

STATE OF NEW HAMPSHIRE

PUBLIC UTILITIES COMMISSION

January 21, 2014 - 9:13 a.m.
Concord, New Hampshire

NHPUC FEB06'14 AM11:40

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

PRESENT: Chairman Amy L. Ignatius, Presiding
Commissioner Robert R. Scott
Commissioner Martin P. Honigberg
Clare Howard-Pike, Clerk

APPEARANCES: Reptg. Eastman Sewer Company, et al:
Jay C. Boynton, Esq.
Reptg. Eastman Sewer Users Coalition:
Phillip C. Schaefer
Robert Logan, *pro se*
Geraldine Logan, *pro se*
Reptg. PUC Staff:
Michael Sheehan, Esq.
Mark Naylor, Director/Gas & Water Division

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

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 BRIAN HARDING
 WILLIAM WEBER
 MARK NAYLOR

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P R O C E E D I N G

1
2 CHAIRMAN IGNATIUS: I'd like to open the
3 hearing in Docket DW 13-171. This is Eastman Sewer
4 Company, the Village District of Eastman, and Eastern --
5 excuse me, Eastman Community Association's Joint Petition
6 to approve a sale of the assets and liabilities of the
7 Eastman Sewer Company to the Village District of Eastman.
8 We've had preliminary proceedings, discovery, and we're
9 now at the point of the hearing on the merits. So, what
10 I'd like to do is start with appearances. Then, we'll
11 talk a little bit about the procedure for today. And, I'm
12 interested if there's any agreed upon procedure among the
13 parties. We'll go through a few of the ground rules about
14 how we do our proceedings here.

15 So, let's first start with appearances
16 please.

17 MR. BOYNTON: Good morning. My name is
18 Jay Boynton. I'm an attorney from Andover, New Hampshire.
19 I represent the Petitioners.

20 CHAIRMAN IGNATIUS: Good morning.

21 MR. HARDING: Good morning. I'm Brian
22 Harding. And, I represent the Eastman Sewer Company in
23 this proceeding. And, I'm the General Manager for the
24 sewer company.

1 CHAIRMAN IGNATIUS: Good morning.

2 Welcome.

3 MR. HARDING: Thank you.

4 MR. WEBER: Hi. I'm Bill Weber. I'm
5 the General Manager of the Village District of Eastman.

6 CHAIRMAN IGNATIUS: Good morning.

7 MR. GOLDMAN: Good morning. I'm Maynard
8 Goldman. I'm President of the Eastman Community
9 Association.

10 CHAIRMAN IGNATIUS: Good morning.

11 MR. SCHAEFER: Good morning. I'm
12 Phillip Schaefer. I represent the Eastman Sewer Users
13 Coalition.

14 CHAIRMAN IGNATIUS: Good morning.

15 MS. LOGAN: I'm Geraldine Logan. And,
16 I'm an intervenor.

17 CHAIRMAN IGNATIUS: Good morning.

18 MR. LOGAN: I'm Robert Logan. A member
19 of the Village District of Eastman. And, I'm an
20 intervenor, as far as the Village District is concerned.

21 CHAIRMAN IGNATIUS: Good morning.

22 MR. LOGAN: Good morning.

23 MR. SHEEHAN: Good morning. Michael
24 Sheehan, along with Mark Naylor, representing Staff.

1 CHAIRMAN IGNATIUS: Welcome, everyone.
2 I understand a Settlement Agreement has been filed that's
3 reached amongst some of the parties, but not all. We've
4 reviewed that. And, as is our practice, we will hear
5 evidence in support and any issues in opposition to the
6 Settlement Agreement. And, then, if there are other
7 non-settling parties who would want to testify, who
8 prefiled testimony, and that would be Mr. Schaefer,
9 Ms. Logan and Mr. Logan, that's an opportunity as well.
10 And, in both cases, witnesses would be subject to
11 cross-examination. And, I can give you the sort of order
12 of how that would play out.

13 Mr. Sheehan, has there been any
14 discussion among the participants on the game plan for the
15 morning?

16 MR. SHEEHAN: Yes. We propose beginning
17 with a panel of four witnesses. The three gentlemen who
18 just introduced themselves, Mr. Weber, Harding and
19 Goldman, along with Mark Naylor, presenting testimony in
20 support of the Agreement. I've spoken to them, as well as
21 the intervenors, and they understand that, after that
22 testimony, they would have the right to ask questions, as
23 does the Board. And, after that is finished, I understand
24 Mr. and Mrs. Logan and Mr. Schaefer may want -- do want to

1 make statements. I'm not sure, I've told them that their
2 testimony, prefiled testimony is in the record, I'll go
3 over exhibits in a minute, that they are marked as
4 exhibits. There's no need to repeat that. But they have
5 an opportunity to summarize, to comment on what happened
6 prior to them, whether they want to take the stand
7 formally or not. So, that's how we propose. There's a
8 whole bunch of exhibits I can go over now, if you'd like
9 to?

10 CHAIRMAN IGNATIUS: Let's hold off one
11 second on exhibits. Are there participants who would like
12 an opportunity to cross-examine Mr. and Mrs. Logan and
13 Mr. Schaefer? And, if so, then that would be the normal
14 course, and we'd have them take the stand and be available
15 for cross-examination.

16 MR. BOYNTON: We would only anticipate
17 cross if there's testimony offered today. We do not
18 expect to cross-examine based on the prefiled testimony.

19 CHAIRMAN IGNATIUS: All right.

20 MR. BOYNTON: Is that what you were
21 asking me?

22 CHAIRMAN IGNATIUS: Yes.

23 MR. BOYNTON: Okay.

24 CHAIRMAN IGNATIUS: Yes.

1 MR. SHEEHAN: Similarly, we understand
2 what the intervenors' positions are, and we're prepared to
3 handle it as far as argument goes, more than with actual
4 cross-examination.

5 CHAIRMAN IGNATIUS: All right. Well,
6 that sounds good. We'll see how that plays out. But it
7 sounds like it may not be necessary, but we've got the
8 form to do that, if that's what people would like.

9 Let me describe a little bit about how
10 we do proceedings, because I know some of you are not
11 frequent flyers here. And, so, we have our own way of
12 conducting proceedings. Because materials are prefiled,
13 we've read all of them, and none of the witnesses need to
14 restate what was in their prefiled testimony. We've been
15 through it. And, we want this really to be an opportunity
16 to highlight particular items, anything that's changed
17 since the prefiled testimony, what the terms of the
18 Settlement are, for those of you who are proposing that,
19 and then a chance for people to question the terms of the
20 Settlement, both to flesh out the details and to challenge
21 it, for those of you who don't think it's a good idea.
22 But there's no need for everybody to restate everything,
23 because it's in the record and we have read it.

24 We'll have, when the panel goes on,

1 there will be a chance for sort of direct examination of
2 working through the details of the Settlement, and,
3 between the Staff and Mr. Boynton, I think that would
4 cover the direct questioning. And, then, it will be an
5 opportunity for Mr. Schaefer and Mr. and Mrs. Logan to ask
6 any questions, if you take issue with things in the
7 Settlement, that would be your chance to cross-examine
8 those witnesses on the terms of the Settlement. The
9 Commissioners then have a chance to ask questions. And,
10 at the end of our questioning, the party or parties that
11 put on the Settlement would have a chance for what we call
12 "redirect". So, any sort of follow-up questions to
13 clarify anything. And, then, that's it. It doesn't go
14 through another whole round.

15 Then, we would switch, if any of the
16 intervenors want to testify, they would testify, and they
17 would then be -- have that sort of direct questioning to
18 bring out the pertinent points, then subject to
19 cross-examination by the other parties, and then
20 questioning by the Commissioners, and then a redirect
21 opportunity for them as well. And, I understand that may
22 or may not happen, if you don't feel a need to testify,
23 and just the prefiled written materials will suffice,
24 that's fine, too.

1 The final thing then would be to give
2 everyone an opportunity, once the evidence is closed, give
3 everyone an opportunity to make a closing statement, just
4 an oral statement of a few minutes, summarizing your
5 points and your recommendation to us. We won't have
6 written briefs. We won't have final written submissions
7 after the end of the hearing. That's not usually the way
8 we do it. So, we would have, just to kind of wrap up,
9 oral presentations from all of the evidence and your
10 recommendation to us. And, then, we take all of that into
11 consideration. And, we'll go through, on our own, go
12 through all of the evidence, and we'll issue an order.

13 One of the things that's very important,
14 because we have a court reporter, is you can only have one
15 person talking at a time. He's very good, but he can't
16 type two people's voices at once. So, we just have to
17 remember, when people get questioning, and you can't cut
18 into somebody else's answer, even if you're trying to be
19 helpful. You really need to let one person stop before
20 the next one starts up. And, I guarantee Mr. Patnaude
21 will let you know if it's getting hard to follow. When
22 you see the hands go up like that [indicating], it means
23 there's no transcribing going on because it got too crazy.

24 So, is there any question about

1 procedure or should we begin? Yes, Mr. Logan.

2 MR. LOGAN: I had a question in terms of
3 the document we received from Marcia Brown on Thursday or
4 Friday. And, there was a misunderstanding, at least on my
5 part, regarding how materials got submitted, *etcetera*.
6 So, I prepared -- we prepared those materials over the
7 weekend, in particular, and looks like our pretrial --
8 okay. Have to use the microphone?

9 CHAIRMAN IGNATIUS: Yes, you can sit.
10 That's fine.

11 MR. LOGAN: Oh. Is that on?

12 CHAIRMAN IGNATIUS: The red light should
13 be on.

14 MR. LOGAN: Is that better?

15 CHAIRMAN IGNATIUS: Thank you.

16 MR. LOGAN: Okay. It looked like our
17 pretrial submissions had not been included in the exhibit
18 package. So, we have asked that they be included. They
19 were filed, obviously. And, also, the discovery materials
20 were not included as part of this packaging, the letter we
21 received on Thursday evening. So, we've included those
22 and made those available this morning. And, that's
23 primarily, there's a couple of other miscellaneous
24 exhibits that we also brought forth.

1 CHAIRMAN IGNATIUS: Okay. Mr. Sheehan,
2 I haven't seen the letter. So, maybe you can help me.

3 MR. SHEEHAN: Sure. Last week, Staff
4 circulated a list of exhibits that we proposed would be
5 entered as agreed exhibits, and I think that's what
6 Mr. Logan is referring to. In addition to those, he
7 wanted to bring in the documents he just mentioned, and he
8 has brought them this morning. They have been numbered
9 and they have been marked. Frankly, I don't think any of
10 them are surprises, but Staff and the Petitioners have not
11 really looked through exactly what he was filing, because
12 we didn't know until this morning. I suspect Staff will
13 not object, because it looks like it's mostly discovery
14 responses, and we understand that's coming from the
15 Logans' position.

16 But, anyway, so, we have numbered
17 Exhibits 1 through almost 30, some of them are Staff
18 agreed, some of them are Mr. Logan's and Mrs. Logan's, and
19 some of them are Mr. Schaefer's.

20 CHAIRMAN IGNATIUS: Okay. What we often
21 do -- well, not "often", what we always do with exhibits
22 is we mark them first for identification, just so we can
23 keep track of what we're talking about. And, then, before
24 the end of the proceeding, I will ask if anyone has any

1 objection to the identification being stricken and making
2 them full exhibits. And, so, over the course of the
3 morning, if it turns out that, you know, Exhibit 17,
4 people think "well, wait a minute. I don't think that
5 should be in." Then, you'll have an opportunity to say
6 why that one should not come in as an exhibit, and the
7 others should.

8 So, why don't we assume that all of
9 yours will be marked, maybe they have already been given
10 numbers, and, if not, we'll add numbers to them for
11 identification. And, then, as we work through everything,
12 if anyone has got issues, they can raise it then.

13 MR. LOGAN: Thank you.

14 CHAIRMAN IGNATIUS: Thank you. Are we
15 ready then to talk about exhibits further, Mr. Sheehan,
16 or do you --

17 MR. SHEEHAN: Sure. I can summarize
18 where we are. What's been marked "Exhibits 1" through
19 "14" were exhibits, that list that Ms. Brown circulated
20 last week. They have been marked. Staff and Joint
21 Petitioners agreed to them being full exhibits. Frankly,
22 I don't think we closed the loop with the Petitioners to
23 see whether they object or not, so they could be marked
24 for identification at this point. And, you know, I have a

1 list for the Commissioners.

2 CHAIRMAN IGNATIUS: All right. And,
3 these are all things that should be in our file, we just
4 need to get them in the right order?

5 MR. SHEEHAN: Both.

6 (Atty. Sheehan distributing documents.)

7 MR. SHEEHAN: These are two pages each.

8 CHAIRMAN IGNATIUS: And, does everyone
9 have that two-page list of exhibits? Mr. Schaefer, you
10 look like you do not?

11 MR. SCHAEFER: I have a one-page list.

12 MR. SHEEHAN: Which page do you have?

13 CHAIRMAN IGNATIUS: Let's go off the
14 record for a moment.

15 (Brief off-the-record discussion
16 ensued.)

17 CHAIRMAN IGNATIUS: All right. We're
18 back on the record.

19 MR. SHEEHAN: Thank you. One through
20 fourteen were the exhibits that Staff marked. 1, 2, 3,
21 and 4 are all part of the computer record and they're
22 notated there what tabs they are at, and it is the
23 Petition and the supporting testimony initially filed by
24 Mr. Harding, Goldman and Weber. Exhibit 5, we had them

1 marked in paper this morning. It was a response to a
2 request by the Commission for a list of the people who
3 signed the Petition underlying this matter. Number 6, 7
4 and 8 is the prefiled testimony of Mr. Schaefer, Mr.
5 Logan, and Mrs. Logan that they filed in December.
6 Exhibit 9 -- and those are all non-paper copies, because
7 they're part of the docketbook. Exhibit 9 is the
8 Settlement Agreement we're here to address today.
9 Exhibits 10 through 14 are data responses that Staff wish
10 to submit. They have been filed in paper copy this
11 morning. I have copies for your review, should we get
12 into them in some detail today, they may just be
13 incorporated, but we can address that through the witness
14 testimony.

15 CHAIRMAN IGNATIUS: Yes. The
16 Commissioners do not have the data -- the Commissioners do
17 not have the data requests and responses.

18 MR. SHEEHAN: Okay.

19 CHAIRMAN IGNATIUS: I know the parties
20 do, but we don't see them until somebody puts them forward
21 into the record.

22 MR. SHEEHAN: I've got them here. And,
23 as the witnesses get assembled, we will put them together
24 for you.

1 CHAIRMAN IGNATIUS: Thank you.

2 MR. SHEEHAN: The blank at the bottom of
3 the first page you have in front of you has since been
4 marked "Exhibit 28". And, that is the Logans asked that
5 their -- they filed testimony with their petitions to
6 intervene at the outset of this case. And, so, that's
7 what Exhibit 28 is. And, again, that's in the docketbook.
8 The next page, starting with 15, is what the Logans
9 arrived with this morning. They started at the end of our
10 list and started numbering with number 15 through 27.
11 That's the paper file that has been filed. We have copies
12 here, I don't think we have quite enough for everyone to
13 get one, but I have at least one copy for the Bench,
14 again, should we get into the details of any of those
15 particular documents. And, of those 15 through 27,
16 there's two that were not marked, they withheld, and that
17 was 20 and 23.

18 CMSR. HONIGBERG: I'm sorry, which two?

19 MR. SHEEHAN: Twenty and twenty-three.
20 I think they're deciding, as they sit, whether to
21 introduce them or not. And, then, the last has been
22 marked "Exhibit 29", and that is a single package filed by
23 Mr. Schaefer, with a number of documents. And, he has
24 thankfully Bates numbered it 1 through whatever page it

1 goes through. So, it's a single document from
2 Mr. Schaefer, with many exhibits attached. Again, the
3 paper copy has been filed. I have a copy, there's a
4 couple copies here, again, that we can make available,
5 should we get into the actual details.

6 CHAIRMAN IGNATIUS: One small
7 clarification. At the bottom of the first page, the one
8 that's now numbered "28", says it's the "July 26 testimony
9 of both Mr. Logan and Mrs. Logan", but then Exhibit 15 is
10 just Mr. Logan. So, I assume 28 should be just
11 "Mrs. Logan"?

12 MR. SHEEHAN: That would be correct,
13 yes.

14 CHAIRMAN IGNATIUS: Okay. Good.

15 (The documents, as described, were
16 herewith marked as **Exhibit 1** through
17 **Exhibit 29**, respectively, for
18 identification, with the exception of
19 **Exhibit 20** and **Exhibit 23**, which have
20 been withdrawn at this time.)

21 MR. SHEEHAN: So, in summary, we have
22 marked 1 through 29, omitting 20 and 23. And, it's
23 probably best to wait till the end to go through which are
24 agreed upon.

[WITNESS PANEL: Goldman~Harding~Weber~Naylor]

1 CHAIRMAN IGNATIUS: All right. And, as
2 we go, we'll catch up with our piles, getting them in the
3 right order. So, are we ready then for the panel to be
4 seated?

5 MR. SHEEHAN: Yes.

6 CHAIRMAN IGNATIUS: All right. Then,
7 why don't you proceed, gentlemen.

8 (Whereupon **Brian Harding,**
9 **Maynard Goldman, William Weber,** and
10 **Mark Naylor** were duly sworn by the Court
11 Reporter.)

12 MR. SHEEHAN: Ms. Ignatius, if I may,
13 I've been approached by both intervenors. Apparently,
14 they were expecting to make a brief opening statement,
15 and, in fact, I may have led them to believe they could do
16 so. So, they both tapped me on the shoulder just now and
17 asked if they could do that?

18 CHAIRMAN IGNATIUS: Well, let me address
19 it this way. Generally, if you're an intervenor, you've
20 worked through testimony and you're subject to
21 cross-examination, and then have a chance for a closing
22 statement. Those who don't formally intervene, but just
23 want to come and make a statement before us, we always
24 give that opportunity. So, it's sort of a bit of a hybrid

[WITNESS PANEL: Goldman~Harding~Weber~Naylor]

1 here, a little combination of the two. If there's no
2 objection from anyone to go ahead and have a brief
3 opening, I won't be opposed to that, particularly, as
4 you've said, you don't really expect to be testifying
5 today, and can rely on what you submitted already.

6 So, if there's no opposition, Mr.
7 Boynton, any opposition to that request?

8 MR. BOYNTON: The request is to make an
9 opening statement?

10 CHAIRMAN IGNATIUS: Yes.

11 MR. BOYNTON: In lieu of direct
12 testimony?

13 MR. LOGAN: No.

14 MS. LOGAN: No.

15 CHAIRMAN IGNATIUS: I'm not sure there's
16 a commitment of no testifying. I think the intervenors
17 sort of want it both ways, if you'll allow me to put it
18 that way.

19 MR. BOYNTON: Do you anticipate the
20 opening statement will be an offer of evidence of some
21 fashion?

22 CHAIRMAN IGNATIUS: I wouldn't know.
23 Mr. Sheehan, do you know anything further?

24 MR. SHEEHAN: I don't know either. I

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[WITNESS PANEL: Goldman~Harding~Weber~Naylor]

1 suspect it's a heads' up of what -- putting their
2 particular cases in context, but that's speculation on my
3 part.

4 CHAIRMAN IGNATIUS: Well, because we
5 aren't certain whether you really intend to testify or
6 not, and because we've read all of the prefiled testimony,
7 and I think we have a good sense of what the arguments
8 are, let's not do opening statements. And, then, you'll
9 decide whether or not you want to testify. Your written
10 materials are all in the record. And, you'll have a
11 chance for a closing statement to make the kind of wrap-up
12 arguments, all right? Yes, Mr. Logan.

13 MR. LOGAN: I think this came about
14 through a misunderstanding with the members of the Staff,
15 that we were advised we could make an opening statement.
16 And, unfortunately, we don't have the particulars of, you
17 know, the -- so, I guess my take would be, do we need to
18 offer the -- give testimony in order to make our opening
19 statements, because, ultimately, I think we put some time
20 into preparing them and we would like to have the
21 opportunity to state them?

22 CHAIRMAN IGNATIUS: Well, I assume your
23 statement is summarizing the sorts of points you've made
24 in your prefiled testimony, correct?

{DW 13-171} {01-21-14}

[WITNESS PANEL: Goldman~Harding~Weber~Naylor]

1 MR. LOGAN: Well, I actually have two
2 filed testimonies, one, the prefilled, and the other being
3 the testimony. And, this is, you know, it covers multiple
4 fronts. It does, at the macro level, address where we're
5 going, in my case.

6 CHAIRMAN IGNATIUS: All right. Which
7 we've read. I mean, we've read all of your testimony.
8 And, you have a chance to question these witnesses on any
9 things that you take issue with in the Settlement. And,
10 then, you have an opportunity to testify later this
11 morning, if you want to. If you know you aren't going to
12 want to testify, then let's go ahead with the opening
13 statements.

14 MR. LOGAN: No. I'm fine with
15 testimony.

16 CHAIRMAN IGNATIUS: Okay. Then, why
17 don't we go ahead with the panel. Mr. Patnaude, have you
18 sworn the witnesses?

19 MR. PATNAUDE: Yes.

20 CHAIRMAN IGNATIUS: Okay. Then, Mr.
21 Boynton, do you want to proceed?

22 MR. BOYNTON: Sure. Thank you very
23 much.

24 CHAIRMAN IGNATIUS: And, you can stay

[WITNESS PANEL: Goldman~Harding~Weber~Naylor]

1 seated, if it's easier. And, certainly, the microphone
2 works better if you're seated.

3 MR. BOYNTON: I came prepared to offer
4 testimony summarizing the transaction, the background of
5 it, and the major points in the Stipulation. If the
6 Commission feels that's not necessary, and I believe
7 that's what I heard, we can move to --

8 CHAIRMAN IGNATIUS: What I would suggest
9 is to go through the key provisions of the Settlement
10 Agreement between you and Mr. Sheehan, and then any issues
11 that you know have been raised by other parties, if you
12 want to question your witnesses about their view of some
13 of the criticisms that have been raised about the
14 transaction.

15 MR. BOYNTON: Would you, in effect, like
16 an offer of proof on those topics or --

17 CHAIRMAN IGNATIUS: Actually, we've got
18 witnesses here to hear their views.

19 MR. BOYNTON: Okay. Then, first, I
20 would call Maynard Goldman. And, I would ask the
21 Commission to cut me off if I'm belaboring things that are
22 not necessary to explore.

23 CHAIRMAN IGNATIUS: That's fine.

24 **MAYNARD GOLDMAN, SWORN**

{DW 13-171} {01-21-14}

[WITNESS PANEL: Goldman~Harding~Weber~Naylor]

1 **BRIAN HARDING, SWORN**

2 **WILLIAM WEBER, SWORN**

3 **MARK NAYLOR, SWORN**

4 **DIRECT EXAMINATION**

5 BY MR. BOYNTON:

6 Q. Mr. Goldman, would you please state your name for the
7 record and spell your last name.

8 A. (Goldman) Maynard Goldman, G-o-l-d-m-a-n.

9 Q. And, what is your position with respect to this
10 Petition?

11 A. (Goldman) I'm the President of the Eastman Community
12 Association.

13 Q. There are three entities involved here. Would you
14 briefly tell the Commission what those are.

15 A. (Goldman) The three entities are the Eastman Community
16 Association, which is the designated Board and
17 governing group for the Eastman Community Association;
18 the Eastman Sewer Company, which is a wholly owned
19 for-profit subsidiary of the Eastman Community
20 Association; and the Village District of Eastman, which
21 is a municipality, which currently runs the water
22 company and water operations within the Community of
23 Eastman.

24 Q. The Village District of Eastman is comprised of three

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[WITNESS PANEL: Goldman~Harding~Weber~Naylor]

1 towns -- portions of three towns, is that correct?

2 A. (Goldman) The Community of Eastman is comprised of
3 three towns. About 92 percent of the housing stock,
4 which is about 1,250 units, comprised of individual
5 homes and condominiums, is in Grantham, and a smaller,
6 a much smaller amount is in the towns of Springfield
7 and Enfield.

8 Q. Did you have discussions with the representatives of
9 the Village District relative to the transfer of assets
10 of the Eastman Sewer Company?

11 A. (Goldman) The principal discussions -- the answer is
12 "yes". The principal discussions took place after many
13 months and lengthy discussions amongst the members of
14 the Sewer Board, and then the Eastman Community
15 Association Board, and then we did approach the
16 Commissioners of the Village District.

17 Q. Did those discussions eventually result in a Purchase
18 and Sales Agreement for the transfer of assets?

19 A. (Goldman) They did.

20 Q. And, was that Purchase and Sales Agreement signed?

21 A. (Goldman) It was.

22 Q. Was it approved by the Eastman Sewer Commission Board?

23 A. (Goldman) It was approved by the Eastman Sewer Company
24 Board by a vote of five to nothing. It was approved by

[WITNESS PANEL: Goldman~Harding~Weber~Naylor]

1 the Eastman Community Association Board by a vote of
2 nine to nothing. And, it was approved by the Village
3 District of Eastman Commissioners by a vote of two to
4 one. Sixteen of the seventeen people who had
5 responsibility for the process voted in favor of it.

6 Q. Have the voters of the Village District approved the
7 transaction?

8 A. (Goldman) Voters have approved the transaction on a
9 number of occasions. In January, one year ago, they
10 approved, at a Village District meeting, there was a
11 vote to approve a process going forward. In March, at
12 the annual meeting of the Village District, there was a
13 vote to approve the plan, and a two-thirds vote, which
14 was required to approve the financing. And, in August,
15 there was a vote that was held as a result of a
16 petition to the Selectboard of the Town of Grantham to
17 establish a second village district, and that motion
18 failed by a vote of better than three to one.

19 Q. Are all of the property owners in Eastman sewer
20 customers?

21 A. (Goldman) No. There are about 935 or 40 homes, 335
22 condos, and another 120 lots that are owned by
23 individuals, 1,440 or so, but only 535 people are on
24 the sewer system. The rest of the customers -- excuse

[WITNESS PANEL: Goldman~Harding~Weber~Naylor]

1 me, the rest of the people in Eastman have individual
2 septic systems.

3 Q. Would you describe how the operation of the Sewer
4 Company is a benefit to the entire Community?

5 A. (Goldman) The Sewer Company was created by the
6 developer back many years ago as a for-profit entity.
7 In around 2000, the Sewer Company was sold, in addition
8 to a number of other assets by the developer, to the
9 Eastman Community Association. The wastewater system
10 performs a number of services in the Community. First,
11 of course, it collects the wastewater from the units
12 which are attached to it. These are principally
13 condominium units, but not entirely. Condominiums,
14 mostly which are situated around the lake, and the
15 developer installed a sewer system to handle that
16 wastewater. And, so, there is an overall Community
17 concern and involvement with ensuring that the
18 wastewater is handled in its most effective manner.

19 Secondly, the effluent from the
20 wastewater goes through a treatment plant, and some of
21 it is pumped onto the golf course, and has been for
22 many years. If this were not the case, that is to say
23 if we were not pumping wastewater on the golf course,
24 it is likely that the effluent would need to be either

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1 physically removed from the Eastman Community or would
2 have to be eliminated or reduced in some other fashion.

3 Q. The golf course is an asset available to all the
4 property owners?

5 A. (Goldman) Well, the golf course is a public golf
6 course. Membership is available, but not required to
7 play. And, so, the answer is "yes, it's available."
8 Anybody can play on the golf course.

9 Q. Is it within the geographical boundaries of the Eastman
10 Community?

11 A. (Goldman) It is.

12 Q. Do you believe that there are upgrades to the sewer
13 treatment system that are necessary?

14 A. (Goldman) Well, we have -- the Eastman Sewer Company
15 has contracted with a consultant who has provided a
16 number of reports. And, according to the consultant
17 and the engineers, the engineering consultant, there
18 are significant improvements that are necessary to
19 ensure that the Company and the system is able to
20 continue in an appropriate way.

21 Q. Do you believe that the Village District of Eastman is
22 in a better position to facilitate and achieve those
23 upgrades than the Community Association?

24 A. (Goldman) I'm not sure they're in a better position,

[WITNESS PANEL: Goldman~Harding~Weber~Naylor]

1 but they're certainly in as good a position.

2 Q. As a municipality, does the Village District have
3 access to funding that is not available to the
4 Community Association?

5 A. (Goldman) It is my understanding that the Village
6 District does have access to funding that would not be
7 available to the Community Association and to the Sewer
8 Company. The Community Association is a 501(c)(4)
9 organization. Most importantly, the Sewer Company is a
10 for-profit company. It is unfortunate that at the time
11 of the acquisition this was not taken care of, but, in
12 fact, it was not. So, therefore, as a for-profit
13 company, they do not have access to the kind of
14 financing that the Village District would have access
15 to.

16 Q. Can you describe for the Commission how the operational
17 elements of the Community Association and the Village
18 District will mesh, if this transaction is approved?

19 A. (Goldman) Well, I think, just as -- there are a couple
20 of things that I think you should be aware of. First
21 of all, the Eastman Community Association and the
22 Village District share physical space. They are
23 located in the same small building on the north side of
24 the property of Eastman. Secondly, you should

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1 understand that the Sewer Company has no employees. It
2 has not had any employees since the Company was
3 purchased some dozen years ago from the developer. We
4 have an operator for the system, who is an outside
5 contractor, and that contractor will continue to
6 perform services for the Village District. We have
7 administrative services that have been provided by ECA
8 employees to the Sewer Company. In particular,
9 Mr. Harding, whose full-time job is the Assistant
10 General Manager of the Eastman Community Association,
11 but who has had a responsibility as part of that to be
12 the General Manager of the Sewer Company. And, one of
13 the women in the ECA office has performed the role of a
14 administrator, handling the billing and the payables
15 for the Sewer Company. After the transfer, Mr. Weber,
16 who is the General Manager of the Village District,
17 will take over the operations of the Sewer Company.
18 And, the gal, who is currently his assistant in the
19 Village District, will take over the billing and the
20 payables. The ECA will be available to provide
21 continuing assistance to the Village District for so
22 long as that is necessary. And, they are literally as
23 close as from where I'm sitting to the wall physically.
24 Q. Separate suites in the same building?

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[WITNESS PANEL: Goldman~Harding~Weber~Naylor]

1 A. (Goldman) That's correct.

2 Q. Do you believe that this transaction is in the public
3 interest?

4 A. (Goldman) The answer is certainly "yes". I've read the
5 background of what that means. And, I certainly
6 believe that the Village District has the managerial,
7 technical, and financial expertise to operate this
8 system.

9 Q. Do you have the support of the members of the
10 Community?

11 A. (Goldman) In every way that we've been able to
12 determine, there is no question in my mind that we have
13 the support of a very substantial portion of the
14 Community.

15 Q. There has nevertheless been some opposition?

16 A. (Goldman) There has.

17 Q. There are intervenors in this proceeding?

18 A. (Goldman) There are.

19 Q. Mr. and Mrs. Logan are intervenors, and they're present
20 today. Are they customers of the Sewer Company?

21 A. (Goldman) No, they are not.

22 Q. Mr. Schaefer is present today, speaking in opposition.
23 You mentioned briefly the attempt to form another
24 village district. Was that something that Mr. Schaefer

[WITNESS PANEL: Goldman~Harding~Weber~Naylor]

1 proposed?

2 A. (Goldman) He was the principal proposer of that, yes.

3 Q. And, the purpose of that attempt was to create another
4 entity similar to the Village District of Eastman?

5 A. (Goldman) I assume that it was. He proposed that --
6 the group proposed, 12 voters, I believe, petitioned
7 the Selectboard in Grantham to establish a second
8 village district. And that, as I said, was voted down
9 by a most significant margin at the meeting in August.

10 MR. BOYNTON: Thank you, Mr. Goldman.
11 Staff and the intervenors may have some questions for you.

12 CHAIRMAN IGNATIUS: Thank you.
13 Mr. Sheehan, further direct?

14 MR. SHEEHAN: I had actually prepared
15 questions for the panel as a group. Perhaps it's best to
16 go through the three representatives of the Petitioners,
17 and then -- because my questions would be bouncing around
18 amongst the gentlemen up there.

19 CHAIRMAN IGNATIUS: That's true. I
20 guess I missed that, I was forgetting. I don't know if
21 you planned on questioning the other two --

22 MR. BOYNTON: Yes.

23 CHAIRMAN IGNATIUS: -- members that
24 you're representing as well, excuse me, before moving on.

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1 We probably should do it altogether. So, if you have
2 questions for Mr. Weber or Mr. Harding, why don't you go
3 ahead and do that. And, remember, we have read it all.
4 So, you don't need to go into great detail.

