

STATE OF NEW HAMPSHIRE
PUBLIC UTILITIES COMMISSION

October 25, 2011 - 9:14 a.m.
Concord, New Hampshire

MORNING SESSION
ONLY

NHPUC NOV02'11 PM 4:13

RE: DW 04-048 CITY OF NASHUA, NEW HAMPSHIRE:
Petition for Valuation Pursuant to
RSA 38:9.
DW 11-026 CITY OF NASHUA, PENNICHUCK
CORPORATION, PENNICHUCK WATER WORKS, INC.,
PENNICHUCK EAST UTILITY, INC., AND
PITTSFIELD AQUEDUCT COMPANY:
Joint Petition for Approval to Acquire
Stock in Pennichuck Corporation.

PRESENT: Chairman Thomas B. Getz, Presiding
Commissioner Amy L. Ignatius

Sandy Deno, Clerk

APPEARANCES: Reptg. the City of Nashua, N.H.:
William F. J. Ardinger, Esq. (Rath Young...)
Andrew W. Serell, Esq. (Rath, Young...)

Reptg. Pennichuck Corporation, Pennichuck
Water Works, Pennichuck East Utility, and
Pittsfield Aqueduct Company:
Steven V. Camerino, Esq. (McLane Graf...)

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

ORIGINAL

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Reptg. Anheuser-Busch:

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JOHN L. PATENAUDE

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1 P R O C E E D I N G

2 CHAIRMAN GETZ: Okay. Good morning,
3 everyone. We'll open the hearing in consolidated Dockets
4 DW 04-048 and 11-026. On February, 4, 2011, the City of
5 Nashua and Pennichuck Corporation filed a Joint Petition
6 for approval of the City of Nashua's acquisition of
7 Pennichuck Corporation. An order of notice was issued on
8 February 9 setting a prehearing conference that was held
9 on February 24th. Subsequently, a series of secretarial
10 letters approved a procedural schedule, granted
11 interventions, and granted the Motion to Consolidate, also
12 approved a series of revisions to the procedural schedule,
13 leading to the hearing this morning.

14 I also note that a settlement was filed
15 on October 18th, with, I guess, a fully signed revision or
16 a form filed on October 24th.

17 So, with that, let's take appearances
18 please.

19 MR. SERELL: Good morning. I'm Andrew
20 Serell, from Rath & Young, and I represent the City of
21 Nashua.

22 CHAIRMAN GETZ: Good morning.

23 MR. ARDINGER: Good morning. Bill
24 Ardinger, from Rath & Young. I represent the City of

1 Nashua.

2 MR. CAMERINO: Good morning,
3 Commissioners. Steve Camerino, from McLane, Graf,
4 Raulerson & Middleton, on behalf of the Pennichuck
5 companies.

6 CHAIRMAN GETZ: Good morning.

7 MR. BOUTIN: Edmund Boutin, Boutin
8 Altieri, I represent the Town of Merrimack.

9 CHAIRMAN GETZ: Good morning.

10 MR. ALEXANDER: Good morning. John
11 Alexander, with Ransmeier & Spellman, representing
12 Anheuser-Busch.

13 CHAIRMAN GETZ: Good morning.

14 MR. JUDGE: Good morning. Steve Judge,
15 Wadleigh, Starr & Peters, representing the Merrimack
16 Valley Regional Water District.

17 CHAIRMAN GETZ: Good morning.

18 MR. TEEBOM: I'm Fred Teebom. I'm a
19 citizen intervenor.

20 CHAIRMAN GETZ: Good morning.

21 MR. WIESNER: Good morning. David
22 Wiesner, with Olson & Gould, representing the Town of
23 Milford.

24 CHAIRMAN GETZ: Good morning.

1 MS. HOLLENBERG: Good morning,
2 Commissioners. Rorie Hollenberg, here on behalf of the
3 Office of Consumer Advocate. And, with me today is
4 Meredith Hatfield and Stephen Eckberg.

5 CHAIRMAN GETZ: Good morning.

6 MS. THUNBERG: Good morning,
7 Commissioners. Marcia Thunberg, representing Staff. And,
8 I also have an administrative topic to discuss. Before
9 you you will see a list entitled "Joint Petitioners'
10 Exhibits List". And, we have -- the parties to the docket
11 have tried to be efficient in our presentation to you
12 today. It is our intent or the parties have agreement on
13 the identification of the exhibits that are listed in this
14 list. There are -- there is also a presentation by the
15 Town of Merrimack, in addition to the Joint Petitioners,
16 and the Town of Merrimack has provided you with a binder
17 with its exhibits. So, it is our intent to abide by these
18 numbers in the presentation today. Parties would like to
19 forgo authenticating the exhibits. And, we also have
20 panel presentations today. And, with each panel, the
21 parties would like to have the Settling -- the signatories
22 to the Settlement Agreement do their direct examination of
23 the witnesses before it's opened up for the non-Settling
24 Parties. So, I think that was it for administrative

1 things? Okay.

2 CHAIRMAN GETZ: Any objection to that
3 procedure?

4 (No verbal response)

5 CHAIRMAN GETZ: Okay. Hearing nothing,
6 then we will adopt the identifications of the exhibits as
7 set forth in the Joint Petitioners Exhibit List and the
8 Town of Merrimack's Exhibit List. And, I guess we can
9 turn to then the City and Pennichuck to put on a panel.

10 MR. SERELL: Great. Thank you,
11 Commissioner. For our first panel, we'd like to call
12 Mayor Lozeau and John Patenaude. And, just to give you a
13 little preview, our first panel is going to just give an
14 overview of the public interest criteria and how it
15 applies to this Agreement, probably about 15 minutes or
16 so. Then, we'll have a second panel to discuss a little
17 more specifics of the Settlement Agreement, and then that
18 will be it for us.

19 CHAIRMAN GETZ: Okay. Thank you.

20 MR. SERELL: Before you are seated,
21 would you raise your right hand, each of you.

22 (Whereupon **Donnalee Lozeau** and

23 **John L. Patenaude** were duly sworn by

24 Atty. Serell.)

[WITNESS PANEL: Lozeau|Patenaude]

1 MR. SERELL: Please have a seat.

2 CMSR. IGNATIUS: Mr. Serell, before you
3 begin, --

4 MR. SERELL: Yes.

5 CMSR. IGNATIUS: -- just so I know. Who
6 will be testifying in your second panel?

7 MR. SERELL: Second panel will be Mr.
8 Patenaude, joined by Donald Ware and Bonalyn Hartley of
9 the Pennichuck companies.

10 CMSR. IGNATIUS: Thank you. And, then,
11 will there be a Staff witness as well in another panel or
12 separately?

13 MS. THUNBERG: Staff was going to offer
14 Mark Naylor separately.

15 CMSR. IGNATIUS: Thank you. Are there
16 other witnesses that are expected just on the presentation
17 of the Settlement Agreement itself?

18 MR. SERELL: I don't believe so, your
19 Honor. I don't think so.

20 CMSR. IGNATIUS: Thank you.

21 MR. SERELL: Before I begin, I guess it
22 would be appropriate to have marked the testimony of both
23 the Pennichuck and City of Nashua that was submitted over
24 the course of this case, and that we've marked as

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1 "Exhibits 2" through "11" on our witness list.

2 (The documents, as described, were
3 herewith marked as **Exhibit 2** through
4 **Exhibit 11**, respectively, for
5 identification.)

6 MR. SERELL: Should I hold up on
7 testimony until you've marked all of that or --

8 CHAIRMAN GETZ: No. I think you can
9 proceed. I think that would be fine.

10 MR. SERELL: Okay.

11 **DONNALEE LOZEAU, SWORN**

12 **JOHN L. PATENAUDE, SWORN**

13 **DIRECT EXAMINATION**

14 BY MR. SERELL:

15 Q. All right. Could I ask each of you to introduce
16 yourself for the record, starting with the Mayor first.

17 A. (Mayor Lozeau) Good morning. I'm Donnalee Lozeau. I
18 serve as the Mayor for the City of Nashua.

19 A. (Mr. Patenaude) Good morning. I'm John Patenaude.
20 And, I'm the Transaction Executive for the City of
21 Nashua.

22 Q. Okay. My questions are going to be addressed to the
23 Mayor. But, Mayor Lozeau, if you have need to, feel
24 free to toss any of them to Mr. Patenaude. First of

1 all, could I just ask you how long you've been Mayor of
2 Nashua?

3 A. (Mayor Lozeau) Since January of 2008.

4 Q. Okay. And, we covered your background and experience
5 with your prefiled testimony. We're here today to
6 discuss the Merger Agreement between the City and the
7 Pennichuck Corporation. Are you familiar with that
8 Agreement?

9 A. (Mayor Lozeau) Yes, I am.

10 Q. Okay. And, is it fair to say that Agreement was the
11 result of years of efforts by the City to acquire the
12 Pennichuck utilities?

13 A. (Mayor Lozeau) More than fair.

14 Q. And, can you briefly outline the steps that led up to
15 the execution of that Agreement?

16 A. (Mayor Lozeau) In 2002, before I was Mayor, there was a
17 vote by the Board of Aldermen, followed by a vote of
18 the citizens of Nashua in 2003, followed by an eminent
19 domain action that was filed in, I believe, '04. And,
20 then, since then, we've had an order in 2008, and an
21 appeal order in 2010, and now a Settlement Agreement.

22 Q. So, when the appeal order was issued in 2010, you were
23 mayor at that time, correct?

24 A. (Mayor Lozeau) Yes.

1 Q. And, the City elected not to go forward with the
2 eminent domain taking, is that right?

3 A. (Mayor Lozeau) That's correct.

4 Q. And, what steps did you take after that order was
5 received?

6 A. (Mayor Lozeau) Well, the steps that I took were to put
7 together a team, made up of many of those here in this
8 room behind you, to pull together, an opportunity to
9 have a merger agreement that would make sense for the
10 City, for the region, and for the Company.

11 Q. And, in the eminent domain case, there was a finding by
12 this Commission that the City's acquisition of
13 Pennichuck Water Works was in the public interest. Are
14 you familiar with that?

15 A. (Mayor Lozeau) Yes, I am.

16 Q. Do you believe that the transaction set forth in the
17 Merger Agreement will benefit the public more than the
18 eminent domain taking that was approved by this
19 Commission?

20 A. (Mayor Lozeau) I do.

21 Q. And, why is that?

22 A. (Mayor Lozeau) Well, I believe that we're getting more
23 for less. And, I believe that it also avoids any of
24 the harm that might be attributed to just have

1 Pennichuck Water Works Company alone.

2 Q. And, when you say "more for less", can you just
3 elaborate what you mean by that?

4 A. (Mayor Lozeau) Certainly. What I mean by that is, when
5 we're looking at just Pennichuck Water Works, it would
6 have pulled it away from the other four subsidiaries
7 owned by Pennichuck Corporation. Under this Agreement,
8 we're looking at ownership of the full corporation,
9 which would include the three regulated utilities and
10 the two other subsidiaries, both the management company
11 and the real estate company. That, in essence, gives
12 us the whole corporation and allows it to be run more
13 in a business manner.

14 Q. And, in fact, we're acquiring the entire corporation
15 for a lower price than the Commission set for just PWW,
16 is that right?

17 A. (Mayor Lozeau) Exactly. That's what I meant by "more
18 for less".

19 Q. Okay. Yes. Why else do you believe that this
20 acquisition is in the public interest?

21 A. (Mayor Lozeau) You know, first of all, the citizens
22 voted to take it, and the Board of Aldermen has strong
23 support. I also think that it's really important for
24 us to have local control and regional control of our

1 water resource and our watershed. I think that it's
2 important to bring some stability to the rates and to,
3 actually, the proceedings after nine years. And, I
4 think all of those things together demonstrate that
5 it's in the public interest.

6 Q. Okay. We have submitted testimony regarding the
7 anticipated impact on rates over time resulting from
8 this Merger Agreement. Are you familiar with that?

9 A. (Mayor Lozeau) I am.

10 Q. Okay. And, do you agree that, under City ownership,
11 rates are anticipated to be lower over a period of time
12 than they would be under Pennichuck ownership?

13 A. (Mayor Lozeau) Yes. And, I actually should have
14 mentioned that in your prior question, because that's
15 in the public interest as well.

16 Q. Okay.

17 A. (Mayor Lozeau) Lower rates over time.

18 Q. Is there still -- you mentioned that, back in 2002 and
19 2004, the citizens and the Board had voted in favor of
20 the eminent domain taking. Is there still strong
21 public support within the City for this Merger
22 Agreement?

23 A. (Mayor Lozeau) Yes, I believe there is.

24 Q. And, has the Board of Aldermen been kept apprized every

1 step of the way?

2 A. (Mayor Lozeau) Every step of the way. Our votes have
3 been unanimous from the Board of Aldermen.

4 Q. Very good. How will customers outside the City of
5 Nashua benefit from this Merger Agreement?

6 A. (Mayor Lozeau) Well, like the customers in Nashua, they
7 will also benefit from the lower rates and lower
8 operating expenses, and they also benefit because this
9 Commission will retain jurisdiction and oversight over
10 the three regulated utilities.

11 Q. I know that you've been in this room before, so you've
12 been involved in the process of reaching the -- of the
13 entire proceedings here, including the Settlement
14 Agreement that we have today, correct?

