then to
6 support the assertion of the Sewer Company and VDE that a
7 majority of sewer users favors VDE's acquisition of the
8 ESC assets. At a special meeting on January 9th, 2013,
9 the Village District of Eastman voters approved the
10 acquisition of the assets by only 11 votes, 110 to 99.
11 This 11 vote majority is hardly overwhelming when one
12 considers only about 14 percent of the registered 1,530
13 voters turned out.

14 In a September 2nd, 2010 letter to PUC's
15 Mark Naylor, Eastman Sewer Company represented that it
16 would send a letter to all sewer users and hold a general
17 meeting to ensure that sewer users understand what is
18 being proposed and why. That was never done. Also,
19 during meetings in early 2013, Village District of Eastman
20 Commissioners discussed the advisability of doing mailings
21 and pollings of sewer users. One commission even
22 completed a sewer user survey template -- one commissioner
23 even completed a template for a survey. However, again,
24 nothing was done.

1 In addition, there were
2 misrepresentations presented at the January 9th, 2013
3 special meeting that only the sewer users will pay. I
4 think anyone knowledgable about municipal governing knows
5 that one town meeting or one village district town meeting
6 cannot obligate future town meetings or future village
7 district meetings. So, that was only a representation of
8 the three commissioners at the time, yet voters rely on
9 that, voters who are not knowledgable about the fine
10 points of municipal governing rely on that, when that may
11 or may not be the case in the future, if commissioners
12 would change their mind.

13 Lastly, there's an inherent conflict of
14 interest if the same entity controls both the water and
15 sewer systems of Eastman. And, I'll skip over that point,
16 just let you read it later.

17 And, to wind up, the Coalition joins in
18 the "due diligence" concerns stated in Robert Logan's
19 Petition to Intervene. There's no disagreement,
20 apparently, that the Eastman sewerage and sewer treatment
21 works will require major capital expenditures in the
22 future, in large part due to deferred capital expenditures
23 by the Eastman Sewer Company. However, that expense is
24 presently unknown. If the sewer system does indeed

1 benefit the entire Village District of Eastman and Eastman
2 Community, the sewer users alone should not bear that
3 expense.

4 So, for all of these reasons, the
5 Eastman Sewer Users Coalition requests that the PUC, after
6 appropriate due process, deny the Joint Petition. And,
7 thank you very much for your attention, and I appreciate
8 it. And, certainly, at the appropriate time, I'll answer
9 any questions.

10 CMSR. HARRINGTON: Thank you. Would
11 either of the Logans like to make a statement at this
12 time?

13 MR. LOGAN: Yes. And, we're not that
14 familiar with the process. So, we did --

15 CMSR. HARRINGTON: Don't worry, I'm not
16 a lawyer either.

17 MR. LOGAN: Thank you. We did file a
18 Petition to Intervene. I'm not going to read that.
19 However, I also filed a testimony, and I'm going to read
20 that, if you don't mind?

21 CMSR. HARRINGTON: Just more, if you
22 could give us a brief summary at this time. I think your
23 testimony was fairly short, wasn't it though?

24 MR. LOGAN: It is.

1 CMSR. HARRINGTON: Yes. Okay.

2 MR. LOGAN: So, I'm not clear on what
3 you'd like me to do. Can I read it?

4 CMSR. HARRINGTON: No, you can go ahead.
5 I think it was, now I remember, I think it's only like one
6 page or something, correct?

7 MR. DONOVAN: Okay. All right. I won't
8 give you the background. I've been in Eastman for some 41
9 years. Educational background, I've done a lot in the way
10 of mergers and acquisitions. And, I used a -- a couple of
11 questions here. "Does the broad spectrum of Eastman
12 Community support the transfer of assets of the Eastman
13 Sewer Company to the Village District of Eastman?" In my
14 view, they do not. We were not -- we are not permitted to
15 vote directly on the proposed sale. The ECA governance
16 does not permit a direct vote on the part of the members
17 of the community. Nor were, in my opinion, adequate
18 informational sessions held in a public facility by the
19 Community, that would have provided and allowed for the
20 proper due diligence on the part of the members. The
21 forum that was held in November was held on private
22 property, and I believe, therefore, is subject to a
23 different set of laws.