5 MR. BOYNTON: Okay.

6 BY MR. BOYNTON:

7 Q. Mr. Weber, would you please state your name and spell
8 your last name for the record.

9 A. (Weber) William Weber, W-e-b-e-r.

10 Q. And, what is your position in this matter?

11 A. (Weber) I'm the General Manager of the Village District
12 of Eastman.

13 Q. And, is the Village District of Eastman a New Hampshire
14 municipality?

15 A. (Weber) That's correct.

16 Q. Are there commissioners of the Village District?

17 A. (Weber) Yes. There's three elected commissioners.

18 Q. Do they operate in a manner similar to selectmen in a
19 town?

20 A. (Weber) Yes. It's synonymous with selectmen in a town.
21 That's correct.

22 Q. And, do you -- does the Village District currently
23 operate a public water supply within the Community?

24 A. (Weber) Yes, we do.

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[WITNESS PANEL: Goldman~Harding~Weber~Naylor]

1 Q. About how many customers?

2 A. (Weber) We have approximately 2,700 customers, which
3 entails 1,330 actual connections. The 2,700 are in
4 Grantham. There's approximately another three to 350
5 in Enfield and Springfield combined.

6 Q. And, individually, as a person, how long have you been
7 operating that system?

8 A. (Weber) I'm going on my sixth year.

9 Q. In addition to the operation of the system, the water
10 system, do you have personal individual experience in
11 wastewater?

12 A. (Weber) Yes, I do.

13 Q. Did you own your own excavation company?

14 A. (Weber) Yes, I did.

15 Q. What was that called?

16 A. (Weber) Weber Excavation.

17 Q. Have you been involved in septic systems?

18 A. (Weber) Yes, I have.

19 Q. Did you have a private company?

20 A. (Weber) I did. When I had the excavation company, a
21 lot of our work was geared around residential and light
22 commercial septic systems. And, we built a pump truck
23 to pump these out. We were licensed by the State of
24 New Hampshire DES for pumping and dumping in the Town

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[WITNESS PANEL: Goldman~Harding~Weber~Naylor]

1 of Concord. Sorry to put it that way.

2 Q. Were you licensed as a septic system installer?

3 A. (Weber) Yes, I was.

4 Q. And licensed as a pumper?

5 A. (Weber) I was.

6 Q. Do you have a background, a history of work in
7 municipal sewer systems?

8 A. (Weber) Yes, I do.

9 Q. Could you describe briefly what that was?

10 A. (Weber) I worked in the towns of Hillsborough and
11 Henniker and some other. And, sometimes what would
12 happen, manholes and things like this in municipalities
13 would get plugged up, storm water drains will cross, we
14 need to clean them out. And, I did that for those
15 towns for a period of approximately seven years, six
16 years.

17 Q. Were you involved in the negotiation of a Purchase and
18 Sales Agreement for these assets of the Eastman Sewer
19 Company?

20 A. (Weber) Yes, I was.

21 Q. And, the Village District is prepared to acquire those
22 assets?

23 A. (Weber) Yes, we are.

24 Q. And, what is the purchase price?

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1 A. (Weber) Purchase price is one dollar, plus the
2 assumption of the debt.

3 Q. And, the voters have approved the assumption of the
4 debt?

5 A. (Weber) That's correct. We had a super majority, which
6 is required of a bond hearing, at our annual meeting
7 last March. I don't remember the numbers, but it was
8 the two-thirds super majority required to issue the
9 bond of \$280,000, which was approved through Lake
10 Sunapee Bank.

11 Q. What is your relationship to the Water Systems
12 Operator?

13 A. (Weber) Water Systems Operators is made up of three
14 individuals. I went to school with two of them. And,
15 right now, they are our on-call operators for my water
16 system, when my people are home for the weekends and on
17 holidays.

18 Q. What is the name of that entity?

19 A. (Weber) Water Systems Operators of Henniker.

20 Q. And, will that be the same entity that will be the
21 wastewater system operator?

22 A. (Weber) Yes. They're a contract operator now currently
23 with the Eastman Sewer Company, and they will continue
24 to maintain themselves in that role.

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[WITNESS PANEL: Goldman~Harding~Weber~Naylor]

1 Q. Has the Village District established any capital
2 reserve funds to deal with the Sewer Company?

3 A. (Weber) At last year's annual meeting, the budget was
4 written for three capital reserve funds. Because this
5 facet of the negotiation and the sale between the
6 Village District and Eastman Sewer Company hadn't gone
7 through the Public Utilities Commission approval, our
8 budget was shot down. Not because of a vote, but
9 because it was not ripe at that point. This year, with
10 our new budget, we again have used literally the same
11 budget, and established three capital accounts,
12 wastewater collection, wastewater treatment, and
13 wastewater disposal.

14 Q. What is the purpose of those accounts?

15 A. (Weber) The purpose of the accounts -- excuse me --
16 is -- excuse me -- to start to build up money to
17 correct any deficiencies in the system. Now, we are
18 what we would call "behind the eightball" at this. The
19 improvements to the system may exceed what these
20 capital accounts would raise over the next five to
21 seven years. However, these accounts will be able to
22 be utilized for smaller items as we go, a manhole
23 repair, a pump replacement and such. We have a goal
24 for these accounts that we set with every one of our

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[WITNESS PANEL: Goldman~Harding~Weber~Naylor]

1 capital accounts.

2 Q. Okay.

3 MR. SHEEHAN: Make myself useful.

4 (Atty. Sheehan handing a cup of water to
5 Witness Weber.)

6 WITNESS WEBER: Thank you.

7 MR. BOYNTON: Thank you, Mike. I
8 thought he had some.

9 WITNESS WEBER: Thank you.

10 BY MR. BOYNTON:

11 Q. Are all the sewer customers within the geographical
12 boundaries of the Village District?

13 A. (Weber) Yes, they are.

14 Q. Do you believe that there are savings that will be
15 possible if this transaction is approved, monetary
16 savings?

17 A. (Weber) Yes. Yes, I do. There are, if you'd like me
18 to list a little, I'd be more than happy to, if not --

19 Q. They're outlined in your testimony?

20 A. (Weber) That's correct.

21 MR. BOYNTON: Does the Commission have
22 an interest in a discussion of those savings at this
23 point?

24 CHAIRMAN IGNATIUS: We may have some

[WITNESS PANEL: Goldman~Harding~Weber~Naylor]

1 particular questions. But that's all right. You can
2 continue on.

3 MR. BOYNTON: Okay.

4 BY MR. BOYNTON:

5 Q. Do you believe that the Village District of Eastman has
6 the financial capabilities of running the Sewer
7 Company, providing sewer services?

8 A. (Weber) Yes, we do. As Mr. Goldman said, the Eastman
9 Sewer Company, as it stands now, is not in a position
10 to be able to extract funds that we can. We've already
11 been in touch with the Clean Water State Revolving
12 Fund, where you have to be a municipality to utilize
13 these funds. These are low interest loans, which are a
14 lot less than what a for-profit enterprise could borrow
15 money for. Our banks deal with us on what's called
16 "municipal rates", again, a lot less money in interest
17 savings over the terms.

18 Q. Has the Village District obtained approval for taking
19 over the outstanding debt of the Sewer Company?

20 A. (Weber) Yes, we have.

21 Q. Approval by both the lender and the voters?

22 A. (Weber) That's correct.

23 Q. And, in both cases, approval as a municipal entity?

24 A. (Weber) That's correct.

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[WITNESS PANEL: Goldman~Harding~Weber~Naylor]

1 Q. Do you have confidence in the personnel and the assets
2 of the Village District to own these assets?

3 A. (Weber) Yes, I do.

4 Q. Do you have confidence that the Village District will
5 be able to deliver these services from a managerial,
6 technical, and financial basis?

7 A. (Weber) Yes, we can.

8 MR. BOYNTON: Thank you.

9 WITNESS WEBER: You're welcome.

10 MR. BOYNTON: Shall I move to Mr.

11 Harding?

12 CHAIRMAN IGNATIUS: Yes, please.

13 MR. BOYNTON: Thank you.

14 BY MR. BOYNTON:

15 Q. Mr. Harding, would you please state your name and spell
16 your last name for the record.

17 A. (Harding) It's Brian Harding, H-a-r-d-i-n-g.

18 Q. And, what are your capacities with respect to this
19 Petition?

20 A. (Harding) Well, I'm the General Manager of the Eastman
21 Sewer Company. As was indicated earlier, the Eastman
22 Sewer Company technically does not have any employees.
23 My permanent position is Assistant General Manager for
24 the Eastman Community Association.

[WITNESS PANEL: Goldman~Harding~Weber~Naylor]

1 Q. Administratively, if the Commission approves this
2 transfer, do you believe that it will be seamless, as a
3 practical matter?

4 A. (Harding) Yes, I do. Bill Weber and I have worked
5 closely together, certainly since he joined the Village
6 District. Not nearly as frequently in the past as we
7 have in the past couple of years, as this proposal has
8 moved forward. But we are prepared to offer full
9 assistance, both myself to Mr. Weber, and the
10 individual in my office who does the accounting for the
11 Sewer Company, we'll offer our full assistance to the
12 Village District, if the Commission approves this
13 transfer.

14 Q. Does the Sewer Company operate under a permit from DES?

15 A. (Harding) Yes, we do.

16 Q. And, is that permit transferable to the Village
17 District?

18 A. (Harding) Yes, it is. And, we have verified that with
19 DES.

20 Q. The qualified operator that you use for the Sewer
21 Company is the same operator that operates the Water
22 Company?

23 A. (Harding) The Water Systems Operator of Henniker, New
24 Hampshire is the licensed operator that operates the

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1 Sewer Company. And, Water Systems Operators is
2 prepared to operate the sewer operation when it
3 transfers to the Village District. The Village
4 District operates its own water system. But, as Bill
5 indicated, Water Systems Operators lends support on a
6 contract basis when their operators are unavailable.

7 Q. Have you attempted to determine whether or not there
8 will be savings, financial savings, that will accrue,
9 if this transaction is approved?

10 A. (Harding) Yes, we did. We did look at that closely as
11 this proposal moved forward. And, that was certainly
12 one of the strong justifications for having this
13 proposal move forward. We identified approximately
14 \$20,000 per year in savings or in funds that would no
15 longer need to be expended, if it remained -- if the
16 sewer operation remained with Eastman Community
17 Association or Eastman Sewer Company. And, those funds
18 could be utilized to operate the system, make the
19 improvements that are required to the system, and just
20 benefit the customers, rather than having those funds
21 being spent in taxes, additional insurance, and
22 additional fees to CPAs.

23 MR. BOYNTON: Thank you.

24 WITNESS HARDING: You're welcome.

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[WITNESS PANEL: Goldman~Harding~Weber~Naylor]

1 CHAIRMAN IGNATIUS: Mr. Sheehan.

2 MR. SHEEHAN: Thank you. I'm going to
3 direct -- well, first, let me ask Mr. Naylor some
4 questions.

5 BY MR. SHEEHAN:

6 Q. Mr. Naylor, your name and your title?

7 A. (Naylor) Mark Naylor. I'm the Director of the Gas and
8 Water Division here at the New Hampshire Public
9 Utilities Commission.

10 Q. And, what work did you perform, in a broad sense, on
11 this particular docket?

12 A. (Naylor) I've reviewed the filing that was submitted by
13 the Joint Petitioners, participated in the preparation
14 of discovery questions for the Joint Petitioners,
15 reviewed that, reviewed all the testimony filed by
16 other parties, the intervenors, and negotiated the
17 Settlement Agreement that's being presented today.

18 Q. And, what particular area of expertise do you have?

19 A. (Naylor) In addition to my 23 years here at the PUC, my
20 educational background is in accounting.

21 Q. And, your testimony today will be in the areas of your
22 accounting and of your 23 years experience here at the
23 Commission?

24 A. (Naylor) Yes.

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[WITNESS PANEL: Goldman~Harding~Weber~Naylor]

1 Q. I'm going to bounce around a little, so bear with me.
2 The purchase, and whoever of the Petitioners want to
3 answer jump in, the purchases of the assets and
4 liabilities, what will become of the Eastman Sewer
5 Company after the transaction, if it's approved?

6 A. (Goldman) I believe the answer to that will -- is that
7 it will simply eventually be, I'm not sure quite what
8 the -- it will disappear.

9 Q. Okay.

10 A. (Harding) Be dissolved.

11 A. (Goldman) Be dissolved.

12 Q. There's no other business that the Sewer Company needs
13 to conduct after this transaction?

14 A. (Goldman) There is not.

15 Q. And, the debt that we discussed, that you discussed, is
16 being assumed by the Village District?

17 A. (Goldman) That is correct.

18 Q. How was the purchase price determined, the one dollar,
19 plus assumption of the 280,000 in debt?

20 A. (Goldman) I think there was some discussion amongst --
21 between and amongst the parties as to what was a fair
22 and reasonable price under the circumstances. And,
23 that was what was arrived at.

24 A. (Weber) I can help you with that a little bit. We took

[WITNESS PANEL: Goldman~Harding~Weber~Naylor]

1 -- the Village District Commissioners and I took the
2 value of the system after the repairs were complete,
3 and then deducted out what it would cost to get there.
4 And, it worked out to be that it's about a wash. And,
5 the dollar, from our understanding, it just makes it a
6 legal transfer.

7 Q. Meaning, say, for example, you had to spend \$100 to do
8 the needed repairs, it would then be worth \$100?

9 A. (Weber) Well, I guess that's kind of a broad way of
10 putting it. Our looking at it was, there was some
11 numbers floating around from their consultants anywhere
12 between 600,000 and a million four (1,400,000) to
13 repair the system and make it do what it should be
14 doing and protect the Community. We took the million
15 four (1,400,000), plus the debt that we had to pay off
16 on it, which at the time was about \$300,000, which
17 would make it 1.7 million. We looked at some old
18 appraisals, and the appraisals were around a million.
19 So, we assumed -- made the assumption that it was just
20 not worth any more than a dollar, based on what we'd
21 have to -- the Community would have to put into it.

22 Q. And, you understand that some of the intervenor
23 objection is a challenge to what, in effect, is the
24 purchase price?

[WITNESS PANEL: Goldman~Harding~Weber~Naylor]

1 A. (Weber) That's correct.

2 Q. And, you're aware of what their objections are, and
3 without -- you're satisfied that, despite their
4 objections, you came up with a reasonable price of this
5 purchase and sale?

6 A. (Weber) Yes.

7 Q. When is the closing expected to occur should the
8 Commission approve the transaction?

9 A. (Weber) We targeted March 21st, the day after our
10 annual meeting.

11 Q. Does anything have to happen at this upcoming annual
12 meeting related to the sale?

13 A. (Weber) Nothing. The only thing is, the budget would
14 have to be approved.

15 Q. The sewer users are currently all within the Town of
16 Grantham. And, the Village District serves all of
17 those sewer users, is that correct?

18 A. (Weber) That's correct.

19 Q. What is the geographic boundary of the Village District
20 itself? Is it the three towns or is it a circle that
21 encompasses parts of those three towns?

22 A. (Weber) It's a circle that encompasses pieces of those
23 three towns. Like Mr. Goldman said, the DRA, when they
24 do their assessment and appropriations for the year,

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[WITNESS PANEL: Goldman~Harding~Weber~Naylor]

1 the apportionment for the year, Grantham is
2 92.1 percent, Springfield is 4.1, and Enfield, I
3 believe, is 3.2 percent. Now, even though Enfield and
4 Springfield are not in the wastewater system, the
5 percentage of people on the wastewater system, I don't
6 remember the number, it's 535 out of 1,340.

7 Q. And, the Village District serves the Eastman Community
8 as that Community is understood to be?

9 A. (Weber) Yes. Yes, we do.

10 Q. And, the Village District, after this transaction,
11 could assume more Sewer Company customers should the
12 infrastructure be there and the need be there?

13 A. (Weber) We could.

14 Q. Within that boundary?

15 A. (Weber) We could.

16 Q. And, right now, all of those sewer customers are within
17 the Village District's boundaries?

18 A. (Weber) That's correct.

19 Q. Mr. Naylor, why don't we go over the agreement quickly
20 -- not "quickly", carefully. Can you tell us what
21 steps you took in the process that led up to the
22 Agreement, which has been marked as "Exhibit 9"?

23 A. (Naylor) Yes. It's, as I indicated earlier, a review
24 of the Petition filed by the Joint Petitioners,

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1 certainly based on Staff's familiarity with this
2 company over many years, and many other facts we were
3 already familiar with, in terms of the Company's
4 problems and opportunities and so forth, and how it
5 serves and so forth. We felt that one of the areas
6 that we needed to concentrate on, in terms of an
7 appropriate recommendation to the Commission, was with
8 respect to the managerial, technical, and financial
9 capabilities of the Village District. And, we did
10 explore that to some extent in discovery. And, I
11 believe we have marked some of those discovery
12 responses as exhibits for the Commission's
13 consideration, but I think those are, in addition to
14 what was included --

15 CHAIRMAN IGNATIUS: Mr. Naylor, before
16 you go ahead. Mr. Logan, you have an objection?

17 MR. LOGAN: It's not an objection. I
18 don't know that we have Exhibit 9, and that may be because
19 -- did you give us Exhibit 9 this morning?

20 CHAIRMAN IGNATIUS: Nine is the
21 Settlement Agreement itself, correct?

22 MR. LOGAN: Correct.

23 MR. SHEEHAN: That's correct.

24 MR. LOGAN: I just don't know if we got

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1 a copy this morning when we arrived.

2 MR. SHEEHAN: I did not prepare a paper
3 copy, because that was a document that is filed in the
4 docketbook. And, I believe was, when filed by Staff or
5 Mr. Boynton, whoever filed it, it was sent to the whole
6 service list. And, I can certainly, I have a paper copy
7 here, we can certainly run out and make a copy of it.

8 CHAIRMAN IGNATIUS: That was filed with
9 the Commission on January 16th?

10 MR. SHEEHAN: Correct.

11 CHAIRMAN IGNATIUS: And electronically
12 served on all of the parties?

13 MR. SHEEHAN: That's correct.

14 CHAIRMAN IGNATIUS: Did you not receive
15 that, Mr. Logan?

16 MR. LOGAN: Well, the problem is, I
17 didn't know what Exhibit 9 was until I arrived.

18 CHAIRMAN IGNATIUS: Well, but did you
19 receive a copy of the Settlement Agreement?

20 MR. LOGAN: Yes, I did. I guess I did,
21 yes.

22 CHAIRMAN IGNATIUS: If you need another
23 photocopy made, we can do that. If you have it in your
24 papers and --

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1 MR. LOGAN: Okay.

2 CHAIRMAN IGNATIUS: -- you just need to
3 know which one 9 is, that's --

4 MR. LOGAN: I already have this.

5 CHAIRMAN IGNATIUS: Okay. Thank you.

6 All right. Please continue.

7 BY MR. SHEEHAN:

8 Q. To clarify, Mr. Naylor, Exhibit 9 is titled what?

9 A. (Naylor) It is the Stipulation Agreement filed in this
10 docket between the Joint Petitioners and the Staff.

11 Q. And, it's how many pages?

12 A. (Naylor) It looks like nine, a nine-page document,
13 exclusive of the cover letter. The last page is the
14 signature page, Page 9.

15 Q. You mentioned, just in your prior answer, that the --
16 what Staff looks at in evaluating an agreement like
17 this is the standard of whether the Village District
18 has the managerial, technical, and financial expertise
19 to operate the system, is that correct?

20 A. (Naylor) Yes.

21 Q. And, you just said that you conducted some discovery on
22 that issue. As a result of that discovery, do you have
23 an opinion as to whether the Village District has that
24 managerial, financial, and technical ability?

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1 A. (Naylor) Yes. I believe they do. I believe they have
2 established that the District has the capabilities to
3 operate this system. They have a plan in place for
4 operating it. They have access to capital, which we
5 just heard some testimony on with respect to the Clean
6 Water SRF. So, I believe that they have the
7 capabilities to operate this system.

8 Q. "SRF" is what?

9 A. (Naylor) State Revolving Fund.

10 Q. And, that's the financing Mr. Weber was speaking of?

11 A. (Naylor) That's correct.

12 Q. Again, to the Petitioners, whoever feels appropriate to
13 answer, I think it's been said that the Village
14 District intends to keep operating the system through
15 its current operator?

16 A. (Weber) That's correct.

17 Q. And, a copy of that was provided through discovery, is
18 that correct?

19 A. (Weber) Yes. I believe it was.

20 Q. And, does that contract need to be re-signed,
21 re-executed upon transfer?

22 A. (Weber) It will not have to be re-signed or
23 re-executed. It's transferable. There was a clause
24 for that in the contract.

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1 MR. SHEEHAN: If I may?

2 CHAIRMAN IGNATIUS: Please.

3 (Atty. Sheehan handing a document to
4 Witness Weber.)

5 BY MR. SHEEHAN:

6 Q. I'll show you what's been marked as number "14", which
7 is a data response. Do you recognize that?

8 A. (Weber) I do.

9 Q. And, that's your answer to Staff discovery 1-7?

10 A. (Weber) It is.

11 Q. And, it's a statement of estimated savings from this
12 transaction, is that correct?

13 A. (Weber) Yes, it is.

14 Q. And, the number is what?

15 A. (Weber) \$20,000. Approximately \$20,000.

16 Q. And, is that the number you estimated based on the
17 process you described in your earlier testimony?

18 A. (Weber) Yes. Yes, it is.

19 Q. To the Petitioners, is the Sewer Company currently in
20 compliance with DES requirements?

21 A. (Harding) The Sewer Company is not in full compliance
22 with DES requirements. We received, in July of 2010, a
23 deficiency letter, a letter of non-compliance, with
24 respect to two parameters related to the discharge of

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1 effluent on our golf course through the irrigation
2 system. Those two parameters were biological oxygen
3 demand and total suspended solids. And, notified by
4 the State, again, in July of 2010, that sampling that
5 had been provided, as required by state law, from our
6 operator to the State, on a consistent basis, had not
7 met the minimum requirements.

8 Q. And, what has the Sewer Company done since receiving
9 that notice?

10 A. (Harding) Since receiving the notice, we had an initial
11 conversation with DES. We engaged the services of an
12 engineering firm, Underwood Engineers out of
13 Portsmouth, New Hampshire. Started discussing -- when
14 we initially started having a conversation with the
15 engineering firm we had been using at the time --

16 (Court reporter interruption.)

17 **CONTINUED BY THE WITNESS:**

18 A. (Harding) We initially had discussions with the
19 engineering firm we had been working with at the time
20 -- and I'll slow down, Steven, my apologies -- and
21 decided to change engineering firms to Underwood
22 Engineers of Portsmouth, New Hampshire. Started
23 conversations with them in late 2010, I believe, and
24 that continued in 2011. They proposed at least an

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1 initial process or an initial trial of doing some
2 blending of lake water with the effluent in the holding
3 pond that holds the wastewater that's used to irrigate
4 on the golf course, to see if that would bring the
5 parameters down and bring us in compliance. That did
6 not work. We did that for the entire golf season in
7 2011. And, in 2012, we contracted with them to
8 research alternatives to solve the problem and come up
9 with two recommendations. The most economical way to
10 meet the DES requirements, while continuing to irrigate
11 on the golf course, and the most economical way to meet
12 those requirements while ceasing to irrigate effluent
13 onto the golf course. They submitted their final
14 report in January of last year, January of 2013. And,
15 the Eastman Sewer Board subsequently approved one of
16 those alternatives, to do additional engineering and
17 research on possibly installing a drip dispersal system
18 and cease operation of irrigating effluent onto the
19 golf course.

20 A. (Goldman) I think it's important to your point, I think
21 it's important to know that DES has issued a five-year
22 permit to the Eastman Sewer Company, which is a clean
23 permit, in the sense that on the face of the permit
24 there are no restrictions, because I believe they

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1 recognize that we have been working to correct the
2 problems which exist.

3 BY MR. SHEEHAN:

4 Q. And, I assume, Mr. Weber, you're fully aware of what's
5 been going on between the Sewer Company and DES?

6 A. (Weber) I am.

7 Q. And, part of the -- you testified a minute ago, the
8 money that had to be put in was one of these systems
9 that Mr. Harding just described as an option?

10 A. (Weber) That's correct. Yes.

11 Q. And, Mr. Naylor, what's Staff's role, as far as the
12 status with DES and the Sewer Company? How do you view
13 an issue like this?

14 A. (Naylor) I'm particularly aware of it, because the
15 Eastman Sewer Company has had, since the early '90s, a
16 capital reserve fund built into its rates, and so had
17 accumulated some funds in that account that were
18 available for use for capital projects over the years.
19 And, in the last couple of years, the Company has
20 requested to use that account, funds from that account,
21 for the purpose that Mr. Harding just described. So,
22 we are quite familiar with it.

23 You know, this is about a 40 year old
24 system now. So, you know, these things happen. These

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1 are -- we're familiar with this on the water side,
2 with, you know, aging systems, whether it's
3 production/distribution systems, in this case it's a
4 sewer system. So, it's disposal. But aging small
5 systems are something we're quite familiar with and not
6 particularly alarmed about. It's something that the
7 Company has to address.

8 Q. And, it's fair to say, Staff does not have soil and
9 wastewater experts on board, is that true?

10 A. (Naylor) No, that's true. And, certainly, the agency
11 that has primary jurisdiction over these matters is
12 DES. So, while we are certainly interested and would,
13 if we needed to, bring issues to the Commission, if
14 they were a cause of concern for us, we are -- we
15 essentially keep apprised of what's happening between
16 the Company and its environmental regulator, which, of
17 course, is DES.

18 Q. And, you've just heard the testimony of Mr. Harding and
19 Mr. Goldman about that status. That's your
20 understanding as far as what's going on between the
21 Sewer Company and DES at the present time?

22 A. (Naylor) That's correct.

23 Q. Mr. Weber, then, a question about plans. You said a
24 moment ago, the proposed costs out there are something

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1 north of a million dollars, and that's something that
2 the Village District is willing to assume and take on
3 as a future project for the Sewer Company, is that
4 true?

5 A. (Weber) Yes. If that what it takes, that's what we --
6 that's what we were committed to. If may not cost that
7 much, we hope it doesn't. But we had to go with the
8 worst case scenario.

9 (Atty. Sheehan handing a document to
10 Witness Weber.)

11 BY MR. SHEEHAN:

12 Q. If I may, Mr. Weber, I'm showing you what's been marked
13 as "Exhibit 11", which is a data -- response to data
14 request, Staff Request Number 1-2. Is that an answer
15 you prepared?

16 A. (Weber) Yes, I did.

17 Q. And, could you just summarize -- this data request goes
18 to the financial capabilities of the Village District,
19 is that correct?

20 A. (Weber) Yes, it does.

21 Q. And, if you could just summarize for us what the gist
22 of that response is?

23 A. (Weber) Yes. In sum, the Village District -- let me --
24 okay. I apologize. When the Village District takes

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1 this over, one of the first things we have to do is
2 increase the rates. The reason for increasing the
3 rates is to fund the capital accounts that are
4 necessary to go ahead and start doing these smaller
5 projects. One of the other things that comes along is
6 the bonding capacity of a municipality, in this case a
7 village district. And, we are comfortable with our
8 bonding capacity, because this has gone on for an extra
9 year waiting for the PUC approval, our net debt has
10 actually decreased, increasing our borrowing capacity.
11 And, with these -- by increasing the rates, it will
12 supplement what has been a lot of years where most
13 everyone on the wastewater system has gotten, I've
14 heard everything from a "free ride" to a "low rate"
15 through all this, the current Eastman Sewer Company has
16 the second lowest rate in the state, if I'm not
17 mistaken, of a regulated company, and the ninth lowest
18 rate in the state of a non-regulated company. We need
19 these funds to put this system back together.

20 Now, raising the rates, nobody's happy
21 about. But we're raising them to the point that
22 they're in line with other systems of this type, this
23 size, and this capacity.

24 Q. Did the Village District -- holler if you need a break.

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1 A. (Weber) Yes.

2 Q. Are you okay?

3 A. (Weber) I'm all right. Yes.

4 Q. Did the Village District conduct any financial -- I
5 should say, what financial due diligence did the
6 Village District conduct entering into this proposed
7 transaction?

8 A. (Weber) Well, "financial due diligence", meaning -- I
9 mean, we've got two boxes we brought in over there,
10 thousands and thousands of documents. We met with the
11 Eastman Sewer Company accountants. We met with our
12 attorneys, our other consultants, including all the
13 engineers, to say, you know, "what's this going to cost
14 to put this back together?" And, with that advice and
15 knowledge, we were able to do a comprehensive analysis
16 of what it would take to do this.

17 MR. SHEEHAN: One moment please.

18 (Short pause.)

19 WITNESS WEBER: Okay. I believe what
20 you've given me, Mr. Sheehan, is a summary of the bonding
21 that I believe I answered prior to.

22 MR. SHEEHAN: Right. That was going to
23 be my next question. But, if I may, apparently, I'm one
24 copy short for Mrs. Logan. Could we take --

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1 CMSR. HONIGBERG: For which?

2 MR. SHEEHAN: For these data requests I
3 am submitting.

4 CHAIRMAN IGNATIUS: All right. Then,
5 let's do two things. Let's take a break and make some
6 photocopies, to make sure that the full set is available.
7 And, we also had just a question. Mr. Honigberg noticed
8 something. Do you want to ask for that clarification?

9 CMSR. HONIGBERG: Yes. Are we on the
10 record or off the record?

11 CHAIRMAN IGNATIUS: We're on the record.

12 CMSR. HONIGBERG: On Exhibit 11, Page 4,
13 the carryover paragraph near the end makes a reference to
14 a spreadsheet that happened to list the capital
15 expenditure plans. Is that something you're intending to
16 include as part of this exhibit?

17 MR. SHEEHAN: We had not intended to.
18 We intended to include the reference to it. Certainly, if
19 the Commission wishes to see it, that's an easy enough
20 task to pull up and make available as an exhibit.

21 CMSR. HONIGBERG: It's up to you. I
22 mean, I understand what Mr. Weber is talking about. But I
23 just wondered if that was your intention.

24 MR. SHEEHAN: Okay.

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1 CHAIRMAN IGNATIUS: Mr. Logan?

2 MR. LOGAN: We would like the
3 spreadsheet, if we could.

4 CHAIRMAN IGNATIUS: But you should have
5 it.

6 MR. LOGAN: We did not receive this
7 document.

8 CHAIRMAN IGNATIUS: Well, you should
9 have received all of the discovery, this was in November
10 -- excuse me, September of 2013, a data response to a
11 Staff question, you should have received all of this in
12 your files. We don't copy everything additionally, if
13 it's been made available to the parties through the
14 discovery process. The Commissioners don't see it, that's
15 why we need copies. But you should have all of that in
16 your files.

17 MR. LOGAN: The difficulty is, that not
18 knowing what this exhibit contained until I walked in this
19 morning, I did not package my materials appropriately,
20 because I didn't know what he was going to pursue. So,
21 while I did receive it, I did not package it, because I
22 never saw Exhibit 6, I believe it's 6.

23 CHAIRMAN IGNATIUS: You didn't bring
24 your file with you, you're saying?

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1 MR. LOGAN: I did not. I brought many
2 of the documents. But the collation, if you will, of the
3 information was not done, since I didn't know what was
4 going to be in this exhibit that we're talking about right
5 now. So, if it's someplace else in the file, I have to
6 find that and put it in. So, yes, I could have done it,
7 but I didn't know what this was going to be.

8 MR. SHEEHAN: If I may, we did circulate
9 this list last week as our proposed exhibits. And, we
10 didn't have the paper copies, which I'm presenting you
11 today. But the list and the identifiers were all part of
12 that email that circulated, which is now 1 through 14.

13 MR. LOGAN: Which exhibit are we talking
14 about?

15 MR. SHEEHAN: If we could have a moment
16 to make a couple copies, then I can talk to Mr. Logan
17 and --

18 CHAIRMAN IGNATIUS: But I want to be
19 clear. There are a number of attachments referenced in
20 this data response, we're talking about Exhibit 11, a copy
21 of the contract with the consulting engineers. I don't
22 want to assume that we've got to re-photocopy every single
23 thing that's referenced along the way. There's at least
24 four attachments referenced here.

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1 MR. LOGAN: I didn't mean to request
2 that they be re-photocopied. What I was trying to
3 indicate is I haven't had the opportunity to collate.
4 And, without going to the document Mark is referring to, I
5 thought some of these documents that were identified were
6 not clear as to the particulars. But I have to put my
7 hands on it to -- this is Exhibit, what number?