15 A. (Mayor Lozeau) Correct.

16 Q. And, I think at this time, I just want to show you a
17 copy of that Agreement. You recognize that as the
18 Settlement Agreement that we're here today to seek
19 approval of?

20 A. (Mayor Lozeau) I do.

21 MR. SERELL: So, I will ask to have this
22 marked. I think this will be "Exhibit 1".

23 (The document, as described, was
24 herewith marked as **Exhibit 1** for

1 identification.)

2 BY MR. SERELL:

3 Q. Mayor Lozeau, how would you describe the process that's
4 led us here today?

5 A. (Mayor Lozeau) Very eye-opening to me. Very thorough.
6 I believe that there was a detailed investigation by
7 the Staff, by OCA, and by other parties. Frankly, I
8 believe it's a better agreement having everybody
9 participate the way that they did over time. We've had
10 a full discussion of many issues, most of which, as you
11 can see, are resolved, basically having a settlement
12 agreement. And, I think that we got a sincere effort
13 of everybody involved to listen to each other's
14 concerns. I think, overall, it's been a really good
15 process that had a very good ending.

16 Q. I just want to briefly discuss the issue of corporate
17 governance of the Pennichuck utilities going forward.
18 I know that's covered in Mr. Patenaude's testimony.
19 Have you been closely involved in determining how they
20 would be governed going forward?

21 A. (Mayor Lozeau) Absolutely. Yes, sir.

22 Q. Okay. And, what were your goals in establishing the
23 form of corporate governance that is in the testimony
24 before the Commission?

1 A. (Mayor Lozeau) The goals were to be able to run this as
2 a business, as a company that knew that its goal was to
3 meet the operating expenses and be able to maintain
4 stable rates, to run the Company with a quality
5 product. You know, over the years, throughout this
6 dispute, nobody has ever argued whether Pennichuck was
7 a company that didn't deliver a good product. That's
8 never, in fact, been any part of the discussions.

9 I thought it was important, particularly
10 when we headed down the route of not eminent domain,
11 and tried to change the way we did this and change the
12 approach, was to make sure that we devised a structure
13 that brought expertise to the table from many different
14 disciplines to look at this as a water company, as a
15 business, and to make sure that they pay attention to
16 that. Not just Nashua's interest or another
17 community's interest, but, overall, running the company
18 and running it well.

19 Q. And, is it your desire to have the Board essentially
20 insulated or kept apart from political considerations?

21 A. (Mayor Lozeau) Absolutely. Actually, the way that
22 we've done this as well is, although we're going
23 through a process of interviewing this for this first
24 seated Board of Directors, we have made sure in the

1 bylaws that no political person will sit on this Board,
2 with the exception of myself, and, for me, only the
3 first two years. We're hopeful that the institutional
4 knowledge that I bring might be helpful in getting
5 things off on the right start. No public employees or
6 their relatives are allowed to serve. And, we've
7 really identified the different disciplines that we're
8 interested in having around the table for the expertise
9 that they can bring.

10 Once that's done, in the future, the
11 Board members will be appointed by the Board of
12 Directors, nominated by the Board of Directors
13 themselves, like most boards do, and then will be voted
14 on by the shareholders.

15 Q. Mayor Lozeau, the last thing I wanted to ask you, are
16 you satisfied, is the City satisfied that
17 implementation of the Merger Agreement will be in the
18 best interest of all the ratepayers of the Pennichuck
19 utilities for the reasons that you've outlined?

20 A. (Mayor Lozeau) Absolutely.

21 MR. SERELL: Thank you. That's all I
22 have.

23 CHAIRMAN GETZ: For the entire panel?
24 Mr. Patenaude?

1 MR. SERELL: I'm sorry, there was one
2 additional thing I wanted to ask, your Honor, is that
3 okay?

4 CHAIRMAN GETZ: Yes.

5 MR. SERELL: Thank you.

6 BY MR. SERELL:

7 Q. Ms. Mayor, I wanted to ask you one additional thing.
8 Are there any timing requirements related to the
9 Commission's approval of this Agreement?

10 A. (Mayor Lozeau) There are timing requirements. First,
11 you know, our agreement has December 31st as the date
12 for closing. In addition, you know, I don't think any
13 of us can predict the future. But, today, right now,
14 interest rates are really in a place where we could
15 significantly benefit. As a matter of fact, when we
16 ran the numbers just recently this week, we're looking
17 at about a \$63 million cost savings if we can close
18 relatively quickly. So, it's my hope, and I guess I
19 can look at both of you, and if I'm out of order, I'm
20 sure you'll let me know. You know, it would be great
21 if you could see your way clear to giving your order
22 sometime in early to mid November, so that we can
23 capitalize on those interest rates. The benefit of
24 those interest rates benefits all the ratepayers in the

1 whole district. And, I'm sure that you agree that
2 \$64 million is quite a bit of money, actually, I should
3 say "just over 63 million", I don't want to exaggerate,
4 but it's significant. Thank you for asking.

5 Q. And, Mayor Lozeau, the \$63 million difference is
6 essentially the difference that the City would pay in
7 interest in its bonds, between an interest rate of
8 6.5 percent, which is what our original estimate was
9 based on, and today's interest rates, which are in the
10 fours, is that right?

11 A. (Mayor Lozeau) Yes.

12 Q. Okay. And, our hope is that we'll get this done while
13 interest rates are still in the fours, is that right?

14 A. (Mayor Lozeau) Exactly. Thank you for clarifying the
15 technical aspects of it.

16 MR. SERELL: Thank you very much,
17 Commissioner.

18 CHAIRMAN GETZ: Thank you.
19 Mr. Camerino?

20 MR. CAMERINO: No questions. Thank you.

21 CHAIRMAN GETZ: Mr. Judge.

22 MR. JUDGE: Good morning, Mayor. Good
23 morning, Mr. Patenaude. Drew, does the panel have a copy
24 of Exhibit 17, the Charter of the --

1 MR. SERELL: They do not. But I would
2 be happy to give one to you, so you can hand it to them.
3 And, you might want to have that marked as well.

4 MR. JUDGE: Seventeen, is that right?

5 MR. SERELL: Correct.

6 MR. JUDGE: Seventeen.

7 CHAIRMAN GETZ: Well, Mr. Judge, did you
8 submit that as part -- that's not with the testimony?

9 MR. JUDGE: It's one of the exhibits
10 that was agreed to administratively, Exhibit Number 17.

11 MR. SERELL: I do have one extra copy.

12 CHAIRMAN GETZ: I see it in the exhibit
13 list, but I'm not sure if you submitted it or --

14 MR. JUDGE: It's an exhibit in one of
15 the cases that's been consolidated here. It's also a
16 document that was approved by the PUC in 04-100. It's
17 filed with the Secretary of State, I believe you can take
18 judicial notice of it. But it has been submitted as an
19 exhibit in one of the cases that were consolidated.

20 CHAIRMAN GETZ: In 04-048. Okay, I
21 recall the document.

22 MR. JUDGE: Yes.

23 (The document, as described, was

24 herewith marked as **Exhibit 17** for

1 identification.)

2 CHAIRMAN GETZ: Well, if the witnesses
3 have a copy, so that you can inquire, then let's proceed.

4 MR. JUDGE: Right. I just want to get
5 the copy marked. Thank you.

6 MS. THUNBERG: Mr. Chairman, if I can
7 interject. There's another exhibit, Exhibit 18, which is
8 also not in the DW 11-026 record, and it's not -- I don't
9 know that we have an extra copy. And, it's the
10 Commission's review of the Charter. So, it may run into
11 the same issue of needing a copy of that.

12 MR. JUDGE: I don't intend to use that.

13 MS. THUNBERG: Okay.

14 **CROSS-EXAMINATION**

15 BY MR. JUDGE:

16 Q. Just really a couple of questions. You discussed,
17 Mayor Lozeau, and these questions are to either one of
18 you, either one who feels free to answer. Let's start
19 at the very beginning. If you turn in a couple of
20 pages, you'll see the "Table of Contents"?

21 A. (Mayor Lozeau) Yes.

22 Q. And, you agree with me that this is -- the title at the
23 top of the page says the "Charter of the Merrimack
24 Valley Regional Water District", is that correct?

1 A. (Mayor Lozeau) That's correct.

2 Q. And, it's your understanding that the Water District
3 is, in fact, for a region, it's not defined by a
4 particular municipality?

5 A. (Mayor Lozeau) Yes.

6 Q. Okay. If you turn to the next page, Article 2, just to
7 emphasize that point, I'm not going to read the whole
8 sentence, but the beginning of the sentence says "The
9 Merrimack Valley Regional Water District is created as
10 a regional water district", and then it goes on from
11 there, is that correct?

12 A. (Mayor Lozeau) That is.

13 Q. Article 5, just a couple of pages in, deals with
14 "Membership". And, check me if I'm wrong about this, I
15 know there's a couple of paragraphs here, but "any
16 municipality which contains any customers or any part
17 of a Water Supply, Treatment, Transmission and
18 Distribution System of the Pennichuck Corporation [is]
19 eligible for membership of the District." So that
20 anyone who is affected by Pennichuck Corporation, any
21 municipality is eligible to be a member of the
22 district. And, that's what the Charter says?

23 A. (Mayor Lozeau) Yes. That's what the Charter says.

24 Q. And, let me ask you to turn to Article 6 for a moment,

1 a couple of other pages in. And, in the document that
2 you have, it's probably Page 8. And, there's a Section
3 (j)?

4 A. (Mayor Lozeau) Yes.

5 Q. Do you have that? And, it's in the body of the
6 paragraph, I just want to read the last sentence of
7 that paragraph, tell me if I'm reading this correctly:
8 "In addition, except as provided below or elsewhere in
9 this chapter, all matters determined by the Board shall
10 be accomplished by Voting by Director." Did I read
11 that correctly?

12 A. (Mayor Lozeau) Other than you should have said
13 "Charter", and not "chapter".

14 Q. Thank you for making that correction.

15 A. (Mayor Lozeau) You're welcome. I knew you were testing
16 me.

17 Q. I was. I put that in there. I wanted to see if you
18 were paying attention. Is it your understanding that
19 the contrast there is that, under some circumstances,
20 there is a vote by customer, and Nashua, obviously, has
21 a lot of customers, but the general rule here is that
22 the vote is by director, each director gets one vote?

23 A. (Mayor Lozeau) That's correct.

24 Q. Let me go back to the testimony that you had about

1 corporate governance. You indicated that the members
2 of the Board would be nominated by the Board and
3 approved by the City. And, I just want to check with
4 you, there's one exception to that, and that is that
5 one member will be nominated by the Regional Water
6 District and approved by the City?

7 A. (Mayor Lozeau) That is correct.

8 Q. That is true. That's correct. And, the Regional Water
9 District consists of municipalities that are in every
10 one of Pennichuck's regulated utilities, Pittsfield,
11 the Pittsfield Aqueduct Company;
12 Londonderry/Litchfield, PEU; Bedford/Nashua from PWW,
13 is that correct?

14 A. (Mayor Lozeau) That's correct.

15 MR. JUDGE: Thank you, Mayor.

16 WITNESS LOZEAU: You're welcome.

17 CMSR. IGNATIUS: Mr. Judge?

18 MR. JUDGE: Yes.

19 CMSR. IGNATIUS: At some point, either
20 now or before we're done today, make sure a copy goes to
21 the Clerk, she does not have one.

22 MR. JUDGE: I will.

23 CMSR. IGNATIUS: And, if you have an
24 extra, we can photocopy one during a break.

1 MR. JUDGE: Well, why don't we let the
2 panel hold that copy for the moment, and I'll make sure it
3 gets over this morning.

4 CMSR. IGNATIUS: Thank you.

5 CHAIRMAN GETZ: Mr. Alexander?

6 MR. ALEXANDER: No questions.

7 CHAIRMAN GETZ: Okay. Mr. Teebom?

8 MR. TEEBOM: I have one question.

9 BY MR. TEEBOM:

10 Q. When you mentioned "\$63 million of savings", that's not
11 a cash-in-hand, is it? That means \$60 million over the
12 life of the --

13 A. (Mayor Lozeau) Over the 30 years.

14 Q. Over the 30 years.

15 A. (Mayor Lozeau) Yes.

16 MR. TEEBOM: Thank you.

17 CHAIRMAN GETZ: Okay. Mr. Wiesner?

18 MR. WIESNER: No questions, Mr.

19 Chairman.

20 CHAIRMAN GETZ: I had skipped you,
21 Mr. Boutin, because I understood you not to be a signatory
22 to the Settlement.

23 MR. BOUTIN: I see.

24 CHAIRMAN GETZ: Is that correct?

1 MR. BOUTIN: I get you. You're right.

2 CHAIRMAN GETZ: Okay. Thank you.

3 Ms. Thunberg.

4 MS. THUNBERG: Staff has no questions.

5 CHAIRMAN GETZ: Okay. Then,

6 Ms. Hollenberg?

7 MS. HOLLENBERG: No question, actually.

8 Thank you.

9 CHAIRMAN GETZ: All right. Now, Mr.
10 Boutin.

11 MS. HOLLENBERG: If I could just -- I do
12 have questions for Mr. Patenaude, but I think they're more
13 appropriate for when he is participating in the ratemaking
14 panel, just to make that clear.

