

**BEFORE THE NEW HAMPSHIRE
PUBLIC UTILITIES COMMISSION**

Investigation to Determine if Lamplighter Mobile Home Park, LP
is a Public Utility
DW-09-267

**PETITIONERS' OBJECTION TO AND REQUEST FOR DENIAL
OF LAMPLIGHTER MOBILE HOME PARK, LP'S MOTION TO DISMISS
REQUEST FOR DETERMINATION**

NOW COMES the Petitioners, residents and homeowners of Lamplighter Mobile Home Park, and files this Objection to the *Motion to Dismiss the Petitioners' Request for Determination* and to request the Motion to Dismiss be denied as follows:

HISTORY

On or about February 24, 2010, the Respondent, Lamplighter Mobile Home Park, LP (hereinafter LMHP, LP), filed a Motion to Dismiss the Petitioners' Request for Determination, Docket DW-09-267, filed with the Commission on December 18, 2009.

ARGUMENTS SUPPORTING THE OBJECTION

1. In paragraph 2 of its motion, LMHP, LP makes the claim that it “is not, as a matter of law, a public utility” and further asserts that the Petitioners’ Petition “should be dismissed for lack of jurisdiction”. The Petitioners’ reject the Respondent’s claim as a premature and presumptuous argument inasmuch as the question of jurisdiction is the central question placed before the Commission and that it is within the statutory authority of the Commission to decide questions of its jurisdictional authority based on the evidence and specific circumstances of this case.

2. Under its heading “**Relevant Facts, A. Water Charges**”, the Respondent makes certain statements that are either not factual or are subject to challenge through the Discovery process, as provided for in PUC Administrative Rule PUC 203.09. In particular, the Respondent’s assertion that only lawful charges are passed-through to Lamplighter homeowners is subject to investigation and interpretation. The Petitioner has earlier in its Petition raised the issue of water supply system leakage loss as well as LMHP,LP’s own water consumption as potential costs being “passed-through” to LMHP,LP’s water service customers. The Petitioner intends to access the opportunity and advantage of Discovery to establish data relative to its assertions in this example and others.

Next, we disagree with LMHP,LP that current water costs are “part of the rental charges”(See Respondent’s paragraph 3, page 2). The Respondent’s claim implies that water costs are included in the rent charge, typically expressed by landlords as “utilities included”. Water costs are currently billed to tenants as a separate “Utility Charges” line item on their monthly billing statement (see Attachment B of the December 18, 2009 Petition filing). The Petitioners will argue that the separation of lot rent from water charges, and likely soon to include sewer charges, is indicative of LMHP, LP utility operations. The answer to the assertion that LMHP,LP “pays all base charges associated with vacant lots and all charges for water usage that exceeds that used by individual tenants” (see Respondent’s paragraph 6, page 3) is debatable and should remain open and subjected to fact finding via the Discovery process.

With regard to the Respondent’s assertion that LMHP, LP “does not set the rates for water charges, is not the source of the water, and does not provide or sell water to the general public” (see Respondent’s paragraph 7), the Petitioners disagree. In fact, LMHP,LP does set water rates as spelled out in the company’s 2010 Community Fee Rate Schedule (copy available on request), albeit at a rate presumably at the maximum level allowed by law. Further, LMHP, LP is the sole supplier and source of water to the public living at

Lamplighter Park. LMHP, LP purchases water from the Conway Village Fire District; distributes water to the public residing at Lamplighter Park; and, subsequently, collects fees from park residents for the provision of the water service. For clarification, it is LMHP, LP that enjoys the customer/supplier relationship with the CVFD, not the Lamplighter Park homeowners. We contend that the homeowners at Lamplighter Park are utility customers of LMHP, LP.

3. In Section B. **Sewer Charges**, paragraphs 8 and 9, the Respondent only briefly addresses the planned \$1.2 million sewer project soon to be constructed by LMHP, LP. This planned sewer project, along with LMHP,LP's stated intent to pass-on construction costs to homeowners, amounts to the Respondent's "gorilla in the room". LMHP, LP has not presented an argument to negate the Petitioner's assertion that LMHP, LP's current and intended charges to homeowners, as stated by LMHP, LP both verbally and in writing, are "unjust, unfair, and unreasonable" and "contrary to the public good" (See Petitioners filing, pages 3-B, 4-D). The petitioners will show that the current and future charges as earmarked for the planned sewer construction are, indeed, excessive, unreasonable, and detrimental to the public good.