8 CHAIRMAN IGNATIUS: Eleven. So, why
9 don't we take a brief break, make sure everybody's got
10 photocopies, if they need it, of the, you know, one set
11 for each party. And, then, give you a chance, if there's
12 additional things in your files to pull out and get
13 organized. And, Mr. Sheehan, maybe you can help, of the
14 other things that are listed on the first page of the
15 exhibits, which you're putting in. And, then, if the
16 intervenors can help with the items that they have
17 identified on the second page, make sure that everybody's
18 got those pulled together as well, and photocopies of
19 those for the Commissioners. I do know that the testimony
20 submitted by both of the Logans included a number of data
21 responses. And, if those are already -- we'll do the same
22 thing, we'll line up our copies, so that we don't have to
23 run and make more pages of what we already have.

24 MR. LOGAN: I apologize for a

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1 misunderstanding on my part. When I received the letter
2 Thursday evening, I did make an attempt to contact Marcia,
3 and, unfortunately, we did not connect until Friday. And,
4 I focused on the materials that were not included, and
5 didn't understand that I would have to bring the copies we
6 had today, because I --

7 CHAIRMAN IGNATIUS: That's fine.

8 MR. LOGAN: I apologize.

9 CHAIRMAN IGNATIUS: All right. Let's
10 take a fifteen-minute break, let everyone get the papers
11 together, and we'll give the court reporter a break as
12 well. Thank you. We'll resume at 10:45.

13 (Recess taken at 10:32 a.m. and the
14 hearing resumed at 10:51 a.m.)

15 CHAIRMAN IGNATIUS: We are back. And,
16 Mr. Sheehan, are you working on Exhibit 14?

17 MR. SHEEHAN: We had --

18 CHAIRMAN IGNATIUS: No, 12.

19 MR. SHEEHAN: We talked about 14, which
20 was the cost savings. Mr. Weber started speaking about
21 number -- Exhibit 11, which is Staff 1-2. And, I just
22 handed him what's marked as "Exhibit 12", which is Staff
23 1-3. And, I put on the Commissioners' desk the next one
24 we'll get to in a bit, which is Exhibit 13, which is Staff

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1 1-5.

2 CHAIRMAN IGNATIUS: Thank you.

3 MR. SHEEHAN: And, I think everyone has
4 the copies they need.

5 CHAIRMAN IGNATIUS: Good.

6 BY MR. SHEEHAN:

7 Q. Mr. Weber, both 11 and 12, Staff 1-2 and Staff 1-3,
8 talk about the financial aspect of this proposed
9 transaction. And, could you identify what Exhibit 12
10 is, your response to Data Request 1-3?

11 A. (Weber) The exhibit that you've marked "12" in the
12 corner, Staff 1-3, is indicative of -- it's indicative
13 of a future financing with the Village District, and
14 how we would go about implementing the changes we would
15 need to do to bring the system up to the standards we
16 need to.

17 There is a note I'd like to make on
18 this. Because this process has gone on for quite a
19 while, a lot of these numbers are not accurate anymore.
20 And, they're actually -- they actually show a little
21 bit more favoritism to the Community at this point,
22 because the Village District of Eastman's debt limit
23 has now decreased since we started this. We paid off a
24 year -- a year and a quarter of debt, meaning our

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1 borrowing and our capacity is now that much lower than
2 it was, putting us in -- I mean, higher, putting us in
3 that much better position to take care of these things.

4 Q. I think you might have flipped a couple.

5 A. (Weber) I think I did.

6 Q. Your amount of debt is lower, --

7 A. (Weber) Correct.

8 Q. -- so your debt capacity is higher?

9 A. (Weber) That's correct. Yes.

10 Q. Because you've got a set limit within which you have to
11 work?

12 A. (Weber) We're allowed one percent of the assessment for
13 the three towns.

14 Q. Okay. So, the passage of time, what I think you're
15 saying is, in Exhibit 12, the passage of time has made
16 those numbers out-of-date in a way that will make it
17 easier for you to get the financing?

18 A. (Weber) That's correct.

19 Q. I'm going to put you on the spot. And, could you
20 correct those numbers sitting here today or would that
21 be impossible to do? At least give us an idea of how
22 much, --

23 A. (Weber) Yes.

24 Q. -- by what magnitude they change? By a percent? By

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1 20 percent?

2 A. (Weber) Well, as an example, when the process started,
3 we were at approximately 2.2 million debt service,
4 meaning we owed \$2.2 million. Right now, we owe 1.75.
5 The percentage, I wouldn't know off the top of my head.
6 So, it's another close to half a million, not quite.

7 Q. Okay. And, that has not been replaced by any other
8 borrowings?

9 A. (Weber) No, it has not. We have not bonded anything
10 else.

11 Q. And, Mr. Naylor, these were responses to your or
12 Staff's data requests, is that correct?

13 A. (Naylor) Yes.

14 Q. And, after receiving those responses on these issues of
15 financing and what's available to the Village District,
16 do you have an opinion as to their financial ability to
17 do the work that should be done into the future?

18 A. (Naylor) Well, I think it's certainly encouraging, and
19 I found particularly these, the two responses that
20 we're talking about here, the Exhibits 11 and 12,
21 responses to Staff 1-2 and 1-3, they give us a lot of
22 information here, which I think is very helpful. I
23 think Staff was particularly interested in the
24 possibility that the Village District can take

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1 advantage of the Clean Water State Revolving Loan
2 Funds. That is something not available to the Eastman
3 Sewer Company at present. And, you know, the issue of
4 access to capital for small utilities is an issue that
5 I have testified in in other dockets here. And, it's
6 always a significant obstacle for the small utilities
7 to obtain capital. So, in this particular case, I
8 think this is one of the issues that we wanted to
9 explore and, ultimately, support the transfer, because
10 it does appear that there's an enhanced capability to
11 access capital going forward under the Village District
12 ownership.

13 Q. And, comments, Mr. Weber?

14 A. (Weber) If I could, I'd like to just add this. That,
15 when the Clean Water State Resolving Fund list came out
16 last year, the Eastman Sewer Company was on it as being
17 approved. However, the State does not allow private
18 companies to engage in those funds or utilize these
19 funds. The footnote at the bottom of the page, I don't
20 have it, and I'm more than happy to get it off the
21 internet or from my secretary when we take a break, at
22 the bottom of the page, Footnote 4 was, if this
23 transfer were to happen, the Village District is
24 preapproved. We wouldn't have to go another year on

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1 the process.

2 Q. And, that's funding for what?

3 A. (Weber) That's Clean Water State Revolving Funds,
4 CWSRF.

5 Q. Part of this transfer is the assumption of existing
6 debt. And, I think you testified that it's about
7 \$280,000, and it's a loan from the Sunapee Bank?

8 A. (Harding) Lake Sunapee Bank, that is correct.

9 Q. And, what are the terms of that debt that would be
10 assumed by the Village District?

11 A. (Harding) Well, it was, originally, it was -- the loan
12 was taken out in 2009. It was a ten-year loan. The
13 original borrowing amount was \$380,000. The actual
14 current balance owed is we're now down to 266,000.
15 And, we originally borrowed the money at five percent,
16 and then we subsequently refinanced at four and
17 three-eighths percent.

18 Q. Some mechanical questions, I think probably Mr. Harding
19 can answer, but if the others jump in. How would the
20 sewer customers learn or know that this transfer has
21 occurred, if it's approved, they now have a new owner,
22 so to speak?

23 A. (Harding) If the transfer is approved, we will send a
24 communication, a written communication by U.S. Mail to

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1 all Eastman Sewer Company customers to make them aware
2 of the pending transfer.

3 Q. And, I think it's been answered before as well, is the
4 Village District employees, the staff people you have
5 now, Mr. Weber, that will be doing the actual billing?

6 A. (Weber) Yes. That's correct.

7 Q. Will the customers have a toll-free number to access
8 any questions or problems regarding billing or service
9 problems?

10 A. (Weber) They will not. They will only have our local
11 number. If it becomes a necessity, we would look into
12 that. Excuse me. If that would serve the customers,
13 we'd be more than happy to look into it. But, no, at
14 this point there would not be.

15 A. (Goldman) I think I would just like to add that we're
16 talking about a geographic area here of 350 acres. So,
17 I don't see any need for a toll-free number.

18 Q. Fair enough. I put in front of the Commissioners since
19 the break, and I put in front of you, Mr. Weber,
20 Exhibit 13, which is Staff Request 1-5, regarding
21 rates. You've already testified that there will be a
22 need to increase rates as you described. Perhaps, I'm
23 sorry, Mr. Harding is the one that answered 1-5, is
24 that correct?

[WITNESS PANEL: Goldman~Harding~Weber~Naylor]

1 A. (Weber) Yes.

2 A. (Harding) That is correct.

3 Q. Thank you. And, what's an overview of what that data
4 request says?

5 A. (Harding) Well, the data request is just requesting the
6 information on exactly how the user fees will be
7 established. And, in my response, I indicated that the
8 Village District of Eastman follows the same procedures
9 as do most municipalities. Where a draft budget is
10 prepared, and then refined, between management, between
11 Bill Weber and the Commissioners, and then the final
12 proposed budget is put before the voters, included in
13 the Annual Report for consideration and vote by the
14 voters at the annual meeting. And, once approved, the
15 budget revenues and expenses become the model on which
16 user fees are based. And, just want to emphasize at
17 the start of the process, when this conversation began
18 and we started involving the Community, we made it very
19 clear to all Eastman owners that going forward, if this
20 transfer were to be approved, all ongoing sewer costs
21 that have been the responsibility of the sewer
22 customers will continue to be the responsibility of the
23 sewer customers even after transfer.

24 Q. Mr. Weber, that will fall under your jurisdiction. Is

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[WITNESS PANEL: Goldman~Harding~Weber~Naylor]

1 that an accurate statement of how the future fees will
2 be set?

3 A. (Weber) Yes. That's very accurate. Actually, just to
4 take that one step further, at our annual meeting last
5 year, every single warrant article that had to do with
6 a wastewater customer, it was footnoted at the bottom
7 that any fund used for anything for wastewater would
8 come from sewer users' fees or a special assessment,
9 not from general taxation.

10 A. (Goldman) I think it's also important to point out
11 that, if this transfer of assets is not approved, that
12 there will be a rate increase that will be necessary
13 for the sewer customers, and that the Sewer Company
14 would have to apply to the PUC for such an increase.

15 Q. How often will the sewer customers get billed?
16 Monthly? Quarterly?

17 A. (Weber) Quarterly.

18 Q. And, that's what it is now?

19 A. (Harding) That is correct.

20 Q. And, so, other than maybe a different name on the top
21 of the bill, a customer will not see any changes in
22 frequency or anything else, as far as how they're
23 getting billed from the Sewer Company?

24 A. (Weber) No, not at all.

[WITNESS PANEL: Goldman~Harding~Weber~Naylor]

1 Q. Mr. Weber, you are aware that one avenue of the
2 intervenors' critique is that they claim you did not
3 follow the processes correctly for your various
4 meetings and the town meetings. You're aware of that
5 generalized critique?

6 A. (Weber) I am.

7 Q. And, you don't need to go into the details, I suspect
8 the intervenors may raise certain ones. But are you
9 comfortable that the processes for the meetings that
10 resulted in approvals that you testified to were
11 followed correctly?

12 A. (Weber) Yes, I am.

13 Q. Now, I'm going to ask the same question to Mr. Goldman.
14 To the extent you have corporate processes to approve
15 your part of this transaction, did those processes, in
16 your opinion, follow the way they should have?

17 A. (Goldman) Absolutely.

18 Q. And, Mr. Harding, were you involved in any corporate or
19 governance approvals or votes that's under your
20 jurisdiction, so to speak?

21 A. (Harding) No. I'm not involved in any of the votes.
22 I'm not a resident of Eastman. So, I participate as an
23 employee, participate in compiling and sharing
24 information, but not directly involved in the votes.

[WITNESS PANEL: Goldman~Harding~Weber~Naylor]

1 Q. And, Mr. Naylor, I'll have you end with my series of
2 questions. Are you comfortable, from Staff's
3 perspective, that the proposed transfer, as described
4 in the Stipulation Agreement, does meet the legal
5 standards here, that it is in the best interest, in the
6 public interest for the Eastman customers?

7 A. (Naylor) Yes.

8 MR. SHEEHAN: I have no further
9 questions of the panel.

10 CHAIRMAN IGNATIUS: Thank you. Then,
11 let's move to cross-examination. Mr. Schaefer, do you
12 have questions of the panel?

13 MR. SCHAEFER: I do. Thank you.

14 **CROSS-EXAMINATION**

15 BY MR. SCHAEFER:

16 Q. Mr. Naylor, please. With respect to the benefits to
17 the sewer customers, Petitioners suggested potential
18 savings, with regard to taxes, insurance, and
19 accounting costs. Did the Petitioners provide any
20 written third party document that validated those
21 amounts, especially as it relates to the accounting?

22 A. (Naylor) I don't believe so.

23 Q. Did they say how they propose to allocate accounting
24 and insurance costs between the water and the sewer

1 users going forward?

2 A. (Naylor) Well, my general understanding is, as these
3 gentlemen just testified just a moment ago, that the
4 intention is that all costs relating to the operation
5 and maintenance of the sewer system will be billed to
6 the sewer users going forward.

7 Q. I guess maybe my question wasn't quite clear enough.
8 The savings that are purported appear -- are for taxes,
9 insurance, and accounting. The VDE itself has taxes
10 and insurance and accounting. And, I'm just asking you
11 whether some of their existing costs will be shared
12 over to the sewer users going forward, and whether the
13 way that that allocation is going to be made has been
14 specified, so that we can know whether there really is
15 savings to the users?

16 A. (Naylor) Well, I'm not familiar with the expenses of
17 the Village District. I'm not familiar in any real
18 sense with their budgeting process. So, I really, you
19 know, I really can't speak to that issue.

20 Q. Well, let's --

21 A. (Naylor) Again, I think the point that's been made to
22 us, and reiterated here, is that Village District will
23 bill all of the sewer-related costs to sewer users.

24 Q. Have you considered possible negative effects on the

[WITNESS PANEL: Goldman~Harding~Weber~Naylor]

1 sewer customers caused by this transaction?

2 A. (Naylor) Well, I guess by -- sort of by inference, in
3 terms of examining the Petition that's been filed,
4 with, you know, the details of the proposal, and the
5 potential transfer of the sewer system from ownership
6 of the Eastman Community Association to the Village
7 District, you know, we examined all of the details of
8 that, and what that means. What, in terms of
9 operation, and potential bill impacts and so forth.
10 And, I did not see anything that led me to believe that
11 the transaction should not be approved.

12 Q. Is it possible that the non-operational costs, referred
13 to management, accounting, insurance, rent, *etcetera*,
14 to the sewer users, could be even greater under the VDE
15 than they are now?

16 A. (Naylor) I have no idea.

17 Q. If the costs to the sewer users increased, would that
18 be considered in the public good?

19 A. (Naylor) Well, that's speculation at this point. I
20 can't say. I don't have any data. I can only operate
21 with the data that I have.

22 Q. I didn't -- I asked, "if the costs increased, would
23 that be considered in the public good?"

24 A. (Naylor) Well, I don't think you can just evaluate that

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1 alone in isolation. I think there's other things that
2 have led Staff to support this agreement. Most
3 significantly I think is the enhanced access to
4 capital. That is a very significant issue,
5 particularly with a system that's about 40 years old.
6 So, you know, I think you have to look at all of the
7 factors that are involved in something like this.
8 Particularly, for the Commission Staff, who has no, you
9 know, bias one way or the other. We are obligated, our
10 duty is to provide recommendation -- excuse me,
11 recommendations to the Commission based on what we
12 think is legally permissible and in the public good.
13 So, we balance a number of considerations.

14 Q. Mr. Goldman, please. Did you determine whether the
15 Sewer Company, with or without the backing of the ECA,
16 could borrow substantial funds for its planned
17 improvements to the Sewer Company?

18 A. (Goldman) I'm not sure I understand the question.

19 Q. Did you determine whether the funding that you
20 anticipate will be necessary could be borrowed from a
21 bank for the Sewer Company, with or without the ECA's
22 backing?

23 A. (Goldman) Not directly. The prior loan -- actually,
24 the existing loan that the Sewer Company has with the

[WITNESS PANEL: Goldman~Harding~Weber~Naylor]

1 Lake Sunapee Bank was only possible because the Eastman
2 Community Association guaranteed it. And, that
3 guarantee was provided because the Council at Eastman,
4 which consists of 85 or 86 or 87 members, unanimously
5 voted to support that guarantee. I suspect that it is
6 conceivable that additional financing for capital
7 expenses could be provided into the Sewer Company, but,
8 certainly, they could only be provided by the guarantee
9 of the Association.

10 Q. Back to Mr. Naylor, please. In the Stipulation
11 Agreement, on Page 3, I guess that's Exhibit 9, Section
12 E, there's a list of assets and liabilities of the
13 Sewer Company that the ECA proposes to transfer to the
14 Village District. It includes "contracts and leases".
15 As part of the process, did the ECA submit any copies
16 of contracts and leases for the PUC to review?

17 A. (Naylor) I don't recall any in this particular case, in
18 this docket.

19 Q. Would it not be desirable for the PUC to review those
20 leases and contracts as part of the process?

21 A. (Naylor) In this transfer petition?

22 Q. Yes.

23 A. (Naylor) Not necessarily. If the Company, as a
24 regulated utility, was required to file contracts or

[WITNESS PANEL: Goldman~Harding~Weber~Naylor]

1 leases with us, then, presumably, they have done that,
2 and the Commission has reviewed them. There are a
3 number of matters which a utility may engage in that
4 they do not need explicit permission from the
5 Commission. So, I think it's -- I think it's quite
6 clear from the context of the Petition filed in this
7 docket that the list of assets to be transferred is
8 intended to be an inclusive list of all assets, with
9 the physical assets, contracts, what have you, that are
10 part of the operation of a sewer utility.

11 I mean, it's clear from the Petition
12 that Eastman Sewer Company will no longer exist as a
13 utility subsequent to the transfer. So, I think it's
14 quite clear from the context that it's intended to
15 transfer everything involved in the sewer business to
16 the Village District.

17 Q. If there were a clause in a lease or contract which
18 said "This lease is null and void should the Company no
19 longer be under the oversight of the PUC", would that
20 be important to note?

21 A. (Naylor) Well, I suppose it would be. But I can't
22 imagine what circumstances would give rise to such a
23 clause. I don't know whether this would be a
24 contractor or some other entity.

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1 A. (Goldman) Can I make a comment here? There seems to be
2 some implication here that there are documents that
3 have been withheld or that people aren't looking at.
4 To the best of my knowledge, there's only one contract
5 and one lease, and everybody has seen them. The
6 contract is the contract with the Water Systems
7 Operator, and that, by inclusion, is transferable. The
8 lease is the lease to the Village District for the rent
9 they now pay, which is about \$20,000 a year. That is a
10 savings to the Village District that will accrue, if
11 this transfer is permitted.

12 MR. SCHAEFER: Excuse me. Could you
13 repeat that answer for me please?

14 CHAIRMAN IGNATIUS: Maybe, it was a long
15 answer, so, which particular area are you looking for to
16 be repeated?

17 MR. SCHAEFER: Mr. Goldman's comment.

18 CHAIRMAN IGNATIUS: On both the contract
19 and the lease?

20 MR. SCHAEFER: Actually, the lease.

21 CHAIRMAN IGNATIUS: All right.

22 MR. SCHAEFER: No, I'm sorry. I would
23 like the reporter to read back what Mr. Goldman said as it
24 pertains to the lease or is that not allowed?

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1 CHAIRMAN IGNATIUS: It's a little
2 cumbersome.

3 WITNESS GOLDMAN: Madam Chairman, could
4 I make a comment, because it's --

5 CHAIRMAN IGNATIUS: Is it a different
6 issue? Let's --

7 WITNESS GOLDMAN: It's relevant to the
8 question.

9 CHAIRMAN IGNATIUS: Well, first, we're
10 asking about on the lease. Do you want to clarify the
11 answer to the lease?

12 WITNESS GOLDMAN: I do. I do.

13 CHAIRMAN IGNATIUS: All right. Why
14 don't you go ahead and do that.

15 WITNESS GOLDMAN: I have been advised
16 that I was in error with regard to the lease. That the
17 lease -- the lease is the lease with the Village District,
18 but that the lease will continue after the sale, because
19 they will still be renting the space.

20 CHAIRMAN IGNATIUS: Thank you.

21 BY MR. SCHAEFER:

22 Q. Could you be more specific about the lease. Could you
23 give the date of the lease or a reference to where it
24 was filed with the PUC. Anything to clarify that

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1 document?

2 A. (Weber) If I may, the lease is in the Petition. It's
3 part of the contract. It was part of the Purchase and
4 Sales Agreement. The Village District of Eastman would
5 no longer pay a rent or lease to the Eastman Community
6 Association. It was something that we requested that
7 be stricken as a savings to the sewer customers.

8 CHAIRMAN IGNATIUS: Well, let's get a
9 little greater clarity. Thank you, Mr. Weber. If you
10 look at Exhibit 1, that's the Joint Petition, correct?
11 And, you said the lease itself is --

12 WITNESS WEBER: The Purchase and Sale
13 should be in there, madam Chair.

14 CHAIRMAN IGNATIUS: Yes. Yes, it is.

15 WITNESS WEBER: And, as part of the
16 Purchase and Sales, we declined to accept the lease from
17 the Eastman Community Association as it stands to the
18 Eastman Sewer Company now. Currently, there's a \$2,200 a
19 year payment that goes to the Eastman Community
20 Association, paid by the Eastman Sewer Company, that the
21 Village District of Eastman will not be paying once we've
22 consummated this, provided we do.

23 CHAIRMAN IGNATIUS: Can you find where
24 in the Agreement that's stated?

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1 WITNESS WEBER: I'd have to --

2 CHAIRMAN IGNATIUS: It's the second
3 exhibit to Exhibit 1, so, it's the second attachment to it
4 is the lease -- I mean, excuse me, is the Purchase and
5 Sale Agreement.

6 WITNESS WEBER: I would have to defer to
7 my attorney. I don't have a copy.

8 WITNESS HARDING: If I may, madam Chair,
9 I think we're confusing two, two different leases here.
10 What Mr. Weber is speaking about is correct. The Eastman
11 Sewer Company does not own the land on which its assets
12 sit. That land is owned by the Eastman Community
13 Association. And, the Eastman Sewer Company pays to the
14 Eastman Community Association a lease or rent of that land
15 of \$2,200 per year. Mr. Weber is correct that, as part of
16 the bill of sale, that lease of ECA land will not apply to
17 the Village District if this -- if this sale is approved.
18 What Mr. Goldman was speaking about earlier was lease of
19 office space, the fact that we share space in the same
20 building, and the Village District does lease office space
21 from the Eastman Community Association, approximately a
22 thousand or \$1,200 a month. That lease of office space
23 will continue, even if the sale is approved.

24 CHAIRMAN IGNATIUS: And, just so I

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1 understand the amount that would not be paid if the
2 transaction were to go through for the lease of ECA land
3 is how much?

4 WITNESS HARDING: It is \$2,200 per year.

5 CHAIRMAN IGNATIUS: Thank you.

6 MR. LOGAN: Could I --

7 CHAIRMAN IGNATIUS: No, please. I want
8 you to wait. Mr. Schaefer, do you have further questions?

9 MR. SCHAEFER: Oh, yes. Thank you.

10 BY MR. SCHAEFER:

11 Q. Mr. Harding, how much is the ESC paying for your
12 services as its manager?

13 A. (Harding) The ESC is paying to the Eastman Community
14 Association, not to me directly, but to ECA, \$3,600 per
15 year for my management responsibilities of the Sewer
16 Company.

17 Q. And, does that money accrue to you in any way or is it
18 offset for your time?

19 A. (Harding) It does not accrue to me. It is just -- it's
20 a recognition that, as an ECA employee, my time -- I'm
21 spending a portion of my time serving the Eastman Sewer
22 Company and its customers, and the Eastman Sewer
23 Company is reimbursing the ECA for that time.

24 Q. And, excluding the time that you've consumed with this

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1 particular transaction, about how much time do you
2 spend per month managing the Sewer Company?

3 A. (Harding) It averages probably one -- three-quarters to
4 one day per week, and that is excluding the time that
5 has been spent since we started this process with the
6 Village District. So, six to eight hours per week, on
7 average.

8 Q. And, do you think that going forward that it will take
9 about the same amount of time?

10 A. (Harding) I really have no idea, Mr. Schaefer. I can
11 picture Mr. Weber taking a more direct role in the
12 operation of the system than I did, since I don't have
13 that kind of background. So, I cannot say.

14 Q. When the ECA purchased the Sewer Company in late
15 2000/2001, it was represented at PUC hearings, by
16 Devine, Millimet & Branch, that's our exhibit, Page 1.

17 MR. SCHAEFER: What number did we get,
18 Mike?

19 MR. SHEEHAN: Twenty-nine.

20 BY MR. SCHAEFER:

21 Q. Twenty-nine. Did the ECA recover from sewer users its
22 cost of legal advice in the transaction and for being
23 represented in front of the PUC? So, when they bought
24 the Company in 2000/2001, did they go back and ask the

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1 sewer users to pay for the costs that they had?

2 A. (Harding) I'm not aware that they did.

3 Q. Do you know if the sellers recovered their legal
4 expenses in that transaction from the sewer users?

5 A. (Harding) I'm not aware that that happened.

6 Q. During the discovery, you were asked why the ECA was
7 assessing the Sewer Company for a substantial portion
8 of the appraisal and legal cost and consulting cost in
9 pursuing this transaction. Please refer to Pages 2 and
10 3 of the exhibit. In your experience while gaining
11 your MBA, what examples did you study where Company A
12 sold Company B to Company C, and Company B paid for the
13 transaction costs?

14 A. (Harding) I'm not going to be citing any examples that
15 I may have studied in case studies while working on my
16 MBA. I can tell you that this determination was made
17 at the time, a discretionary decision, that it seemed
18 fair and reasonable, with the Eastman Sewer Company
19 being a separate, for-profit regulated utility, albeit
20 owned by the Eastman Community Association, but a
21 stand-alone separate company, that to be responsible
22 for a portion of legal expenses related to this
23 transaction seemed fair and reasonable.

24 And, as I had indicated, I believe, in

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1 one of my responses to a discovery question, if the
2 Commission feels otherwise, and feels that, as a
3 condition of approving the sale that some of those
4 expenses be reimbursed to Eastman Sewer customers, that
5 will be done.

6 Q. Is it true that the charges for legal and consulting
7 fees to the Sewer Company were \$9,900 -- \$9,947 through
8 9/19/2013? Please refer to Pages 4 to 6.

9 A. (Harding) That sounds about right, Mr. Schaefer. I
10 don't have the exact figure in front of me. So, I'll
11 have to accept that as --

12 Q. It's in the exhibit. Would you say that the PUC would
13 be justified if it ordered restitution for all of the
14 imposed cost sharing?

15 A. (Harding) Not necessarily. Because, as we indicated
16 earlier, the Eastman Sewer customers stand to save
17 money if this transaction is approved. A figure of
18 \$20,000 has been identified. And, I want to clarify,
19 because I'm not sure it was mentioned earlier, that's
20 \$20,000 per year that sewer customers are currently
21 responsible for, expenses that accrue to a regulated
22 utility. So, that's not a one-time savings. That is
23 an annual savings. And, sewer customers will benefit,
24 not necessarily in direct rebates to them or discounts

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1 on their sewer user fees, but having the money that
2 they pay be allocated in ways that serve them more
3 directly, and instead of taxes going to the Town of
4 Grantham or the State of New Hampshire.

5 Q. So, you're proposing that they will save about \$40 per
6 household?

7 A. (Harding) I believe the math works out to that, yes.

8 Q. Okay. And, you're going to throw that up against the
9 already announced \$300 a year increase in fees, and you
10 call that a benefit?

11 A. (Harding) You're really -- you're talking about two
12 separate issues. You're referring to the VDE's
13 proposal to increase fees approximately \$300? Those
14 fees are going to have to go up either way, whether the
15 Sewer Company is transferred to the Village District or
16 whether it stays with -- it stays as a stand-alone
17 company, managed by ECA, as Mr. Goldman testified
18 previously. If this transfer is denied, within
19 probably less than a month, we will be filing to the
20 PUC for the need for a rate case. So, the rates have
21 to go up whether this transfer is approved or not.
22 What I can tell you that taxes paid to the state, taxes
23 paid to the Town of Grantham, and some additional CPA
24 fees and insurance expenses will be eliminated if it's

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1 transferred to the Village District.

2 Q. In 1994, the PUC issued an order, DE 94-069, it's Pages
3 7 to 10. Is that contract or lease the one that is
4 relevant today? Is that still standing?

5 A. (Harding) I'm not sure I understand what contract or
6 lease you're referring to, Mr. Schaefer.

7 Q. Do you have the --

8 CMSR. HONIGBERG: Do you have his packet
9 of exhibits?

10 MR. SCHAEFER: Do you have the packet?

11 WITNESS WEBER: I'm lost.

12 MR. SCHAEFER: Page 7 to 10 of the
13 packet.

14 CHAIRMAN IGNATIUS: This is Exhibit 29.
15 That's a --

16 WITNESS HARDING: I do not have a copy
17 of that.

18 WITNESS WEBER: We do not have a copy of
19 that.

20 CMSR. HONIGBERG: Mike, how many copies
21 were those? There were two up here.

22 MR. SHEEHAN: He provided us with a half
23 dozen. And, I gave one to Mr. Boynton, two to you guys.
24 And, I'm not sure where the rest -- one to the Logans.

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1 I'm not sure where the rest are.

2 CMSR. HONIGBERG: Okay. We'll keep one
3 up here. We're going to give -- we're going to give this
4 packet --

5 WITNESS WEBER: Thank you.

6 CMSR. HONIGBERG: -- to the witness
7 panel.

8 (Cmsr. Honigberg handing document to the
9 Witnesses.)

10 CMSR. HONIGBERG: He's talking about
11 Pages 7 to 10, I think.

12 CHAIRMAN IGNATIUS: And, Mr. Schaefer,
13 can I ask you to, in your -- before you begin questioning
14 about this, just give me a very brief what we call an
15 "offer of proof" on what the relevance of this 1994 order
16 is to today's discussion?

17 MR. SCHAEFER: I'm moving to the
18 question of the enforced payment of taxes by the Sewer
19 Company in violation of that particular lease. The Sewer
20 Company was obliged to pay taxes on its real property, and
21 that was in this agreement. The ECA has, because it's the
22 -- to its own advantage, it's caused the Sewer Company to
23 pay those taxes on things which the Sewer Company doesn't
24 own. And, if you'll allow, we'll get to that in fullness

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1 of time.

2 CHAIRMAN IGNATIUS: Well, I'll allow a
3 bit. But let's make sure the fullness of time doesn't
4 become the fullness of days and days and days.

5 MR. SCHAEFER: No. I --

6 CHAIRMAN IGNATIUS: If it's really
7 relevant, and you tie it to what we're talking about here,
8 then let's see where we go. If it's -- I still am not
9 quite following it. So, --

10 MR. SCHAEFER: Okay. I'm sorry. I'll
11 try to make --

12 CHAIRMAN IGNATIUS: So, let's give it a
13 brief exploration, and we'll see where we are.

14 BY MR. SCHAEFER:

15 Q. So, Brian, do you have that in front of you now, the
16 contract lease?

17 A. (Harding) Yes, I do.

18 Q. Is that active today?

19 A. (Harding) I suspect that it is.

20 Q. Do you see that the annual rent rate is specified in
21 the lease?

22 A. (Harding) Can you direct me as to where precisely that
23 is in the document?

24 Q. ESUC Page 9, at the bottom, "2. Consideration and

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1 Term".

2 A. (Harding) Okay.

3 Q. Do you see that?

4 A. (Harding) I do. And, it refers to the \$2,200 to which
5 I previously referred.

6 Q. Good. So, we're talking about the right document?

7 A. (Harding) Yes.

8 Q. Refer to the next page, Page 10. Is there any mention
9 of the real estate taxes that are of the obligation of
10 the Sewer Company?

11 A. (Harding) Yes.

12 Q. Could you explain what you understand from that that
13 the Sewer Company is obliged to pay?

14 A. (Harding) Perhaps it's better if you would explain what
15 you understand from that document, Mr. Schaefer, since
16 you're raising this issue.

17 Q. Excuse me. I think I get to ask the questions. Can
18 you interpret this paragraph for us, to your
19 understanding?

20 MR. BOYNTON: Madam Chair, if I could
21 object to this line of questioning. Briefly, I understand
22 the Commission's desire to fully explore relevant issues.
23 This is a document that was presented this morning. None
24 of these folks have seen it previously.

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1 CHAIRMAN IGNATIUS: I thought
2 Mr. Harding just said that's the -- he confirmed the
3 amount of the lease and said that we're talking about the
4 same -- the same agreement that's currently in effect.
5 Did I misunderstand?