15 CHAIRMAN GETZ: Okay.

16 MS. HOLLENBERG: Thank you.

17 CHAIRMAN GETZ: Mr. Boutin.

18 MR. BOUTIN: Thank you. First of all,
19 good luck in your next life.

20 CHAIRMAN GETZ: Thank you very much.

21 BY MR. BOUTIN:

22 Q. Mayor, --

23 MR. JUDGE: Are the rumors of your death
24 exaggerated?

1 (Laughter.)

2 MR. BOUTIN: Depends what you mean by
3 "next life". I just have a few questions for you.

4 BY MR. BOUTIN:

5 Q. You were asked some questions about the Charter. The
6 provision in the Settlement Agreement allowing the
7 Charter to nominate a director was not contemplated at
8 the time the Charter was adopted, is that correct?

9 A. (Mayor Lozeau) I'm sure that's correct.

10 Q. And, the Charter in no way, as far as you know,
11 addresses how the director would be nominated by the
12 Water District, is that correct?

13 A. (Mayor Lozeau) It doesn't speak specifically to how
14 somebody is nominated, but certainly speaks to how
15 votes are taken.

16 Q. Well, that would assume that the -- that the Charter is
17 written at a time before the power to nominate was
18 contemplated, that somehow they were considering that
19 problem, wouldn't that be fair?

20 A. (Mayor Lozeau) I don't know.

21 Q. Next question. The original Board is appointed by the
22 -- or nominated by the Mayor and approved by the
23 Aldermen, is that correct?

24 A. (Mayor Lozeau) That's correct.

1 Q. Now, your Board of Aldermen contains how many, 13
2 members?

3 A. (Mayor Lozeau) Fifteen.

4 Q. Fifteen? And, nine of them are from wards, is that
5 correct?

6 A. (Mayor Lozeau) Correct.

7 Q. Wouldn't you agree with me that those nine members have
8 often disparate interests representing their individual
9 constituencies?

10 A. (Mayor Lozeau) On occasion.

11 Q. And, would you also -- would it also be fair to say
12 that even the Counsels-at-Large often have disparate
13 views of things?

14 A. (Mayor Lozeau) Mr. Boutin, you know, I'm sure that
15 you've seen politics in action. It doesn't have to be
16 your area that you have disputes over.

17 Q. Well, and that's just the point. That the initial
18 Board is appointed as part of a political process by
19 elected political officials, is that correct?

20 A. (Mayor Lozeau) It is part of a political process for
21 the initial seating of the Board.

22 Q. Now, as I understand it, you've been aware since the
23 conception of this proceeding that the Town of
24 Merrimack wanted to have a nomination for a member of

1 the Board, is that correct?

2 A. (Mayor Lozeau) I don't know that it's since the
3 beginning, but I've been made aware that they wanted
4 somebody, yes.

5 Q. And remember several tech sessions we discussed that
6 concept, is that right?

7 A. (Mayor Lozeau) That's correct.

8 Q. And, as I understand it, you refused to have Merrimack
9 nominate a Board member?

10 A. (Mayor Lozeau) That's correct.

11 Q. Now, the Merrimack Valley Regional Water District never
12 did make that request formally as part of this
13 proceeding, is that also correct?

14 A. (Mayor Lozeau) I don't believe that to be correct.

15 Q. Can you point me to a filing or a document where that
16 request was made?

17 A. (Mayor Lozeau) There have been sessions where that's
18 been discussed.

19 Q. Was it the last session where that was discussed, in
20 connection with the Settlement Agreement?

21 A. (Mayor Lozeau) I can't recall exactly when it was, but
22 I was certainly made aware of it. Maybe Mr. Judge
23 could answer your question.

24 MR. JUDGE: The testimony of Rick Sawyer

1 was filed regarding this issue.

2 BY MR. BOUTIN:

3 Q. Now, there was testimony -- not testimony, but there
4 was discussion in the tech sessions about a parcel of
5 land, a watershed land that was proposed to be sold to
6 a developer. Do you recall that discussion?

7 A. (Mayor Lozeau) Yes.

8 Q. And, that apparently there was a problem because the
9 property may have been contaminated, was that also part
10 of the discussion?

11 A. (Mayor Lozeau) Well, I think that there have been
12 issues raised by a citizen in Nashua about whether
13 there is contaminants on the site.

14 Q. Is there any negotiation right now about substituting a
15 property in Merrimack?

16 A. (Mayor Lozeau) No.

17 Q. Is it one of the things that would be considered if the
18 deal were to fall through?

19 A. (Mayor Lozeau) All things are being considered right
20 now. There are discussions with myself and members of
21 the group that is purchasing property in Nashua.

22 Q. Now, do you know approximately how many of Pennichuck
23 Corporation's ratepayers are in Nashua, as opposed to
24 the rest of the system?

1 A. (Mayor Lozeau) About 66 percent.

2 Q. And, of Pennichuck Water Works, do you know how many
3 are within the water system? I'm sorry. How many of
4 the ratepayers of Pennichuck Water Works are in Nashua?

5 A. (Mayor Lozeau) I think I just told you that,
6 66 percent, --

7 A. (Mr. Paternaude) There's roughly -- there's roughly, I
8 believe, around 26,000.

9 Q. And, as a percentage, is that 67 or 68 percent or is it
10 80 percent?

11 A. (Mr. Paternaude) Of Pennichuck Water Works?

12 Q. Yes.

13 A. (Mr. Paternaude) Of Pennichuck Water Works itself, it's
14 roughly 80, between 80 and --

15 (Court reporter interruption.)

16 **BY THE WITNESS:**

17 A. (Mr. Paternaude) Of Pennichuck Water Works itself, of
18 not the total system, it's roughly -- it's roughly
19 80 percent.

20 MR. BOUTIN: Thank you. Now, I have no
21 further questions, but I would like to indicate to the
22 Commission that I filed a brief in this case yesterday.
23 And, in one case, I made a statement that -- I guess it
24 remains accurate, based on this testimony. So, thank you.

1 I've had my questions.

2 CHAIRMAN GETZ: Thank you. Okay.

3 Commissioner Ignatius.

4 CMSR. IGNATIUS: Thank you.

5 BY CMSR. IGNATIUS:

6 Q. Mayor Lozeau, you mentioned the importance to the City
7 of an order by mid November, if possible. I want to be
8 sure I understand the agreement on closing dates. In
9 the prefiled testimony, it talked about closing by the
10 end of December of 2011. And, then, in the Settlement
11 Agreement, there's references to a "March 2012" final
12 cut-off date. Am I mixing those dates? Is there a
13 "close by" date that is agreed upon?

14 A. (Mayor Lozeau) December 31st.

15 Q. All right. I have some questions about governance, and
16 I don't know if this is the right panel, looks like it
17 is, and, Mayor, you're shaking your head "yes", so
18 looks like you're the right witness.

19 A. (Mayor Lozeau) I spent a lot of time on it, so, maybe.

20 Q. All right. This is an unusual structure. And, so, I
21 want to just make sure I understand how various
22 scenarios would play out that we're likely to see over
23 the next few years, if this were approved. Assuming
24 everything is approved as filed, and in the first year

1 of operation, how would a decision be made by one of
2 the utility affiliates, so, PWW, PAC, or PEU, how would
3 a decision be made, let's say, to invest in new
4 infrastructure be made?

5 A. (Mayor Lozeau) It will be made by the full Board of
6 Directors. The goal is for it to be really no
7 different than the way Pennichuck Corporation has
8 approached it. So, you invest capital in the system.
9 And, the system isn't just in Nashua proper, it's
10 throughout those three utilities. You have a
11 responsibility to those customers to invest. Our
12 numbers in our modeling demonstrate an amount of
13 capital investment each year of about the same of what
14 Pennichuck is doing today. So, those decisions would
15 be made just as the Board of Directors makes them
16 today. We've been very cautious in looking at
17 potential Board members to have a mix of disciplines
18 around the table, as I mentioned earlier. So, you want
19 to make sure you have finance people, you want to make
20 sure you have water works people, you want to make sure
21 you have operations people. And, you want to make sure
22 that you have somebody that understands the regulatory
23 status and needs of a utility. And, we really have had
24 a great opportunity to interview people that bring

1 those skill sets to the table. If you have the right
2 mix at the table, the right decisions will be made
3 going forward. And, it's in everybody's best interest
4 for the system to be working well.

5 Q. Are there any instances where one of the separate
6 affiliates might have a different decision-making
7 process than -- because of a particular issue that
8 affects, let's say, Pittsfield, that doesn't affect the
9 other areas?

10 A. (Mayor Lozeau) No. And, one of the things that I
11 probably should have taken the liberty to mention
12 during this, it relates to the public interest, it
13 relates to your question now, and how we're going to
14 take action going forward, is that one of the benefits
15 of this Settlement and the structure that we've put in
16 place means that the people that have been running the
17 Company for quite some time are going to continue to
18 run the Company. So, when I look at a Don Ware and
19 others on his staff, they're going to be making
20 recommendations to the Board of Directors about what
21 the system needs are. They have some long-term plans
22 and strategies about investments that need to be made,
23 they have a capital improvement plan. I see all of
24 those things taking place. And, so, I can't imagine

1 where there would be a process different from one
2 utility than another. It's really going to be what the
3 system needs.

4 Q. Are there ever any instances where the Board of
5 Directors needs a further vote or approval from the
6 City of Nashua?

7 A. (Mayor Lozeau) There are instances that the next Board
8 of Directors, some might tell you that they, you know,
9 that final budget, the capital, you may have noticed
10 some of that language in here. But it's important to
11 note that it isn't about going down line-by-line and
12 saying "Oh, there's a pipe in Amherst" or "a pipe in
13 Pittsfield", it's not about that. It's in the broad
14 term of "this is the capital investment this year." I
15 think Nashua has a really good record of making good
16 decisions. You know, we just -- our second year in a
17 row with a AAA rating. And, one of the things cited by
18 the rating agencies is that we've made good decisions
19 based on our investments in our infrastructure. I
20 don't see the City changing that approach.

21 Q. Can you help me understand the mechanics of that
22 ultimate vote by Nashua in those instances? For
23 example, once there's a decision of the Board of
24 Directors, who does it go to? What sort of notice? Is

1 it a referendum? Is it a vote of the Mayor or the
2 Aldermen?

3 A. (Mayor Lozeau) No.

4 Q. How would it work?

5 A. (Mayor Lozeau) Nashua will be operating as the
6 shareholder, and it would vote only as it related to
7 financial.

8 Q. So, there's never a point where a Board of Directors'
9 decision is put to the people of Nashua to vote on --

10 A. (Mayor Lozeau) No, there's not.

11 Q. -- or their elected officials to vote on?

12 A. (Mayor Lozeau) There is not. As a matter of fact, we
13 intended on purpose to keep the parochial nature out of
14 this structure. I mean, you know, in simple terms,
15 people will say to me "why don't you just make it a
16 department in the City of Nashua?" Because I don't
17 want that. I don't want it to be subject to some of
18 the political pressures that might be out there. I
19 think it's important that it be designed to be able to
20 have good business judgment, a fiduciary
21 responsibility, with an arm's length from the political
22 process, so that it can be run like a business. I
23 think that's the only way that it will run similar to
24 how it's run before. And, the only difference being

1 that it won't be a publicly traded company anymore.

2 And, so, there won't be the need for the shareholders
3 to have that financial benefit. That all of that money
4 can be reinvested in the system. And, all we have to
5 do is cover the cost of operations and investment in
6 the infrastructure to run the system.

7 Q. But one of the intervenors had testified, I think it
8 was Mr. Teebom, had testified that, because this would
9 no longer be a publicly traded corporation, it wouldn't
10 have an annual meeting, wouldn't have the kind of
11 shareholder rapport and access that shareholders might
12 have had before, and he was equating shareholders with
13 ratepayers, and then it says that there would be no
14 opportunity for ratepayers to have that kind of open
15 forum to make their voices heard. And, if I've
16 mischaracterized, I apologize. But do you have any --
17 do you have any reaction to that assertion, any concern
18 on that part?

19 A. (Mayor Lozeau) I have no concern with that. I think
20 that the ratepayers will be heard, they will be heard
21 before this Commission. You're going to regulate and
22 have oversight over it. This process is very open to
23 them. And, in addition, our By-Laws call for the
24 actions of the Board of Directors to be open under the

1 Right-to-Know law, which I think also puts in those
2 extra protections that are necessary and important.

3 CMSR. IGNATIUS: Thank you. That's very
4 helpful. I think that's all I have.

5 WITNESS LOZEAU: You're welcome.

6 CHAIRMAN GETZ: Okay. Good morning.

7 WITNESS LOZEAU: Good morning.

8 BY CHAIRMAN GETZ:

9 Q. Mayor, I have one question. I want to follow up on
10 this issue about the -- it's from the Settlement
11 Agreement, and I think it's raised by Mr. Judge, and it
12 relates to the Merrimack Valley Regional Water
13 District. They get to "nominate one Board member,
14 subject to approval by the City in its capacity as the
15 sole shareholder of Pennichuck Corporation." And, I'm
16 actually reading from Mr. Patenaude's second
17 supplemental testimony, on Page 10. And, it says, it
18 follows up on Line 11 of that page, "This member would
19 be subject to the same conditions that apply to any
20 other Board member, as stated in the current form of
21 By-Laws attached to the Merger Agreement." And, I'm
22 trying to understand what it would -- how that power
23 would be exercised, whether to approve or disapprove a
24 nomination. And, if I go to the By-Laws, and what I'm

1 looking at is actually your testimony from
2 February 18th, and there's an attachment at the back on
3 Page 84, with respect to "Approval and appointment by
4 the sole shareholder", says "a nominee having been
5 nominated, pursuant to Paragraph A, and having met the
6 qualifications set forth in Section 2 above, shall be
7 elected by the sole shareholder at the annual meeting
8 of the Board." So, what I'm trying to understand is,
9 do you have, when I read the -- first read the
10 testimony, it sounded like there was this kind of broad
11 discretion to approve or disapprove any nomination by
12 the District. But, if go to the By-Laws, it sounds to
13 me that the -- as long as who they nominate from the
14 District fits in under some of the description of who
15 can be on the Board, that you're really required to
16 appoint that person. Am I reading this or
17 understanding this correctly?