24 Furthermore, full disclosure of at least

1 three viable options was not done in an open and
2 transparent way. The recordings and the public disclosure
3 requirements for meetings held on private property I don't
4 believe are applicable in the case of Eastman property.
5 The documentation of the meetings, which is suggested to
6 be minutes, is, in fact, a liberal interpretation of what
7 was said at the meeting. My wife attended the meeting.
8 And, the meeting was done by the proponents of the ESC
9 sale to the VDE. No validation was done or required, nor
10 is there a recording provided to members of the community.

11 As far as whether this transaction is in
12 the public interest? It is my view that the public
13 interest would best be served if the PUC required that all
14 meetings regarding the acquisition of the Eastman Sewer
15 Company, by any party, are public and are held in a public
16 facility. Furthermore, all meetings need to be bound by
17 the disclosure, participation and attendance regulations
18 that are required for public matters and meetings.

19 And, based on my experience, what
20 observations would I have as far as what has occurred
21 regarding the VDE, the ECA, the ESC activities, sort of a
22 coalition? It's my perspective that, to date, the actions
23 of the VDE commissioners and General Manager are more
24 consistent of what I would expect or one would expect of a

1 seller's agent. This perspective is based on produced
2 financial audits done by ESC's auditor, who happens to be
3 the ECA Board's chosen auditor. This auditor also files
4 the tax returns for the seller, ECA.

5 The consulting engineering reports
6 provided were all performed on behalf of the seller. And,
7 at least one is updated. That report is a comprehensive
8 Capital Improvement report submitted by CLD Consulting
9 Engineers on March 2008. It seems of little current merit
10 in evaluating making an acquisition decision five years
11 later. Subsequent Consulting Engineering Reports by
12 Underwood Engineering are almost entirely focused on the
13 waste water issues. Many of these issues existed in 2001,
14 when the community, ECA, acquired the Eastman Sewer
15 Company. They are, therefore, limited in scope and are
16 not adequate to evaluate the complete current capital
17 status of the Eastman Sewer Company.

18 The Capital Reports are all produced by
19 the seller. It is standard practice, in all my
20 experience, for a buyer, in acquiring capital assets, to
21 perform their own independent capital valuation due
22 diligence.

23 In short, neither I, nor any VDE member,
24 to my knowledge have been provided with an independent

1 buyer financial or engineering evaluation, nor has the
2 buyer developed a comprehensive 5-year forward capital
3 plan, which essentially would be the liability of the
4 acquirers.

5 Furthermore, I would recommend that the
6 PUC require the following information and voting process
7 to be funded by the ECA: Mandate two public information
8 sessions for sewer users at a public site, a full
9 disclosure of the due diligence requests that I have made
10 to the VDE commissioners between February and June 2013,
11 which would include a thorough and open independent
12 finance and expense evaluation of the sewer company's
13 current financial capital and operational health,
14 performed by an independent accountants firm, not one that
15 the ECA employs, with concurrence on the selected firm by
16 the Coalition of Sewer Users. An independent and
17 respected engineering firm's comprehensive assessment of
18 all existing Eastman Sewer Corporation's capital, all
19 known future state and federal requirements that could
20 necessitate additional capital funding for the next five
21 years with concurrence on the selected firm by the
22 Coalition of Sewer Users. This is a 42 year old sewer
23 system.

24 Third, an independent 5-year forward

1 Capital Plan. The vast majority of the sewer system's
2 capital infrastructure is more than 40 years old, past its
3 useful life, developed -- this 5-year Capital Plan would
4 be developed with equal partnership on the part of the
5 Coalition of Sewer Users.

6 Furthermore, mandate a comprehensive ECA
7 proposal -- ECA proposal to update the 42 year old capital
8 components of the ESC sewer system. The ECA needs to
9 consider partially funding, for a 3-year period, a
10 reasonable portion of the Sewer Company capital
11 infrastructure. And, this would, in fact, probably
12 protect the lake.

13 Mandate a vote on the part of all sewer
14 users as to an acceptable solution for a workout solution
15 to improve the current ESC financial and capital status.