6 MR. BOYNTON: It's actually an agreement
7 between an entity called "ELC, Inc." and the Eastman Sewer
8 Company from 15 years ago. The amount is the same. My
9 concern is that these folks have not had a chance to look
10 at Mr. Schaefer's package that was presented this morning.
11 We got it just before the Commission came out.

12 CHAIRMAN IGNATIUS: Mr. Schaefer, how
13 many more inquiries do you have related to this document?

14 MR. SCHAEFER: This is the conclusion
15 with the lease.

16 CHAIRMAN IGNATIUS: Are there other
17 areas you want to inquire into? My thought is that we
18 come back to that after they have had a chance to take a
19 look, if, in fact, the witnesses are not familiar. And, I
20 guess no one has ever asked them if they are familiar with
21 this document. So, I'll ask that question. Mr. Harding,
22 do you know this agreement?

23 WITNESS HARDING: Well, as Mr. -- as Mr.
24 Boynton pointed out, I mean, this agreement was issued by

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1 the PUC in 1994. So, six or seven years before we bought
2 the Sewer Company. Now, I was referring previously to the
3 specific mention of the \$2,200 per year lease of the land.
4 And, I'm certainly familiar with that, because that has
5 been an arrangement between the Eastman Sewer Company and
6 the Eastman Community Association. I can't speak to the
7 rest of this document. If it's an order issued by the PUC
8 that hasn't been rescinded or amended, I'd have to assume
9 it's still in effect. But I'm not familiar with the
10 document.

11 CHAIRMAN IGNATIUS: Well, the lease
12 itself, and I don't know what page that's on, --

13 MR. SCHAEFER: Nine.

14 CHAIRMAN IGNATIUS: All right. So, it
15 looks like the lease itself is not in the document,
16 there's an order that references it.

17 WITNESS GOLDMAN: And, this purports,
18 madam Chairman, to be a license agreement between ELC,
19 Inc., which is not, to the best of my knowledge, in any
20 way involved in this exercise. My guess is, and I don't
21 know, that when the Company was sold, that this was
22 subsumed, eliminated, perhaps ignored, I don't know. But
23 I think the relationship of this to what we're talking
24 about today is at least suspect and needs further review.

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1 CHAIRMAN IGNATIUS: Well, if this is not
2 an agreement that exists with the current entities, then,
3 Mr. Schaefer, I don't see a basis to inquire into it.
4 I'll give you one last chance to explain to me why it's
5 relevant what the terms were in an agreement between ELC,
6 Inc. and Eastman Sewer Company?

7 MR. SCHAEFER: Because the ECA bought
8 the Sewer Company with its equipment, leases, *etcetera*,
9 from ELC, Inc.

10 CHAIRMAN IGNATIUS: That may be. But
11 why is that relevant to the proposed transfer today?

12 MR. SCHAEFER: Because there are aspects
13 of the way the ECA has managed its relationship with the
14 Sewer Company, which have resulted in transferring of
15 funds outside -- in violation of this lease.

16 CHAIRMAN IGNATIUS: But we just -- I
17 thought we just established this lease doesn't -- is not
18 currently in effect?

19 MR. SCHAEFER: I don't know that we have
20 established that. I have asked whether leases or
21 contracts were submitted as part of this, and I'm trying
22 now to explain why it's important to know what the
23 contractual obligations are between the owner and its
24 property. So, ECA, there was a contract between ELC and

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1 the Sewer Company. So far as we know, that has not been
2 changed by the fact that the Sewer Company has a new owner
3 itself, and that's how it has the right to run the Sewer
4 Company.

5 CHAIRMAN IGNATIUS: But one of the
6 witnesses stated "there is one lease in existence." And,
7 are you asking -- are you suggesting that that's not an
8 accurate statement?

9 MR. SCHAEFER: I'm suggesting this is
10 the lease that he was referring to.

11 CHAIRMAN IGNATIUS: Well, and Mr.
12 Maynard [Goldman] just said he doesn't believe that that's
13 the case. So, rather than you and I going through this,
14 let's see what the witnesses know. The answers thus far
15 is there's only one lease in existence. Do you want to
16 inquire of the witnesses whether that's accurate, and is
17 there any further lease that they may be aware of?

18 BY MR. SCHAEFER:

19 Q. Are you aware of any other lease, Brian, Mr. Harding?

20 A. (Harding) I'm not aware of any other lease between the
21 Eastman Community Association and the Eastman Sewer
22 Company, other than the one that relates to the lease
23 of land. Or, I cannot think of one.

24 Q. So, when you say "other than the one that relates to

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1 the land", do you have a copy of that lease?

2 A. (Harding) I don't have a copy of the lease. I believe
3 that was in the original agreement documents or
4 purchase documents between ECA and the Eastman Sewer
5 Company with the developer, that that annual lease of
6 \$2,200 would continue to be paid, as it was previously.

7 WITNESS WEBER: Madam Chair, may I
8 recant something I said? I made a mistake, and I would
9 like to bring it up here. It's very relevant to what is
10 being said.

11 CHAIRMAN IGNATIUS: If it's relevant to
12 the question of the lease, then, yes.

13 WITNESS WEBER: Yes. I indicated to you
14 that this lease of \$2,200 per year was in the Purchase and
15 Sales Agreement. I was wrong. It was in the original
16 MOU, a Memorandum of Understanding between the ECA, the
17 ESC, and the VDE. When we finally negotiated the Purchase
18 and Sales, the \$2,200 lease was removed in Section 1.10
19 [Section 1.11?], on Page 15 of 95 in the Petition, and
20 Page 16 of 95, Page 16, it is 2.01, they are silent as to
21 the amount. There is no lease that will be due. We asked
22 the ECA and ESC to remove them. And, so, I misspoke. It
23 was in the Memorandum of Understanding, which is not part
24 of your package. But the Purchase and Sales does

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1 eliminate it and stays silent on it.

2 CHAIRMAN IGNATIUS: And, the page
3 numbers you were referring to are in our Exhibit 1, the
4 full, long packet that's attached to the Joint Petition,
5 and Page 10 says "This page intentionally left blank", and
6 "Page 16", did you say?

7 CMSR. HONIGBERG: He said "15 and 16",
8 right?

9 WITNESS WEBER: Fifteen and sixteen of
10 the Petition, the copy of the Purchase and Sales.

11 CMSR. HONIGBERG: So, what's on 15
12 that's relevant?

13 WITNESS WEBER: On Page 15, it is
14 Section 1.11, about the "Real Property". It is silent on
15 a lease amount. And, on the next page, 16, 2.01, there is
16 no cost, again, it remains silent on any dollar amount.
17 We are granted the easements and licenses applicable, I
18 don't need to read it to you. But that's where that
19 \$2,200 amount went away. It was in a Memorandum of
20 Understanding. I don't think there's anybody up here,
21 other than Mr. Naylor, who would dispute it, only because
22 of lack of knowledge. So, I misspoke to you earlier.

23 CHAIRMAN IGNATIUS: All right. Thank
24 you. Mr. Schaefer, can we move on?

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1 MR. SCHAEFER: I feel that I'm being
2 pressured not to investigate this area.

3 CHAIRMAN IGNATIUS: I'm not pressuring
4 you. I'm trying to stick to what's relevant evidence.
5 And, I'm not seeing how it's relevant to continue to talk
6 about a 1994 lease agreement with a party that isn't in
7 existence anymore.

8 MR. SCHAEFER: We don't know that it's
9 not in existence. What we do know is that nobody knows
10 anything about the lease that is current or thinks that he
11 knows anything about the lease that is current. All we
12 remember is the \$2,200 figure, which happens to be in this
13 lease. And, there is nothing that I have found in PUC
14 proceedings that nullified this particular lease. The
15 Sewer Company never came and said "we have a new lease
16 with our owner apropos the running of the Sewer Company."
17 And, I think that the Commission ought to be interested in
18 what the contractual obligations were and whether the ECA
19 was appropriate in charging the Sewer Company for the
20 taxes that they have been charging. In the packet -- I'm
21 afraid I'm testifying at this point. At Page 10 and 11,
22 you'll see a copy of the tax card for these properties.
23 And, you'll see that -- you'll also note that the Sewer
24 Company has been assessed taxes for things which the ECA

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1 says it owns, including the land. You already heard that
2 they said that the Sewer Company does not own any land.
3 Nonetheless, the ECA has forced the Sewer Company to pay
4 the taxes on the land.

5 CHAIRMAN IGNATIUS: All right. I would
6 like you to ask the witnesses questions about why they
7 make the payments they do, your concern that this
8 discussion of tax on land that maybe isn't owned.

9 MR. SCHAEFER: Okay.

10 CHAIRMAN IGNATIUS: Let's be specific on
11 what is currently obligated and being done, as opposed to
12 what might have been done 20 years ago with other
13 entities, all right?

14 MR. SCHAEFER: Leases do last a long
15 time sometimes.

16 BY MR. SCHAEFER:

17 Q. For the past three years, the ECA has been assessing
18 the Sewer Company for everything on the tax cards that
19 I just referred to, Page 10 -- 11 and 12. And, that's
20 accumulated to about \$25,000 over the past three years.
21 Brian, is that right, approximately?

22 A. (Harding) I can't confirm that that's correct. I
23 addressed, I know in one of your discovery questions,
24 Mr. Schaefer, Request Number 3-3 Schaefer/Van Dolah,

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1 you raised this issue, and I responded to it. And,
2 specifically, I acknowledged in my response that the
3 Eastman Sewer Company did pay \$3,037.05 in property
4 taxes on land it did not own. However, during the same
5 period, the Eastman Community Association paid
6 \$5,025.78 in ESC Sewer Company building taxes that
7 would have been made by ESC, if it were not for a
8 cost-sharing agreement that existed between the two
9 organizations from 2001 to 2005. That was my response
10 to your specific question during discovery, and I stand
11 on that response.

12 Q. Okay. So, now you've introduced that discovery here.

13 A. (Harding) It was introduced when it was submitted to
14 the PUC.

15 Q. No, it wasn't. Brian, does the Sewer Company own the
16 spray irrigation system?

17 A. (Harding) No, it does not. The Eastman Community
18 Association owns the spray irrigation system.

19 Q. Look at Page ESUC-12 --

20 (Court reporter interruption.)

21 BY MR. SCHAEFER:

22 Q. Okay. Look at Page 12 of our packet. Do you see an
23 item marked "irrigation spray", the fourth one down
24 near the bottom?

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1 A. (Harding) Yes, I do.

2 Q. Does it appear that the ESC is then paying the taxes on
3 something that the ECA owns?

4 A. (Harding) No. This -- I assume this tax card, and I'm
5 trying to verify the date, --

6 Q. It says on the top of the page "2012".

7 A. (Harding) I'm not familiar with this tax card or with
8 this document. I can tell you and answer your
9 question, the Eastman Sewer Company does not own the
10 irrigation system. The Eastman Community Association
11 owns the irrigation system.

12 Q. This document was provided with that, that I sent to
13 you before, for which you gave that answer that skirted
14 the issue.

15 A. (Harding) I'm sorry?

16 Q. I'm sorry. I request that you look at -- if you never
17 looked at this tax card, it's a surprise to me. But
18 this is the tax card for the Sewer Company, and this is
19 where you get the tax bill, about \$10,000 a year.

20 A. (Goldman) I've never seen this tax card. But I can
21 tell you that Mr. Harding's answer is correct. This
22 says from year 1997. There was a new irrigation system
23 built well after that. My guess is, and I don't know,
24 that this is an unfortunate carryover from the old

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1 irrigation system, and that this number is simply
2 incorrect. It's wrong.

3 Q. So, were you -- so, were you carrying out the best
4 interest of the sewer users when you didn't even look
5 at the tax card and question whether it was
6 appropriate?

7 A. (Harding) I would never maintain that we do our work
8 flawlessly. And, if something slipped by me, that's my
9 responsibility. But I would have to -- I would have to
10 research this further, ask questions of the Town of
11 Grantham. Verify, if, in fact, as Mr. Goldman has
12 said, that this refers to the old irrigation system
13 that no longer exists.

14 A. (Goldman) I would also say that this all happened in
15 the past. Should this transfer be approved, there
16 ain't going to be no taxes. They're history.

17 Q. Yes. And, the ECA will have taken the money from the
18 Sewer Company, won't it?

19 A. (Goldman) I would say, without consulting counsel, that
20 if it turns out that the ECA has incorrectly taken
21 money from the sewer customers, that those funds will
22 be, in an appropriate way, offset by other charges. We
23 will do whatever is necessary to make it right.

24 Q. Well, Brian, finally, according to PUC Order 24,368,

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1 the Sewer Company was to undertake a ten year program,
2 from 2004 to 2014, to inspect, clean and map all the
3 sewer lines. Has that happened? Please refer to
4 Pages 21 and 22.

5 A. (Harding) Well, I can't answer -- I can answer the
6 question without referring to the pages, that that has
7 not happened. We have not mapped and inspected all of
8 the sewer lines for the sewer system. We have -- I
9 just should add that we have done cleaning and
10 inspection in a number of different years. We've spent
11 approximately \$65,000 on that endeavor. We did not, as
12 was requested in the order, did not provide reports to
13 the PUC on an annual basis regarding the status of
14 that. I've indicated that in the response to one of
15 the discovery questions, and that was our oversight.
16 That should have been done. But the work was done in
17 years when we could afford it or when Water Systems
18 Operators, who oversaw the work, was available to
19 facilitate it.

20 MR. SCHAEFER: May I move onto Mr. Weber
21 please?

22 CHAIRMAN IGNATIUS: Yes, please.

23 BY MR. SCHAEFER:

24 Q. Mr. Weber, in what town do you live?

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1 A. (Weber) I live in -- I live in Weare, New Hampshire.

2 Q. Are you a full-time employee of the Village District of
3 Eastman?

4 A. (Weber) Yes, I am.

5 Q. How many hours a week do you work for them?

6 A. (Weber) Forty.

7 Q. Are you occupied full time with Water District
8 responsibilities?

9 A. (Weber) Yes.

10 Q. How much time could you attribute to managing the sewer
11 utilities?

12 A. (Weber) Whatever it takes. I've watched Brian for the
13 last five years, and it's a minimal amount of time.

14 Q. Brian said it takes almost a day a week.

15 A. (Weber) We're going to do things a little different.

16 Q. What --

17 A. (Weber) I'll be extending my hours, and I have other
18 help. I have employees in the field, whereas the Sewer
19 Company does not.

20 Q. Please estimate the monthly charge to the sewer users
21 for your services?

22 A. (Weber) I'm not aware there's going to be any charge
23 for my services. I'm paid by the VDE Water Department
24 right now. I'm not aware of any.

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1 Q. Earlier in testimony, you tried to explain the sale
2 price for the Sewer Company. Do you have a document to
3 validate the spreadsheet that you referred to?

4 A. (Weber) A document to validate the spreadsheet?

5 Q. Well, do you have the spreadsheet that validates the
6 conclusion that you reached, which was a dollar was a
7 fair price?

8 A. (Weber) No. I don't have it with me.

9 Q. So, that was just off the top of your head, right?

10 A. (Weber) That was work product in my notes.

11 Q. There's always been a discussion of this "\$20,000
12 savings". Do you think that there will be additional
13 costs? So, will the sewer users be charged a portion
14 of your rent, a portion of the operating costs of the
15 office, etcetera, that might offset that \$20,000
16 savings, in part?

17 A. (Weber) I can't answer that without sitting down and
18 doing the math. I know the savings have been touted
19 here. DRA, we have spoken to them about allocating
20 costs. Right now, because the PUC hasn't agreed or
21 disagreed to the transfer, we're in limbo. I'm not
22 going to the DRA, because they're not going to give me
23 any answers anyway where we don't own the Sewer
24 Company. But I honestly don't know. I can't speak to

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1 that.

2 Q. Does the DRA have rules and regulations that would
3 speak to the issue of managing two utilities and
4 allocating costs?

5 A. (Weber) Yes. If you look at the MS forms that we're
6 required to fill each year, you'll see that there is a
7 wastewater entry above the water entry that most
8 village districts use.

9 Q. How important is it for clear, open, and honest
10 communication when working as a general manager of a
11 public utility?

12 A. (Weber) Very.

13 Q. Are you always clear and open in your communications?

14 A. (Weber) I hope so.

15 Q. Is it important to the operations of the Village
16 District that you present facts correctly?

17 A. (Weber) I'd like to know where you're going with this?

18 Q. Can you give an answer?

19 A. (Weber) I'm not sure -- please, repeat that please.

20 Q. Is it important to the operations of the Village
21 District that you present the facts correctly?

22 A. (Weber) I present the facts as I know them. If I base
23 something on erroneous information, I don't think
24 that's me speaking. That's the information that I've

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1 gotten from somewhere else or someone else.

2 Q. Have you read the Stipulation Agreement?

3 A. (Weber) Yes.

4 Q. Do you believe that it's totally correct?

5 A. (Weber) Yes.

6 Q. Please reference Paragraph III, III.B, in the
7 Stipulation Agreement. Are all the properties within
8 the Village District's corporate --

9 CMSR. HONIGBERG: He doesn't have it in
10 front of him.

11 WITNESS WEBER: I don't have it. I gave
12 mine to Mr. Logan.

13 BY MR. SCHAEFER:

14 Q. Paragraph III, Section B.

15 CHAIRMAN IGNATIUS: And, you're on
16 Page 2?

17 CMSR. HONIGBERG: What page?

18 MR. SCHAEFER: I'm sorry. Now, you've
19 got me looking for it.

20 WITNESS WEBER: I don't know where you
21 are, Phil.

22 MR. SCHAEFER: There's two of them.

23 CHAIRMAN IGNATIUS: He's getting you the
24 citation.

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1 WITNESS WEBER: Okay.

2 MR. SCHAEFER: It's Page 3 is where I'm
3 referencing, but it's III.B, which starts on 2 and
4 continues to Page 3.

5 CMSR. HONIGBERG: Is it the paragraph
6 that starts "The Village District is a municipal
7 corporation"? That one?

8 MR. SCHAEFER: Correct.

9 CMSR. HONIGBERG: Okay.

10 BY MR. SCHAEFER:

11 Q. And, so, my question is, are all the properties within
12 the Village District's corporate boundaries taxed by
13 the Village District?

14 A. (Weber) No.

15 Q. Are all of the properties within -- okay. Please
16 explain.

17 A. (Weber) We have two properties that the only access
18 they have is through the Village District of Eastman,
19 and they're charged a different water rate to
20 compensate for the lack of being able to tax them.

21 Q. But, in the Stipulation, doesn't it say it "does not
22 provide water services outside the boundary"?

23 A. (Weber) It's not outside the boundary.

24 Q. Are they out -- if they were inside the boundary,

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1 wouldn't they be taxed?

2 A. (Weber) No. This is a very, very specific and odd and
3 unusual situation that we worked out with the Town of I
4 believe it's Springfield, about these two properties.
5 There's also three more on Howe Hill, the same thing.
6 So, the question is answered correctly. You've just
7 taken it two more steps.

8 Q. Why is it that these properties are within the
9 corporate boundary and they are not taxed by the
10 Village District?

11 A. (Weber) As I said, you can't get to the properties any
12 other way. And, to change the corporate boundaries of
13 the Village District at Eastman would take several --
14 many thousands of dollars in surveys to do it. My
15 predecessors 20 years ago felt that this was a
16 reasonable solution to the problem for the two towns
17 and the Village District.

18 Q. Please refer to Exhibit 4, Line 23.

19 CHAIRMAN IGNATIUS: But give him time to
20 find the documents please.

21 MR. SCHAEFER: Yes.

22 CHAIRMAN IGNATIUS: Do you have that?

23 WITNESS GOLDMAN: We don't know where
24 that is.

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1 WITNESS WEBER: I don't know, ma'am. I
2 do not have it.

3 CHAIRMAN IGNATIUS: This is the test --
4 your testimony.

5 MR. SCHAEFER: You're prefiled
6 testimony.

7 CHAIRMAN IGNATIUS: From June 2013.

8 WITNESS WEBER: I apologize. I'm
9 getting there. Yeah, I have it.

10 BY MR. SCHAEFER:

11 Q. So, your sworn statement is that, "In February of 2012
12 the VDE was approached by the Eastman Sewer Company,
13 requesting that the Board of Commissioners consider
14 acquiring the ESC." Was that the first time the VDE
15 was contacted about this acquisition?

16 A. (Weber) I don't remember. This is based on my best
17 memory. Now, we're almost a year later. It's as close
18 as I can remember.

19 Q. Would you believe that, in the minutes, the non-public
20 minutes of January 19th, which I think are exhibits
21 from the Logans, there's a section about the Eastman
22 Sewer Company, which says "District Manager said he
23 spoke with Joe Desmore", I'm sure they meant "Damour",
24 "who was the Sewer Company's field operator." Does

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1 that ring a bell?

2 A. (Weber) It does not.

3 Q. Okay.

4 MR. LOGAN: Bob, I need that --

5 **BY THE WITNESS:**

6 A. (Weber) I spoke with Brian Harding. The first time I
7 ever heard about this, Brian and I met in the hallway
8 between the two offices and Brian mentioned it to me.
9 There's no reason to believe I wouldn't have talked to
10 Joe about water-related issues, I'm sure. Only because
11 I deal with Joe on a daily -- sometimes daily basis.

12 MR. SCHAEFER: Can someone give him
13 Exhibit 22 please?

14 CHAIRMAN IGNATIUS: Assume this is a
15 response to Data Request 3, is that correct?

16 MR. SHEEHAN: Exhibit 22 is part of the
17 Logans' package.

18 CMSR. HONIGBERG: Do we have it?

19 MR. SHEEHAN: I don't think they --

20 MR. LOGAN: I gave you four copies for
21 submission.

22 MR. SHEEHAN: Where did I put those?

23 MR. LOGAN: I believe he's referring to

24 Page 11.

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1 CHAIRMAN IGNATIUS: Let's go off the
2 record for a moment.

3 (Brief off-the-record discussion
4 ensued.)

5 CHAIRMAN IGNATIUS: Let's go back on the
6 record. We have an issue of documentation being available
7 to all of the witnesses and the parties, some things that
8 we have some copies of, but not quite enough to go around.
9 So, what I'd like to do, it's now a little after noon,
10 take a lunch break. And, over that period of time, people
11 identify with each other any materials that haven't been
12 fully distributed or that people didn't know to bring with
13 them today, make the extra copies with the help of our
14 office, and make sure that the Commissioners each have a
15 set of the materials that are going to be used as well.
16 And, that we resume again at one o'clock. Thank you.
17 We're adjourned, we're in adjournment until one o'clock.

18 (Whereupon a lunch recess was taken at
19 12:05 p.m. and the hearing resumed at
20 1:13 p.m.)

21 CHAIRMAN IGNATIUS: We're back. And, I
22 want to apologize. It was my delay in getting down here.
23 I was in the middle of something and thought, "okay, if I
24 stop now, I'll never get back to it." We're back. Mr.

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1 Boynton, yes?

2 MR. BOYNTON: Madam Chair, I would like
3 to make, for the record, a formal objection to some of the
4 remaining documents, in terms of relevance. When I had an
5 opportunity to look through them this morning, it became
6 clear that many of these documents have marginal, if any,
7 relevance to the current proceedings. If you look at
8 Exhibit 16 that's been marked, for instance, it begins
9 with a question about "detailed inventory of the capital
10 infrastructure from 1972 or '73." Similarly, Exhibit 17
11 looks back into the past. Exhibit 18 starts with a
12 question about "the ECA acquisition in 2000-2001",
13 questions about book costs at that point.

14 Fundamentally, I believe that people
15 should have the right to come and speak their piece. But,
16 at the same token, we need to strike some balance, it
17 seems to me, between the time available and relevant
18 inquiry.

19 CHAIRMAN IGNATIUS: Well, let me ask you
20 this. If we -- I think we all are concerned that we stay
21 focused on the transaction at hand and any information
22 that sheds like on that transaction, and make sure that
23 the inquiries are always relevant to that question before
24 us that we are asked to rule on. As the materials that

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1 have been marked for identification are used this
2 afternoon, it may become more apparent whether there's
3 relevance or not. I don't know if we could categorically
4 say they are or are not just by the fact that they're in
5 this packet. And, so, I guess I would ask, Mr. Schaefer
6 and the Logans, in your questioning, to be as focused as
7 you can be on any of these materials as they relate to
8 this transaction and this review. And, if, after those
9 inquiries, we find that you have a reason, Mr. Boynton, to
10 object, we'll take it up at that time. But, since it's a
11 little hard to know which piece of each document is being
12 brought forward, I think we can't rule on it in the
13 abstract. But I do appreciate your reminding all of us of
14 the importance of relevance to this transaction and what
15 we are charged with determining, and that's whether this
16 transfer is in the public good and should be approved.

17 MR. BOYNTON: One other side of it, and
18 I'll be just very quick with it. Many of the questions
19 struck me as being argumentative in nature. We recognize
20 that the intervenors have a different position. And, I'm
21 concerned that they're going to run out of time and not
22 have a chance to testify. That these proceedings do take
23 a while, and it might be helpful to ask how long they, if
24 they intend to testify, how long that will take, so that

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1 they can prioritize their desire to have cross-examination
2 with their desire to have some testimony.

3 CHAIRMAN IGNATIUS: Well, I think we'll
4 -- I won't bother to ask people how long they intend to
5 question or testify, but I think the reminder is a good
6 one. And, I know, Mr. Schaefer, you've been trying to
7 focus your questions, I appreciate that. I think it's a
8 matter of really staying as focused on the relevant issues
9 of this transfer that's been submitted to us. All right?

10 MR. BOYNTON: Thank you.

11 CHAIRMAN IGNATIUS: Thank you.

12 Mr. Logan, something on that?

13 MR. LOGAN: Yes. I just want to
14 respond, if I could, to Attorney Boynton's comment?

15 CHAIRMAN IGNATIUS: Well, I don't know
16 if there's anything to respond to, is there?

17 MR. LOGAN: Well, all of the --

18 CHAIRMAN IGNATIUS: I didn't agree to
19 strike any of the exhibits.

20 MR. LOGAN: Okay.

21 CHAIRMAN IGNATIUS: And, I didn't ask
22 him to -- didn't ask you to state how long you plan to
23 testify. So, I think we're ready to move on back to
24 Mr. Schaefer.

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1 MR. SCHAEFER: Thank you. I'm actually
2 trying to find my place at this point.

3 BY MR. SCHAEFER:

4 Q. So, in Exhibit 4, Line 23, you said, this is to
5 Mr. Weber, "In February of 2012 the VDE was approached
6 by the Eastman Sewer Company." And, my question was,
7 was that the first time the VDE was contacted --

8 A. (Weber) I don't have it.

9 Q. -- about the acquisition?

10 CMSR. HONIGBERG: He doesn't have the
11 testimony, I'm told. That's his prefiled testimony?

12 MR. SHEEHAN: Correct.

13 CMSR. HONIGBERG: Somebody must have a
14 copy of it they can provide to him. We had it for him a
15 few minutes ago, I thought.

16 WITNESS WEBER: Well, it doesn't seem to
17 be here. You're looking at my prefiled, Phil?

18 MR. SCHAEFER: Indeed.

19 WITNESS WEBER: Excuse me?

20 MR. SCHAEFER: Yes.

21 WITNESS GOLDMAN: What's the date?

22 MR. SCHAEFER: The date?

23 WITNESS GOLDMAN: The date of the
24 document?

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1 MR. SHEEHAN: June 21, 2013.

2 MR. SCHAEFER: There's no date on the
3 document. Oh, yes, there is.

4 WITNESS WEBER: All right. I don't have
5 it as an exhibit. I just have it as my prefiled
6 testimony.

7 MR. SCHAEFER: That's fine.

8 BY MR. SCHAEFER:

9 Q. The second page, part way down on Line 23.

10 A. (Weber) Please repeat the question.

11 Q. Please look at the second page of your prefiled
12 testimony, Line 23.

13 A. (Weber) I am.

14 Q. Okay. It says "In February of 2012 the VDE was
15 approached by the Eastman Sewer Company", etcetera.
16 You see it?

17 A. (Weber) Yes.

18 Q. Okay. Was this the first time the VDE contacted -- was
19 contacted about this acquisition?

20 A. (Weber) It was the first time all of the entities got
21 together and discussed it. That's correct.

22 Q. Are you sure?

23 A. (Weber) My memory tells me I am.

24 Q. So, then, please refer to --

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1 MR. SCHAEFER: Is 29 mine?

2 MR. SHEEHAN: Yes.

3 CHAIRMAN IGNATIUS: Yes, it is.

4 BY MR. SCHAEFER:

5 Q. Twenty-nine. Page 14. There is a section on the
6 bottom of that page that says "Eastman Sewer Company",
7 and this is allegedly a non-public meeting of the
8 Village District of Eastman Commissioners. Do you see
9 the section that says "Eastman Sewer Company"?

10 A. (Weber) Yes, I do.

11 Q. Yeah. And, in the second sentence it says "District
12 Manager Weber said that he spoke with Joe Damour", I
13 suppose, "who is the sewer company's field operator,
14 and Commissioner Fairweather said he spoke with the
15 sewer Board President Brad Moses."

16 A. (Weber) I can't speak to Commissioner Fairweather. I
17 did speak with Joe Damour. I spoke to him outside of a
18 meeting.

19 Q. In relation to the Eastman Sewer Company?

20 A. (Weber) I'm not a commissioner. I'm the General
21 Manager. I can speak to Joe at any time for any
22 reason.

23 Q. So, did you speak to him in regards to the Sewer
24 Company? It's in this section of the minutes.

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1 A. (Weber) If it's in the minutes, I spoke to him about
2 it, yes.

3 Q. So, then, your sworn testimony should be altered to say
4 that you were first approached in January, right?

5 A. (Weber) Brian Harding and I met in -- yes, that's true.

6 Q. Okay. Thank you. You further testified that you have
7 a law degree?

8 A. (Weber) No, I testified that -- yes, I have a JD.

9 Q. Yes. From which school did you get your degree?

10 A. (Weber) Massachusetts School of Law.

11 Q. And, are you aware of the New Hampshire laws that
12 particularly as they apply to municipalities and
13 village districts?

14 A. (Weber) Not all of them. Some of them.

15 Q. Are you confident of the ones that you understand?
16 Some of them?

17 A. (Weber) The ones I deal with on a daily basis, yes.
18 The ones I deal with on occasion, no.

19 Q. Do you remember this meeting of January 19th, the one
20 that we were just referring to, Pages 14 and 15?

21 A. (Weber) Do I remember specifically talking with Joe?
22 Is that what you're asking me?

23 Q. No, no. Do you remember the meeting? There was a
24 meeting. There was a discussion about Clerk McClory

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1 not re-upping for --

2 A. (Weber) Oh. No, I honestly don't. This has been over
3 two years ago. I'm not trying to be difficult.

4 Q. Okay.

5 A. (Weber) I honestly don't, Phil. It's been two years.

6 Q. All right. Do you understand the RSA 91-A, the Right
7 to Know law?

8 A. (Weber) I know some of it.

9 Q. What portions do you know?

10 CHAIRMAN IGNATIUS: Can you be more
11 targeted in your question please?

12 WITNESS WEBER: Yes. The law is just --

13 CHAIRMAN IGNATIUS: This could take us
14 quite awhile.

15 BY MR. SCHAEFER:

16 Q. Did you know that this meeting in January, the
17 non-public meeting, was contrary to that law, in
18 violation thereof?

19 A. (Weber) Again, I can't speak to it. It's been over two
20 years.

21 Q. No.

22 A. (Weber) Why would --

23 Q. Do you know that -- do you know that there are
24 constraints that --

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1 A. (Weber) Just come out and say what you're trying to ask
2 me.

3 Q. Do you know that there are constraints which specify
4 what can be discussed in a non-public meeting?

5 A. (Weber) I am aware of that. That's correct.

6 Q. Was that material about the Eastman Sewer Company
7 within the bounds for a non-public meeting?

8 A. (Weber) Yes, it was.

9 Q. You don't understand. I believe the law specifies that
10 issues of personnel --

11 A. (Weber) Look at the -- look at the exceptions to it.

12 MR. BOYNTON: Madam Chair, I'm sorry to
13 interrupt, but this is becoming argumentative.

14 Mr. Schaefer may have a different position. The relevance
15 of the 2012 non-public session is marginal at best, unless
16 we can get some focus as to why it has any bearing at all
17 on the purpose of the present proceedings.

18 CHAIRMAN IGNATIUS: Well, I'm concerned
19 about a larger question than that. This is not a tribunal
20 over Right to Know compliance. The court system is the
21 place to go for that. And, so, can you explain to me why
22 it's relevant to the discussion of the transfer of the
23 assets of the Company to explore the Right to Know
24 questions?