18 A. (Mayor Lozeau) You are.

19 CHAIRMAN GETZ: Okay. All right.
20 That's all I have. Then, any redirect?

21 MR. SERELL: Just very briefly, Mr.
22 Commissioner. Just one question for you, Mayor Lozeau.

23 **REDIRECT EXAMINATION**

24 BY MR. SERELL:

1 Q. I wanted to follow up on Mr. Boutin's questioning. Why
2 was the City willing to have the Merrimack Valley Water
3 District nominate one member to the Board of Directors,
4 but not allow Merrimack or any other individual towns
5 to do the same?

6 A. (Mayor Lozeau) Well, there's a few reasons. The first
7 one is, because, initially, the Merrimack Valley
8 Regional District was set up because there was a
9 contemplation that eminent domain would take place and
10 then they would be the operating entity. But the main
11 reason is because the Regional Water District is
12 regional, and all of the towns, including Merrimack,
13 can be members of that.

14 In addition, they understand a very
15 fundamental principle, that each of the members that
16 we're interviewing for a position on the Board of
17 Directors understands: You are not there representing
18 the Merrimack Valley Regional Water District. You are
19 not there voting a town or a location that you come
20 from. You are there as a Board of Director member, who
21 has the fiduciary responsibility to conduct business,
22 financing capital investments at a high level of what's
23 best for this company that you're now responsible for.
24 And, unless somebody understands that, they have no

1 place on the Board of Directors.

2 Q. And, why would you not be in favor of having individual
3 towns nominate persons to the Board?

4 A. (Mayor Lozeau) For two reasons. One, because there's
5 too many towns, and you would have a very unwieldy
6 Board of Directors. And, two, because I'm not
7 convinced that they would understand that premise.

8 MR. SERELL: Thank you.

9 CHAIRMAN GETZ: Okay. Then, this panel,
10 I guess, is partially excused.

11 WITNESS LOZEAU: One half.

12 CHAIRMAN GETZ: Thank you, Mayor.

13 WITNESS LOZEAU: You're welcome.

14 MR. BOUTIN: I have some redirect.

15 CHAIRMAN GETZ: I'm sorry, we just had
16 redirect.

17 MR. BOUTIN: Yes, I do.

18 CHAIRMAN GETZ: Well, no, we had
19 redirect. You want to ask --

20 MR. BOUTIN: I'm sorry, recross then.

21 CHAIRMAN GETZ: -- for the opportunity
22 for recross?

23 MR. BOUTIN: Yes.

24 CHAIRMAN GETZ: And, what's the basis of

1 your request for recross? Because recross is not
2 something that we grant as a matter of right.

3 MR. BOUTIN: I think there were some
4 things brought out in the direct -- redirect that would
5 help me. Also, some of her answers, after I was able to
6 make my direct examination, raised questions that I should
7 pursue, although they're very brief.

8 CHAIRMAN GETZ: We will permit you to
9 inquire only with respect to the redirect, which I take it
10 is entirely limited to the distinction between why the
11 District would be accorded an opportunity to have a place
12 on the Board, as opposed to other distinct bodies, such as
13 the Town of Merrimack or other towns. So, you may inquire
14 with respect to the response to that question.

15 **RECROSS-EXAMINATION**

16 BY MR. BOUTIN:

17 Q. Is there anywhere in the By-Laws where the
18 qualifications of directors are stated, other than that
19 they must not be elected officials?

20 A. (Mayor Lozeau) I believe that we have a list of
21 particular disciplines that we're interested in having
22 serve on the Board of Directors. I don't have those
23 By-Laws in front of me.

24 Q. Let me just give you this. The By-Laws are attached to

1 Mayor Lozeau's direct testimony in this docket.

2 MR. SERELL: Commissioner, I'll defer to
3 you, but it seems like it's beyond the scope of the
4 redirect.

5 CHAIRMAN GETZ: Well, I'm going to see
6 where this goes, because I think we're at the edge of the
7 envelope here, Mr. Boutin.

8 MR. BOUTIN: Well, I think that the
9 question and answer --

10 WITNESS LOZEAU: Mr. Boutin?

11 MR. BOUTIN: Yes.

12 WITNESS LOZEAU: You can have that back.
13 Actually, I think what I was looking for was the addendum
14 that I actually posted on the website and sent to every
15 community that gave a listing of the qualifications of
16 those that we were looking for for the Board of Directors.

17 BY MR. BOUTIN:

18 Q. So that, to the extent your testimony to Mr. -- to your
19 lawyer's question about whether or not the nomination,
20 or, I think it was -- it may have been Commissioner
21 Getz's question, whether or not a nominee met the
22 qualifications, you're not talking about those
23 qualifications that are listed on the addendum, but
24 only the qualifications about the political experience,

1 is that correct?

2 A. (Mayor Lozeau) Actually, no, that's not correct. The
3 addendum was agreed to by the Board of Aldermen prior
4 to being posted. So, I would --

5 Q. But it's not -- it's not part of any of your corporate
6 organizational documents, is it?

7 A. (Mayor Lozeau) Not that I'm aware of.

8 MR. BOUTIN: Thank you.

9 CHAIRMAN GETZ: Mr. Serell, last
10 opportunity?

11 MR. SERELL: Nothing further.

12 CHAIRMAN GETZ: Okay. Thank you.

13 MS. THUNBERG: Mr. Chairman, may I --
14 I'd like to make a record request for this statement of
15 qualifications. Because, in your questioning, you had
16 talked about "qualifications", Mr. Boutin has talked about
17 "qualifications". And, I don't think they're the same
18 list. And, I think it would benefit the record to just
19 have this document that Mayor Lozeau is referencing that
20 was posted to a website, just so we can see whether it is
21 the same qualifications or not.

22 MR. SERELL: We'd certainly be happy to
23 provide that.

24 MS. HOLLENBERG: I've never seen the

1 document, so I can't even respond to a request for taking
2 a record request, because I don't know what documents
3 we're talking about.

4 CHAIRMAN GETZ: Well, I guess that would
5 mean that, in no case would anybody ever ask to have a
6 record request submitted to a proceeding, unless you had
7 seen it ahead of time? Which I don't think that's the
8 test. So, what we'll do is, we'll reserve an exhibit for
9 the record request. And, if there's something in that
10 that you have some objection to, you'll be able to -- I'm
11 not sure how long -- well, let me ask this question,
12 Mr. Serell. So, is that something that could be provided
13 today?

14 MR. SERELL: I believe so, yes.

15 WITNESS LOZEAU: Yes.

16 CHAIRMAN GETZ: I don't know if this
17 hearing is going to last one day or more. But, at a
18 minimum, you would have a chance to file something in
19 writing, if you have an objection. So, is there anything
20 further on this topic or for Mayor Lozeau?

21 (No verbal response)

22 CHAIRMAN GETZ: Okay. Hearing nothing,
23 then thank you very much.

24 WITNESS LOZEAU: Thank you.

1 CHAIRMAN GETZ: And, we'll reserve
2 Exhibit 19 for that record request.

3 **(Exhibit 19 reserved)**

4 MR. SERELL: For the next panel,
5 Mr. Camerino will be examining the next panel.

6 MR. CAMERINO: Could we just take a five
7 minute break while our panel gets set? One of them had to
8 step out for a minute.

9 CHAIRMAN GETZ: That would be fine.
10 We'll take a brief recess.

11 (Whereupon a recess was taken at 10:02
12 a.m. and the hearing resumed at 10:11
13 a.m.)

14 CHAIRMAN GETZ: Okay. We're back on the
15 record. And, just let me note that we now have copies of
16 this brief filed by Mr. Boutin yesterday in this
17 proceeding. So, Mr. Camerino.

18 MR. CAMERINO: Thank you, Mr. Chairman.
19 Mr. Patenaude is going to stay up on the stand, and the
20 Joint Petitioners also call Bonalyn Hartley and Donald
21 Ware.

22 (Whereupon **Bonalyn J. Hartley** and
23 **Donald L. Ware** were duly sworn by the
24 Court Reporter, joining Witness

[WITNESS PANEL: Hartley|Ware|Patenaude]

1 Patenaude as a panel of three
2 witnesses.)

3 MR. CAMERINO: And, Mr. Patenaude, I
4 remind you that you are still under oath from before.

5 **BONALYN J. HARTLEY, SWORN**

6 **DONALD L. WARE, SWORN**

7 **JOHN L. PATENAUDE, PREVIOUSLY SWORN**

8 **DIRECT EXAMINATION**

9 BY MR. CAMERINO:

10 Q. Mr. Ware, would you just give your name and business
11 address for the record please.

12 A. (Mr. Ware) Yes. My name is Donald Ware. And, I work
13 for Pennichuck Corporation, located at 25 Manchester
14 Street, in Merrimack, New Hampshire.

15 Q. And, what is your position with the Pennichuck
16 companies?

17 A. (Mr. Ware) I am President of the regulated water
18 utilities.

19 Q. Ms. Hartley, would you give your name and business
20 address please.

21 A. (Ms. Hartley) Yes. My name is Bonalyn J. Hartley. I
22 work for the Pennichuck Corporation and its
23 subsidiaries located in Merrimack, New Hampshire.

24 Q. And, what is your role with the Pennichuck companies?

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1 A. (Ms. Hartley) I'm Vice President of Administration and
2 Regulatory Affairs.

3 Q. Thank you. I'm going to direct questions to each of
4 you individually as part of this direct examination.
5 Mr. Patenaude, beginning with you, would us just
6 provide a brief overview of the basic components of the
7 Settlement Agreement.

8 A. (Mr. Patenaude) Sure. Part of the -- the Settlement
9 Agreement is recommending the Commission to issue an
10 order approving the City's acquisition of Pennichuck.
11 There are nine key areas in the Settlement Agreement,
12 and I'll just go through those: Those are the
13 ratemaking structure proposed by the Joint Petitioners;
14 the treatment of the City's domain -- eminent domain
15 costs; the establishment and operation of the Rate
16 Stabilization Fund; the recognition of a Municipal
17 Acquisition Regulatory Asset as a regulatory asset of
18 the utilities; a proposed limitation on dividends and
19 distributions made by the utilities; a proposed
20 condition relating to the issuance of the City's
21 acquisition bonds; one modification to the corporate
22 governance model proposed by the City for the
23 Pennichuck Corporation following the acquisition; the
24 proposed condition relating to the first rate cases to

1 be filed with the utilities; and a proposed condition
2 relative to the reporting regarding the -- after the
3 closing of the merger.

4 Q. Thank you. Ms. Hartley, Mr. Paternaude mentioned the
5 "ratemaking structure". Can you just provide a brief
6 summary of the ratemaking structure in the Settlement
7 Agreement?

8 A. (Ms. Hartley) Yes. The ratemaking structure is broken
9 down into two major components. The first is the cost
10 of acquiring the existing equity, which is then being
11 used to calculate the CBFRR. That is our term for the
12 "City Bond Fixed Revenue Requirement".

13 The second major element for the
14 ratemaking structure proposed by the Joint Petitioners
15 is that the remaining costs, including any future
16 investment, will be subject to the traditional
17 ratemaking method. This revenue requirement will begin
18 with the next rate cases, and will be based on a
19 combination of these two parts, and will result in
20 rates that are lower than under current ownership. We
21 have provided exhibits and illustrations which
22 demonstrates this effect.

23 Q. Mr. Ware, Ms. Hartley indicated that this proposed
24 ratemaking structure will result in lower rates under

1 City ownership than they would under the current
2 ownership -- than would prevail under the current
3 ownership. Can you just briefly explain why that is?

4 A. (Mr. Ware) Yes. As Ms. Hartley has indicated, at an
5 interest rate of six and a half percent or below the
6 starting point of the rates required or revenue
7 requirement of the utilities under City ownership will
8 be less than that of the rates or revenue requirement
9 under current ownership.

10 On a going forward basis, there are two
11 significant differences that will ensure that costs
12 will remain lower. First of all, capital investment
13 will be done primarily with debt, resulting in a lower
14 cost of capital in the calculation of the revenue
15 requirement. And, secondly, because the Company will
16 no longer be publicly traded, there will be
17 approximately \$1.7 million in savings associated with
18 the administration of a publicly traded company.

19 Q. Okay. Ms. Hartley, you referred to the "CBFRR", the
20 "City Bond Fixed Revenue Requirement". Can you just
21 briefly explain for the Commission what that is and how
22 it's calculated and allocated to the individual
23 utilities?