16 Recognize the Coalition of Sewer Users
17 as representing the interests of some the ESC users and
18 fully involve their representatives in all communications
19 and negotiations. In addition, no incremental ECA member
20 special assessments would be allowed during this 3-year
21 period. Incremental sewer owner assessments would be
22 permissible.

23 Mandate that sewer users have the exact
24 same government privileges -- ECA governmental privileges

1 as it pertains to the Eastman Sewer Company, which the ECA
2 Board has given to the Eastman Golf members, which is
3 another community asset, they call it "Golf
4 Course/Center", similarly acquired from the CEC. The
5 difference being the CEC acquired the golf course as an
6 asset purchase, and, when it acquired the sewer company,
7 it was a company -- a company, S corporation.

8 The sewer users would have the rights to
9 directly elect commissioners of the sewer company. The
10 sewer commissioners would be directly accountable to the
11 sewer members for its actions. The golf members today
12 elect a committee, that committee establishes rates and
13 rules. And, the members of the golf course who are --
14 they get to elect the members of the committee.

15 Last, sewer users would be granted the
16 same voting rights in the independent sewer municipality
17 as the VDE members have today for capital and operating
18 expenses commencing immediately. Thank you.

19 CMSR. HARRINGTON: Mrs. Logan, do you
20 have a statement to make?

21 MS. LOGAN: I do. I do. My name is
22 Geraldine Logan. And, I, too, am a 40 year resident/owner
23 of Eastman, during which time I have served on various
24 committees and council. And, as a member of the Village

1 District of Eastman, while not a sewer user, the sewer
2 piping passes over my property. I'm concerned that the
3 Sewer Company has not been properly maintained under ECA
4 ownership, and believe that an independent engineering
5 inspection should be done before any assets and liability
6 transfer occurs. Petitioner rights, duties, privileges,
7 immunities, and substantial interests will be directly
8 affected by the outcome of the above captioned proceeding
9 as set forth here in.

10 Petitioner and other customers of the
11 ECA at present enjoy the protection of the Public
12 Utilities Commission governance over ESC capital
13 investments and expenditures. Upon sale of the assets of
14 ESC to VDE, that protection will no longer exist.

15 In the 12 years of ECA ownership, the
16 ECA Board has not developed a comprehensive capital plan
17 similar to what has been in existence for the ECA
18 community's capital plan during that period. The ECA
19 capital plan is an integral part of the ECA annual
20 budgeting process. The failure to implement a similar
21 financial system for the ESC puts all members of VDE at
22 risk in assuming financial liability of undefined
23 magnitude.

24 Numerous ESC capital components now

1 exceed their projected useful life. I therefore do not
2 think that the ESC asset and liability ownership should be
3 transferred to any buyer until full disclosure of capital
4 needs is done.

5 In addition to that, to the answer of
6 whether the broad spectrum of the Eastman Community
7 support the transfer of assets to the Eastman Sewer -- of
8 the Eastman Sewer Company to the Village District? The
9 answer is no, because all Eastman residents were not
10 permitted to vote directly on the proposed sale, only
11 registered VDE voters. Nor were adequate informational
12 sessions provided that would have perhaps allowed for
13 proper due diligence on the part of members. Furthermore,
14 the information that was presented was not accurate and
15 not acknowledged to be so until after the vote.

16 Do I believe this is in the public
17 interest? No. The Eastman Community Association is a
18 501(c)4 organization, and, as such, must be operated only
19 to promote social welfare to all members to be eligible
20 for tax exemption. Social welfare is defined as "general
21 welfare and the common good". The proposed transfer of
22 ESC to VDE imposes a risk to non-sewer users that they
23 will be inequitably paying for a portion of the VDE
24 operating expenses and other costs related to the sewer

1 system and potentially some portion of the long overdue
2 upgrading of the sewer capital infrastructure.