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1 MR. SCHAEFER: I'm questioning Mr. Weber
2 in the frustrating attempt to show whether he is competent
3 to be the manager of a -- of two utilities at the same
4 time.

5 CHAIRMAN IGNATIUS: All right.

6 MR. SCHAEFER: And, failing to know or
7 understand the Right to Know law I believe is pertinent.

8 CHAIRMAN IGNATIUS: All right. What I
9 want to do, because we can't spend all afternoon going
10 through the minutes of every meeting, if that's your
11 point, and I know that that's spoken to in the testimony.
12 We can accept that that's your argument. This isn't the
13 tribunal to decide what is or is not within 91-A. And,
14 so, I hope that having me establish that that's your
15 position, I hope that we can move on. Because just I'm
16 worried, it's almost 1:30, and we still have a long way to
17 go.

18 MR. SCHAEFER: Yes. I'm sorry that
19 that's the case.

20 BY MR. SCHAEFER:

21 Q. Do you have, Bill, do you have significant financial
22 responsibilities for the VDE?

23 A. (Weber) Define "significant".

24 Q. What financial responsibilities do you have for the

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1 VDE?

2 A. (Weber) I manage it. I manage the budget.

3 Q. Do you collect the information about purchases and
4 estimates and contracts for the Commissioners?

5 A. (Weber) Yes.

6 Q. Do you make financial recommendations to the
7 Commissioners?

8 A. (Weber) I have that authority, yes.

9 Q. Are you pretty astute financially? Do you consider
10 yourself to be astute?

11 A. (Weber) In what context?

12 Q. Financially.

13 A. (Weber) I'm not an MBA and I'm not an accountant.

14 Q. So, you're not astute?

15 A. (Weber) I'm not sure what you mean. I'm astute in
16 running the Village District.

17 Q. Do you consider yourself to be financially responsible?

18 A. (Weber) I'm financially responsible to the customers of
19 the Village District of Eastman.

20 Q. Refer to Page 19 of the exhibit. During the
21 interrogatories, the Village District was asked to
22 provide written commitments --

23 (Court reporter interruption.)

24 BY MR. SCHAEFER:

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1 Q. I'm sorry. During the interrogatories, the VDE was
2 requested to provide written commitments from the
3 Commissioners saying they had the time to manage the
4 sewer utility, in addition to their responsibilities
5 with the water utility. Did you provide those
6 statements?

7 A. (Weber) I can't speak for the Commissioners. They're a
8 volunteer board. What we spoke to was, the law that we
9 adopted, 149-I, there's no statutory requirement to
10 have a sewer advisory board, and the Commissioners
11 allowed me to answer in that regard.

12 Q. But the interrogatory asked you to effectively ask the
13 Commissioners to commit, to basically say "yes, I have
14 the time to do this." Did you do that?

15 A. (Weber) Yes.

16 Q. Where are those statements?

17 A. (Weber) It's not -- I didn't -- there's no need to put
18 it here. That's not the question. You're asking me
19 two different questions. You're asking for commitments
20 from each of the VDE Commissioners. You're not asking
21 me if I asked the Commissioners. That's not what's in
22 the interrogatory.

23 Q. I asked you to provide statements from the
24 Commissioners saying they had the time. The

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1 Commissioners were not here to interrogate.

2 A. (Weber) What you asked is "please provide commitments".
3 I could not get a commitment from any commissioner. I
4 did get their answers.

5 Q. Did you get any answers?

6 A. (Weber) Yes, I did.

7 Q. What did they say?

8 A. (Weber) It's not relevant to the question, Phil.
9 Again, you're asking me something -- you're making
10 something that's not there. I'm not trying to be
11 frustrated or argumentative. But you're all over the
12 place. My answer is not going to change. My answer,
13 it is what it is, "the Commissioners are confident a
14 sewer advisory board can be [formed]". I advised them,
15 under the statute that they adopted, there was no
16 requirement, hence there was no reason to put any other
17 answer in.

18 Q. Is the PUC to understand that the VDE Commissioners are
19 not sure they have the time to manage the sewer
20 utility?

21 A. (Weber) You can't get that out of my answer. They
22 would have to ask the Commissioners themselves.

23 Q. The VDE has suggested that it might -- it might appoint
24 a sewer advisory board to assume the responsibility of

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1 managing the sewer district. Is that correct?

2 A. (Weber) That is a correct statement, yes.

3 Q. Thank you. According to your response, see Page 17 of
4 the attachment -- of the exhibit, they advertised for
5 volunteers to serve on the sewer advisory board. Is
6 that correct?

7 A. (Weber) Hold on. Let me get there. We had no
8 response, that's correct. We advertised it in the
9 Highlights, like I said, which is a Community-wide
10 online newsletter. We had put it on our website, and
11 there was no response. We have had a response since
12 then. Again, you're talking -- you're looking at
13 something that's very old.

14 Q. To your knowledge, are you the only Bill Weber who
15 lives in Weare?

16 CHAIRMAN IGNATIUS: And, what's the
17 relevance of that, Mr. Schaefer?

18 MR. SCHAEFER: Give me a little --

19 CHAIRMAN IGNATIUS: See if you can --
20 just be direct in what you're asking him.

21 CMSR. HONIGBERG: The question is, are
22 you the only Bill Weber in Weare, as far as you know?

23 WITNESS WEBER: I don't know.

24 CMSR. HONIGBERG: Okay.

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1 BY MR. SCHAEFER:

2 Q. You said that you owned an excavating company in an
3 earlier occupation?

4 A. (Weber) Back in the late '80s and '90s, yes.

5 Q. Did you have any -- what's the reason for not
6 continuing that? Why did that -- why did you not
7 continue in that occupation?

8 A. (Weber) The economy took a tank in 1991. I went
9 through a divorce, and decided to go to law school
10 instead.

11 Q. Okay. Sorry. I hope that wasn't painful.

12 A. (Weber) Not at all.

13 Q. Have you ever been personally involved in owning or
14 operating a golf course?

15 A. (Weber) Yes. I built one.

16 Q. You built one. Was that -- that was the Oak Brook
17 club, in Weare?

18 A. (Weber) Yes.

19 MR. BOYNTON: Objection. The relevance
20 to this whole line?

21 MR. SCHAEFER: Page 16, financial --

22 CHAIRMAN IGNATIUS: There's an objection
23 on the question of relevance. And, is this what you're
24 helping me to understand, the relevance? Mr. Boynton

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1 objected on the basis of relevance. I want to give you a
2 chance to respond to that, the relevance of that question.

3 MR. SCHAEFER: We're going to get to the
4 financial issues surrounding the golf course.

5 CHAIRMAN IGNATIUS: All right. And,
6 so, --

7 MR. SCHAEFER: Financial responsibility
8 as the manager is an important consideration.

9 CHAIRMAN IGNATIUS: Okay. You can
10 continue.

11 BY MR. SCHAEFER:

12 Q. So, according to Page 16, did you serve as the
13 owner/manager of that property?

14 A. (Weber) Not this one that's listed.

15 Q. The Oak Brook?

16 A. (Weber) This is completely incorrect. I did own a golf
17 course named "Oak Brook".

18 Q. You did?

19 A. (Weber) Yup. But it's not this one. I'm sorry.

20 Q. How many of them were there?

21 A. (Weber) This is wrong. First of all, it was a 9-hole
22 course. And, second of all -- the second thing is, it
23 wasn't opened in 2005. And, the third thing was, I
24 didn't manage it. So, this is incorrect.

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1 Q. But you did own a golf course?

2 A. (Weber) I owned it.

3 Q. And, what happens with the golf course? Are you still
4 operating it?

5 A. (Weber) It went bankrupt.

6 Q. Were there other owners or partners?

7 A. (Weber) Yes, there was.

8 Q. And, did the bankruptcy have ramifications for yourself
9 or others?

10 A. (Weber) Of course.

11 Q. Were you financially responsible when the course
12 failed?

13 A. (Weber) No.

14 Q. Did it go through -- it did go through bankruptcy?

15 A. (Weber) You don't have all the facts here.

16 Q. I know. You said it went through bankruptcy?

17 A. (Weber) Actually, no. The golf course did not go
18 through bankruptcy. The parent company did. The golf
19 course never did go through bankruptcy.

20 Q. Did you own the parent company as well?

21 A. (Weber) At that time, I don't remember. I honestly
22 don't remember in '05.

23 Q. Did these problems affect your personal financial
24 situation?

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1 A. (Weber) No.

2 CHAIRMAN IGNATIUS: Sir? Oh, is that
3 it? Okay. Thank you. Mr. Logan, Ms. Logan, who wants to
4 go first?

5 MR. LOGAN: I'll go. Just give me a
6 second to get my papers in front of me. It will take just
7 a moment. I'd like to ask Mark some questions, if I
8 could.

9 CHAIRMAN IGNATIUS: I'm sorry, could you
10 say that again. I didn't hear you.

11 MR. LOGAN: Okay. I'd like to ask --
12 I'll sit over here. Is that working?

13 CHAIRMAN IGNATIUS: Is the red light on?

14 MS. LOGAN: Yes.

15 CHAIRMAN IGNATIUS: Good.

16 MR. LOGAN: Okay.

17 CHAIRMAN IGNATIUS: That should be fine
18 then. Speak directly into it.

19 MR. LOGAN: I'd like to ask -- well,
20 actually, I'd like to ask Brian a question or two first,
21 if I could?

22 CHAIRMAN IGNATIUS: Please.

23 BY MR. LOGAN:

24 Q. Brian, earlier you indicated that you spend somewhere

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1 between six to eight hours a week on the Eastman Sewer
2 Company, is that correct?

3 A. (Harding) That's my estimate, correct. And, that's on
4 average. Some weeks it's more, and other weeks it
5 would be less. But I would say that's a reasonable
6 average.

7 Q. And, how much time would you guesstimate that Gayle
8 spends on the Eastman Sewer Company?

9 A. (Harding) Much less. She probably averages two hours a
10 week, two to three hours a week. It's not a
11 significant amount of time.

12 Q. Okay. So, if I were to push the numbers on your --
13 using the low-ball six hours per week, times 50 weeks,
14 I come up with 300 hours a year?

15 A. (Harding) Okay.

16 Q. And, if I were to look at your compensation fully
17 loaded, you're familiar with the "fully loaded"
18 concept, which is benefits, payroll, etcetera, time and
19 packages?

20 A. (Harding) Yes, sir.

21 Q. In a ballpark, would you disagree with the number of
22 100 grand, in terms of your compensation?

23 A. (Harding) No, I would not disagree with that number.

24 Q. So, that would say, if we took the 300 hours against

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1 2,000 hours, which is the typical, you know, rule used
2 for a year that one works, I think that comes out to be
3 about 15 percent of your time, which would come out to
4 15,000 a year for your compensation, in terms of the
5 time you're spending on this. Would you agree?

6 A. (Harding) Yes, I agree with your calculations.

7 Q. Well, what that means is that the ECA is expending
8 \$15,000 in a compensation package to you for the time
9 you're spending on this. Anything wrong with that
10 logic that you can think of?

11 A. (Harding) Well, you're assuming that I work a normal
12 40-hour week, which I don't. I typically average more
13 like 50 hours a week. But, yes, if you were to do the
14 math, the value for my time that is spent on the Sewer
15 Company is certainly more than what the Sewer Company
16 reimburses ECA. There's no question.

17 Q. And, what would you, using the same logic that I just
18 did for Gayle, would you assume that's probably in the
19 \$3,000 range or would you disagree with that number? I
20 mean, I could do the math. But, rather than do it,
21 would that seem in the ballpark?

22 A. (Harding) I'm sorry. Could you repeat the question,
23 Bob.

24 Q. Okay. I took Gayle, and I asked the question of -- I

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1 was trying to calculate her compensation, based on her
2 income and total, fully loaded, and came up with three
3 grand. Do you want to go into that number in detail or
4 is that good enough?

5 A. (Harding) No. I think that's probably reasonable.

6 Q. Okay. So, what we see here is a delta between the
7 3,600 and the 18,000 of approximately fourteen four
8 [14,400] unaccounted for. Would you agree with that?

9 A. (Harding) I agree that the Eastman Community
10 Association and the Eastman Sewer Company have an
11 arrangement where I am -- where my time, again, not
12 reimbursed to me, but an allocation of my time is paid
13 by the Eastman Sewer Company back to ECA, \$300 a month
14 or \$3,600 per year. And, Gayle's time, as well as any
15 labor expended by any of our maintenance personnel is
16 reimbursed on an hourly basis. And, that time is
17 tracked and reimbursed directly to the Eastman
18 Community Association for any hourly labor. My time as
19 a manager is an allocation.

20 Q. Okay. We're talking about you and Gayle. What you're
21 saying is you -- let me just see if I understood you
22 correctly. You're time we bill \$3,600?

23 A. (Harding) Correct.

24 Q. "We", the Eastman Community Association. So --

1 (Court reporter interruption.)

2 BY MR. LOGAN:

3 Q. I'm sorry. I'm looking at my papers. I apologize. We
4 agree, in your case, that it's approximately \$15,000,
5 based on the calculation we went through. The ECA gets
6 compensated \$3,600. I think, so that right there is,
7 doing my math in the head, twelve -- no, it's eleven
8 four [11,400]. Okay? Do we agree on that? Under
9 compensation to the ECA for the effort you put in to
10 the Eastman Sewer Company?

11 A. (Harding) I don't agree that the ECA is being under
12 compensated. That's the arrangement. ECA is being
13 compensated exactly what it has agreed to be
14 compensated for my time.

15 Q. I'm looking at the cost to the Eastman Community
16 Association, which we just established, of your time,
17 based on the hour calculation we just went through and
18 we just discussed, and I believe you agreed to. And,
19 I'm then looking at what the Eastman Sewer Company pays
20 to the Eastman Community Association, and I'm
21 calculating the difference. And, I'm saying that
22 difference is an underpayment, even if that's the
23 agreement. You can certainly agree to be under
24 compensated for something. There's nothing wrong with

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1 that. I'm not arguing whether it's right or wrong.

2 A. (Harding) I would presume, if the Eastman Community
3 Association felt that it was being under compensated,
4 it would have raised that issue with the Eastman Sewer
5 Company.

6 Q. That's not the point of my question.

7 A. (Harding) Well, but you're taking issue with an
8 agreement between two parties --

9 Q. I'm not taking an issue with it. I'm just establishing
10 the facts.

11 A. (Harding) Okay.

12 CHAIRMAN IGNATIUS: Mr. Logan, I think
13 you've gotten into the record the calculations you want.
14 You'll have your chance to argue how you interpret that.
15 He'll probably never agree to what you want it to be, the
16 conclusion towards --

17 MR. LOGAN: All right. All right.

18 CHAIRMAN IGNATIUS: But let's keep
19 going.

20 BY MR. LOGAN:

21 Q. The thing I would like to get clarity on is Gayle. Did
22 you indicate that you -- that the Eastman Sewer Company
23 pays on a per hourly basis for her work?

24 A. (Harding) When she works on Eastman Sewer Company

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1 business, she keeps track of her time. And, the
2 Eastman Sewer Company pays directly for the time she
3 expends on Sewer Company business. As is the case with
4 maintenance staff, the Eastman Community Association --

5 Q. Okay. All right. I'm fine. That's fine. So, all
6 right. I'm going back to the \$20,000 savings. And,
7 while we will not agree, for whatever reasons, and the
8 eleven six [11,600] incremental cost that is not
9 reflected as per the billing, and saying that those
10 costs ought to be adjusted downward from the 20,000 by
11 the eleven four [11,400]. And, just, if you understand
12 the math, it's not a question of right or wrong, would
13 you agree with that math?

14 A. (Harding) I don't agree with the premise that somehow
15 the Eastman Community Association is owed money from
16 the Eastman Sewer Company. And, that's your premise,
17 and I disagree. I fulfill my --

18 Q. My question --

19 A. (Harding) I fulfill my responsibilities for the Eastman
20 Community Association. They're satisfied that I do
21 that. I do the same for the Eastman Sewer Company. No
22 debt is owed to the Eastman Community Association.

23 Q. All right. I would like to move on with the
24 questioning, if I could?

[WITNESS PANEL: Goldman~Harding~Weber~Naylor]

1 A. (Harding) Fair enough.

2 Q. And, I'd like to shift to Mark. Thank you. Mark, in
3 your experience, what are the primary reasons, maybe
4 the top three, that a person is hired for in a
5 managerial position?

6 A. (Naylor) Probably depends, to some degree, on what type
7 of position it is. Whether there are extensive
8 personnel management responsibilities or whether
9 it's --

10 Q. Well, in this case --

11 A. (Naylor) -- field, you know, someone that's more
12 operations oriented, that kind of thing.

13 Q. So, in this case, I guess it would be better to -- in
14 other words, in the case of the VDE, what would you,
15 you know, in the submission, they indicated they have
16 the managerial, financial, and technical expertise.
17 And, so, what I'm really asking is relative to this
18 particular Petition.

19 A. (Naylor) Well, I can speak to the issue surrounding the
20 VDE, based on the Petition filed by the Joint
21 Petitioners, and the discovery materials that have been
22 generated in this case, as well as our discussions in
23 technical sessions. And, it really -- it really
24 revolves around having qualified personnel, recruiting

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1 and hiring qualified people to fulfill the
2 requirements, a certified operator, people with
3 experience, people with the proper licenses, utility
4 experience, certainly. So, I guess those are, you
5 know, a handful of things that I would certainly look
6 for.

7 Q. Thank you. And, what, in your experience at the
8 managerial level, is the primary reason people are
9 fired?

10 CHAIRMAN IGNATIUS: Are you asking him
11 about this particular transaction and why Mr. Naylor
12 reached the conclusion that they had that managerial
13 expertise or are you asking a sort of general business
14 management question?

15 MR. LOGAN: I'm asking, going back to
16 the submission, the parties were assessed as having the
17 managerial expertise. And, I'm asking, you know, in terms
18 of his experience, what has been his experience with
19 people being fired in similar positions? What is the
20 reasons behind those terminations, based on his
21 experience?

22 CHAIRMAN IGNATIUS: And, the relevance
23 of other people's experience being fired to this, this
24 transaction we're studying today, can you help me

[WITNESS PANEL: Goldman~Harding~Weber~Naylor]

1 understand that?

2 MR. LOGAN: Sure. In my experience,
3 there's a reason, in most cases, why people are fired.
4 And, it's not the same reason we hire them. But now I'm
5 giving you my experience, having hired, you know, several
6 hundred people.

7 CHAIRMAN IGNATIUS: But what is it --
8 why is Mr. Naylor's view of why some people get fired from
9 their jobs pertinent to whether this transfer is in the
10 public interest?

11 MR. LOGAN: Because I assume he made an
12 assessment of the individual and the capabilities of the
13 VDE, because that's what --

14 CHAIRMAN IGNATIUS: All right. Then,
15 why don't you ask him his assessment of the people and why
16 he reached the conclusions that he did regarding their
17 expertise?

18 MR. LOGAN: Because I'm looking to see
19 why people are terminated, and to determine if that was
20 factored into his decision.

21 CHAIRMAN IGNATIUS: Ask him directly
22 about his understanding of these people and this transfer.
23 Let's not get into anybody's management theories about the
24 rest of the world.

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[WITNESS PANEL: Goldman~Harding~Weber~Naylor]

1 MR. LOGAN: It isn't a theory, but I
2 won't ask the question. I'll remove the question. Not
3 feel comfortable that I'm removing it, but, apparently,
4 it's not going to be allowed.

5 CHAIRMAN IGNATIUS: Well, I want you to
6 stay focused on relevant information. And, you haven't
7 demonstrated to me why that's relevant.

8 MR. LOGAN: Well, I don't particularly
9 want to debate it with you, I have 40 years of experience
10 of hiring and firing people, and I pretty much know what
11 happens. But I'll pass on that.

12 BY MR. LOGAN:

13 Q. Okay. So, what are the -- in looking at management
14 expertise, I think you somewhat answered this, but
15 maybe not, that you assess in that person?

16 A. (Naylor) Well, I didn't assess any one individual in
17 this, in this case. I assessed everything that was
18 presented to us, as far as the Village District
19 acquiring this utility and operating it. I think the
20 significant factors, in the Staff's support of this
21 transfer, really come down to the fact that the Village
22 District already operates a utility, and has a very
23 qualified system operator, by Mr. Damour and his
24 company, to continue to operate the system going

[WITNESS PANEL: Goldman~Harding~Weber~Naylor]

1 forward. And, those are probably the key components of
2 the Staff's support.

3 Q. Okay. Prior to becoming Village District Manager, did
4 you look at Mr. Weber's previous managerial -- previous
5 job functions?

6 A. (Naylor) No, I did not.

7 Q. And, did you ask if the Village District had done a
8 background check on Mr. Weber?

9 A. (Naylor) No, I did not.

10 MR. BOYNTON: Objection. Relevance.

11 CHAIRMAN IGNATIUS: There's an objection
12 on relevance. Mr. Logan, a response?

13 MR. LOGAN: A background check. Do I
14 have an answer or I'm not sure --

15 CHAIRMAN IGNATIUS: Do you have an
16 answer on why that would be relevant?

17 MR. SCHAEFER: Certainly.

18 CHAIRMAN IGNATIUS: Well, tell me very
19 quickly why you think it would be relevant.

20 MR. LOGAN: Background checks tell you
21 the behavioral aspects of a person. And, if one finds in
22 the background check some of the behavioral aspects, means
23 they did an inappropriate hiring.

24 CHAIRMAN IGNATIUS: Mr. Sheehan.

[WITNESS PANEL: Goldman~Harding~Weber~Naylor]

1 MR. SHEEHAN: The measure is, as
2 Mr. Naylor said, it's the operating company that's running
3 the business, and it's the history of that company running
4 that business. And, whether Mr. Weber, Mr. Harding or
5 anyone else has a record of long ago, that's irrelevant to
6 whether you think this transfer to the Village District is
7 appropriate.

8 CHAIRMAN IGNATIUS: I'm going to sustain
9 the objection. I think the question "did you conduct a
10 background check?", he answered "no, you didn't", if I
11 recall correctly. It was the question "so, why didn't
12 you?" and further questions of that is what's being
13 sustained as not relevant. So, please move on.

14 BY MR. LOGAN:

15 Q. Do you think, Mark, the critical element of leadership
16 is to develop a Plan B?

17 MR. SHEEHAN: Objection, unless it's
18 pertaining to this particular transfer.

19 CHAIRMAN IGNATIUS: I'll allow the
20 question. I'm not sure where it's going, but let's see
21 where it goes.

22 **BY THE WITNESS:**

23 A. (Naylor) "Plan B"?

24 BY MR. LOGAN:

[WITNESS PANEL: Goldman~Harding~Weber~Naylor]

1 Q. "Plan B" means that, if Plan A doesn't work, you have a
2 fallback.

3 A. (Naylor) Well, I think, you know, any entity that owns
4 a business has to have -- has to have plans in place,
5 and contingency plans. So, sure. That's --

6 Q. And, do you think a critical element of leadership is
7 to be able to perform due diligence, the individual, as
8 management, on the part of the individual, they can
9 perform their own --

10 (Court reporter interruption.)

11 BY MR. LOGAN:

12 Q. I'm sorry. Do you think a critical element of
13 leadership is to perform due diligence, to be able to
14 perform due diligence in a managerial role?

15 A. (Naylor) Well, I guess I'm going to presume that, by
16 using the term "due diligence", you're referring to the
17 District performing due diligence with respect to the
18 condition and the operation of the sewer utility. Is
19 that accurate?

20 Q. Yes.

21 A. (Naylor) Well, I think the Joint Petitioners have
22 answered that question, in their -- throughout their
23 filing and through their discovery responses. There's
24 no real secrets here with respect to where the system

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[WITNESS PANEL: Goldman~Harding~Weber~Naylor]

1 is, what condition it is, its age, its needs. So, I
2 think, you know, the term "due diligence" has some
3 meaning here, but I don't think it's, you know,
4 something that would be evaluated as if it were a
5 acquisition of a business entity that was expected to
6 turn profits year after year. We know that these small
7 utilities typically earn very small profits, if any.
8 So, I would suggest that the District is, based on what
9 I understand, is hardly acquiring this utility to have
10 it be a profit-making entity year after year.

11 Q. I guess a question would be that the Eastman Community
12 Association, as demonstrated by, I hope I can find the
13 right exhibit, has an asset base of about \$18 million.
14 For a small entity, that's fairly deep pockets, by --
15 in contrast to --

16 (Court reporter interruption.)

17 BY MR. LOGAN:

18 Q. In contrast to the Village District of Eastman, is not
19 quite as affluent.

20 CHAIRMAN IGNATIUS: Is there a question?

21 MR. LOGAN: I was trying to pose it as I
22 was thinking it. You know, so, thinking about what Mark
23 had to say, in terms of a municipality, and I'm looking at
24 the Seller, and contrasting the two, that I guess the

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1 concern, and now I'm getting into testimony, so, I won't
2 ask a question.

3 CHAIRMAN IGNATIUS: All right.

4 MR. LOGAN: I'll just move on, it that's
5 all right.

6 CHAIRMAN IGNATIUS: Make a note and come
7 back to it, if you have a question.

8 MR. LOGAN: Okay. Thank you. I'm
9 sorry. I'm not particularly -- I'd like to move to Bill
10 Weber for a minute, if I could?

11 CHAIRMAN IGNATIUS: That's fine.

12 BY MR. LOGAN:

13 Q. Bill, what is your backup plan, if, for some reason,
14 you're unable to perform your duties?

15 A. (Weber) I don't understand. My duties personally?

16 Q. Yes. Do your job as Village District Manager?

17 A. (Weber) What is my backup plan?

18 Q. If you are unavailable to do your job, --

19 A. (Weber) Oh. I have a staff that will cover for me.
20 They're covering today.

21 Q. You're out for a sustained six to twelve month period?

22 A. (Weber) I guess I don't have a backup plan for a six to
23 twelve month period.

24 Q. All right. So, there isn't a backup plan long term?

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[WITNESS PANEL: Goldman~Harding~Weber~Naylor]

1 A. (Weber) I have a backup plan. But --

2 Q. Long term?

3 A. (Weber) You'd have to define "long term".

4 Q. We could use the long-term disability, which is three
5 months or greater.

6 A. (Weber) I have one for three months. I don't have one
7 for six months or a year.

8 Q. Let's go to Exhibit 21, if we could.

9 CHAIRMAN IGNATIUS: And, this would be
10 within the packets that were copied over the lunch break,
11 I take it?

12 MR. SHEEHAN: Correct.

13 CHAIRMAN IGNATIUS: Thank you, everyone,
14 for doing that, by the way.

15 BY MR. LOGAN:

16 Q. Do you remember this meeting and this document, Bill?

17 A. (Weber) Yeah, pretty much. Yes. I do.

18 Q. If we could move to Page 3. And, just view
19 Commissioner Sullivan's remarks, wherein he states that
20 he has been a "Commissioner for eight years, and it is
21 my sworn oath to represent the best interests of the
22 VDE customers and to provide fair water" --

23 MR. LOGAN: Is everybody with me? I'm
24 sorry. Let me just -- it's Page 3. It's about half, a

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1 little more than halfway down the page, --

2 CMSR. HONIGBERG: Got it.

3 MR. LOGAN: -- labeled "William
4 Sullivan".

5 BY MR. LOGAN:

6 Q. Mr. Sullivan indicated that he has been a "Commissioner
7 for the Village District of Eastman for eight years,
8 and it is my sworn oath to represent the best interests
9 of the VDE customers and to provide fair rates" --
10 "fair water rates for all customers, and to protect the
11 financial interests of the VDE." And, he goes onto say
12 "Eastman" -- "ESC is a for-profit entity", that's the
13 Sewer Company, "under the auspices of the PUC", and a
14 little later he says "90 percent of Eastman does not
15 know of the ECA purchase of the ESC."

16 Now, I emphasize that, because this was
17 in January, about a year ago. At that meeting, there
18 were approximately 200 voters in the Village District
19 of Eastman. If, as I'm sure everybody knows, the
20 number of voters that can vote in the Village --

21 CHAIRMAN IGNATIUS: Mr. Logan, a
22 question.

23 MR. LOGAN: Okay. Maybe I don't need
24 it.

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[WITNESS PANEL: Goldman~Harding~Weber~Naylor]

1 CHAIRMAN IGNATIUS: What's your
2 question?

3 CMSR. HONIGBERG: What's your question?

4 MR. LOGAN: I was going over these
5 remarks, and there's other remarks contained in the
6 document that I would like to call Mr. Weber's attention
7 to.

8 CHAIRMAN IGNATIUS: Do you have a
9 question for him?

10 MR. LOGAN: Yes, I do.

11 CHAIRMAN IGNATIUS: Thank you.

12 MR. LOGAN: But, unfortunately, I can't
13 ask the question without setting the stage.

14 CHAIRMAN IGNATIUS: Well, I think
15 reading through and commenting on Mr. Sullivan's remarks
16 isn't setting the stage. If you can point him to whatever
17 representation you're concerned about and ask him his
18 view, that would be good.

19 MR. LOGAN: Okay.

20 BY MR. LOGAN:

21 Q. Further on in that paragraph he talks about "a
22 deteriorated sewer system", this is Mr. Weber --
23 Mr. Sullivan's testimony or statements. I'll move to
24 Mr. Fairweather's comments. He indicates that the

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1 proceedings began "in February 2012". And, further on
2 in that statement, this is at a public meeting,
3 disseminating to the public the information that these
4 meetings had commenced "in February 2012". And,
5 further on in that statement, Commissioner Fairweather
6 says "Throughout the VDE Commissioners' deliberations
7 on the sewer acquisition," -- has everybody found that
8 spot? "The meetings have been open to the public and
9 minutes of the meetings available to the public. The
10 process has been totally transparent and open."

11 And, my question to you, Bill, is do you
12 agree that these statements were made at the
13 January 9th, 2013 VDE Special Meeting?

14 A. (Weber) As they're written were made.

15 Q. Okay.

16 A. (Weber) Yes.

17 Q. In fact, when did open meetings commence with the
18 sellers?

19 A. (Weber) March -- February 15th, 2012.

20 Q. Not according to the documents that are attached to the
21 previous exhibit we were discussing. In fact, the
22 first time it was noted was in April that you had been
23 meeting.

24 A. (Weber) That's incorrect.

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[WITNESS PANEL: Goldman~Harding~Weber~Naylor]

1 Q. No?

2 A. (Weber) The February minutes from 2000 -- March -- on
3 February 15th, 2012, indicate, by Commissioner Wood,
4 "any meeting that we do here regarding the Eastman
5 Sewer Company acquisition will be done in public." Not
6 only did he say that, included at the February 7th
7 meetings, that you allude to here, were also made
8 public and put on our website.

9 Q. If you go back to Exhibit 22, which you previously
10 received from me on January 11th.

11 A. (Weber) Yup. Gotcha -- I got it.

12 Q. You will note that I address that comment, and
13 indicated that that was not contained in the minutes.

14 A. (Weber) Bob, I don't know where you are.

15 Q. Well, why don't you read what you say is in the
16 minutes, and I'll go to the February 15th document,
17 which is attached to 22, and look at the public minutes
18 for that meeting, and perhaps tell me where you found
19 it.

20 CHAIRMAN IGNATIUS: And, I'll confess,
21 I'm lost.

22 WITNESS WEBER: I'm totally lost, Bob.

23 CHAIRMAN IGNATIUS: Let me just finish.

24 If the point is for us to be convinced of something, help

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[WITNESS PANEL: Goldman~Harding~Weber~Naylor]

1 me out here. Is your concern over whether it was February
2 or January, that sort of a distinction? Is your concern
3 that the dates are correct, but what was public and what
4 was not public is your concern?

5 MR. LOGAN: My concern is that the swing
6 at the January meeting was six votes, that the statement
7 by Commissioner Fairweather was erroneous, and that the
8 documentation presented -- produced by the VDE indicates
9 that, through July, they were not going to acquire the
10 Village -- the Eastman Sewer Company.

11 CHAIRMAN IGNATIUS: And, the reason that
12 all of those issues, if they're all true, the reason those
13 would be pertinent and relevant to this decision today is
14 what?

15 MR. LOGAN: Is the fact that the people
16 that voted for this were wrongfully informed in January.
17 And, that's what the record shows.

18 WITNESS WEBER: The January meeting was
19 a public meeting.

20 MR. LOGAN: It was. And,
21 misrepresentations were made in the public record.

22 WITNESS GOLDMAN: There were
23 misrepresent -- misrepresentations made on both sides in
24 the public record.

[WITNESS PANEL: Goldman~Harding~Weber~Naylor]

1 MR. LOGAN: We're not proposing
2 anything, Maynard.

3 WITNESS GOLDMAN: There was a vote
4 taken, and there was a vote taken in March, and there was
5 a vote taken in August. You guys are on the short end of
6 every vote.