24 A. (Ms. Hartley) Yes. The revenue -- the "CBFRR" is the

1 revenue requirement necessary to service the utilities'
2 pro rata share of the City Acquisition Bonds. The City
3 -- the City Bond Fixed Revenue Requirement is the
4 City's acquisition costs. And, they are allocated to
5 each utility based on the equity of each of the
6 companies, and are calculated on the City bond interest
7 rate fixed over a 30-year period. To help the
8 Commission with an understanding of how we have
9 calculated this, this is very similar to the North
10 Country Capital Recovery Surcharge that the Pennichuck
11 companies presented to this Commission for a Pennichuck
12 case for our North Country systems, up in Middleton,
13 Locke Lake, and North Conway. And, in that case also,
14 where all the equity component was removed, and only
15 the debt interest rate was applied as a return, and
16 that there was a fixed component for that, for those
17 companies to pay -- for those customers to pay over a
18 period of time. And, it actually resulted in lower
19 rates for those customers. And, just as a reference, I
20 thought it might be helpful.

21 Q. Mr. Ware, the testimony refers repeatedly to a "Rate
22 Stabilization Fund". Can you explain what that is and
23 how that works?

24 A. (Mr. Ware) Yes. The "Rate Stabilization Fund" is

[WITNESS PANEL: Hartley|Ware|Patenaude]

1 proposed to be a \$5 million fund. That initial fund
2 balance will be put into the fund by the City. The
3 fund is there to ensure adequate cash flow is available
4 from Pennichuck Water Works through low revenue
5 periods, such as during the winter, wet summers, or
6 during periods of regulatory rate lag. And, it's
7 essential that it's there so that the City will be able
8 to make its obligation to pay the general obligation
9 bond monthly payments. And, so, this will ensure that
10 there is adequate cash flow, again, through those low
11 revenue periods coming out of the utilities to the
12 City, to allow it to make its payment. That was
13 critical, in terms of the marketing of the bonds and
14 retaining the confidence of the rating agency, that
15 there would be adequate cash flow. Typically, bonds of
16 this nature would require a bond reserve, if it was a
17 municipal bond. And, in order to ensure that, again,
18 there's always adequate cash flow to pay the
19 bondholders. And, so, their Rate Stabilization Fund
20 was an essential component to, again, retaining that
21 AAA rating, which results in the lowest possible
22 interest rate, which gets passed on directly as a
23 benefit to the customers.

24 The fund is treated as a form of working

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1 capital for ratemaking purposes. It will be part of
2 Pennichuck Water Works' rate base, and it will earn
3 Pennichuck Water Works' return on investment.

4 As part of each rate case filing in the
5 future, the Rate Stabilization Fund balance will be
6 evaluated. If the fund balance is less than
7 \$5 million, a deferred debit with a three-year
8 amortization period will be set up equal to the
9 difference between the \$5 million and the amount of
10 funds in the Rate Stabilization Fund at the end of the
11 test year. If the fund balance is over \$5 million, a
12 deferred credit with a three-year amortization period
13 will be set up. And, the goal is to retain and
14 maintain that \$5 million throughout the duration of the
15 bond that the City uses to acquire Pennichuck.

16 Q. By the way, in describing this \$5 million Rate
17 Stabilization Fund, can you explain what change was
18 made from the Company's -- the Joint Petitioners'
19 original proposal for which of the utilities would have
20 that included in their ratemaking structure and what's
21 in the Settlement Agreement?

22 A. (Mr. Ware) Yes. Originally, it was proposed that the
23 \$5 million Rate Stabilization Fund would be divided on
24 a pro rata basis, just like the bond itself on a pro

1 rata basis, amongst each of the three utilities. In
2 the final Settlement, the total Rate Stabilization Fund
3 is in, \$5 million, is in Pennichuck Water Works' rates.

4 Q. Thank you. Mr. Paternaude, in your summary of the
5 Settlement Agreement, you mentioned the "MARA", which
6 is the "Municipal Acquisition Regulatory Asset", and
7 you indicated that the Joint Petitioners are asking the
8 Commission to recognize that as a deferred asset. Can
9 you explain what it is, what the "MARA" is and how it's
10 being recovered?

11 A. (Mr. Paternaude) The MARA is a -- it's the acquisition
12 premium incurred by the City to acquire the utilities.
13 It includes the costs of acquisition, plus the related
14 transaction costs. And, it's recovered as an asset,
15 and it's depreciated over time, based on the
16 amortization of the principal of the bond. It doesn't
17 have a specific treatment in the ratemaking, because
18 it's already included in the CBFRR or a component of
19 the ratemaking process. So, it's an asset that gets
20 deferred over time. And, its offset is really in --
21 it's included in the acquisition cost included in the
22 CBFRR.

23 Q. Okay. Ms. Hartley, when you were talking about the two
24 components of ratemaking going forward, you indicated

1 there's one portion of the costs, the acquisition
2 costs, that are recovered through the City Bond Fixed
3 Revenue Requirement. And, you said "the other costs
4 are recovered through traditional ratemaking." Can you
5 identify what costs you're referring to that will still
6 be subject to traditional ratemaking?

7 A. (Ms. Hartley) Yes. The illustration exhibits
8 demonstrate that the elements that are normally found
9 for water utilities, for operating and maintenance
10 expenses and other such items, will be subject to the
11 traditional ratemaking methodology that is very
12 familiar to this Commission, except for the items that
13 we've discussed here as a panel. The first being the
14 CBFRR. The "CBFRR" again is the "City Bond Fixed
15 Revenue Requirement", which represents the cost of the
16 bond acquisition and the equity of the companies. The
17 second would be the "RSF", which is the Rate
18 Stabilization Fund, as described by Mr. Ware. There
19 will be a reconciliation of that fund at the time that
20 the Company files for rate relief. Thirdly, the MARA,
21 as described by Mr. Patenaude, is removed from the
22 traditional ratemaking process, and is subject to -- is
23 subject to recovery only through the CBFRR. And, then,
24 finally, the Joint Petitioners have provided a modified

1 return calculation for the return on equity, in the
2 case that such -- there's an opportunity for investment
3 by these utilities for capital investment. So, a
4 modified return on equity has been provided for the --
5 specific to this ratemaking process.

6 Q. Mr. Ware, the testimony discussed or the Settlement
7 discusses the first rate case after the acquisition.
8 Can you just briefly touch on the timing of that and
9 the test year and related matters?

10 A. (Mr. Ware) Yes. As part of the Settlement Agreement,
11 the signing parties agreed that the Company would file
12 a rate case for all three of the regulated utilities
13 with a 2012 test year, and that the filing would occur
14 on or before June 1st of 2013. And, this will allow
15 for a year where the operating expenses of City
16 ownership are fully known, and also where the final
17 amount in interest rate on the City Bond has been
18 established. And, so, it will allow, again, a case
19 where appropriate rates can be set based on the
20 ratemaking formula.

21 Q. And, in a lot of acquisition settlements, when the
22 filing of the next rate case is mentioned, more often
23 than not it's mentioned because the utility is agreeing
24 to stay out, as opposed to come in. Can you explain

1 why there was an emphasis on timing the utilities to
2 come in for a new rate case?

3 A. (Mr. Ware) Yes. The interest in coming in, again, is
4 that we anticipate right now, because of the current
5 interest markets, better interest rates than what we
6 originally looked at, which may result in a potential
7 rate decrease, in the case of Pennichuck Water Works
8 and Pittsfield Aqueduct Company.

9 Q. Mr. Patenaude, in the Settlement Agreement, the City
10 makes a commitment not to take profits out of the
11 utilities, not to make distributions up to the City
12 itself, except under certain circumstances. Could you
13 explain the reason for that commitment and how it
14 works?

15 A. (Mr. Patenaude) Initially, when this process started,
16 we had included eminent domain costs in the City's
17 acquisition costs. And, also, as part of this process,
18 it was never the City's intent to take monies out to
19 fund its operations, or fire trucks, or City police
20 cars, or whatever, from this business. It was always
21 the case that it would pay itself back for the bonds
22 that it had taken out to buy the business and that was
23 it.

24 Relative to the eminent domain costs,

1 this agreement contemplates that eminent domain costs
2 will not be borrowed by the City and will not be
3 included in the rates for the ratepayers. The
4 exception to the "take back the profits" situation is
5 to allow the City to recover its eminent domain costs
6 if the Pennichuck utilities have good years. In a bad
7 year or in a marginally profitable year, dividends
8 would not be taken out. But, if there was a very dry
9 year, for instance, and there were profits in the
10 utilities, the Settlement Agreement contemplates that
11 the City would take out up to \$500,000 as a payback for
12 the eminent domain costs, and the eminent domain costs
13 be capped at \$5 million over time. And, so, rather
14 than taking it up front, it's taken over time, if there
15 are profits in the corporation. If there are no
16 profits, then there's no repayment of the eminent
17 domain costs.

18 Q. And, Ms. Hartley, you just heard Mr. Paternaude indicate
19 that, if there are sufficient earnings available, the
20 City would reimburse itself for its eminent domain
21 costs. Are those costs, when the -- any of the three
22 utilities come in for a rate case, are any of those
23 costs going to be used for purposes of determining the
24 Company's revenue requirement and its rates?

1 A. (Ms. Hartley) No. But I would like to add that the
2 City has also agreed to an audit of those costs and a
3 categorization of those costs. But, none of those
4 costs will be included in the ratemaking process, when
5 the three companies come in in 2012.

6 Q. Thank you. Mr. Paternaude, the Settlement Agreement
7 includes a number of findings that go into more detail
8 than the Commission sees frequently in Settlement
9 Agreements. And, I'm wondering if you could just
10 briefly explain to the Commission why the Joint
11 Petitioners have asked for findings of that level of
12 detail in submitting the Settlement Agreement?

13 A. (Mr. Paternaude) It's in satisfying our rating agencies,
14 so that we can show them that we expect this
15 organization or business to be self-supporting, and be
16 able to pay off the City debt with the revenues from
17 this business. So, that's why we have so much detail
18 in the Settlement Agreement, is because we want to
19 maintain our current rating of AAA and AA, and to get
20 the best interest rates, which flow through to the
21 ratepayers, in this case.

22 MR. CAMERINO: Thank you. Mr. Chairman,
23 I just have one other minor item, which is to, for the
24 accuracy of the record, we had premarked for

1 identification "Exhibit 8", which is Ms. Hartley's second
2 supplemental testimony. And, after that was filed, there
3 was actually a change in some of the schedules to the
4 Settlement Agreement that results in changes in numbers in
5 Ms. Hartley's testimony. So, what I'd like to do is
6 provide revised copies of her testimony and just ask her a
7 couple of questions regarding that, to make clear what I'm
8 providing.

9 CHAIRMAN GETZ: Okay.

10 BY MR. CAMERINO:

11 Q. So, Ms. Hartley, I'm going to show you a document that
12 is your testimony dated October 18, 2011, but it says
13 "Revised October 24, 2011". And, ask you if that is
14 true and correct to the best of your knowledge and
15 belief?

16 A. (Ms. Hartley) Yes, it is.

17 Q. And, is that -- that testimony was prepared by you or
18 under your direction?

19 A. (Ms. Hartley) Yes.

20 Q. And, it's intended to make some corrections to the
21 testimony that you previously submitted, dated October
22 18th, 2011?

23 A. (Ms. Hartley) That's correct.

24 MR. CAMERINO: Okay. Mr. Chairman, if

1 we could mark that as I believe the next number is
2 "Exhibit 19"?

3 CHAIRMAN GETZ: It would be "20".

4 MR. CAMERINO: "20" now? Okay. "20"
5 for identification. And, because we marked the prior
6 version, what I'd also like to submit is an "Exhibit 21",
7 which is a redlined copy, or, actually, it's not red, an
8 underscored copy that is marked to show the changes from
9 Exhibit 8, so the Commission knows exactly what changes
10 were made.

11 BY MR. CAMERINO:

12 Q. And, Ms. Hartley, let me show you that exhibit that I'm
13 asking to be marked as "Exhibit 21" for identification,
14 and ask you if the changes on there are, in fact, the
15 changes that you made from Exhibit 8 to Exhibit 20?

16 A. (Ms. Hartley) That is correct.

17 MR. CAMERINO: Thank you.

18 CHAIRMAN GETZ: Yes. We'll mark
19 Exhibits 20 and 21 for identification, as described by
20 Mr. Camerino.

21 (The documents, as described, were
22 herewith marked as **Exhibit 20** and
23 **Exhibit 21**, respectively, for
24 identification.)

1 MR. CAMERINO: Just give me one second,
2 I want to check with the parties to see if I need to
3 provide this. And, just again for the record, Exhibit 8
4 contains schedules. We have not reprinted those here.
5 So, Exhibit 20 is Ms. Hartley's testimony as corrected,
6 but the schedules still remain with Exhibit 8, which is
7 why we continue to ask that that be marked.