3 And, how will sewer customers have input
4 if this transaction is approved? They will be a minority,
5 outnumbered three to one. So far, they have had no direct
6 input as a sewer-user group. ECA decided not to permit
7 the sewer users to have their own informational session or
8 to allow a direct vote of the sewer users on the
9 acquisition. Sewer ECA members do elect ECA Board
10 members, as do all ECA members, but they do not elect
11 sewer board members or Sewer Company officers. These
12 positions have been appointed by the ECA Board and will be
13 appointed by VDE Commissioners if the acquisition goes
14 forward. The appointed Sewer Advisory Board would have no
15 direct accountability to the sewer users. This approach
16 adds an unnecessary level of bureaucracy to the VDE, which
17 has no added value to the sewer users or to the water
18 users. The ECA Council has no voting involvement in the
19 ESC, nor has this proposal been reviewed in an open ECA
20 Council meeting.

21 A prime reason for the filing for a
22 separate sewer district by members of the Eastman Sewer
23 Coalition is for sewer users only to have a direct vote on
24 the sewer commissioners and to be able to directly vote

1 for operating and capital costs.

2 I do not see any benefits of
3 consolidation with the Village District. The sewer users
4 would lose the availability of a tax deduction for their
5 capital costs, because they can not be taxed separately
6 from the VDE. They would have no voting power for
7 independent sewer commissioners. And, they would have
8 only about 25 percent of the voting power of the entire
9 district. The Sewer Company exists solely to serve sewer
10 users, it provides no service to the community as a whole.
11 The cost savings between having a separate village
12 district or becoming part of the VDE are the same.

13 And, as I said, the maintenance I don't
14 feel has been properly followed, any maintenance
15 procedures. There was a settlement agreement on
16 September 2nd, 2004, an Agreement Order Number 24,368,
17 which "calls for Eastman to begin, in 2004, a 10-year
18 program of locating, inspecting and cleaning its sewer
19 mains." I am not aware of any record that this has been
20 done. One of the sewer mains runs about a mile along the
21 west side of Eastman Lake at a distance of about 20 to 50
22 feet from the shore. It's 42 years old and must be fully
23 inspected and evaluated before any sale to make sure there
24 is no danger to the lake. If this were not done, it would

1 be a disservice not only to the ECA community, but to the
2 residents of the Towns of Grantham, Springfield and
3 Enfield, as well as to the residents of the State of New
4 Hampshire, as this is a State-owned lake. Thank you.

5 CMSR. HARRINGTON: Thank you. Staff.

6 MR. SHEEHAN: Thank you. For the
7 record, we do not object to the interventions, which you
8 have already granted. We would ask that you clarify, with
9 regard to the Logans, that they are two separate
10 intervenors or not. I suspect, from what we heard, they
11 are two separate intervenors, so we can reflect that
12 accordingly.

13 After an initial review of the Petition
14 and the filings, the Staff has identified several issues
15 that we will explore through discovery, others may arise,
16 of course. The first is the Petition states the
17 District's corporate bounds encompass Eastman Sewer. They
18 attach a map. Staff will review that exhibit and conduct
19 further discovery, to make sure that the sewer customers
20 are all within the Village District, and the sewer assets,
21 to the extent that's an issue, it's also in the
22 appropriate locations.

23 Of course, to be an unregulated utility,
24 the District -- the Village District would need to be

1 serving entirely within its corporate bounds. So, we
2 would need to confirm that and conduct discovery on that
3 issue.

4 There have been several votes taken to
5 this process. We will make sure that the proper statutory
6 procedures have been followed with regard to those votes
7 and make a recommendation.

8 Staff will review the financial
9 capability of the Village District to meet any future
10 capital needs of the system. The Village District states
11 its voters have authorized it to enter into a financing.
12 The ability to finance -- obtain financing, of course, is
13 essential, and having the managerial capability to operate
14 a utility, we will review and make recommendations on that
15 topic.

16 Staff will inquire how the Village
17 District will fix fees. According to the testimony of
18 Mr. Harding, the Village District will set fees "in accord
19 with appropriate municipal procedures." We will
20 investigate what that means and whether that's
21 appropriate. The Staff will review whether the Eastman
22 Sewer customers will have appropriate representation with
23 the Village District Board should the sale be approved.