7 MR. LOGAN: Can we continue?

8 WITNESS GOLDMAN: Any time.

9 CHAIRMAN IGNATIUS: Please.

10 MR. LOGAN: Did I answer your question,
11 Commissioner?

12 CHAIRMAN IGNATIUS: Yes. Thank you.

13 MR. LOGAN: Thank you.

14 BY MR. LOGAN:

15 Q. Now, further on in that testimony, on Page 7, --

16 A. (Weber) Wait, wait, wait, wait. I'd like to bring
17 something. You've asked me to read these minutes here,
18 Exhibit 22. These aren't minutes. This is your
19 interpretation of the minutes, now that I'm reading it
20 more closely. And, I apologize for not catching it.

21 Q. The minutes are attached that I refer to, Bill. If you
22 want to read the memo, I'll be happy to read the memo,
23 but I didn't bring up the memo, *per se*. I said "are
24 you aware of what is in the contents of these

[WITNESS PANEL: Goldman~Harding~Weber~Naylor]

1 documents, because I sent them to you on January 11th?"

2 A. (Weber) Well, you alluded -- you alluded to these being
3 "minutes", and they're not.

4 Q. I read the -- I referred you to a page --

5 A. (Weber) Yes.

6 Q. -- that says on the top of it -- look, I can go through
7 these with you, if you'd like me to, each page. The
8 one on 2/7 is Page 11, 12, 13, and 14. Those are
9 non-public minutes. If I continue on to Page 18,
10 "Non-public session", February 15. Okay?

11 A. (Weber) Yes.

12 Q. If I can go back to my question, and back to Page 7.

13 CHAIRMAN IGNATIUS: I'm sorry, 7 of
14 which document?

15 MR. LOGAN: Seven of Exhibit 22.

16 CHAIRMAN IGNATIUS: Thank you.

17 MR. LOGAN: Well, let me just double
18 check here, because I've been jumping around. I did
19 scramble my papers, I apologize. I'm back to a public
20 meeting. Oh, here it is. Okay. It's the minutes of the
21 January -- Exhibit 21? Yes. I apologize. I think I have
22 covered up -- all right, I've got it. Sorry. Page 7, the
23 bottom of the page.

24 CMSR. HONIGBERG: Page 7 of 22, Exhibit

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1 22?

2 MR. LOGAN: Yes.

3 CMSR. HONIGBERG: Okay.

4 MR. LOGAN: Thank you. Thank you for
5 your -- I'm sorry, my wife corrected me, it's 21.

6 CHAIRMAN IGNATIUS: All right.

7 WITNESS WEBER: Exhibit 21?

8 MR. LOGAN: Yes. Exhibit 21, which is
9 back to the January 9th, 2013 meeting.

10 WITNESS WEBER: Page 7, Bob, is the
11 January 9th Special Meeting.

12 MR. LOGAN: Ninth. Did I say "19th"?

13 WITNESS WEBER: You said "13".

14 MR. LOGAN: I apologize. In 2013. So,
15 we're all on Page 7 of Exhibit 21, just to verify with
16 everybody to make sure we're there?

17 CHAIRMAN IGNATIUS: Thank you.

18 BY MR. LOGAN:

19 Q. Okay. The last paragraph states -- or, excuse me,
20 third paragraph from the bottom, Commissioner
21 Fairweather's last sentence states "Our District
22 Manager, Bill Weber is an attorney", and this is in
23 regard to Article 2. Now, are you an attorney, Bill?

24 A. (Weber) I'm a non -- I have a JD. I have a law degree.

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[WITNESS PANEL: Goldman~Harding~Weber~Naylor]

1 I have a JD.

2 Q. So, were you properly represented as an "attorney" at
3 this meeting?

4 A. (Weber) I guess I'm not following what you're saying,
5 was I "properly represented", I'm not sure what that
6 means.

7 Q. Well, Mr. Fairweather said you were an "attorney".

8 A. (Weber) Okay. Attorney, JD, lawyer, I'm sure he just
9 -- it was just a generic statement. I don't see him
10 saying here "our attorney who represented us in this",
11 it just says "Bill is an attorney". It doesn't spell
12 out that I've done anything for representation.

13 Q. All right. Let's move down to the last paragraph,
14 where it says "VDE Manager William Weber gave the
15 Article Number 2 Summary. RSA", and I assume this is
16 quoted from you, "RSA Number 149 is long and
17 convoluted." Is that correct?

18 A. (Weber) This is not a quote. This is what the Clerk
19 wrote.

20 Q. So, were these minutes approved?

21 A. (Weber) Yes. It's what the Clerk writes. I didn't say
22 these words verbatim. But you're on -- go ahead.

23 Q. Do you disagree with what it said?

24 A. (Weber) Not really. I think it -- I think it spells

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[WITNESS PANEL: Goldman~Harding~Weber~Naylor]

1 out 149-I pretty well.

2 Q. Okay. So, you were represented to the general public
3 at that meeting as an attorney, you were utilized to
4 give an explanation to RSA 149 as being long and
5 convoluted. Is that what you did?

6 A. (Weber) I gave a summary.

7 Q. Now, is it appropriate, for someone who is an employee
8 or a member of a board, to give a legal opinion on a
9 matter before that employee or board?

10 A. (Weber) I didn't give a legal opinion.

11 Q. I would say that's how it was represented to those in
12 the audience. I don't know of a single person that
13 didn't interpret it that way.

14 A. (Weber) I'm sorry, Bob, that's not a legal opinion.
15 This is a comment that is made by a district manager,
16 who happens to have a law degree. I'm sorry, that's
17 all there is to it. There's no more than that.

18 Q. Well, I'm not going to argue with you, Bill, but I just
19 don't think that was represented --

20 A. (Weber) And, even if you read the next page, "so the
21 law applies for Commissioners if you adopt the
22 statute", it goes on and on. And, it's just -- this is
23 very vague language. And, a copy of RSA 149 was
24 available to the voters anyway at that meeting. So, --

[WITNESS PANEL: Goldman~Harding~Weber~Naylor]

1 Q. Which you had described as being "long and convoluted"?

2 A. (Weber) It is. It definitely is.

3 Q. Would you come back and answer my question?

4 A. (Weber) What's the question?

5 Q. Is it appropriate for an employee or a member of a
6 board to give a legal opinion as it pertains to a
7 matter before that body?

8 A. (Weber) And, as I said, I did not give a legal opinion.

9 It is a statement made by the Manager of the Village
10 District. That's like saying that Commissioner
11 Fairweather --

12 Q. That's not how you were introduced by Mr. Fairweather.

13 A. (Weber) It says right here, I'll point out to you, "As
14 Commissioner Fairweather said, a lot of the statute
15 does not pertain to what is occurring here." Does that
16 make him an attorney practicing law? Bob, come on.
17 You know it's just a statement I made.

18 Q. Would you, as a owner, expect -- or, as a participant
19 in a company expect this kind of a representation to be
20 made?

21 CHAIRMAN IGNATIUS: I'm sorry. I didn't
22 hear the question. Can you repeat that please?

23 MR. LOGAN: I was trying to put it in
24 the general context that, if you're a stockholder in a

[WITNESS PANEL: Goldman~Harding~Weber~Naylor]

1 company, would you expect an employee of that company, I
2 mean, in my experience, all the lawyers I worked with have
3 stated to me it's unethical to state legal opinions on
4 matters before them, if they're a member of a board or if
5 they're an employee of that company.

6 CHAIRMAN IGNATIUS: All right. And,
7 we've been through this. And, Mr. Weber said, in his
8 view, he wasn't giving a legal opinion. You may disagree.

9 MR. LOGAN: Okay.

10 CHAIRMAN IGNATIUS: And, we don't need
11 to keep going through it, --

12 MR. LOGAN: All right.

13 CHAIRMAN IGNATIUS: -- unless you have a
14 different point.

15 MR. LOGAN: All right. Excuse me.
16 Could I pass to my significant other?

17 CHAIRMAN IGNATIUS: Sure. Ms. Logan,
18 please proceed.

19 MS. LOGAN: Okay.

20 BY MS. LOGAN:

21 Q. I'll direct this to Mr. Goldman. The governance values
22 that are stated on our Community website,
23 "Collaboration, we work together to achieve consensus
24 on issues, recognizing the importance of members'

[WITNESS PANEL: Goldman~Harding~Weber~Naylor]

1 opinions, and remaining flexible when working towards
2 fulfilling the Community's needs and expectations.
3 And, respect, we recognize the value of diversity of
4 interests and opinions within our Community." Do you
5 practice these values?

6 A. (Goldman) I do.

7 Q. The Petitioners have said they had overwhelming support
8 to proceed with the acquisition, but the initial vote,
9 as we just pointed out, was a six-vote difference.
10 And, this was in spite of the fact that VDE members
11 were -- had been misinformed before the vote. Through
12 a series of Community mailings, ECA, as owner of the
13 Sewer Company, has preserved -- promoted the
14 acquisition by, one way, denigrating Community members
15 who opposed it, as shown in Exhibit Number 27.

16 CHAIRMAN IGNATIUS: And, do you have a
17 question, Ms. Logan?

18 MS. LOGAN: I have attached 27 as some
19 of Mr. Goldman's previous communications mailed to Eastman
20 Sewer users.

21 CHAIRMAN IGNATIUS: Do you have a
22 question of Mr. Goldman?

23 BY MS. LOGAN:

24 Q. Did you write that letter, Mr. Goldman?

{DW 13-171} {01-21-14}

[WITNESS PANEL: Goldman~Harding~Weber~Naylor]

1 A. (Goldman) I can't -- I don't see that letter.

2 Q. It's Attachment Number 27.

3 MR. SHEEHAN: It would be the very
4 bottom of that clipped package.

5 BY MS. LOGAN:

6 Q. It's called "...now you know the rest of the story."

7 A. (Goldman) I did write that letter.

8 Q. Oh.

9 A. (Goldman) And, that letter had nothing to do with the
10 Sewer Company. It was with regard to other matters.

11 WITNESS WEBER: Mike, we have 28 and
12 9 --

13 MR. SHEEHAN: No, I say that, and you're
14 right. It's not in the package I copied.

15 WITNESS WEBER: Okay.

16 MR. SHEEHAN: So, we don't have --

17 MS. LOGAN: I gave you copies of it,
18 actually.

19 CHAIRMAN IGNATIUS: You know, we've
20 been -- I remember reading the "...now you know the rest
21 of the story." It must be attached to your testimony.
22 It's in the -- I know I read it yesterday, so --

23 WITNESS GOLDMAN: I recall the letter.

24 BY MS. LOGAN:

[WITNESS PANEL: Goldman~Harding~Weber~Naylor]

1 Q. Reviewing the following statements contained in that
2 letter, paragraph two, sentence one, "Although together
3 we have made considerable progress at Eastman in recent
4 years there continues to be a small group of dissenters
5 who oppose virtually every initiative to improve our
6 Community."

7 In paragraph four, sentence one, he said
8 "There are several ways to respond to the types of
9 irresponsible material contained in the anonymous
10 letter and many postings that appear on the LISTSERV."
11 Now, this statement presents no substantiation to the
12 phrase "irresponsible material".

13 A. (Goldman) I can't hear you.

14 CHAIRMAN IGNATIUS: And, you really need
15 to be asking questions, not --

16 MS. LOGAN: Okay.

17 CHAIRMAN IGNATIUS: You'll have a chance
18 at a closing to make your points. But, please, this is a
19 chance to ask the witnesses questions.

20 MS. LOGAN: Okay. These letters target
21 unnamed Eastman members' civil liberties in the expression
22 of their civil right. Then, in September 27th and August
23 14th letters in Exhibit 27, he targets and names
24 specifically the Logans and Phil Schaefer. In content,

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[WITNESS PANEL: Goldman~Harding~Weber~Naylor]

1 they are not as onerous as the April 18th letter, however,
2 it is not difficult to connect the dots between the two
3 very accusatory earlier letter and these two. I guess the
4 rest that I was going to say is really kind of testimonial
5 in nature, but it speaks to the fact that he has -- I
6 don't know how this coincides with the values that he says
7 he practices.

8 CHAIRMAN IGNATIUS: All right. You'll
9 have your chance to make your interpretation of these
10 things. So, is there a question to the witness?

11 BY MS. LOGAN:

12 Q. Could you tell me how these activities coincide with
13 your values?

14 A. (Goldman) I believe they do. As I mentioned earlier,
15 the letter, the first letter to which you refer was --
16 had nothing to do with the VDE, the Sewer Company, or
17 any of those discussions. It was specifically a
18 response to an anonymous letter, which I received from
19 a -- which was published on the LISTSERV, and
20 circulated in the Community. As you well know, over a
21 period of years, there have been many such letters.
22 And, I responded to that letter in a way which I felt
23 was appropriate. I would do it again tonight,
24 tomorrow, and tomorrow night.

{DW 13-171} {01-21-14}

[WITNESS PANEL: Goldman~Harding~Weber~Naylor]

1 As for the other letter, and I actually
2 don't have it in front of me, and I don't remember it,
3 so, I can't -- I can't respond. But, as a matter of
4 public record, you are the intervenors, and people in
5 the Community who are aware of what is happening know
6 who the intervenors are. And, I see no reason why
7 mentioning your names in a factual document, that was
8 sent to the members of the Community, in any way should
9 be offensive or violates somebody's civil rights or any
10 other such accusation.

11 MS. LOGAN: I'm finished here.

12 MR. LOGAN: Could I --

13 CHAIRMAN IGNATIUS: Mr. Logan, you have
14 more questions?

15 MR. LOGAN: I do.

16 CHAIRMAN IGNATIUS: Oh, I'm sorry. I
17 thought you were finished before?

18 MR. LOGAN: No. I just wanted to take a
19 breather.

20 CHAIRMAN IGNATIUS: Oh. Okay.

21 MR. LOGAN: Sorry I wasn't clear.

22 CHAIRMAN IGNATIUS: Then, go ahead.

23 And, then, Ms. Logan, are you done?

24 MS. LOGAN: Yes, for the moment.

{DW 13-171} {01-21-14}

[WITNESS PANEL: Goldman~Harding~Weber~Naylor]

1 CHAIRMAN IGNATIUS: Well, I don't mean
2 for the moment. I mean, --

3 MS. LOGAN: No. For the questions, yes.

4 CHAIRMAN IGNATIUS: -- understanding
5 here, you're not people who practice here in front of us,
6 we're trying to give you as much leeway, but we also do
7 have some standards.

8 MS. LOGAN: Yes.

9 CHAIRMAN IGNATIUS: And, if you choose
10 to intervene, you take some of the rules that come with
11 it. So, you're done? Thank you. Mr. Logan, go ahead and
12 finish up please.

13 MR. LOGAN: Okay.

14 BY MR. LOGAN:

15 Q. Brian, I guess this is in your response to Staff, and
16 it's Exhibit 13. And, actually, maybe the question is
17 to Mr. Weber, but maybe you can help me whether it is
18 you or him. Your response indicates that the rates and
19 fees, I'm down in the last paragraph of what is labeled
20 "H" -- well, it's Exhibit 13. I was looking at the
21 original numbers that Attorney Boynton used. The last
22 sentence: "revenue from rates and fees and expenses is
23 balanced out with taxes." And, I guess I would defer,
24 unless you want to answer the question, Brian, to

{DW 13-171} {01-21-14}

[WITNESS PANEL: Goldman~Harding~Weber~Naylor]

1 Mr. Weber. What is the percentage of operating and
2 maintenance expenses that are covered by the fees
3 charged, the bills sent out, if you will, to the users
4 of the water company?

5 A. (Harding) Bill, do you want to --

6 A. (Weber) Oh, he is asking me. I'm so sorry.

7 A. (Harding) Well, no, and I think Mr. Logan has given me
8 an opportunity to answer the question, if I saw fit.
9 But, Bill, I think you're the more appropriate person
10 to address this.

11 A. (Weber) I'm sorry, Bob. I wasn't paying attention,
12 because I thought you were asking Brian.

13 Q. All right. I'll be happy to --

14 A. (Weber) It's my fault.

15 Q. I'll be happy to repeat it. No problem. And, that's
16 why this -- you know, I was looking at Brian's
17 testimony, but the question really should go to you.

18 A. (Weber) Yes.

19 Q. You're on the first page?

20 A. (Weber) Yes.

21 Q. And, as you read on the last paragraph of that page, it
22 indicates "Any difference between the expected revenue
23 from rates and fees and expenses is balanced out with
24 taxes." And, the question I have is, for the ongoing

[WITNESS PANEL: Goldman~Harding~Weber~Naylor]

1 operating expenses and maintenance, which is on the
2 continuation on the back of the page, what percent of
3 those operating and maintenance expenses are covered by
4 what is billed to the water users, the clients of the
5 VDE? You understand the question?

6 A. (Weber) What percentage of taxes is allocated to O&M?

7 Q. No. You have certain costs to run the Village
8 District?

9 A. (Weber) Correct.

10 Q. Operating and maintenance expenses?

11 A. (Weber) Right.

12 Q. On the bottom of the first page, it talks about the
13 "rates and fees are balanced out with taxes", which I
14 believe means that you supplement the operating
15 expenses and maintenance costs with some amount of
16 taxes?

17 A. (Weber) Correct.

18 Q. And, what I'm looking for is what is that ratio of
19 uncovered from the fees you charge periodically to the
20 users of the water system? Do you charge 70 percent of
21 water utilization or do you charge --

22 A. (Weber) No. It changes every year. But, for the most
23 part, we're trying to balance, and actually Phil was
24 helpful with that a couple years back, we're trying to

[WITNESS PANEL: Goldman~Harding~Weber~Naylor]

1 make it that our capital expenses are funded by our
2 taxes and our operations and maintenance are funded by
3 users' fees and water use fees.

4 Q. Right. So, what is that ratio?

5 A. (Weber) It changes every year.

6 Q. Well, yes, but is it 50 percent? Is it 100?

7 A. (Weber) Well, we're seeking 50 percent. Right now,
8 this budget I'm doing, I honestly couldn't say. I
9 don't want to quote something that's wrong.

10 Q. How about the current year? You know, let's try to
11 step back a minute.

12 A. (Weber) Let me do it then. It would be 900 -- you got
13 a calculator, Bob?

14 Q. I got a phone. That will do it.

15 A. (Weber) All right. Take 900,000, minus 344,000 in user
16 fees and water use charges, and the balance would be
17 taxes, which was approximately \$549,000 for fiscal year
18 2013. We don't set the tax rates, DRA, and they only
19 set it based on an apportionment, which is done in the
20 fall.

21 Q. No, I understand that.

22 A. (Weber) Now, you're first tax bill is based on the
23 second half of this year.

24 Q. I understand that. But my question is really, maybe

[WITNESS PANEL: Goldman~Harding~Weber~Naylor]

1 you're not understanding it, is the operations, the
2 ongoing operations of the water company, --

3 A. (Weber) Yes.

4 Q. -- and the ongoing maintenance expenses?

5 A. (Weber) Yes.

6 Q. Okay. That costs X bucks.

7 A. (Weber) Yes.

8 Q. Okay. Let's say X is, I don't know, what is it?

9 A. (Weber) 900,000.

10 Q. That's just the operating expenses?

11 A. (Weber) That's our average budget per year, is
12 \$900,000.

13 Q. I'm not asking for the budget, because does that
14 include capital or not?

15 A. (Weber) Yes. It includes everything.

16 Q. I'm trying to segregate the two, as you do here.

17 A. (Weber) Oh, I just gave it to you. \$344,000 is water
18 use and fees, \$549,000 is taxes.

19 Q. That's the income stream.

20 A. (Weber) Okay. Now, you want the expense side?

21 Q. Yes.

22 A. (Weber) Okay, 300 and -- just hold on, give me a
23 second. That's the expense side -- that's the revenue
24 side. So, on our expense side, our operating budget

[WITNESS PANEL: Goldman~Harding~Weber~Naylor]

1 for this past year was \$537,000, and the balance would
2 be capital.

3 Q. So, the 5 -- I'm focusing on the operating.

4 A. (Weber) Okay.

5 Q. So, 537 versus 344 in income?

6 A. (Weber) No, no, no. Hold on. 537,000 -- you're asking
7 me two different things. One side you're asking me
8 revenues, the other side you're asking me expenses.
9 \$537,000 was our budget, meaning operations and
10 maintenance.

11 Q. Okay.

12 A. (Weber) The balance are your capital accounts.

13 Q. I know. But I'm trying to stick with operating
14 expenses.

15 A. (Weber) I'm sorry, I'm confused. I'm trying to figure
16 out what you want. I've given you both sides of the
17 equation.

18 Q. I'm focusing on your operating and maintenance
19 expenses, all right?

20 A. (Weber) Okay.

21 Q. You have a revenue budget or income?

22 A. (Weber) Yup.

23 Q. And, you have an expense?

24 A. (Weber) Yes.

[WITNESS PANEL: Goldman~Harding~Weber~Naylor]

1 Q. What is that ratio?

2 A. (Weber) Oh, I don't know. You're asking me something I
3 just don't know.

4 Q. Well, I could --

5 A. (Weber) You got -- I gave you the numbers, do it on
6 your phone. I gave you, our operating budget is
7 577,000, and our income is 900,000. So, that will tell
8 you the ratio. It's probably what, 58 percent?

9 Q. Well, I think the numbers -- this isn't really a
10 difficult thing, but --

11 A. (Weber) Thank you.

12 Q. I think you're commingling of the 900,000, does that
13 include capital or not?

14 MR. BOYNTON: I have an objection on
15 relevancy again. We're talking about the water company
16 and the accounting, I'm not sure --

17 CHAIRMAN IGNATIUS: Mr. Logan, do you
18 have a response to that?

19 MR. LOGAN: Yes, I do. I think it's
20 important that, in this question, that if you ask a person
21 running a water company, or a sewer company, "how much are
22 we paying to run that, operating expenses and maintenance,
23 and how much are we paying for capital?" That that's a
24 reasonable question. I believe we do have that answer for

[WITNESS PANEL: Goldman~Harding~Weber~Naylor]

1 the Eastman Sewer Company as it operates today. And, I
2 believe Mr. Weber should easily be able to answer that.
3 And, I also think that the fact that approximately 60
4 percent of that operating and maintenance expense is what,
5 in fact, is covered by the income stream from the users,
6 which means that the rest of it is being covered through
7 taxes.

8 CHAIRMAN IGNATIUS: All right. Why
9 don't you -- I think he has established the numbers, yes,
10 that you were looking for?

11 MR. LOGAN: I didn't think we had
12 clarity on the buckets for the numbers, I thought he
13 commingled in his 900,000 --

14 CHAIRMAN IGNATIUS: All right. So,
15 let's just not jump around. Let's try and just do it in a
16 very methodical way. On the revenue side only, the
17 operation and maintenance expenses -- excuse me, revenues.

18 (Laughter.)

19 WITNESS WEBER: You're looking at the
20 third column.

21 CHAIRMAN IGNATIUS: I'm not helping.
22 So, on revenues, operation and maintenance revenues, if
23 you sort them that way?

24 WITNESS WEBER: We don't.

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[WITNESS PANEL: Goldman~Harding~Weber~Naylor]

1 CMSR. HONIGBERG: You have user fees and
2 you have taxes, right?

3 WITNESS WEBER: That's correct.

4 CHAIRMAN IGNATIUS: How much do you get
5 in user fees?

6 WITNESS WEBER: Approximately \$335,000.
7 That was for 2013.

8 CMSR. HONIGBERG: Right. How much do
9 you get in taxes?

10 WITNESS WEBER: \$549,170.

11 CMSR. HONIGBERG: That's 900 and some
12 odd thousand dollars.

13 WITNESS WEBER: That's correct. That's
14 where our budget was last year.

15 CMSR. HONIGBERG: Okay. You spent that
16 money how?

17 WITNESS WEBER: Obviously, to pay all
18 the bills. We're a non-profit. And, I don't mean to be
19 wise with you.

20 CMSR. HONIGBERG: Right.

21 WITNESS WEBER: The first 577,000, we
22 take the user fees, and that's applied first. So, that
23 would be, you're leaving approximately 180,000 left over.
24 Then, the next \$180,000 funding for the operation and

[WITNESS PANEL: Goldman~Harding~Weber~Naylor]

1 maintenance comes out of taxes.

2 CMSR. HONIGBERG: Stop right there. Are
3 we good at that point?

4 MR. LOGAN: Yes. Yes.

5 CMSR. HONIGBERG: Do we need any more?

6 MR. LOGAN: I think we've got the ratio,
7 approximately 60 percent.

8 CMSR. HONIGBERG: Okay.

9 MR. LOGAN: I do have another question.

10 CHAIRMAN IGNATIUS: That's fine. Thank
11 you.

12 BY MR. LOGAN:

13 Q. And, that is, do you think this is fair to your
14 constituents, in the sense that the people who are
15 using water are under billed for their utilization?

16 A. (Weber) The people that are using water are under
17 billed? I'm not sure there's an answer to that. The
18 people that are under billed are happy. I don't mean
19 that in a wise way. No, no. Well, I'm not sure what
20 to say. It's a very difficult community to run,
21 because we don't have 100 percent full-time residents.
22 You're about 66 to 68 percent of the Community is full
23 time. So, it's very difficult to allocate these
24 expenses in a way you'd like to see them. Now, we try,

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[WITNESS PANEL: Goldman~Harding~Weber~Naylor]

1 we do our best. And, each year, the demographic
2 changes. We're seeing more children in there, more
3 water use per homes; more grandchildren, more water use
4 per homes; more grandparents raising children. It's a
5 yearly thing. We just play the balance game every
6 year, Bob.

7 Q. So, are you answering my question -- you know, I'll try
8 it again. Do you think it is equitable to the people
9 who do not use the water to make up the difference for
10 those who do?

11 A. (Weber) But everybody is taxed at the same rate. If
12 you own a \$500,000 house, you're going to pay X in
13 taxes. If you've got a \$300,000 condo, you're going to
14 pay X. The apportionment is the same. I'm not trying
15 to be difficult. I'm just not -- give me the question
16 in five words.

17 Q. Well, I did. But I'll do it -- I'll do it in a
18 different way.

19 A. (Weber) Do it in four.

20 Q. I'll do it in a different way, in taxes. When you pick
21 up the money through taxes, --

22 A. (Weber) Correct.

23 Q. -- you are subsidizing people who use water, based on
24 the value of other people's property for --

[WITNESS PANEL: Goldman~Harding~Weber~Naylor]

1 A. (Weber) No, you're not.

2 Q. Pardon me?

3 A. (Weber) No, you're not.

4 Q. Of course, you are.

5 A. (Weber) Then, you need to come down and sit with me in
6 the office, we'll go over this.

7 Q. What is it I don't understand?

8 A. (Weber) It's too much math for me to get through to you
9 in one stop. Again, --

10 Q. I'm sorry, Bill, but I do understand quite well --

11 (Multiple parties speaking at the same
12 time.)

13 **BY THE WITNESS:**

14 A. (Weber) We're trying to do this at 50 percent taxes/50
15 percent user fees. What I'm saying is, based on the
16 Community being a 66 percent full-time rate, it's a
17 toss up. Each year it changes. The first year I
18 started, it was 54 percent. I'm not -- I can't give
19 you a number. I can give you --

20 BY MR. LOGAN:

21 Q. I'm not looking for the number. I asked you a question
22 about fairness and equity, based on --

23 A. (Weber) I can't speak to whether it's fair or not.

24 CHAIRMAN IGNATIUS: Let Mr. Logan

[WITNESS PANEL: Goldman~Harding~Weber~Naylor]

1 finish, please, Mr. Weber.

2 WITNESS WEBER: Yes.

3 BY MR. LOGAN:

4 Q. The question was about fairness to people who do not
5 use water being charged to supplement the usage of
6 water by other parties? And, that is --

7 A. (Weber) Okay. Tell me who's not getting water that is
8 paying taxes. That might -- is that what you're
9 looking for?

10 Q. No. It has nothing to do with taxes.

11 A. (Weber) I don't know who's subsidizing who then.

12 Q. It has to do with what you said was 60 percent of your
13 water utilization is charged based on utilization.

14 A. (Weber) No, I didn't. Sixty percent is our taxes.

15 Q. I don't think that's the way the math came out. That
16 would even be worse.

17 A. (Weber) I just -- I have no idea what you're trying to
18 ask me. I'm sorry. I'm not trying to be stupid. I'm
19 not trying to blow you off. I got no clue.

20 Q. All right.

21 A. (Weber) I can't speak to the "fairness" of one thing or
22 another. I just don't know how each person would look
23 at this. It seems like it's subjective. I can't give
24 an objective view on it. I'm so sorry.

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[WITNESS PANEL: Goldman~Harding~Weber~Naylor]

1 CHAIRMAN IGNATIUS: Can I ask a
2 question? Working with the numbers that Commissioner
3 Honigberg asked to clarify, is your question related to,
4 of the \$577,000 in expenses, --

5 MR. LOGAN: Yes.

6 CHAIRMAN IGNATIUS: -- 335,000 came from
7 user fees, and that left 180,000 that was picked up
8 through taxes?

9 MR. LOGAN: Correct.

10 CHAIRMAN IGNATIUS: And, you're asking,
11 "is that fair?"

12 MR. LOGAN: Yes.

13 CHAIRMAN IGNATIUS: That that 180,000 in
14 water operating expenses should be paid for out of tax
15 revenues?

16 MR. LOGAN: Correct. Because that is
17 water utilization, and instead people are paying,
18 particularly the higher valued properties, --

19 CHAIRMAN IGNATIUS: Okay. So,
20 Mr. Weber --

21 WITNESS WEBER: With all due respect,
22 ma'am, and Bob, the problem is, if you've got that
23 difference of \$180,000 in taxes covering that, it could
24 mean 40 low-end properties, just a number, or 20 high-end

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[WITNESS PANEL: Goldman~Harding~Weber~Naylor]

1 properties. That's why I'm saying you can't answer the
2 question.

3 MR. LOGAN: Well, in fact, --

4 WITNESS WEBER: There is no answer to
5 your -- I know exactly what you're saying, I know exactly
6 what you're trying to elicit from me, but I don't think
7 there's an answer. I think it's a question that just is
8 kind of subjective and there's nothing you can do.

9 BY MR. LOGAN:

10 Q. Let me phrase the tax side of it, as you just
11 expressed.

12 A. (Weber) Okay.

13 Q. If you own \$100,000, you pay a \$21 tax rate,
14 approximately 10 percent is the Water Company's
15 precinct tax, which means that \$100,000 house pays 21
16 times 100.

17 A. (Weber) No. The water use tax is \$1.52 per thousand.

18 Q. All right. I thought it was around \$2.00, maybe it's
19 \$1.52. A \$100,000 house, how much is that?

20 A. (Weber) It comes out to the \$15 and I -- I don't have a
21 calculator. \$1.53 per thousand, so, 150 -- \$1.53 times
22 100, 15.30.

23 A. (Goldman) Right.

24 Q. So, a \$500,000, what is that same assessment?

[WITNESS PANEL: Goldman~Harding~Weber~Naylor]

1 A. (Weber) \$76 and -- \$76 and some change.

2 Q. Okay. So, there is a difference, right? The person
3 with the higher valued house is paying five times --

4 A. (Weber) Yes, they are. You're absolutely right.

5 Q. Right? And, they are supplementing. So, by design,
6 you're saying it's fine?

7 A. (Weber) I didn't design the setup of the system, Bob.

8 Q. But you're running it, though?

9 A. (Weber) I can't change it.

10 Q. All right. I don't want to pursue the line of
11 questioning. What will happen with the sewer users?

12 A. (Weber) The sewer users has no general taxation. We've
13 already established, it's only user fees and special
14 assessment.

15 Q. And, will that be done like the water fees and capital?

16 A. (Weber) No. It will probably be done differently,
17 because there's no taxation to use. We don't have that
18 number to work with with sewer users. It's a
19 completely different animal.

20 Q. Okay. Let me go to another matter, if I could. Thank
21 you. I want to look at the evaluation of -- that you
22 mentioned, your cross reference, how you came up with
23 the value of one dollar.

24 CHAIRMAN IGNATIUS: Is that to Mr.

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[WITNESS PANEL: Goldman~Harding~Weber~Naylor]

1 Maynard [Goldman]?

2 MR. LOGAN: To Mr. Weber.

3 CHAIRMAN IGNATIUS: To Mr. Weber. All
4 right.

5 BY MR. LOGAN:

6 Q. And, just to sort of refresh our memories, could you
7 describe how you reconcile that one dollar payment?

8 A. (Weber) Yes. First of all, I didn't come up with it.
9 All of us came up with it. But we reconciled it on our
10 end, the Village District of Eastman, by taking the
11 amount of work it would need --

12 Q. Pardon me?

13 A. (Weber) We reconciled our side, we decided what it was
14 worth. What is that sewer system worth if it was up
15 and running as a normal system, without having to need
16 a lot of maintenance?