8 CHAIRMAN GETZ: Okay.

9 MR. CAMERINO: Thank you. That
10 concludes my direct examination.

11 CHAIRMAN GETZ: Anything further, Mr.
12 Serell, for the panel?

13 MR. SERELL: No, your Honor.

14 CHAIRMAN GETZ: Mr. Judge?

15 MR. JUDGE: No questions, your Honor.

16 CHAIRMAN GETZ: And, Mr. Alexander?

17 MR. ALEXANDER: No questions.

18 CHAIRMAN GETZ: Mr. Teebom?

19 MR. TEEBOM: Yes, a couple.

20 **CROSS-EXAMINATION**

21 BY MR. TEEBOM:

22 Q. Mr. Paternaude, what is the amount, the dollar amount
23 for the MARA, M-A-R-A?

24 A. (Mr. Paternaude) The actual dollar, the amount of the

[WITNESS PANEL: Hartley|Ware|Paternaude]

1 MARA, will not be calculated until the end, because
2 it's really based on how much money is borrowed by the
3 City and --

4 (Interruption of a telephone ringing
5 over the speaker system.)

6 CHAIRMAN GETZ: Hold on for a second.

7 (Off the record.)

8 CHAIRMAN GETZ: You can resume,
9 Mr. Teebom.

10 **BY THE WITNESS:**

11 A. (Mr. Paternaude) The estimate was roughly 69 million.

12 BY MR. TEEBOM:

13 Q. That represents what? That represents the difference
14 between --

15 A. (Mr. Paternaude) That's the difference between the
16 purchase price, and -- you take the purchase price, you
17 add the liabilities assumed, and subtract from that the
18 assets at the -- on the balance sheet.

19 Q. Okay. Is that calculated in one of the -- presented in
20 one of the exhibits?

21 A. (Mr. Paternaude) It was, in the testimony in July, I
22 believe.

23 Q. Okay. My second question is looking at the -- this is
24 for Ms. Hartley, the famous Hartley spreadsheets, and

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1 pick Schedule A, any of the Schedule A's.

2 A. (Ms. Hartley) Okay. I have Pennichuck Water Works in
3 front of me.

4 Q. Yes. Just pick the PWW one is the easiest one, the
5 first one, actually, in the whole set. Is it true that
6 the rate base in Pennichuck ownership is less than half
7 the rate base under -- the rate base under Nashua
8 ownership is less than half the rate base under
9 Pennichuck ownership?

10 A. (Ms. Hartley) Yes.

11 Q. And, the difference is the -- under Pennichuck
12 ownership, in the PWW case, 92 million, and under the
13 Nashua ownership is 42 million?

14 A. (Ms. Hartley) Correct. Adjusting for the equity
15 purchased assets of the corporation, and which are
16 found in the CBFRR.

17 Q. And, that 42 million, that gets -- that earns at a
18 blended rate of -- that earns at the traditional rate?

19 A. (Ms. Hartley) No, that's not the traditional rate.
20 Currently, under current ownership, our blended return,
21 overall rate of return is 7.98 percent. Under the City
22 ownership, it will be at the cost of Pennichuck Water
23 Works' debt, which is 6.04 percent.

24 Q. Okay. Now, I remember reading, and --

1 (Court reporter interruption.)

2 BY MR. TEEBOM:

3 Q. The cost of the -- the cost that the CBFRR is earning
4 is -- was the cost of the City's bond cost, plus 3
5 percent, and I remember the 3 percent, I don't -- can
6 you -- is the 3 percent added to the 6 percent --

7 A. (Ms. Hartley) Well, the CBFRR, the City Bond Fixed
8 Revenue Requirement, is going to be calculated on
9 whatever the bond interest rate is, the final bond
10 interest rate, which we don't know yet, will be
11 calculated on that rate. And, that's the rate that
12 will be allocated on a pro rata basis to each of the
13 regulated utilities.

14 Q. Now, I remember in an earlier agreement --

15 CHAIRMAN GETZ: Excuse me. Mr. Teebom,
16 it might be helpful for Mr. -- this Mr. Patnaude if you
17 sat down and spoke into the microphone.

18 MR. TEEBOM: I see. Okay. I thought we
19 had to stand up.

20 BY MR. TEEBOM:

21 Q. I remember reading in an earlier version, perhaps this
22 version we just got last night, that you added 3
23 percent to that rate?

24 A. (Ms. Hartley) I really do not recall that, in terms of

1 the CBFRR, not at all. Oh. Okay, I see where you're
2 talking about. I'm sorry, I misunderstood you. If you
3 go to Schedule 4 of those same exhibits, I believe what
4 you're referring to is, if there was any future
5 investment made by the new entity, okay, that we have
6 proposed a modified return on that equity that is
7 different than what you might find in the market-based
8 calculation for a publicly traded company and that's
9 under the regulatory jurisdiction of the PUC. And,
10 this modified return on equity does propose, and it
11 says -- states right here, a 3 percent, if you will,
12 increment on the most recent 12 month average of the 30
13 year United States Treasury Bond interest rate.

14 Q. What page is that on, Ms. Hartley?

15 A. (Ms. Hartley) It's on Page 8 of 9, Schedule 4. And,
16 it's at the bottom. It's a footnote. And, I think
17 that's probably what you're referring to, Mr. Teebom.

18 Q. Yes. Can you refer us also then to the Settlement
19 Agreement where this is cited, the Settlement Agreement
20 itself?

21 A. (Ms. Hartley) It's not in the Settlement Agreement, I
22 don't think, specifically, perhaps.

23 Q. It was in an earlier version, that's why I see some
24 difficulty to track footnotes. So, it was in an

[WITNESS PANEL: Hartley|Ware|Patenaude]

1 earlier version. I'd like you to clarify where it is,
2 what page?

3 A. (Ms. Hartley) I think there is -- I think there was
4 some reference to it, but not as specific as that.

5 MR. SERELL: Page 10.

6 WITNESS HARTLEY: Thank you. It's in
7 here?

8 WITNESS PATENAUDE: Page 10.

9 WITNESS HARTLEY: Thank you, John.

10 WITNESS PATENAUDE: The last sentence.

11 **BY THE WITNESS:**

12 A. (Ms. Hartley) Okay. You are correct, Mr. Teebom. It's
13 on Page 10 of the Settlement Agreement, Section e, and
14 I believe it's your last sentence --

15 BY MR. TEEBOM:

16 Q. Yes.

17 A. (Ms. Hartley) -- that you're referring to. Would you
18 like me to read that for you? Did you find it?

19 Q. I found it. I just wanted to make sure on the record
20 that it's understood.

21 A. (Ms. Hartley) Yes.

22 Q. And, I have a final -- it's important to understand
23 these points, because of, you know, how do we pay the
24 excess CBFRR rates, it's new costs, and reimburse the

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1 City of Nashua for the -- the City of Nashua, of
2 course, paid for this acquisition --

3 (Court reporter interruption.)

4 BY MR. TEEBOM:

5 Q. The reason it's important to understand this point is
6 how, you know, you have a new debt of \$157 million of
7 the Nashua ownership that does not exist under the
8 Pennichuck ownership. And, how do the utilities pay
9 this to the City of Nashua, and yet have a lower water
10 rate? That's the point. And, how is that achieved?
11 Now, I am quite -- I think I have it figured out, Ms.
12 Hartley.

13 CHAIRMAN GETZ: Well, Mr. Teebom, do you
14 have additional questions for the witnesses?

15 MR. TEEBOM: Yes.

16 BY MR. TEEBOM:

17 Q. Could you just summarize that point. How do we achieve
18 -- how does the new corporation achieve paying the City
19 of Nashua in full for its debt, so like \$11 million
20 annual payments, and keep its water rates lower than
21 under Pennichuck ownership? Can you summarize that for
22 me?

23 A. (Ms. Hartley) Yes, I'd be glad to. Under the current
24 ownership, this Company, under current ownership, is

1 entitled to earn a return, our current return on equity
2 is 9.75 percent. If you will, you might call that a
3 "profit".

4 Under the new ownership, which would be
5 the City ownership, that will no longer exist. We have
6 agreed to a modified return on equity, which would be
7 less, and, in this case, it would be -- I think in this
8 example it was 7.19 percent, which would be less than
9 the market that we might achieve under normal
10 ratemaking policies and procedures here at the
11 Commission on a market-based return on equity. And,
12 most importantly, your CBFRR, the City Bond Fixed
13 Revenue Requirement, is going to be calculated, as I've
14 stated, at a lower interest rate than the 9.75. In
15 other words, what we're saying is, the total cost of
16 capital, and I'm going to summarize this, under current
17 ownership, is greater than it will be under the City
18 ownership. And, therefore, rates will always, all
19 things considered equal, be lower.

20 Q. Thank you. Okay. A final question. Under, in the --
21 I think it's addressed to -- well, it relates to the
22 Settlement Agreement, and I guess that goes to Mr.
23 Paternaude, perhaps, Mr. Ware, I'm not sure. But
24 there's an item called "severance cost" of

1 \$2.2 million. Does that apply only to senior corporate
2 managers who leave the corporation or does that apply
3 to senior corporate managers who leave the old
4 corporation and then assume the same position in the
5 new corporation?

6 A. (Mr. Patenaude) No. It's a -- the severance agreements
7 are what I call a "double trigger agreement". There
8 has to be a change in control, number one, first
9 trigger. And, the second trigger is you have to leave
10 the employ of the Company. So, people that stay on
11 will not receive severance.

12 MR. TEEBOM: Okay. Thank you. No more
13 questions, Mr. Getz.

14 CHAIRMAN GETZ: Thank you. Mr. Wiesner?

15 MR. WIESNER: I have no questions, Mr.
16 Chairman.

17 CHAIRMAN GETZ: Ms. Thunberg?

18 MS. THUNBERG: Yes. I just have a
19 clarifying question to ask Mr. Patenaude.

20 BY MS. THUNBERG:

21 Q. During your direct, Attorney Camerino had asked you a
22 question about the specificity of the approvals that
23 the Joint Petitioners are looking for. And, you
24 mentioned the purpose of the specificity was for the

1 ratemaking -- rating agencies, rather?

2 A. (Mr. Paternaude) Yes.

3 Q. And, I just wanted to have you clarify, do you have the
4 Settlement Agreement before you?

5 A. (Mr. Paternaude) Yes, I do.

6 Q. Are there specific sections that ratemaking agencies --
7 I'm sorry, I'm using "ratemaking", strike the question.
8 Are there specific sections of the Settlement Agreement
9 that the rating agencies need to see in a Commission
10 order? And, if so, can you draw the Commission's
11 attention to those sections?

12 A. (Mr. Paternaude) Yes. And, those, obviously, the first
13 one is the approval of the merger. The ratemaking
14 structure is very important for ratemake -- rating
15 agencies, because that proves -- that shows that the
16 City can be repaid out of the revenues generated by
17 Pennichuck Corporation, the utilities.

18 The Rate Stabilization Fund is another,
19 because that's sort of a contingency fund. The MARA is
20 another that's important to the rating agencies, the
21 Municipal Acquisition Regulatory Asset. And, the
22 limitation on dividends is also important to the rating
23 agencies, because they want to make sure that the cash
24 is there, that the City is not using the cash to buy

[WITNESS PANEL: Hartley|Ware|Patenauade]

1 fire trucks, and they're using the cash to -- that's
2 generated mainly to pay down debt, and only if there is
3 excess profits, to pay down the eminent domain costs.
4 And, those are the main ones.

5 MS. THUNBERG: Thank you. The Staff has
6 no further questions.

7 CHAIRMAN GETZ: Okay. Ms. Hollenberg?

8 MS. HOLLENBERG: Thank you.

9 BY MS. HOLLENBERG:

10 Q. Mr. Patenaude, could you please turn to Page 6 of the
11 Settlement Agreement. Directing your attention to
12 Paragraph 3, titled "Financing of the Acquisition".
13 This paragraph appears to identify the acquisition
14 costs, do you agree with that?

15 A. (Mr. Patenaude) Yes.

16 Q. And, it states that these are "estimates" of the
17 current acquisition costs, do you agree?

18 A. (Mr. Patenaude) Yes.

19 Q. Do you also agree that these are -- or, are these
20 estimates based on any specific date?

21 A. (Mr. Patenaude) The estimates are based on closing
22 prior to December 31st.

23 Q. Thank you. And, I'd like to ask you about each of the
24 estimates for each category of costs, and ask to what

1 extent you expect or the City expects these estimates
2 to change in the future. The "Merger consideration to
3 be paid under the Merger Agreement", number (1), what
4 -- would you characterize this as a "fixed estimate" or
5 one that might change?

6 A. (Mr. Paternaude) It could only change slightly, if
7 options -- that this includes both shares outstanding
8 and options to purchase shares. So, if an individual
9 exercised his or her option to buy shares, there could
10 be a slight shift between the two.

11 Q. Do you have a sense of the outstanding options that are
12 existing at this time?

13 A. (Mr. Paternaude) I have a sense, but I don't have the
14 number engrained in my mind.

15 Q. Can you say generally or give a sense about the percent
16 to which this might fluctuate?

17 A. (Mr. Paternaude) It would be slightly.

18 Q. Okay.

19 A. (Mr. Paternaude) It would be, you know, --

20 Q. Okay. Okay. And, number (2), "Bond issuance costs and
21 fees", could you give us a sense about this estimate
22 and how fixed it is or whether it could change in the
23 future?

24 A. (Mr. Paternaude) It could change by the amount of the

1 bonds, and it was a number that was provided to us by
2 our advisors. So, it really depends on the amount of
3 the bonds and interest rates.