Further, with regard to Respondent's paragraph 9, the definition of "public utility" in RSA 362:2-1 does not support the Respondent's apparent

claim that a “building” or “treatment plant” is a requirement to satisfy the statutory definition of a public utility. RSA 362:2 provides a wide descriptive definition of the term “public utility”; as “...any company...partnership or person owning any plant or equipment or any part of the same for the conveyance ofsewage disposal, power or water for the public...” LMHP, LP does own and operate equipment for the furnishing of and conveyance of water, and does intend to furnish and operate sewerage equipment for conveyance of and disposal of sewage for the public residing at Lamplighter Mobile Home Park.

4. Under the section titled **ARGUMENTS AND AUTHORITY**, paragraphs 10 through 18, the Respondent cites various examples of case law to support its contention that LMHP, LP does not fit the legal criteria for “public utility”. In citing the Appeal of Zimmerman, 141 N.H. 605 (1997), the Respondent asserts that the situation and circumstances of Zimmerman are “very similar to” (see Paragraph 14) and “almost identical to” (paragraph 17) those seen in this case. The Petitioners are prepared to show the Commission that the situation and circumstances are far from identical or “very similar” to those in Zimmerman. Among other differences, the tenants of Zimmerman were not being charged unreasonable and unfair costs for the elective telephone services they chose to contract for. Nor was there an issue involving the effect

on the public good with regard to Zimmerman's services. The petitioners will also argue the significant differences between the relative public in the Zimmerman case as compared to the public in this case.

The Respondent also cites the PUC's mediated resolve of the case involving Community Water and Wastewater Services (CWWS) as another precedent case to argue that mobile home parks are not subject to the Commission's jurisdiction. The Petitioners have reason to believe that a review of the CWWS decision and hearing minutes will show that this case is not an appropriate precedent citing. In any case, the Petitioners are prepared to delineate the significant differences between the Lamplighter Park situation and the various cases cited by the Respondent.

5. Finally, in its paragraph 18, the Respondent asserts that Administrative Rule Puc 602.13 exempts LMHP,LP "from the definition of "public utility" as set out in RSA 362:2 and RSA 362:4". Once again, LMHP, LP makes a presumption that the Commission will Determine LMHP, LP is not a "public Utility". Or, interpreting the Respondent's paragraph 18 meaning another way, perhaps LMHP, LP is misreading Puc 602.13 (c.) to believe that the "landlord (in this case LMHP, LP) [is] supplying water to tenants which service is included in a rental fee". Again, that is not the case for homeowners at Lamplighter Mobile Home Park where water service is billed as a line item

separate from the lot rental charge. In fact, water fees are listed as a separate category on the LMHP; LP 2010 Community Fee Rate Schedule (available upon request) .

SUMMARY

6. We, the Petitioners, contend with good reason that the circumstances and charges associated with LMHP, LP's current and planned utility services - in particular the planned \$1.2 million sewer construction project - demonstrate the need for further investigation and fact finding by both the Petitioner and the Commission. For that to happen, and for Petitioners to fully present their case before the Commission, the processes of Discovery and investigation must be preserved. If LMHP, LP's Motion to Dismiss is allowed, the benefits and advantages of the Discovery process will be lost and the Petitioners will be denied due access to key information and the opportunity to make their case before the Commission.

THEREFORE, IN CONSIDERATION OF THE ABOVE, the Petitioners, as residents and homeowners of Lamplighter Mobile Home Park, respectfully request that the Commission:

- A. Deny the Motion for Dismissal as submitted by LMHP, LP; and,
- B. Grant such other and further relief as may be just and proper.

Respectfully submitted,

Thomas F. Moughan, Sr. Acting Pro Se, by and for the Petitioners

Dated: March 5, 2010

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THE STATE OF NEW HAMPSHIRE
PUBLIC UTILITIES COMMISSIOIN

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CERTIFICATE OF SERVICE

I hereby certify that I have this 5th day of March, 2010, forwarded electronically, as well as by hand and/or regular mail, a copy of the Petitioners' Objection to the Motion to Dismiss and request for Denial of the same, as filed by Lamplighter Mobile Home Park, LP on February 24, 2010, to all individuals on the Service List.

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