17 Q. Can you give me the components of how you came up with
18 your costs?

19 A. (Weber) No. I can't. It's a long -- it's a lot of
20 math, a lot of spreadsheets, and a lot of
21 investigation.

22 Q. I've looked at everything that you've told me you
23 looked at.

24 A. (Weber) Uh-huh.

{DW 13-171} {01-21-14}

[WITNESS PANEL: Goldman~Harding~Weber~Naylor]

1 Q. And, I cannot get to a dollar under any circumstances.

2 So, --

3 A. (Weber) It came to a dollar.

4 Q. Pardon me?

5 A. (Weber) It came to a dollar.

6 Q. But it doesn't -- there's nothing to substantiate it?

7 A. (Weber) But the parties agreed to the dollar.

8 Q. So, there was no substantiation that you are willing to
9 put in front of this body?

10 A. (Weber) I am more than willing to put it in front of
11 the body. The problem is, I don't have it in front of
12 me. I don't have it here.

13 Q. Did you think it was relevant?

14 A. (Weber) No. It's a Purchase and Sales. It's all
15 signed and done. It's over.

16 Q. But the valuation --

17 A. (Weber) The voters have agreed to it. The dollar was
18 put on the warrant, the voters voted for it.

19 Q. The voters trusted your due diligence.

20 A. (Weber) Okay. And, we did it.

21 Q. But you're not willing to share?

22 A. (Weber) I don't -- Bob, I don't have that information
23 with me. I explained to you earlier, we took what it
24 would take to get the system up and running. We used

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[WITNESS PANEL: Goldman~Harding~Weber~Naylor]

1 an appraisal. We based it on engineering studies, we
2 based it on accountants, we based it on many, many
3 factors that I just can't add up in the next five
4 minutes off the top of my head.

5 Q. All of the documents you sent me were the seller's
6 documents.

7 A. (Weber) That's what we needed for due diligence.

8 Q. And, so, everything you looked at was the seller's
9 perspective?

10 A. (Weber) No. No.

11 Q. From a financial valuation?

12 A. (Weber) No.

13 Q. Can you show me something that isn't?

14 A. (Weber) Sure. It's right in the box over there.

15 Q. I looked in the box. I didn't see any.

16 A. (Weber) I don't know what to say. All our due
17 diligence is in the two boxes.

18 Q. I'm asking you to tell me where it -- tell me one
19 document that shows me what work you did originally,
20 what original work you did in due diligence?

21 A. (Weber) You may have to -- give me a specific example
22 of due diligence you would have liked to have seen the
23 Village District of Eastman do and I'll address it.

24 Q. I gave you --

[WITNESS PANEL: Goldman~Harding~Weber~Naylor]

1 A. (Weber) Give me one example.

2 Q. Pardon me?

3 A. (Weber) Give me one example.

4 Q. My due diligence request was in my prefiled testimony,
5 and began in February of 2012, over a period of four
6 months, was submitted in July, when this first was
7 filed. And, you have continually negated not answering
8 it. There is nothing new here, Bill. This has been on
9 the table for a long time. And, you have consistently
10 given me back the Buyer's [sic] information.

11 A. (Weber) We did the due diligence. We did what we were
12 supposed to do. The voters approved it. I don't know
13 what else --

14 Q. But you can't show me anything, nor have you?

15 A. (Weber) We can show it to you, if you want, if the
16 Commission is willing to let us go back and sit down
17 for the next hour and a half, Bob. I don't remember
18 every single detail. I think, if this is all you've
19 got, you know, I'm sorry. I just can't give you every
20 single detail off the top of my head. I gave you an
21 idea --

22 Q. This is not a new request, Bill.

23 A. (Weber) Okay. We told you, what we took was --

24 CHAIRMAN IGNATIUS: Gentlemen, I think

[WITNESS PANEL: Goldman~Harding~Weber~Naylor]

1 we get the gist of the dispute here.

2 WITNESS WEBER: Yes. Just it's
3 pointless.

4 CHAIRMAN IGNATIUS: Mr. Logan, you've
5 asked for any evaluations that were done independent of
6 what was received from the Seller, correct?

7 MR. LOGAN: Yes.

8 CHAIRMAN IGNATIUS: And, Mr. Weber, your
9 answer to that is?

10 WITNESS WEBER: Everything is back
11 there, madam Chair. I only gave a rough idea of how we
12 came to it. But the spreadsheets are on our computers,
13 the Commissioners had notes. It's just -- it was a lot of
14 things. There's a summary back there, it's equivalent to
15 about 900 pages of due diligence.

16 CHAIRMAN IGNATIUS: And, are those
17 materials, have they been made available prior to the --

18 WITNESS WEBER: Absolutely. Oh, they're
19 on our website.

20 CHAIRMAN IGNATIUS: All right. So,
21 Mr. Logan, I take it it's a dispute as to the value of the
22 information that's been made available, not whether it's
23 actually available to you or not, it's just what you make
24 of it?

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[WITNESS PANEL: Goldman~Harding~Weber~Naylor]

1 MR. LOGAN: To the best of my knowledge,
2 all of the information is sourced from the Seller.

3 CHAIRMAN IGNATIUS: All right. And,
4 you've made that point in your testimony, and I understand
5 that. All right. Then, is there anything else on that
6 line of inquiry? Obviously, you're not going to agree.

7 MR. LOGAN: I guess only one question,
8 and I'll try to move on. Well, no, I won't go there.

9 CHAIRMAN IGNATIUS: Does that conclude
10 your questioning?

11 MR. LOGAN: Could I take a minute to
12 think about that? Is that all right? Just one minute?

13 CHAIRMAN IGNATIUS: Sure.

14 MR. LOGAN: Thank you.

15 (Short pause.)

16 CHAIRMAN IGNATIUS: Mr. Logan.

17 MR. LOGAN: There are two other, there
18 are two other questions, if I could.

19 BY MR. LOGAN:

20 Q. Bill, one of the documents that I believe you referred
21 to this morning was the Underwood report?

22 A. (Weber) Engineers reports. There's two of them --
23 there's three different ones.

24 A. (Goldman) Four, I think.

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[WITNESS PANEL: Goldman~Harding~Weber~Naylor]

1 A. (Weber) Four, actually.

2 A. (Goldman) I think there were four.

3 A. (Weber) Underwood was one of them, one of four.

4 Q. In terms of establishing the condition of the Sewer
5 Company, of the sewer infrastructure of the 40 year old
6 system, how technically what the condition of that was?

7 A. (Weber) That was one of the reports we -- yes.

8 Q. So, we're talking about the engineering state. Is
9 there another report that evaluates the engineering
10 state? The CLD is an old report, I believe dated 2008,
11 and the work was done in 2007?

12 A. (Weber) Yes.

13 Q. And, in that report, the CLD report, it identified a
14 number of the components of the system.

15 MR. LOGAN: I'm sorry, are you getting
16 this?

17 MR. PATNAUDE: Yes.

18 MR. LOGAN: I'm okay? Okay. Sorry.

19 BY MR. LOGAN:

20 Q. In that report, it identified the components that
21 needed to be replaced. It identified the timeline for
22 those items to be replaced. And, it stated some values
23 at the time, 2007, in terms of what that cost would be.
24 And, as part of this process, in my experience I would

[WITNESS PANEL: Goldman~Harding~Weber~Naylor]

1 have expected that you would have taken the components
2 of that report, created a spreadsheet from that report,
3 and sort of provided updated information. It doesn't
4 mean there isn't another spreadsheet that identifies
5 capital improvements going forward. It just means the
6 reconciliation to the report you're referring to, CLD,
7 and that capital report going forward was never done.
8 I never saw a reconciliation between those documents.

9 A. (Weber) It's on our website. We did it. It was
10 updated --

11 Q. I did look at your website, Bill. And, I'm sure Phil
12 can bring it up, and I don't think it's there.

13 A. (Weber) If it's not there, my apology. But the
14 spreadsheet was updated by --

15 Q. We're not talking about there not being a spreadsheet.

16 A. (Weber) No, no. There was a capital report --

17 Q. I know. We're not talking about that --

18 A. (Weber) -- that was taken from the engineers, that was
19 updated in 2012 dollars, based on the CLD report from
20 2008 and the Underwood report from 2010, '11, and '12.
21 It was all brought forward -- you're absolutely right.
22 The numbers from CLD's report were dated. The
23 components that needed to be repaired were not. They
24 still needed the repair. Nothing fixed itself, and not

[WITNESS PANEL: Goldman~Harding~Weber~Naylor]

1 a lot of money was put into the system. So, that
2 report, ESC, I think Brian could speak to it, or maybe
3 Maynard, that information was confirmed by Underwood,
4 Dave Mercier, I spoke to him a couple of times about
5 that. Now, these numbers may have to be updated again,
6 because this process has moved on. But, my
7 understanding, for the budget for the Eastman Sewer
8 Company this year, which I'm probably not qualified to
9 speak on other than this one sentence, when I went to
10 the meeting, that they had updated the capital
11 projects, just in case this transaction does not go
12 through, the Eastman Sewer Company has to start working
13 on those things.

14 And, I would defer to Brian, if there's
15 something else on that, Bob. I'm uncomfortable
16 answering the sewer question, you know, their capital
17 improvement plans.

18 Q. Well, I believe, in the CLD report, --

19 A. (Weber) Yes.

20 Q. -- the pipes were identified, an estimate was made over
21 the total number of, you know, the linear feet of
22 piping.

23 A. (Weber) Uh-huh.

24 Q. And, I did not see that in the report, the capital

[WITNESS PANEL: Goldman~Harding~Weber~Naylor]

1 spreadsheet going forward.

2 A. (Weber) It's probably, you know, you can't put every
3 item in. It was lumped in with some other numbers.
4 You're talking about the roots and things in the
5 piping?

6 Q. Right. It's a pretty big number, Bill.

7 A. (Weber) It was in there. You got to look careful.

8 Q. It's one of my concerns, because the pipes go over our
9 property. All right. I don't -- what's the other one
10 I have? Hazardous waste. In the Bernaiche report, I
11 believe he referenced that he did not do any hazardous
12 waste analysis?

13 A. (Weber) That's correct. We did. The hazardous waste
14 that he is referring to, and we called Mr. Bernaiche
15 about this, the hazardous waste, "were they storing any
16 chemicals, gasoline, oil, antifreeze, at the Headworks
17 building or any of the properties they own?"
18 Mr. Bernaiche said "no". That hazardous waste was put
19 in there as a federal law requirement under the
20 Brownfield Act to make sure that -- I'm sorry, under
21 the Superfund Act, with Brownfield they would clean it
22 up, there was no hazardous waste that qualified, in
23 Mr. Bernaiche's opinion. So, it was not little cans of
24 oil and gas and paint thinner and things like this,

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1 Bob. I called him and asked him. I made sure on that.
2 Q. Did you get it in writing?
3 A. (Weber) I could.
4 Q. Well, I'm referring to his report, which is part of
5 Exhibit 16.
6 A. (Weber) Yes.
7 Q. And, --
8 A. (Weber) I memorized it well.
9 Q. Pardon me?
10 A. (Weber) I remember it well.
11 Q. Okay. If you go to Page 7 of that report. This is the
12 Bernaiche report, I believe is the way he pronounces
13 his name.
14 A. (Weber) Sixteen?
15 Q. Yes.
16 A. (Weber) I don't have Page 7. I've got 162 --
17 Q. Well, I don't know if the appraisal is numbered, *per*
18 *se*. But I know you have sent that to us.
19 A. (Weber) Yes.
20 Q. It should be part of the materials in your two boxes
21 back here.
22 A. (Weber) It's not in 16, Bob.
23 Q. We didn't make a copy of the Bernaiche report for
24 purposes of this submission, because you were the

[WITNESS PANEL: Goldman~Harding~Weber~Naylor]

1 source of the document.

2 CHAIRMAN IGNATIUS: Why don't you go
3 ahead and just ask the question, see if he recalls, and we
4 don't have to worry about finding the page.

5 MR. LOGAN: Thank you.

6 BY MR. LOGAN:

7 Q. It says "We have not" -- this was his report, using his
8 numbering system, it's Page 7, Item 9. "We have not
9 been provided a hazardous conditions report, nor are we
10 qualified to detect hazardous materials." Therefore,
11 if you had a conversation with him, it would be
12 irrelevant. "Therefore, evidence of hazardous
13 materials, which may or may not be present on a
14 property, was not observed. As a result, the final
15 opinion of value is predicated upon the assumption that
16 there is no such material on any of the properties that
17 might result in a loss or change in value." Now,
18 that's pretty clear to me, and I've had clients who had
19 hazardous waste after they purchased something. It's a
20 pretty big number if you get caught.

21 A. (Weber) It is. It can scare you. So, what we did is
22 we went to the DES website, after Bernaiche told us
23 that, where we could find the database for spills of
24 hazardous materials throughout the State of New

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1 Hampshire. We did go there. We found one small spill
2 in Enfield, it's from a gas station, I believe is
3 defunct. I don't know. The database didn't indicate
4 that. There is no hazardous waste spill within three
5 miles of that wastewater system that is on record with
6 the State of New Hampshire.

7 Mr. Bernaiche is not qualified, because
8 he is not a hazardous waste appraiser. He would come
9 in, if you found drums on the ground with all sorts of
10 old acetone and things, and say "yup, it's going to
11 cost 3 million to clean it up." But, because there was
12 no entry in the database at DES, there was no reason to
13 do a report, and hence he's not qualified to do it.

14 Q. I thought earlier in this questioning you indicated
15 that you had called him and gotten a verbal assurance
16 that there was not hazardous waste?

17 A. (Weber) Not little paint -- we thought he meant little
18 paint cans and gas cans and oil cans. That's what he
19 assured me there wasn't. He further assured me he
20 wasn't qualified to do the big one. And, there may be
21 a misunderstanding here on hazardous waste.

22 Q. Well, you know, what I'm asking the question about is
23 the risk to the Village District if such an observation
24 should occur and what that might cause economically to

[WITNESS PANEL: Goldman~Harding~Weber~Naylor]

1 the Village District. And, I'm not asking a question.
2 So, let's just leave it at that.

3 CHAIRMAN IGNATIUS: All right. Thank
4 you. Questions from Commissioners? Commissioner Scott.

5 CMSR. SCOTT: Thank you.

6 BY CMSR. SCOTT:

7 Q. Going back to this morning. Some of your original
8 cross with Mr. Boynton formulated some questions in my
9 mind. Just for clarification, and, again, whoever is
10 best to respond, please do so. But I'm going to assume
11 perhaps Mr. Weber. I want to explore a little bit
12 more, so I understood about the Water Systems
13 Operators. They, correct me if I'm wrong, they
14 currently, I think you mentioned, for the water
15 utility, they basically are kind of a standby for you,
16 so you and your staff cover the basic operations, but
17 during off -- when you're off, they --

18 A. (Weber) Other than normal business hours.

19 Q. Is that correct?

20 A. (Weber) Yes. But Water Systems Operators is a contract
21 licensed operator in the State of New Hampshire, and he
22 has a high enough grade license, it requires a Grade 2
23 for our treatment plant, he is legally qualified to run
24 it as what's called an "operator for hire". I think he

[WITNESS PANEL: Goldman~Harding~Weber~Naylor]

1 responds to about 40 systems in the state, ours is one
2 of them. So, that is correct. He does -- we're on
3 call 24/7, Monday from 7:00 a.m. to Friday is 3:30
4 p.m., Water Service Operators is on call the balance of
5 the time, weekends and holidays.

6 Q. Okay. Thank you. And, on the other side, for the
7 Sewer Company, and I assume Mr. Harding, but again
8 whoever wants to answer.

9 A. (Weber) Sure.

10 Q. Can you characterize their work there. Is it they are
11 the sole operators?

12 A. (Harding) They are the sole operator of the system.
13 So, they are responsible for the daily operation of the
14 system, and they also serve as the on-call team, if
15 there is a situation that comes up evenings, weekends,
16 holidays.

17 Q. Okay. So, here's the clarifying question, finally.
18 Thank you. So, moving forward, assuming the transfer
19 is approved, would they still be the full-time operator
20 to the sewer system and be on call for the water
21 system, is that correct, or will that relationship
22 change?

23 A. (Harding) No.

24 A. (Weber) That is correct. They will be our full-time

[WITNESS PANEL: Goldman~Harding~Weber~Naylor]

1 operator for hire. I have a license that's high enough
2 to run the system, however, we're going to contract it,
3 and they will be on call for the water.

4 Q. Okay. So, from a day-to-day operational perspective,
5 as far as expertise, there should be no change. Is
6 that a correct statement?

7 A. (Weber) That is correct.

8 Q. Okay. Thank you. And, for the Village District,
9 again, the existing water utility, are there any open
10 or past enforcement actions from the Department of
11 Environmental Services?

12 A. (Weber) No, sir.

13 Q. Okay.

14 A. (Weber) We've had none.

15 Q. Are there any technical problems in serving your
16 customers?

17 A. (Weber) No, sir.

18 Q. Are there outstanding legal issues?

19 A. (Weber) No, sir.

20 Q. Thank you.

21 A. (Weber) I'm proud to say we have no one in our
22 complaint file.

23 Q. Great. Thank you. And, Mr. Goldman, you mentioned in
24 your testimony, from where you are on the stand, that

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[WITNESS PANEL: Goldman~Harding~Weber~Naylor]

1 the Association would be available to assist the
2 Village District should the transfer happen, is that
3 correct?

4 A. (Goldman) Yes, I did say that.

5 Q. Is there some kind of formal mechanism or how does that
6 work?

7 A. (Goldman) No. There isn't a formal mechanism at this
8 point. What I was really talking about was the working
9 relationship between the Sewer Company, or the
10 facility, Mr. Harding, Gayle, being in the same
11 building as the Village District, literally a few feet
12 away, and the arrangement that we have come to, which
13 is an obvious one, which is they would be available
14 during the transition, as well as after the transition,
15 to assist in whatever way is necessary. I also would
16 say, on behalf of the Association, that we certainly
17 stand ready to provide any assistance in whatever way
18 we can. It's my position that, whether we're talking
19 about the Village District or the Sewer Company, that,
20 in the end, it's the residents of Eastman who are going
21 to have to stand ready, in the event of some kind of a
22 crisis, to support whatever needs to be supported in
23 whatever way is necessary to do so.

24 Q. So, am I correct, there's no MOU or formal agreement?

[WITNESS PANEL: Goldman~Harding~Weber~Naylor]

1 A. (Goldman) Well, the agreement exists. There's language
2 in the -- in the Purchase and Sale that says that there
3 will be this support. At the moment, there is no other
4 document that exists. That, again, we're talking about
5 a small community, with a relatively limited number of
6 people. We do have what some people would regard as a
7 fairly complex governance process. We have the Village
8 District, we have the Eastman Sewer Company as an
9 entity, we have the Community Association. But I
10 certainly see no reason why those groups can't and
11 won't work together to do their best for the Community
12 and the customers.

13 A. (Weber) If I may, Commissioner?

14 Q. Yes, please.

15 A. (Weber) Department of Environmental Services will make
16 absolutely sure this does not get away from them too
17 easily and will hold our feet to the fire. Because of
18 their long-term and long-standing relationship, we're
19 going to be integrated with the Eastman Sewer Company
20 for a minimum another year, minimum, just with the
21 process of the permit and those kinds of things. Thank
22 you.

23 Q. Thank you. And, I think Mr. Weber mentioned there were
24 a certain percentage of seasonal customers, I assume

[WITNESS PANEL: Goldman~Harding~Weber~Naylor]

1 closer to the waterfront and the condos, that type of
2 thing?

3 A. (Weber) I actually -- yes, I would say so. When I
4 started five and a half years ago, the percentage was
5 about 52 to 48 full-time, and now it's moved up to
6 about 64 to 66 percent are full-time.

7 Q. So, I think you had mentioned mailings, there was some
8 discussion early on about, "assuming the transfer
9 happens, how do customers know about it?" So, am I
10 correct that, if you're not a resident, if you're not
11 living full time at your location, you'll get a mailing
12 at your house, I assume the same place you pay your
13 bill, I assume?

14 A. (Harding) That is correct. A number of our customers
15 do -- are not full-time residents, and, in fact, their
16 permanent mailing addresses are somewhere other than
17 the Eastman Community. So, whatever their billing
18 address is or their permanent address that we have on
19 file, that's where their communication would go.

20 Q. Okay. And, there's been a fair amount of discussion
21 and testimony about how open the public meetings have
22 been, the meetings you've had, rather. Were those --
23 if I was an out-of-town seasonal resident there, how
24 would I know about these meetings?

[WITNESS PANEL: Goldman~Harding~Weber~Naylor]

1 A. (Goldman) Well, I think the answer to that is, we do
2 our best, the Association does its best to publicize
3 these through direct mail, through various publications
4 that the Community puts out, and, if necessary, through
5 email. There are other ways in which people get
6 information in the Community, including a Community
7 LISTSERV, which the intervenors are very familiar with.
8 So, I think there are many ways in which people get
9 information. We also have a website, I mean to say the
10 ECA has a website. The Village District has a website.
11 The Sewer Company?

12 A. (Harding) On the ECA --

13 A. (Goldman) On the ECA website, there's a link to the
14 Sewer Company. So, there are many ways with which we
15 can communicate with even people who are out of town.
16 And, if you look at the history of both our dues
17 collections and collections for the Sewer Company, we
18 have had remarkably little problem in communicating,
19 and we collect a very high percentage of well over
20 90 percent of the obligations due, and a very high
21 percentage of that on a timely basis.

22 Q. Thank you. And, finally, I think, for the Sewer
23 Company, if the transfer is not approved, do you feel
24 -- I just wonder if you could characterize, obviously,

[WITNESS PANEL: Goldman~Harding~Weber~Naylor]

1 there's some work to be done in the system. If the
2 transfer is not approved, do you feel the customers
3 would be better off or worse off?

4 A. (Harding) Oh, we definitely feel the customers will be
5 worse off if the transfer is not approved. We have an
6 obligation to the sewer customers to do the best job we
7 can, and we will continue to do that. The Sewer -- the
8 Eastman Sewer Board approved the budget for 2014 at
9 their last meeting, and will be asked to approve the
10 capital budget for 2014 at their meeting tomorrow. So,
11 we're prepared to move forward, if necessary, if this
12 is not approved. But we feel, for all of the reasons
13 we have discussed today, and for all of the reasons
14 submitted with prefiled testimony and answers to the
15 discovery questions, Eastman Sewer customers will be
16 much better served if the transfer to the Village
17 District is approved.

18 CMSR. SCOTT: Thank you. That's all I
19 have.

20 CHAIRMAN IGNATIUS: Thank you.
21 Commissioner Honigberg.

22 CMSR. HONIGBERG: I'll bounce around a
23 little bit.

24 BY CMSR. HONIGBERG:

[WITNESS PANEL: Goldman~Harding~Weber~Naylor]

1 Q. There was an abbreviated discussion this morning of
2 that lease agreement that was subject to the PUC order
3 almost 20 years ago. And, it was tied in some way to
4 the \$2,200 payment. Are they related? What is the
5 source of the \$2,200 payment?

6 A. (Harding) Well, the source of the \$2,200 payment, to
7 the best of my knowledge, because I was not involved
8 with the Sewer Company at the time it was purchased
9 from the developer in 2001, but, because the Sewer
10 Company had been paying that \$2,200 as an ongoing
11 annual expense, that I have to assume that, in the
12 agreement, when the Eastman Community Association
13 purchased the Sewer Company, that that requirement to
14 continue to pay \$2,200 for land owned by ECA just
15 continued forward. And, we've done that every year
16 since the purchase of the Sewer Company.

17 A. (Goldman) Can I add a short response to that, sir?

18 Q. Sure.

19 A. (Goldman) I've just had a quick opportunity to look at
20 this document. And, I'm not certainly providing a
21 legal opinion. But I note, in the top of the order, a
22 statement to the effect that the -- excuse me, I need
23 to find the exact page, Order, 94-069, "the utility
24 remains responsible for all plant-related maintenance

[WITNESS PANEL: Goldman~Harding~Weber~Naylor]

1 repairs, insurance, and taxes." And, then,
2 three-quarters of the way back, a statement to the
3 effect that "Termination of this Agreement", on Page --
4 well, it's my page, Exhibit 29, my Page ESUC-10,
5 three-quarters of the way down, "The License Term [of
6 this Agreement] shall expire and terminate upon the
7 occurrence of any one of the following events: a" --
8 below the line, "a change of control of Licensee". I
9 submit to you, this document expired on its face when
10 the Sewer Company was purchased by the Eastman
11 Community Association.

12 CHAIRMAN IGNATIUS: Mr. Schaefer, I'm
13 not sure, this is not really your time to be questioning,
14 so --

15 MR. SCHAEFER: I'm just asking for what
16 document was he reading from?

17 CHAIRMAN IGNATIUS: He had said it was
18 on Exhibit 29, Page 10, and that was Item 9,
19 "Termination", Section (c).

20 CMSR. HONIGBERG: Are you good back
21 there?

22 BY CMSR. HONIGBERG:

23 Q. Mr. Weber, I'm going to put your mind at ease a little
24 bit. There's lots of people who are responsible for

[WITNESS PANEL: Goldman~Harding~Weber~Naylor]

1 understanding the Right to Know law who don't
2 understand the Right to Know law.

3 A. (Weber) Thank you.

4 Q. But, in connection with the meeting that was part of
5 the -- described in the minutes that are in Exhibit 21,
6 where you were described as an "attorney", and then
7 what you said was described somewhat by the person
8 taking the minutes. If you go to Page 8, I want to ask
9 you about the next statement by Commissioner
10 Fairweather. As written down here, it says he was
11 going to ask two questions, and he says "Please confirm
12 that we asked our attorney if we could adopt this one
13 section only, and that is not possible." He's not
14 referring to you, is he?

15 A. (Weber) No. He was referring to Attorney Bernard
16 Waugh.

17 Q. So, Bernard Waugh was providing legal advice?

18 A. (Weber) He was actually at the meeting.

19 Q. That's what I -- I figured there was a lawyer advising
20 the Commission on that.

21 A. (Weber) Thank you.

22 Q. And, not relying on you for this. With respect to
23 the -- I hate to go back to this, and I apologize, --

24 A. (Weber) That's all right.

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[WITNESS PANEL: Goldman~Harding~Weber~Naylor]

1 Q. -- the split between what gets covered with user fees
2 and what gets covered with taxes. The users are also
3 paying taxes as well, right?

4 A. (Weber) That's correct.

5 Q. So, everybody, all of the taxpayers are picking up the
6 taxpayer portion. So, those who are also users pay the
7 user fee, and then some portion of their taxes go to
8 covering the delta between what the users fees have
9 paid and the total operating expenses, correct?

10 A. (Weber) That's correct. And, I just misspoke to you on
11 something. Our attorney was not at this meeting. He
12 was at our annual meeting. But that comment was from
13 Bernard Waugh.

14 Q. But it was -- okay.

15 A. (Weber) From an attorney.

16 Q. So, back after my previous question, --

17 A. (Weber) Yes.

18 Q. -- regarding Exhibit 21, but the attorney referenced in
19 there is Attorney Waugh?

20 A. (Weber) That's correct.

21 Q. Okay. I think that's all I have for you. I have a
22 question for Mr. Naylor. Have you done a lot of hiring
23 and firing?

24 A. (Naylor) Not -- not really.

[WITNESS PANEL: Goldman~Harding~Weber~Naylor]

1 Q. Have you ever had occasion to fire an executive at a
2 water company or a sewer company?

3 A. (Naylor) No.

4 CMSR. HONIGBERG: I didn't think so. I
5 don't have anything else.

6 CHAIRMAN IGNATIUS: A couple more
7 questions that have not already been addressed.

8 BY CHAIRMAN IGNATIUS:

9 Q. Maybe Mr. Harding or Mr. Maynard [Goldman]. What, at
10 the highest level, what got this conversation going
11 about this transaction? I mean, we've got into a lot
12 of details and dates and numbers. But, in a very
13 general sense, why did it even begin as a conversation?

14 A. (Goldman) I think, madam Chairman, first of all, it
15 didn't just happen overnight. It's a long history, as
16 we all now can tell. And, I think that, for many
17 years, there was no rate increase at the Sewer Company.
18 It was over a dozen years that there was no rate
19 increase. The total revenue that the Sewer Company had
20 during those years was about \$100,000. This was not an
21 Enron or a huge asset-based organization. And, we
22 applied for a rate increase, and were astonished to
23 learn, after a period of 14 or some odd months, that
24 the cost of the application and approval was over

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[WITNESS PANEL: Goldman~Harding~Weber~Naylor]

1 \$20,000, 20 percent of our revenues. And, I think that
2 began to kind of indicate to us that maybe we were in
3 the wrong ballgame. We did know, and we understood,
4 that there were going to be significant capital
5 expenditures that needed to be made. And, we also knew
6 that they had to be financed. We knew the only way
7 that they could be financed currently was for the
8 Community Association to guarantee those loans. And, I
9 don't think we were necessarily unwilling, we've
10 already -- we guarantied a loan up to \$360,000, but I
11 think we felt maybe there's a better way.

12 And, so, we explored a number of
13 alternatives. We explored the possibility of spinning
14 off the Sewer Company or making it, not spinning it
15 off, but making it a -- not a subsidiary of ECA, but an
16 operating entity within the ECA. Candidly, a problem
17 with that was that there was no guarantee that you were
18 going to approve our being no longer subject to PUC
19 regulation. And, so, therefore, one objective of ours,
20 namely, to reduce the cost of rate raises, *etcetera*,
21 would not be obtained. Secondly, we discovered that,
22 because we are a for -- because the subsidiary is a
23 for-profit subsidiary, it was going to be a nightmare
24 to unwind that. And, so, that became a problem.

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[WITNESS PANEL: Goldman~Harding~Weber~Naylor]

1 We did discuss a possibility of
2 establishing a second village district within the
3 Community. And, there were a few people who felt that
4 that would be an appropriate way to go. But, after
5 reviewing it, back long before that became a real
6 Community issue, we determined that having yet another
7 entity in this 15, 16, 1,700 resident, 350-acre
8 community just didn't make any sense. It was just
9 something we thought was not appropriate.

10 And, so, almost by a process of
11 elimination, we came to the thought that maybe merging
12 with the Village District would make some sense. And,
13 I would -- just a couple of additional comments, I
14 think. I don't mean to go on. One is, the Village
15 District already had the authority to run a sewer
16 company. We didn't have to go through that exercise.
17 When they established the Village District, they gave
18 it the authority to manage wastewater. The second was
19 that I don't know how many thousands of communities
20 there are around the country that have combined
21 wastewater and water districts. You people are in the
22 business, I'm not. I don't have to tell you that.
23 But, clearly, we weren't -- we weren't pushing new
24 ground here. This was something that was very common,

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[WITNESS PANEL: Goldman~Harding~Weber~Naylor]

1 even in the State of New Hampshire.

2 So, I'm sorry that's a long answer. But
3 I think that that, really, those considerations are --
4 kind of brought us to a point. And, then, when we
5 began discussions with the Village District, there has
6 been a Commissioner who has not supported this effort,
7 who remains perhaps a little bit more neutrally, but
8 still remains, as best I know, opposed to it. But, as
9 I mentioned earlier, of the 17 people on the three
10 Boards who have voted, who had an opportunity to vote
11 for this, there was a positive vote.

12 Q. Thank you. Mr. Naylor, you spoke earlier about "access
13 to capital being important" and one of the things that
14 you had evaluated. What is different, if the transfer
15 goes through, that gives VDE greater access to capital
16 than Eastman Sewer Company has had?

17 A. (Naylor) Well, I think the first thing is the access to
18 the Clean Water SRF. And, the Joint Petitioners have
19 indicated that Eastman Sewer's potential capital
20 project that Mr. Harding described this morning rated
21 very highly on that list, but the Company, in its
22 current ownership format, I guess you'd say, is not
23 eligible. That these funds are only available to
24 municipalities. That's a significant driver here, I

1 think.

2 The other issue with respect to capital,
3 I think, too, and Mr. Goldman just touched on this,
4 with respect to the rate proceeding, and I think he was
5 referring to the 2008 and 2009 rate proceeding that
6 ended up costing about \$20,000, that was a financing
7 petition as well, it also involved temporary rates, and
8 a step adjustment at the conclusion of the permanent
9 rate phase. This was a very complicated project for
10 the Company here, a small company here at the
11 Commission, because, like all regulated utilities, they
12 must access the capital and deploy it in the field
13 before they can come to the Commission for approval to
14 increase rates, to begin their recovery of those
15 investments. And, as the Commission knows from long
16 history, that's a significant burden for a small
17 company. There's a real carry -- a significant
18 carrying cost for construction work in progress, and
19 that delay is costly.