4 Q. Would you characterize it similarly that it would
5 change slightly or --

6 A. (Mr. Paternaude) I really don't know, because that's,
7 you know, again, it's a condition of the amount of the
8 bonds and the rates and so forth.

9 Q. Would it increase if the bond issuance were delayed?

10 A. (Mr. Paternaude) It could. You know, again, we relied
11 on the information from our bond advisors on this.

12 Q. Okay. And, number (3), "Transaction costs and fees",
13 do you have a since about that estimate?

14 A. (Mr. Paternaude) Yes. That, you know, again, that was
15 an estimate looking at legal fees, investment banking
16 fees. I would say that this is the -- this number will
17 not be -- I would say it should not be greater than
18 this.

19 Q. Okay. And, the "Severance costs", do you agree that
20 that's a precise estimate?

21 A. (Mr. Paternaude) I believe it is, yes.

22 Q. And, the Rate Stabilization Fund is a precise number
23 also?

24 A. (Mr. Paternaude) That's a precise number.

1 Q. Thank you. Mr. Patenaude, could you please turn to
2 Page 17 of the Settlement Agreement. And,
3 specifically, I'd like to ask you a question about
4 Paragraph E.1. There's a provision, a subparagraph,
5 subparagraph (ii), which states words to the effect
6 that there is a requirement that the "true interest
7 cost on the City Acquisition Bond does not exceed
8 6.5 percent per annum." Do you see that?

9 A. (Mr. Patenaude) Yes.

10 Q. And, what does "true interest cost" mean as used in
11 this context?

12 A. (Mr. Patenaude) It's like -- it's the rate that the
13 bonding folks look at. It's the interest cost over the
14 life of the bond from that. So, when they talk about
15 "bond costs", they're really looking at the true
16 interest costs.

17 Q. Okay. Would the true interest cost include the costs
18 for a bond issuance?

19 A. (Mr. Patenaude) Not typically.

20 Q. Okay. And, is it the City's intention to secure the
21 lowest interest rate possible on the City acquisition
22 debt?

23 A. (Mr. Patenaude) Yes.

24 Q. Thank you. If I could ask you, Mr. Patenaude, to

1 please look at Page 18 of the Settlement Agreement.
2 Paragraph 3, which is the "Post-Close Accounting
3 Report". It appears to require the utilities to file a
4 detailed accounting of the transactions. Do you see
5 that?

6 A. (Mr. Patenaude) Yes.

7 Q. And, will the account -- what will the accounting
8 include -- or, I guess the accounting will include,
9 it's identified some of the things the accounting will
10 include, including an accounting of all acquisition
11 costs. Will this accounting of acquisition costs
12 include supporting documentation?

13 A. (Mr. Patenaude) I believe it will, yes.

14 Q. So, if there were invoices related to specific costs,
15 that would be an example of a supporting document for a
16 cost?

17 A. (Mr. Patenaude) That would be available, yes.

18 Q. Thank you.

19 MS. HOLLENBERG: One moment please.

20 BY MS. HOLLENBERG:

21 Q. Mr. Patenaude, earlier, in the earlier panel with the
22 Mayor, there was some discussion and questions about
23 the decisions about infrastructure investment. And, I
24 would -- actually, to the extent that anyone on the

1 panel, Mr. Ware, if you want to comment on this, and I
2 just want to clarify. Is it correct that decisions
3 about whether or not certain infrastructure investment
4 needs to be done for a utility to provide safe and
5 adequate service, that that will be made at the
6 management level of the utility?

7 A. (Mr. Ware) I believe the intent would be to follow the
8 current process, which is where the operating arm makes
9 recommendations to the Board relative to capital
10 improvements necessary to, you know, provide adequate
11 and safe drinking water to all its customers. And,
12 that recommendation that's, again, presented by the
13 various operating entities and managers, goes to the
14 Board. The Board then reviews it, and then accepts
15 that. They don't get involved in the process of
16 identifying the individual projects, but they do make a
17 decision as far as the total amount that they will
18 allow to be budgeted. And, if they come back and say
19 "you've got a 6 and a half million dollar budget, we
20 want it to be 6 million", it goes back to the operating
21 folks who work as a team and find the -- and eliminate
22 the half million dollars from the budget.

23 Q. Okay. And, when you refer to the "Board", you're
24 referring to the Pennichuck Corporation Board?

1 A. (Mr. Ware) Correct.

2 Q. Thank you. Mr. Patenaude, would you agree with
3 Mr. Ware's description of the process that will be used
4 going forward with regard to the infrastructure
5 investment made at the utility level?

6 A. (Mr. Patenaude) Yes.

7 MS. HOLLENBERG: Thank you. I don't
8 have any other questions. Thank you.

9 CHAIRMAN GETZ: Thank you. Mr. Boutin.

10 BY MR. BOUTIN:

11 Q. A question for Mr. Ware. Earlier today I showed you a
12 map and asked you to outline the Pennichuck franchise
13 in Merrimack. And, I believe you did so in green on
14 this chart. Am I outlining it with my finger where you
15 put your green mark?

16 A. (Mr. Ware) Yes, that is where I put my green mark.

17 MR. BOUTIN: And, because no one could
18 seem to locate a map of the franchise, I'm going to make
19 this an additional exhibit.

20 CHAIRMAN GETZ: Okay. So, copies, are
21 you going to have smaller copies? Are you going to have
22 to make that an actual exhibit?

23 MR. BOUTIN: I think we'll -- no, I will
24 provide smaller copies, except I don't -- actually, let me

1 just take a minute. I have a copy --

2 CHAIRMAN GETZ: Well, let's go off the
3 record for a second, just so I understand.

4 MR. BOUTIN: Yes.

5 (Whereupon an off-the-record discussion
6 ensued.)

7 CHAIRMAN GETZ: All right. Let's go
8 back on the record. And, we're discussing how to describe
9 for the record some adjustments to the Town of Merrimack's
10 Exhibit I, to reflect some inquiry Mr. Boutin has for Mr.
11 Ware.

12 MR. BOUTIN: And, what I have is, you
13 presently have before you Exhibit -- Merrimack Exhibit I,
14 which is a copy of the same map. I asked Mr. Ware to draw
15 in, with a green line, what the Pennichuck franchise is in
16 Merrimack, and he's done so on the chalk on this board
17 here. I will submit an exhibit afterwards which is a
18 Exhibit I, marked in the same manner that Mr. Ware has
19 done. And, that would then be, according to the Chair's
20 description, the next exhibit in the Merrimack series,
21 which I believe is J. And, the map that I'm referring to
22 is called "Privately Owned Vacant Parcels (Industrial)",
23 which has a "Town of Merrimack" stamp on it. And, I'll
24 produce some testimony later as to where it came from.

1 CHAIRMAN GETZ: Okay.

2 BY MR. BOUTIN:

3 Q. Now, Mr. Ware, the area shown in green is a franchise
4 of the Pennichuck Water Works, correct?

5 A. (Mr. Ware) Yes.

6 Q. And, it's sometime referred to as "part of the Core
7 System". Would you explain that.

8 A. (Mr. Ware) What we term the "Pennichuck Water Works
9 Core System" are all our franchise areas in Pennichuck
10 Water Works that are served from the Core Water System,
11 which gets most of its water from the treatment plant
12 and from the Pennichuck Brook watershed.

13 Q. What other areas outside of Nashua are served by the
14 Core System, as you understand it?

15 A. (Mr. Ware) There are portions of Hollis, Amherst,
16 Milford, and then we have a contract with the Town of
17 Hudson and the Town of Tyngsboro that receive water
18 from the Core System.

19 Q. Those latter two have bulk water contracts, as I
20 understand it?

21 A. (Mr. Ware) Yes.

22 Q. Now, have any of the other towns, which you consider
23 part of the Core System, intervened in this proceeding?

24 A. (Mr. Ware) Not to my knowledge, no. Well, excuse me,

1 Milford is intervening.

2 Q. Milford is also a bulk water customer, is that correct?

3 A. (Mr. Ware) We have customers -- well, they're not Core
4 customers, but we have what we call "CWS customers" in
5 Milford.

6 Q. Now, --

7 CHAIRMAN GETZ: I'm sorry, when you say
8 "CWS", "Core Water System", is that --

9 WITNESS WARE: Well, there's two --

10 CHAIRMAN GETZ: I just want what the
11 "CWS" stand for.

12 WITNESS WARE: That's the Community
13 Water Systems that are not connected to the Core Water
14 System that are part of Pennichuck Water Works.

15 CHAIRMAN GETZ: Thank you.

16 BY MR. BOUTIN:

17 Q. So that -- I want to turn now to the question of
18 capital costs. As I understand it, capital costs each
19 year are to be funded by additional debt, is that
20 correct?

21 A. (Mr. Ware) Yes.

22 Q. And, that additional debt is going to be bond debt, is
23 that correct?

24 A. (Mr. Ware) Yes.

1 Q. And, the estimate right now is that that additional
2 bond debt would average about 8 million a year, is that
3 also correct?

4 A. (Mr. Ware) Yes.

5 Q. Now, is it your understanding that any additional
6 bonded indebtedness has to be approved by the
7 shareholder?

8 A. (Mr. Ware) The issuance of debt, yes. That's my
9 understanding that the shareholder would approve.

10 Q. And, if I were to say to you that that is part of the
11 Articles of Incorporation of the merged company, would
12 that also be something you'd agree with?

13 A. (Mr. Ware) Yes.

14 Q. So that, in effect, the Board of Aldermen and the City
15 of Nashua is going to be approving the capital budget,
16 isn't that correct?

17 A. (Mr. Ware) They will be approving the amount to be
18 borrowed.

19 Q. And, if they fail to approve the amount that's
20 borrowed, then there would be no borrowing, is that
21 right?

22 A. (Mr. Ware) That would be correct, as I understand it.

23 Q. Now, referring to what will be Exhibit J, the chalk
24 that I just referred to, just south of the area shown

1 on that map -- strike that. Would you agree that the
2 southerly border between Merrimack and Nashua runs
3 roughly along Pennichuck Brook?

4 A. (Mr. Ware) Yes.

5 Q. And, south of Pennichuck Brook, would you also agree is
6 where Nashua has one of its main commercial/industrial
7 corridors? Route 101-A?

8 A. (Mr. Ware) If you're identifying Route 101-A as being
9 just south of the brook, yes.

10 Q. Well, would you agree that it is just south of the
11 brook?

12 A. (Mr. Ware) It is south of the brook, yes.

13 Q. Now, I don't know whether my next questions are for Mr.
14 Patenaude or Mr. Ware, but they involve the Rate
15 Stabilization Fund. And, I'm inquiring about something
16 I'm not sure I understand. I'll refer you to Exhibit C
17 of the Settlement Agreement.

18 CHAIRMAN GETZ: So, we're talking about
19 the last five, four or five pages of the Settlement
20 Agreement package?

21 MR. BOUTIN: It's entitled, yes, the
22 "Methodologies and Procedures for PWW Rate Stabilization
23 Fund".

24 CHAIRMAN GETZ: Okay.

1 MR. BOUTIN: I want to be sure he has
2 it.

3 BY MR. BOUTIN:

4 Q. Okay. I just want to make sure I understand how this
5 works. And, I've got to tell you, it's changed a few
6 times, so I'm not sure that I do. The Rate
7 Stabilization Fund is now on the -- or, was proposed to
8 be on the books of Pennichuck Water Works, one of the
9 regulated utilities, is that correct?

10 A. (Mr. Ware) Yes.

11 Q. And, it's not going to be allocated among the other
12 utilities, as I believe you testified. Am I right
13 again?

14 A. (Mr. Ware) Yes.

15 Q. So that, if one of the other utilities, regulated
16 utilities, needs money to stabilize its rates or to
17 make up the deficiencies, the proposal, as I gather, is
18 for that utility to borrow from Pennichuck Water Works
19 out of the Rate Stabilization Fund. Have I got it
20 right?

21 A. (Mr. Ware) That is one of their options to meet a
22 revenue shortfall, relative to their City Bond Fixed
23 Revenue Requirement.

24 Q. Okay. So, if they don't have -- well, that's the first

1 thing that comes out of the revenues, is that right, is
2 the City Fixed -- Bond Fixed Revenue Requirement?

3 A. (Mr. Ware) Yes.

4 Q. Okay. So, if there's a deficiency, then they're going
5 to have to borrow from Pennichuck out of the Rate
6 Stabilization -- Pennichuck Water Works out of the Rate
7 Stabilization Fund, is that right?

8 A. (Mr. Ware) That is one of their options. They can
9 borrow from Pennichuck or they could borrow from a line
10 of credit.

11 Q. If they had a line of credit?

12 A. (Mr. Ware) Yes.

13 Q. And, in terms of the borrowing that would occur, if it
14 did occur, between Pennichuck Water Works and one of
15 these utilities, the ratepayers of Pennichuck Water
16 Works would bear the risk of those loans, isn't that
17 right? In other words, if you're not repaid, you're at
18 risk.

19 A. (Mr. Ware) Yes.

20 Q. And, if the Pennichuck Water Works were also in a
21 revenue deficiency situation, they would also be
22 required to draw on this fixed revenue -- what's the
23 current name, fund. So that, let's take a hypothetical
24 scenario and see whether or not I've got things right

1 here. If, in year one, there is a significant profit,
2 which the regulated utilities have accumulated.
3 Pennichuck Corp. is then authorized, after it's paid
4 its share of the indebtedness for that year, is
5 authorized to reimburse the City of Nashua for its
6 eminent domain costs. Have I got that right?