24 If this sale is approved, and, of

1 course, we make no judgment at this early stage, Staff
2 wants to ensure a seamless transition of the operations
3 from the Village District. The Petition does state there
4 is an agreement with a licensed operator, Water System
5 Operators, Inc. Staff is familiar with that entity, a
6 Mr. Damour, and is pleased to see the Village District
7 intends to continue with that entity to run the system.
8 And, we also note that the Village District intends to use
9 existing sewer staff, which should also help the
10 transition, as far as customers, from their perspective.

11 These are some of the issues we see at
12 this point, and we'll be looking into and reporting on in
13 due course. And, after we finish this morning, we would
14 expect to work with the parties present to reach a
15 schedule and get this case rolling. Thank you.

16 CMSR. HARRINGTON: Thank you. Just to
17 make it clear on the intervenors then. Robert Logan and
18 Geraldine Logan have been granted intervenor status as
19 separate intervenors. And, the Eastman Sewer Users
20 Coalition has been granted intervention status as well,
21 contingent on supplying a list of its members to the
22 various parties. Everybody clear on that?

23 (No verbal response)

24 CMSR. HARRINGTON: Commissioner Scott.

1 CMSR. SCOTT: A couple things, and maybe
2 for Staff to start. So, am I correct, so we have nothing
3 from the Office of Consumer Advocate, is that correct?

4 MR. SHEEHAN: I believe they did express
5 an intent to, it was in a report that I prepared, a memo I
6 prepared, I don't have that.

7 MS. BROWN: I know that they're not here
8 today, but Staff will continue to reach out to the Office
9 of Consumer Advocate, since they represent residential
10 ratepayers. And, that customer group, although
11 represented in parts here today, they may want to jump in.
12 So, Staff will take the role of reaching out to OCA.
13 Thank you.

14 CMSR. SCOTT: Thank you for that. And,
15 for Attorney Boynton, did I pronounce it correct?

16 MR. BOYNTON: Yes, sir.

17 CMSR. SCOTT: A couple things. This is
18 just for your notice, and maybe you're already aware of
19 it, and it may not be germane to this case. But are you
20 aware the General Court recently passed Senate Bill 11,
21 which makes changes to RSA 31, regarding municipal water
22 and sewer utility districts that cross boundaries? So, my
23 question is, "are aware of that?" And, second, if you
24 are, do you know if it has any impact on the District's

1 plans?

2 MR. BOYNTON: I was not aware of it. I
3 will immediately check it out. As you described it, I
4 don't think it will have an impact. But we will certainly
5 take a look at it.

6 CMSR. SCOTT: That's my guess also. But
7 I just wanted to make sure you're aware of it. And, that
8 law takes effect September 8th of this year.

9 And, my other quick question for you is,
10 I just want to confirm, so there's been no transfer of
11 stock in relationship to this transfer as of --

12 MR. BOYNTON: That's correct. This will
13 be an asset sale.

14 CMSR. SCOTT: Okay. And, currently, the
15 stock is owned by ECA, is that what I read?

16 MR. BOYNTON: That's correct.

17 CMSR. SCOTT: All right. Thank you.

18 CMSR. HARRINGTON: And, then, just one
19 other question, a follow-up on this. Is it correct that
20 there's going to be another election being held on
21 August 17th?

22 MR. BOYNTON: The vote on August 17th
23 will be to see whether the voters will create a separate
24 new village district.

1 CMSR. HARRINGTON: And, if that vote was
2 in the affirmative, then would we have a new village
3 district that just accompanied the sewer users, is that
4 the intent?

5 MR. BOYNTON: Yes, I believe that's the
6 intent.

7 CMSR. HARRINGTON: Okay. Care to
8 comment?

9 MR. DONOVAN: Yes, it is. With the
10 exception of it includes some other properties, about
11 nine, I believe, similar to the Logans. Where they're not
12 sewer users, but the sewer passes over their property.

13 CMSR. HARRINGTON: Okay. Thank you. I
14 assume all the parties will be meeting immediately after
15 this for a technical conference to work on various issues
16 and to produce a procedural schedule. And, if there's
17 nothing else, we'll adjourn. Thank you.

18 **(Whereupon the prehearing conference**
19 **ended at 10:56 a.m., and the Staff and**
20 **Parties conducted a technical session**
21 **thereafter.)**

22

23

24