20 So, I think those two factors are really
21 very significant. And, you know, I think that really
22 carries a lot of weight. I think I've testified in
23 many other cases with smaller utilities that access to
24 capital is just so critical. And, this certainly

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1 appears to be an excellent opportunity for this utility
2 to have better access to capital, be able to deploy it
3 more quickly, to begin its recoveries more quickly,
4 than it is at the present time.

5 Q. You heard questions from Mr. Schaefer and from the
6 Logans about the 2004 order of the Commission that
7 required annual reporting on efforts to clean and map
8 the sewer system, did you not?

9 A. (Naylor) I did.

10 Q. And, the Company, I think Mr. Harding had said that
11 they hadn't kept up on that, hadn't done the reporting
12 that was required, and hadn't done all of the work that
13 was required, is that correct?

14 A. (Naylor) Correct.

15 Q. Why not? What's been going on?

16 A. (Naylor) Well, I had to go back and sort of put events
17 back in sequence, and there was some discovery asked of
18 the Company with respect to that. The Company did
19 expend I think the number was \$65,000 or something in
20 that neighborhood with respect to those activities that
21 were specifically the subject of that docket at the
22 time. That was actually an overearning docket. The
23 Company's earnings were over their last found rate of
24 return. But, in 2007/2008, the Company found itself

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1 looking at some pretty substantial capital improvements
2 that were necessary, and I don't know how much we --
3 this may have been discussed this morning, but that's
4 the case we just referred to, that \$20,000 in rate case
5 expenses and financing. I believe the total capital
6 investment of those projects that were subject of that
7 financing were somewhere around 380 --

8 A. (Harding) 380,000.

9 A. (Naylor) So, the Company has had some other pretty
10 substantial capital needs. And, then, of course, the
11 latest project that's being evaluated, the --

12 A. (Harding) Drip dispersal.

13 A. (Naylor) -- the drip dispersal, that's not just brand
14 new, that's been percolating for a little while now.
15 So, you know, Staff should certainly share some blame
16 for not following up on reporting, and that was made --
17 the lack of reporting was discussed this morning, and
18 we should share some of the blame for no follow-up on
19 that. But I think there's a lot of issues here. It's
20 not really particularly black and white.

21 Q. Is there still a need, in your view, for mapping of the
22 system or has that been done?

23 A. (Naylor) Well, you know, this is, again, it's a pretty
24 small utility. And, you know, this is a system, I

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1 believe it's in the 40 or 42 year old range, these
2 gentlemen to my left no more specifics about it than I
3 do. But, I mean, I guess my observation of that at the
4 moment would be that that's a bit of a luxury,
5 considering, you know, considering the other needs
6 they're looking at.

7 Q. So, you're saying it would be a lower priority than
8 some other --

9 A. (Naylor) Yes.

10 Q. -- uses of funds?

11 A. (Naylor) Yes, I think so.

12 A. (Goldman) Can I add something?

13 Q. Yes.

14 A. (Goldman) I think Mr. Naylor's comments are right on,
15 and access to capital is certainly very much at the top
16 of the list. I was on the Sewer Board for a number of
17 years. And, I can recall discussions about spending
18 money to map and photograph the system. I believe, I'm
19 not sure I have an exact number, but perhaps somewhere
20 between 35 and 40 percent of the system has been
21 televised, is that the right word? Some such number,
22 it may not be quite that high. But, frankly, the cost
23 of doing this, remember, we were talking about a system
24 that had total revenues of \$100,000, was considerable.

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[WITNESS PANEL: Goldman~Harding~Weber~Naylor]

1 And, I can tell you that, while I supported, and I may
2 not have been the only one that supported trying to do
3 that, we were outvoted on a number of occasions,
4 because we didn't have the funds.

5 Now, in retrospect, should we have gone
6 for an earlier rate raise? I mean, we can, you know,
7 we can go back to Monday morning. But it was -- these
8 were things that were discussed. In some years, we did
9 it, when we had the money. And, in years when we
10 didn't have the money, we didn't do it.

11 Q. Mr. Naylor, you've heard concerns by Mr. Schaefer and
12 the Logans that suggest that the Company and the
13 Village District personnel have not been reliable in
14 their information, that some of what they have said has
15 not been credible. Is your experience in working with
16 them shown you to be concerned about the reliability of
17 their representations to you?

18 A. (Naylor) No.

19 Q. Do you have any experience in working through this
20 docket and with this Company, these various companies,
21 that have demonstrated that their representations have
22 been accurate?

23 A. (Naylor) I have had no concern about those issues. I
24 think the Joint Petitioners presented a good filing.

[WITNESS PANEL: Goldman~Harding~Weber~Naylor]

1 It was clear and concise. Their discovery responses to
2 Staff were particularly helpful in fleshing out some of
3 the details. You know, we felt that they had put
4 together a credible, an achievable transfer process, to
5 an entity which operates a utility already. I just
6 haven't seen anything that causes me concern about it.

7 We had some discussions, particularly
8 among the Staff, with respect to this case, where this
9 currently regulated utility is proposed to be
10 transferred to a municipality. Which, under 362:2, if
11 the municipality provides utility service solely within
12 its corporate boundaries, it's not jurisdictional to
13 the Commission. So, we had some discussion about that,
14 whether the Commission needed to provide an approval.
15 But I think there's other cases, and I shouldn't get
16 too far into these types of things, but, since the
17 Commission controls entry into the utility business, it
18 also controls exit from the utility business. And,
19 that's really part of what's going on here, is Eastman
20 Sewer is proposing to go out of business and transfer
21 its works and system.

22 But, I think, in sum, Staff felt that
23 this was a good plan. We think it meets, you know,
24 some of the critical needs of the utility going

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1 forward, and that's why we've chosen to support it.

2 CHAIRMAN IGNATIUS: All right. I have
3 no other questions. Any redirect, Mr. Boynton?

4 MR. BOYNTON: No, but thank you for the
5 opportunity.

6 CHAIRMAN IGNATIUS: Mr. Sheehan, any
7 redirect?

8 MR. SHEEHAN: No. The panel -- the
9 Commissioners covered the questions I had. Thank you.

10 CHAIRMAN IGNATIUS: Thank you. Then,
11 the panel is excused. You may head back to your seats.
12 Thank you very much for your testimony.

13 As they're heading back to their seats,
14 let me ask, Mr. Schaefer, do you wish to testify or just
15 have your materials submitted as they already are in the
16 record?

17 MR. SCHAEFER: We're fine on the record.

18 CHAIRMAN IGNATIUS: Okay. How about
19 Ms. Logan? Mr. Logan?

20 MS. LOGAN: In the record.

21 CHAIRMAN IGNATIUS: All right. And, I
22 think that was understood from the others that if -- there
23 was no need to cross-examine -- for cross-examination if
24 the witnesses would not be taking the stand, is that

1 right?

2 MR. BOYNTON: Yes. That's correct.

3 MR. SHEEHAN: That's correct.

4 CHAIRMAN IGNATIUS: Okay. Good. Then,
5 what we have left then is to resolve whether there are
6 objections to any of the exhibits, and then opportunity
7 for closing statements. I think, for the sake of the
8 court reporter, we ought to take a brief break, and let
9 everyone compose their thoughts for closings. And, so,
10 let's take a fifteen-minute break. It's now twenty after
11 three, so, at 3:35 come back. The order that we should
12 take these in is we always -- the person who is seeking
13 the approval is always the last to go. So, let's -- we
14 would begin with either the Logans or Mr. Schaefer, the
15 three of you can work that out. I don't care. But the
16 three of you go first, then, we'll turn to Mr. Sheehan,
17 and, then, finally, to Mr. Boynton. All right? So, we're
18 adjourned for fifteen minutes.

19 (Recess was taken at 3:22 p.m. and the
20 hearing resumed at 3:45 p.m.)

21 CHAIRMAN IGNATIUS: All right. We are
22 back. And, before we begin with closings, I told you that
23 one of the things we do at the end is see if there is
24 objections to any of the exhibits that we've marked for

1 identification, objection to them becoming full exhibits
2 to the file. Generally, there aren't, but occasionally
3 there are. Do we have any requests -- and, I now, Mr.
4 Boynton, you had earlier raised questions of relevance
5 possibly, before we really explored the documents
6 themselves. So, are there objections to any of the
7 exhibits becoming full exhibits? Mr. Boynton.

8 MR. BOYNTON: I understand, from a
9 conversation with counsel for the Staff, that previously
10 identified Exhibits 20 and 23 have been withdrawn.

11 MR. SHEEHAN: They were actually never
12 presented to the Clerk. When they were handed to me by
13 the Logans, those were missing. So, they were never on
14 the radar, so to speak.

15 CHAIRMAN IGNATIUS: So, on our list, the
16 ones 20 and 23 should just be removed from the list?

17 MR. BOYNTON: Yes.

18 CHAIRMAN IGNATIUS: Looks like everyone
19 is nodding to that. All right. Thank you. Anything
20 further, Mr. Boynton?

21 MR. BOYNTON: Yes. Thank you. With
22 regard to Exhibit 27, there were three letters -- two
23 letters and a publication as a part of Exhibit 23 [27?].
24 There was discussion about the April 18th letter,

1 Mr. Goldman indicated that had nothing to do with this
2 transaction at all. We don't object to the other parts of
3 Exhibit 27.

4 CHAIRMAN IGNATIUS: Help me out. I'm
5 not finding 27.

6 CMSR. HONIGBERG: Yes. I don't think we
7 had 27.

8 MR. SHEEHAN: And, I can clarify that,
9 because none of us found it as he was testifying. And,
10 during the break, I conferred, and Mrs. Logan had still
11 had it in her file folder, so, it was never put out to be
12 copied. So, we had four copies just now. I did give the
13 Clerk a copy, and the parties now have a copy. And, so,
14 it was never discussed with you, but it's now been marked.
15 So, the discussion is now whether it should be admitted.

16 CHAIRMAN IGNATIUS: And, so, can someone
17 describe what --

18 MR. SHEEHAN: I can provide you --

19 CHAIRMAN IGNATIUS: -- what the letter
20 or letters are?

21 MR. SHEEHAN: Would you like a copy to
22 follow or --

23 CHAIRMAN IGNATIUS: Sure, if we have one
24 we can look on together. Thank you.

1 MR. BOYNTON: We just received that
2 ourselves. And, as I understand it, there are three
3 components. One is a statement from the Eastman Community
4 Association and the Eastman Sewer Company dated
5 August 14th, 2013.

6 MR. SHEEHAN: There should be three.
7 I'm not sure. I have some leftovers here, so --

8 CHAIRMAN IGNATIUS: Well, what I see is
9 dated April 18th, 2013.

10 MR. SHEEHAN: And, these are the other
11 two.

12 CHAIRMAN IGNATIUS: Oh.

13 MR. SHEEHAN: This has been a scramble.

14 CMSR. HONIGBERG: Okay.

15 MR. BOYNTON: There's one captioned at
16 the top that says "Why a "NO" Vote on August 17th is the
17 Right Vote." We don't object to that.

18 CMSR. HONIGBERG: Okay.

19 MR. BOYNTON: There is Mr. Goldman's
20 letter of September 27th, 2013. We don't object to that.
21 There's a letter dated April 18th, that I think has no
22 relevance at all. It's not related to this transaction.
23 It is a letter from Mr. Goldman to an anonymous letter
24 that he received, but not related at all to this process.

1 CHAIRMAN IGNATIUS: Although, it's --
2 either the letter itself or references to it are in
3 someone's testimony, because I remember reading it
4 yesterday. Maybe not the full letter, maybe it was just
5 some quotes from it.

6 MR. BOYNTON: I went back trying to find
7 it and couldn't. It was hard to do on the fly.

8 CHAIRMAN IGNATIUS: All right.

9 MR. BOYNTON: We would just note our
10 objection to it. That's all.

11 CHAIRMAN IGNATIUS: All right.
12 Ms. Logan, you had sought to put in this letter. Can you
13 tell me why it should be, the April 18, 2013 letter, is
14 important to the record?

15 MS. LOGAN: Well, he does not identify
16 by name who he's talking about, nor does he identify what
17 he's talking about in his anonymous letter that he
18 produced. And, yet, to go from that, to his following
19 letters, I think, in the Community, gave the people "Oh,
20 these must be the same people."

21 CHAIRMAN IGNATIUS: All right. Well,
22 one moment.

23 (Chairman and Commissioners conferring.)

24 CHAIRMAN IGNATIUS: Okay. It's been

1 testified to, both -- there's some references in written
2 testimony, it's been testified to this afternoon. So,
3 we're going to allow the April 18th, 2013 letter in, as
4 well as the September 27th, 2013 letter, and the "Why a NO
5 Vote" sheet, altogether as "Exhibit 27". Thank you.

6 Any other objections to documents being
7 exhibits?

8 (No verbal response)

9 CHAIRMAN IGNATIUS: All right. Seeing
10 none, then, we will strike the identification and make
11 Exhibits 1 through 29 full exhibits, with the
12 understanding that 20 and 23 were never introduced. There
13 will be gaps in the numbering there. Thank you.

14 So, the final thing would be statements
15 in closing. And, I failed to mention that it's perfectly
16 acceptable to coordinate comments, so that the three Joint
17 Petitioners don't need to speak separately, you know, one
18 statement from Mr. Boynton, on behalf of the three
19 entities would be appropriate. Similarly, if the
20 intervenors want to work together and have one speaker for
21 all three, that's fine. If you have a desire to speak
22 separately, I won't stop you from doing that, but just
23 understand that we're going towards the end of the day.
24 So, any way you can coordinate and not duplicate comments

1 would be helpful. Have you thought about who wants to
2 speak and in any order?

3 (Mr. Schaefer and Mr. Logan and Mrs.
4 Logan conferring.)

5 CHAIRMAN IGNATIUS: Mr. Logan.

6 MR. LOGAN: Each of us would like to
7 speak. We come from different places in our perspective.

8 CHAIRMAN IGNATIUS: All right. If you
9 can keep it to five minutes, that would perfect for each
10 of you. The same rule for all parties, five minutes each.

11 MR. LOGAN: Okay. This situation or
12 this Petition to me is about trust and inspect, with
13 emphasis on the "inspect". The original commitment by the
14 Eastman Community Association was that we would acquire
15 the Sewer Company back in the 1999/2000 time frame. And,
16 it, in the future, it would be, let's say, let go by the
17 Community, that the users of that sewer system would be
18 given the opportunity to create a municipality. That was
19 the commitment that was made to the Community by the Board
20 President and by the Board at that time frame. And, that
21 is documented, and I didn't bring that particular exhibit,
22 I could certainly provide it. I believe we broke the
23 trust of the people of the Community through a series of
24 activities that were talked about this morning and are

1 shown in the exhibits, by having these meetings that were
2 non-public. And, that disturbs me greatly as a member of
3 the democracy.

4 I've covered some of that ground in
5 Exhibit 21, in the statements this morning. I've also
6 addressed the questionable behavior in the non-public
7 session in Exhibit 22, which I also covered somewhat.
8 However, if one looks at this sequence of events,
9 beginning back sometime in early January 2012 or earlier,
10 and then looks at what played out in July, where the
11 Village District Commissioners voted against acquiring
12 unanimously the Sewer Company, then the public would have
13 stood, when they saw those minutes in August, thinking
14 that was the end of that. As time went forward, in
15 October, no mention in either the September or August
16 minutes, in October 16th, District Manager Weber and
17 Commissioner Wood attended, in the afternoon of that day,
18 an Eastman Sewer Board meeting.

19 The next morning there was a formal
20 meeting of the VDE Commissioners, attended by ESC and ECA
21 Board members. And, that was the first subsequent
22 reversal of course that occurred. Those minutes were not
23 published until around November 17th, without looking I
24 can't give you the exact date. November 7th, it was

1 announced that there would be a Community meeting, ECA
2 Forum, which is reflected in the discovery materials,
3 which, as the ground rules have been stated by Mr.
4 Goldman, does not allow recording, does not allow
5 participation in the same sense that we've had today. I
6 reflected, as I was putting my comments together, that
7 this has been an open session, it has been an attempt for
8 parties to deal with each other as best they could, and
9 time limits have not usually been particularly strict. At
10 a forum, time limits are controlled, it is controlled by
11 the facilitator, not always controlled by the Community.
12 It's a very different game than the public meetings.

13 So, as of that date, that was the first
14 time parties who wanted to form a sewer -- independent
15 sewer municipality could have done so, eleven months after
16 the proceedings had started. One can debate what all that
17 -- all those minutes look like over that time horizon.
18 Quite frankly, I've lost trust. That's my conclusion on
19 that part of the equation. And, quite frankly,
20 Mr. Goldman and I don't see eye-to-eye on it. It's a
21 style of leadership difference.

22 Okay. I've tried, in my efforts, to
23 demonstrate the managerial deficiencies of the VDE.
24 Again, Exhibit 21 and 22 go over those substantially. I

1 also indicated this morning, I think we came up that there
2 had been a under -- from a point of view of what the ESC
3 is paying to the ECA, the bill does not reflect about 11
4 or \$12,000. I think, in the analysis submitted in
5 discovery, there's about a 4K or so understatement,
6 because, in comparing the cost of the audit, which is a
7 line item on the VDE side, and comparing the line item in
8 the audited report of the ESC, it also includes other
9 accounting fees. And, in the discovery process or in
10 presentation of the savings, that subtraction is not made.
11 So, the 4K there, the 10K. And, then, there's the
12 assumption somehow that, well, it probably won't cost the
13 20K number that's going around for a complex submission
14 that was made back in 2008, I would question whether it
15 would cost nothing. You know, let's face it. You've got
16 to produce documents, you've got to have a Village
17 meeting, and you've got to communicate with people about
18 what you're doing. And, that same complexity exists
19 whether it's before this group or whether it's before the
20 VDE. And, quite frankly, this is a far more objective
21 group of people to present a proceeding to, than what I
22 view as an elitist government that goes off, formulates
23 its own decision, and then, once they have put that
24 together, tells the people what the conclusions are, and

1 gives sort of credence to inspection, but really doesn't
2 provide adequate opportunity. If you think about
3 November 17th to January 9th, over the Christmas holidays,
4 and the time that people had to try to respond to that, it
5 just wasn't there.

6 So, that's the -- and, on the managerial
7 side, obviously, all of that is reflected. I have
8 addressed some of the financial side of things. And,
9 looking at Eastman, if you look at Exhibit 26 -- or,
10 excuse me, 20 -- 26, yes, you will see that Eastman has
11 indeed very deep pockets. It has over \$17 million worth
12 of assets. It is more than capable of doing anything it
13 wants in regards to this sewer system. The sewer system
14 and the golf course were bought essentially in the same
15 way. They were bought as stand-alone assets to the
16 Community, they were bought to stand on their own, and
17 they were intended to run that way. About ten years ago,
18 through a governmental process, there was no direct vote
19 on the part of the Community, the golf course was elevated
20 to a unique status, where there is direct vote, in terms
21 of a Golf Committee, in terms of what the Golf Committee
22 budget is, in terms of what goes on with the golf course.
23 And, all of a sudden, we place this thing on a high
24 plateau. Nothing was done for the Sewer Company. And, I

1 can guarantee you that 90 percent of the members of that
2 council did not have a clue what was going on. They
3 follow. And, I'm sure people here understand what I mean
4 when I say "they follow."

5 Eastman has 85 employees, more than
6 enough to adequately back up any needs whatsoever that
7 this sewer company has. And, it has done a reasonable
8 job, with the only exception being a failure to address
9 the capital needs. And, I would look at, if you look at
10 what I think are objective eyes, obviously, I'm prejudice
11 to my objectivity, so, you had a golf course and you had a
12 Sewer Company. This one went like this [indicating], this
13 one stayed here [indicating]. To me, that says clearly
14 "golf is more important than sewage." I'm sorry. All
15 right. That's that.

16 And, the last point is the technical
17 side of things. And, all of the documents I have seen are
18 generated on behalf of the Seller. Some of those
19 documents are old. I believe that the members of the
20 public are being saddled with an unknown liability of a
21 magnitude that they can't even imagine, because they have
22 no way to find out. And, I believe that's a serious
23 deficiency to the members of the public to drop this
24 potential bomb on their lap and say "not our problem."

1 Now, much -- I've heard the assurances
2 of Mr. Goldman. I've heard some of his assurances in the
3 past, too. I don't trust him. I'm sorry, he knows that.
4 There's no difference here. And, I think you established
5 that trust by some of the questions that were asked. And,
6 to me, we have to ask ourselves -- well, I don't want to
7 go there.

8 I think that addresses the points I
9 tried to make, in terms of putting together my assessment.
10 And, I apologize for making the statement about my
11 inability to trust. I'm sorry I said that, but I don't
12 think that's a surprise.

13 CHAIRMAN IGNATIUS: Thank you.

14 MR. LOGAN: I got a little carried away.
15 I'm sorry. I apologize, Maynard.

16 MS. LOGAN: I wanted to thank the
17 members of the Staff and the Public Utilities Commission
18 for their help and understanding over the past few months.
19 It's been my first experience with a governmental agency.
20 And, I've been duly impressed. I've read a lot of PUC
21 cases online. And, I see where Pennichuck Water Works
22 will come in here and want to double their rates, and then
23 Anheuser-Busch comes in as an intervenor and says "Oh, no,
24 no, no." And, you're just right there helping the beer

1 drinkers keep the cost of their beer down. So, I mean, I
2 know that the Eastman Sewer Company, we're kind of small
3 potatoes here, but we like to think you're looking after
4 us, too.

5 The Commissioners are being asked to
6 approve a transfer of assets and liabilities from a
7 privately held sewer company to a municipal water
8 district. This is perplexing for a situation for several
9 reasons. Most sewer users don't understand the impact of
10 becoming a minority in a larger municipality. The Water
11 District has unanimously publicly maintained that it would
12 not be in their best interest, until just a few months
13 before the vote, when two of the three Commissioners
14 reversed their positions without any explanation. The
15 Sewer Company would not be in its deteriorated state, if
16 the users fully understood the current state of the ESC
17 capital equipment and financial status, and if they had a
18 direct vote in how their assessment monies were spent.

19 There have been inadequate opportunities
20 for alternate proposals to be thoroughly vetted. The only
21 such alternative proposal commenced more than 15 months
22 after the VDE started meeting with the ECA to transfer the
23 ESC.

24 We request that you decline the request

1 and maintain oversight, which will be sorely lacking if it
2 becomes part of the VDE. Thank you.

3 CHAIRMAN IGNATIUS: Thank you.

4 Mr. Schaefer.

5 MR. SCHAEFER: Thank you. Like the
6 Logans, I have never been involved in a proceeding of this
7 nature. And, again, without the help of this PUC Staff,
8 it would not have been possible for me to appear on behalf
9 of more than 40 Eastman sewer users, members of the
10 Eastman Sewer Users Coalition. Thank you to the Staff for
11 their assistance. I also want to thank the Commissioners,
12 to themselves for holding paramount the interest of the
13 consumers, who can so easily be swayed by forceful PR
14 campaigns and misinformation. Few consumers have the time
15 or the initiative to become informed or dig below the
16 surface to truly understand the issues. That is why it is
17 so important that the Commissioners expend time and energy
18 understanding all the facts of the situation as best
19 possible. For your responsible efforts, we thank you.

20 The PUC is left with a very difficult
21 choice. The ECA has failed the sewer users by
22 inappropriately assessing the Sewer Company for real
23 estate taxes that were not owed by the Sewer Company. By
24 charging the Sewer Company for a major portion of the

1 costs for this transaction to their benefit, not to the
2 benefit of the sewer users. By failing to obey PUC Order
3 24,368, to fully inspect, clean, and map the sewer system
4 by 2014, nonetheless accepting a much larger rate increase
5 in exchange for agreeing to do that. And, also, by
6 failing to do the annual reporting, as previously noticed,
7 which was part of that agreement. Furthermore, they
8 didn't even report an interruption in the inspection
9 process, which is stipulated in the PUC agreement.

10 Thus, the ECA has not been a dependable
11 owner of a public utility. On the other hand, the VDE has
12 a general manager whose demonstrated understanding of
13 financial issues should cause concern, and whose personal
14 financial record should raise questions. The VDE
15 Commissioners have not committed to being willing and able
16 to manage the Sewer Company. Under these circumstances,
17 the VDE is not a good choice as an owner and manager of an
18 additional public utility.

19 The net value to sewer users of PUC
20 oversight has been very positive. Leaving the Sewer
21 Company under the responsibility of the ECA for another
22 three years with more vigilant PUC attention is a
23 reasonable solution to this dilemma. The ECA should have
24 learned from the disclosures made during this process that

1 it must make financial amends and be properly responsible
2 going forward.

3 The PUC should decline the Petitioners'
4 request in favor of maintaining its regulatory position.
5 At least with the PUC here, and ready to oversee the Sewer
6 Company's owner, the public has some protection. We need
7 you.

8 CHAIRMAN IGNATIUS: Thank you.
9 Mr. Sheehan.

10 MR. SHEEHAN: Thank you. Staff, of
11 course, by its signature on the Agreement, is asking the
12 Commission to approve the sale as proposed. Briefly, the
13 legal standard governing your review is whether the
14 proposed sale is within the public good. And, as the
15 Commission has interpreted, the "public good" standard is
16 the language we've heard many times here, whether the
17 receiving entity, the Village District, has the
18 managerial, financial, and technical ability to run the
19 Sewer Company, if the transfer is approved. Mr. Naylor
20 made a brief reference to perhaps a jurisdictional
21 question of whether you have the jurisdiction over an
22 entity that is now or will be a municipality. But I think
23 he also noticed the -- it's a distinction without -- it
24 becomes moot, because you still have to approve the exit

1 of the Sewer Company from being a public utility. So,
2 whether you review it as "approving the sale" or you
3 review it as "are we going to okay the Sewer Company
4 leaving?", in the public utility world, the standard is
5 the same. Because, under 374:28, the Commission may
6 authorize a public utility to discontinue any part of its
7 service whenever it shall appear that the public good does
8 not require continuance of service. So, it's the same
9 standard either way. So, it is the public good standard.
10 It is the technical, financial, and managerial expertise
11 of the receiving entity, the Village District.

12 Without belaboring the point, Staff's
13 position is, on the financial side, the biggest problem
14 facing the Sewer Company is access to capital to undertake
15 the many hundreds of thousands of dollars worth of work
16 that needs to be done. As Mr. Naylor testified, that is
17 going to happen much more easily as a municipality, that
18 can gain access to those State Loan Funds, rather than
19 having to compete for them on the private market as a
20 private entity.

21 Second, technically, as Mr. Naylor
22 testified, we rely on DES in large part to make sure that
23 it's being run well. If not, they are the ones that will
24 say that there are pollution problems. And, what we can

1 gather from the Department of Environmental Service is
2 there are issues, but they are being worked on, they are
3 addressed, everyone knows about them, and they do have a
4 valid permit. And, the Staff is comfortable that it is
5 being addressed as best as it can be.

6 Otherwise, on the technical side, is the
7 operator is the operator that's been there for the past,
8 they're going to continue to use that same operator. And,
9 there's been no suggestion to this proceeding that there's
10 anything wrong with that operator in how they conduct
11 their business.

12 And, on the managerial side, which, of
13 course, bleeds into the others, we have the Village
14 District, headed by Mr. Weber, who has been running their
15 water system for years, without any apparent problems.
16 There's been no, again, contradiction that that system has
17 been run well without complaint or without regulatory
18 problems. And, that there is a -- they are within the
19 same building, there is going to be a similar staff, while
20 it's transitioning, there's a lot of connections there
21 that should enable the management side of that to continue
22 well.

23 A lot of this hearing -- so, that
24 addresses the legal standard, and Staff believes, through

1 its signature on the Agreement, that the Petitioners have
2 met those legal standards and that we recommend approval
3 of the Settlement Agreement.

4 A lot of this hearing has been spent in
5 the discovery on other issues, that are legitimate issues,
6 but it's Staff's position do not change the above
7 recommendation. And, I'll put them into broad boxes, and
8 I don't mean to slight any argument that I don't
9 recapture. But what I put in the 91-A box, there's
10 clearly some disagreement over the propriety of some of
11 these hearings and what was said and what was advertised,
12 *etcetera*. It's Staff's position that it's not our role,
13 nor the Commission's, to go very far beneath the surface
14 of these votes of the various bodies. The Joint
15 Petitioners presented evidence that the appropriate votes
16 were taken, the votes were made, the super majorities were
17 met. And, it certainly appears that all of that was done
18 okay. Again, there was objections along the way, and they
19 are reflected in the minutes.

20 If, in fact, there were 91-A violations
21 or such violations, that is for another body, the Superior
22 Court. And, it's really for them to dig beneath the
23 surface, to go through the statute line-by-line, to see
24 if, in fact, there were violations, and, if so, what the

1 remedy would be. But, as we stand here today, there's
2 nothing to say that those votes are invalid, and,
3 therefore, the approvals are invalid.

4 There's been talk about some of the
5 running of the Sewer Company, the taxes and the
6 relationship between the Sewer Company and the
7 Association. Someone was overtaxed, undertaxed,
8 overcharged, *etcetera*. And, there's two comments to that.
9 One, that happened in the past. And, it's not to say it's
10 okay that it happened in the past, but we're looking at
11 "can the Village District run the Sewer Company?" Not
12 whether the relationship between the Association and the
13 Sewer Company was less than perfect. If, in fact, one of
14 those parties mischarged or overcharged, or whatever the
15 label is, the other, there may be a remedy between the
16 Sewer Company and the Association, which could inure to
17 the benefit of the sewer customers. But, again, that's
18 not a dispute that's really properly in front of the
19 Commission to decide today. It's really whether the
20 Village District can run the Sewer Company.

21 And, similarly, with questions of due
22 diligence, is another point that the Logans raised with
23 particular strength. Could the process have been handled
24 differently? Of course. But the question we're asked is,

1 "whether it's in the public good?" And, is there any
2 evidence before you that suggests the lack of due
3 diligence resulted in a bad transaction? And, Staff's
4 position is that the due diligence that we saw the
5 Companies undergo was sufficient. They discovered the
6 problems necessary to come to a reasonable decision to
7 acquire the Sewer Company under the conditions outlined in
8 the Agreement. And, so, maybe more information would have
9 led to a slightly different price or a slightly different
10 this, there's really no evidence to that. And, there's
11 really nothing to suggest that, although maybe they could
12 have done it better, it should jeopardize the whole
13 result. So, it seems that what was undertaken was
14 reasonably sufficient to approve the sale.

15 So, for all those reasons, Staff
16 recommends that you approve the Agreement as signed and as
17 submitted, and authorizing the sale to the Village
18 District. Thank you.

19 CHAIRMAN IGNATIUS: Thank you. Mr.
20 Boynton.

21 MR. BOYNTON: Thank you. Fundamentally,
22 a transfer to the Village District as a municipal entity
23 ensures a democratic process in dealing with the needs of
24 the antiquated Sewer Company. The transaction has been

1 approved by all of the Boards involved, by the voters on
2 three different occasions, by the lender, by the Staff.
3 All of these stakeholders have approved the transaction.
4 There are comprehensive stipulations which document the
5 public good, and we urge the Commission to grant the
6 Petition.

7 Virtually all of the sewer customers are
8 already within the Village District of Eastman. The
9 Village District of Eastman has two times as many water
10 customers within the same geographical area. It's already
11 set up, it's running, it's ready to take over these new
12 tasks. The existing sewer operator will continue, as will
13 the current DES permit.

14 The VDE will have greater access to
15 capital. You heard testimony from Mr. Weber. I would
16 suggest that he has already completed SRF applications on
17 the water side of the ledger, he's knowledgeable about
18 that process, he's ready to go. We're in the "can do"
19 mode. The VDE has administrative staff systems in place.
20 VDE will have access to the Community Association staff to
21 assure a smooth transition.

22 Fundamentally, the Village District of
23 Eastman has the managerial, technical, and financial
24 capability to deliver these municipal services in a

1 traditional New Hampshire community-based manner.

2 Thank you for your attention.

3 Appreciate your reading of all of these materials, and
4 giving us the opportunity to appear before you. Thank
5 you.

6 CHAIRMAN IGNATIUS: Thank you. We will
7 take all of this under advisement. I do want to just
8 express our thanks to all of you for working through a lot
9 of issues. And, we have people who don't do this for a
10 living and who have separate lives that don't involve
11 hanging around Concord all the time. So, thank you for
12 your input, and for everyone's willingness to try and help
13 sort out what is and isn't at issue here. And, so, we
14 have it all. We'll take it under advisement and we will
15 issue an order. With that, we are adjourned.

16 **(Whereupon the hearing was adjourned at**
17 **4:17 p.m.)**