

THE STATE OF NEW HAMPSHIRE

PUBLIC UTILITIES COMMISSION

Investigation to Determine if Lamplighter
Mobile Home Park, LP is a Public Utility

DW-09-267

LAMPLIGHTER MOBILE HOME PARK, LP'S
MOTION TO DISMISS REQUEST FOR DETERMINATION

NOW COMES Lamplighter Mobile Home Park, LP, and files this Motion to
Dismiss Request for Determination and states as follows:

PROCEDURAL HISTORY

1. On or about December 19, 2009, Petitioners filed a Request for Determination asking the Commission to determine that Lamplighter Mobile Home Park, LP (hereinafter "LMHP") is a public utility and requesting various forms of relief from the Commission.¹
2. As Respondent is not, as a matter of law, a public utility and Petitioners' Petition should be dismissed for a lack of jurisdiction.

¹ The merits of the relief requested by Petitioners is not addressed herein as Respondent's position is that the Commission lacks jurisdiction over this matter. Respondent reserves the right to respond to the merits of Petitioners' claims at a later time.

RELEVANT FACTS

A. Water Charges

3. Petitioners' assertion that LMHP charges each of their tenants for their water usage is accurate. As part of the rental charges for each lot within the park, LMHP charges each of the tenants for their water usage. This charge, however, is a direct pass-through of the costs charged to LMHP by the Conway Village Fire District and is part of the rental charges which each tenant is notified of when the move into the park.

4. Rather than charge a uniform water charge to each tenant, to assure that the park's tenants are charged only for their share of the water used, LMHP installed individual water meters for each lot in the park. The tenants of each lot are then charged for the actual water used as well as an equal share of the base charge established by the Conway Village Water District.

5. The rate charged to the tenants, both for the water usage and the base charge, is determined solely by the rate LMHP is charged by the Conway Village Fire District. Moreover, when LMHP is notified of a change in the rates to be charged by the Conway Village Fire District, they provide the tenant's of the park the sixty (60) days notice required by RSA 205-A:6.

6. Because of the way the water charges are shared among all tenants, LMHP makes no profit on either the base charges or the actual usage charges.

Moreover, LMHP itself pays all base charges associated with the vacant lots and all charges for water usage that exceeds that used by the individual tenants.

7. LMHP does not set the rates for the water charges, is not the source of the water, and does not provide or sell the water to the general public.

B. Sewer Charges

8. Currently, LMHP provides rental lots for manufactured housing which includes individual and/or group septic systems. The Conway Village Fire District has recently expanded the available sewer services and LMHP intends to provide sewer hook-ups to connect many of the homes in the park to this new sewer system.

9. LMHP will not be building a sewer treatment plant or otherwise processing or disposing of the sewer in question. Additionally, LMHP is not providing sewer services to the general public.

ARGUMENT AND AUTHORITIES

10. With regard water and sewer, RSA 362:2 defines a “public utility” as specific entities “owning, operating or managing any plant or equipment or any part of the same for the conveyance of telephone or telegraph messages or for the manufacture or furnishing of light, heat, sewage disposal, power or water for the public,” (emphasis added).

11. In this instance, the facts (including those plead by Petitioners) support a finding that LMHP merely provides the pipes and meters through which

the tenants obtain water and, in the future, sewer from the Conway Village Fire District. However, it is not necessary to reach the question of whether this is the “manufacture or furnishing” of sewer and/or water as the services that are being provided, as outlined above, are not provided “for the public” as required by RSA 362:2.

12. “Service to the public without discrimination is one of the distinguishing characteristics of a public utility...” Claremont Gas Light Co. v. Monadnock Mills, 92 N.H. 468, 469-470 (1943)(citation omitted). Thus, where services are not provided without discrimination to the public, the services are not considered a public utility subject to the Commission’s jurisdiction.

13. New Hampshire case law makes it clear that when a private landlord provides utilities to his tenants such a landlord is not providing services without discrimination to the public and, accordingly, is not subject to the jurisdiction of the Commission. Appeal of Zimmerman, 141 N.H. 605 (1997).

14. Zimmerman addressed a situation very similar to that seen in this case. Zimmerman rented commercial space to multiple tenants who he charged for telephone services referred to as shared tenant services. The shared tenant services for which the tenants were charged came through a private branch exchange which Zimmerman obtained from a commercial carrier before reselling the services to his tenants. Id. at 606.

15. The question of whether the Commission had supervisory jurisdiction over Zimmerman's phone services turned on the question of whether the services were provided to the "public" within the meaning of RSA 362:2. Id. The Court held that because the shared tenant services were restricted to those with whom Zimmerman has a landlord-tenant relationship such services did not constitute a public utility within the Commission's jurisdiction. Id. at 612.

16. As in Zimmerman, LMHP passes on charges and provides sewer and/or water connections only to the residents of the park – each of whom are involved in a landlord-tenant relationship with LMHP. This is not disputed by Petitioners, and Petitioners make no allegation that the services in question are otherwise being offered to the public without discrimination.

17. Applying Zimmerman, the Commission has held, under circumstances that are almost identical to those seen in the present case, that when a manufactured housing is simply passing on the services obtained from the town "the provision of water and wastewater service to [the park's] tenants is not within the purview of the Commission's jurisdiction." Re Community Water and Wastewater Services, LP, 90 NH PUC 331, pg. 5 (2005); See also Re Interlakes Water and Sewer Company, 81 NH PUC 281 (1996) (Determining that mobile home parks have not been subject to regulation by the Commission).

18. Finally, because the water charges in question are part of the rental fees charged for each lot, Administrative Rules Puc 602.13 and Puc 602.09

specifically recognize that these services are exempt from the definition of “public utility” set out in RSA 362:2 and RSA 362:4.

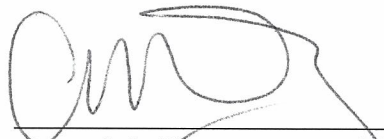
19. In summary, because the services in question are limited to those that have a landlord-tenant relationship with LMHP and are part of the rental charges applicable to each tenant’s lot, the Commission lacks jurisdiction over this matter and the Petition for Determination should be dismissed.

WHEREFORE, the Petitioner respectfully requests that the Commission:

- A. Dismiss Petitioner’s Petition for Determination for lack of jurisdiction; and
- B. Grant such other and further relief as may be just and proper.

Respectfully submitted,
Lamplighter Mobile Home Park, LP
By its Attorneys

Bianco Professional Association

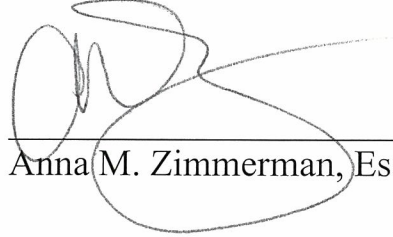


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Dated: February 24, 2010

CERTIFICATE OF SERVICE

I hereby certify that I have this 24th day of February, 2010, forwarded electronically and by regular mail a copy of the Respondent's Motion to Dismiss to the individuals on the Service List.

A handwritten signature in black ink, appearing to read 'Anna M. Zimmerman', is written over a horizontal line.

Anna M. Zimmerman, Esquire

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