7 A. (Mr. Ware) Up to a maximum of \$500,000.

8 Q. Thank you. That's correct. And, I must compliment the
9 City on the fact that they have worked with the
10 intervenors on concepts like this, because they are
11 difficult to understand. So that, if, in the ensuing
12 two years, there are significant losses among the
13 utilities, in the first year, the fund is depleted, and
14 the Company loans are made, ostensibly, if the fund is
15 used, is that right?

16 A. (Mr. Ware) The fund, again, can only be used to meet a
17 revenue shortfall related to the City Bond Fixed
18 Revenue Requirement. If you have operating expenses
19 that are not being met by the revenue requirement
20 that's not associated with the CBFRR, that would come
21 from a line of credit.

22 Q. Again, if the line credit was established?

23 A. (Mr. Ware) There is a line of credit.

24 Q. For each --

1 A. (Mr. Ware) There will be a line of credit.

2 Q. For each of these utilities?

3 A. (Mr. Ware) There is a line of credit for the
4 corporation, which is --

5 Q. Okay. But the first draw is always to this debt
6 retirement?

7 A. (Mr. Ware) No.

8 Q. What's the first draw on the revenues of these
9 regulated utilities?

10 A. (Mr. Ware) The revenues are divided as they come in on
11 a ratio between the CBFRR account and the operating
12 account, if you will. So, if, at the next rate case,
13 for instance, the CBFRR requirement were \$9 million out
14 of a \$27 million revenue requirement, 33 percent of
15 each month's revenues would go into the CBFRR account,
16 67 percent would go into an operating account. The
17 monies in the CBFRR account are exclusively there to
18 pay the City Bond requirement.

19 Q. And, if there's not enough money there, you borrow from
20 the rate -- or, you take money from the Rate
21 Stabilization Fund?

22 A. (Mr. Ware) Correct.

23 Q. Okay. So, that being a resident of Pennichuck Water
24 Works, am I correct in assuming that the risk of that

1 fund being deficient, in other words, it is -- the fund
2 is less than 5 million because of these borrowings
3 and/or payment to CBFRR, then the Pennichuck Water
4 Works' customers are the ones who bear that risk?

5 A. (Mr. Ware) Only for the portion of money that comes out
6 of that fund for Pennichuck Water Works.

7 Q. And, that's mainly the Merrimack and Nashua customers,
8 is that right?

9 A. (Mr. Ware) Amherst, Milford, Hollis, and all the
10 communities that are served by Pennichuck Water Works.

11 Q. None of whom have asked for a seat at the Board, is
12 that right?

13 A. (Mr. Patenaude) No. None have.

14 MR. BOUTIN: No further questions.

15 CHAIRMAN GETZ: Thank you. Commissioner
16 Ignatius.

17 CMSR. IGNATIUS: Thank you.

18 BY CMSR. IGNATIUS:

19 Q. I wanted to see if there's some nice method to these
20 questions, and I can't find one. So, I'm going to have
21 to move around a little bit. The overall structure of
22 this transaction that's proposed, a number of times in
23 the testimony refers to it being done for tax purposes,
24 that some of the mechanisms that have been set up are

1 to avoid bad tax consequences. So, can -- Mr.
2 Paternaude, probably, can you describe what your
3 analysis has been on why these mechanisms will not
4 create bad tax consequences? And, what would happen if
5 it turns out that your decisions or the advice you've
6 been given proven to be wrong and there are tax
7 consequences that weren't anticipated?

8 A. (Mr. Paternaude) The reason there are -- there would be
9 no tax consequence is that Pennichuck Corporation still
10 continues to operate as a taxable corporation, files
11 tax returns. So, it hasn't triggered this -- the
12 built-in gain, which is referred to, I think, in my
13 testimony. We feel pretty confident that that's an
14 appropriate tax treatment of that.

15 The other thing in this process is
16 really that we could not buy the shares of the
17 corporation with non-taxable debt. So, that's a no-no.
18 So, it -- just because the debt -- the bonds themselves
19 are not allowed to buy shares of the corporation. If
20 it were to be challenged, the built-in gain, the tax on
21 the built-in gain, I believe would have to, at that
22 point in time, and even if it were challenged, the
23 Company would have, you know, rights to fight the
24 challenge. And, we believe that we have adequate

1 defenses and we believe we're right on the issue. It
2 would be years down the road before this issue were
3 resolved. And, then, if it, for some reason, we're
4 deemed to be wrong, then I think the Company would have
5 to turn to the City to -- or to bond itself to get the
6 money to pay down this, the debt.

7 Q. Is it fair that you imagine that as a very, very low
8 risk?

9 A. (Mr. Patenaude) Yes.

10 Q. The interest rate that's presumed for the transaction
11 is 6.5 percent, is that right?

12 A. (Mr. Patenaude) At the time that the transaction was
13 signed, 6.5 percent was about right.

14 Q. And, the current rate we heard from the Mayor is lower
15 than that, but I don't know if we heard an exact
16 number?

17 A. (Mr. Patenaude) The current rate is between 4.5 and
18 4.7 percent.

19 Q. And, obviously, the applicable rate will be at the time
20 of the actual bond issuance?

21 A. (Mr. Patenaude) That is correct. I mean, rates change
22 on a daily basis.

23 Q. One of the concerns raised by the Office of Consumer
24 Advocate in prefiled testimony was that "a transaction

1 that is entirely dependent on debt can be risky, if
2 debt turns out to be much higher." Do you have an
3 opinion on that? This is sort of a pure debt versus
4 debt and equity blend that we normally see in
5 utilities.

6 A. (Mr. Paternaude) The way that this has been structured,
7 with all debt, in reality, is -- I think is salable to
8 the public markets, because the transaction had been
9 structured so that the debt is paid down through the
10 Company. I don't see any more risk, any further risk
11 than it would have if it was, you know, debt and
12 equity. I mean, you still have the same components.
13 And, as a matter of fact, as has been testified, the
14 costs to the ratepayers would be higher with the
15 equity, because the rate of return on an equity basis
16 is much higher than it would be on the debt. So,
17 there, I think, from the structural point of view, this
18 is better for the ratepayers, especially in this
19 environment, rate environment, where we're talking in
20 the mid 4 percent interest rate range, than it would be
21 with both debt and equity, because equity -- with
22 equity, it still demands a higher return than would the
23 bond markets today. Why? I don't know. But it's a
24 crazy world we live in. And, bond debt is certainly

1 more affordable today than equity.

2 Q. There's been quite a lot of talk this morning about a
3 pay-down of some of the City's eminent domain costs, if
4 there are excess profits in a given year, limited at
5 the \$500,000 level. Is "excess" defined anywhere?

6 A. (Mr. Paternaude) It's not a defined term, *per se*. But
7 "excess" would be anywhere where, after the City's debt
8 is paid off -- after the City's debt for that
9 particular period is paid off, and the expenses are
10 paid, anything above that.

11 Q. So, the first dollar over would be in the excess?

12 A. (Mr. Paternaude) Right.

13 Q. Okay. Also, on eminent domain costs, in Exhibit 1, at
14 Page 6, I had a question on that list of transaction
15 costs. Number (3), the last sentence clarifies. And,
16 it says that "these category of costs do not include
17 PWW or Pennichuck's eminent domain costs as defined in
18 DW 10-091." The sentence suggests that they,
19 therefore, do include the City's eminent domain costs,
20 but I don't think that fits with other testimony. So,
21 can you clarify, do the transaction costs listed on
22 Page 6 include the City's eminent domain costs?

23 A. (Mr. Paternaude) No, they do not.

24 Q. A few questions that may be better answered by the

1 Pennichuck witnesses, but I'll leave it to you to sort
2 out. In the Settlement Agreement, there are
3 provisions, I'm looking at Pages 15 and 16, for
4 intercompany cash payments and participation in a money
5 pool. Are these structures that are in place
6 currently?

7 A. (Ms. Hartley) Yes.

8 Q. Will there be anything different, if the Settlement
9 Agreement and the merger transaction is approved, in
10 how those are managed than what the companies currently
11 experience?

12 A. (Ms. Hartley) Currently, there's no contemplation to
13 adjust any of these agreements. If something comes up
14 that does need adjustment, we certainly will put that
15 on file with the Commission. But no one has any
16 contemplation to change them at this time.

17 Q. So, they're included in this document -- in the merger
18 document or the settlement document as continued
19 mechanisms among the companies, not that it's anything
20 created new as a part of this transaction?

21 A. (Ms. Hartley) Yes. The idea is everything stays in
22 place as it is now, and will be operated in the same
23 form it is now. So, therefore, the money pool and the
24 management fee allocation should follow that in the

1 same manner. So, again, though, as we get into this,
2 if, during the year, we find something that should be
3 adjusted, we certainly would file that with the
4 Commission. But no one is foreseeing that as necessary
5 at this time.

6 Q. Mr. Ware, you described earlier this morning that there
7 was a provision for coming in with rate cases for the
8 utilities in 2013, and it's on Page 13 of the
9 Settlement Agreement, because you anticipated lower
10 debt and, therefore, could flow through lower rates, is
11 that correct?

12 A. (Mr. Ware) That was part of the reasoning, yes.

13 Q. If the debt is not lower, is there still a reason to be
14 required to come in for a rate case?

15 A. (Mr. Ware) I think that it's important that we look at
16 the financials of each of the utilities. For instance,
17 Pennichuck East Utilities, one of the benefits of the
18 Settlement Agreement is that they stay out of rates for
19 a year. Under the best of the interest rates, they
20 will need rate relief. The amount of rate relief will
21 be a function of the final interest rate. As far as
22 Pennichuck Water Works and the Pittsfield Aqueduct
23 Company, until you look at the specifics of 2012, what
24 the final interest rate is, if the interest rate were

1 at the six and a half percent range, which we no way,
2 shape or form anticipate, you would probably have to
3 come in or could -- might have to come in with 2012 as
4 a test year, in any event, because the view of the
5 operations were based on 2009, which was when our last
6 rate case was.

7 Q. If it appears, in looking at the records of the
8 Company, that, in 2012, there is no need for rate
9 relief, up or down, no change that's likely, does it
10 still make sense for the Company, are there reasons
11 that the Company should come in and go through the
12 expense of a rate case before the Commission?

13 A. (Mr. Ware) Well, I think you identified, if, in fact,
14 there was not a need for rate relief, either up or
15 down, then, no, it would not make sense to come in, in
16 my mind, for a rate case. But, again, that's a very
17 narrow window, as I'm sure you realize, especially as
18 this structure is proposed. Being right on the mark,
19 being neither up nor down. But, if you hit that mark,
20 certainly, there would be no need to come in and go
21 through the expense of a rate case, if you were at that
22 appropriate level of revenue.

23 Q. What is the relationship between the "March 31st, 2012"
24 date at the top of Page 13, on whether the merger

1 closes before or after that date, and the testimony of
2 Mayor Lozeau that it has to close by the end of
3 December 2011?

4 A. (Mr. Ware) **[Answer stricken pursuant to following**
5 **ruling by the Chairman at Page 101 herein.]**

6 MS. HOLLENBERG: Excuse me. I would
7 just make the comment at this point that these are -- I
8 think Mr. Ware is discussing confidential settlement
9 discussions, for one. And, I'm not quite sure that that
10 would be the way that the OCA would categorize what it
11 requested in the context of those discussions.

12 CMSR. IGNATIUS: Let me --

13 MR. CAMERINO: And, I just want to maybe
14 suggest to the witness that the issue here is ascribing
15 particular understandings to other parties. If you want
16 to give your best understanding of what the Settlement is
17 intended to achieve, I think that would address the
18 Commissioner's questions, and then other parties can go
19 from there.

20 CMSR. IGNATIUS: And, I can refine the
21 question.

22 BY CMSR. IGNATIUS:

23 Q. If the transaction does not close December 31st, 2011,
24 is it still a possibility that it could close later

1 than that or is that December date truly a drop-dead
2 date?

3 A. (Mr. Paternaude) The Agreement, the Merger Agreement
4 calls for a drop-dead date of December 31st, 2011. But
5 there is a stipulation in the Agreement where both
6 parties can mutually agree to extend that date, which
7 hasn't been done yet. That has not been done. So,
8 that is in the Merger Agreement.

9 Q. That's fine. That was what I was getting at. So, I
10 don't need to go further into how that term got into
11 the document.

12 MR. CAMERINO: Could we just have one
13 minute please?

14 CMSR. IGNATIUS: Yes.

15 (Atty. Camerino conferring with Atty.
16 Hollenberg.)

17 MR. CAMERINO: I don't know, frankly,
18 how one does this in a public setting. But, I think that,
19 to the extent that Mr. Ware's remark, comments about the
20 settlement discussions can be stricken from the record, we
21 would request that that be done consistent with the nature
22 of the settlement discussions.

23 MS. HOLLENBERG: Yes, please.

24 CHAIRMAN GETZ: Any objection?

1 (No verbal response)

2 CHAIRMAN GETZ: All right. Then, we
3 will strike it from what would be the transcript. It
4 would be treated as "confidential" and redacted.
5 Recognizing that there may be people who are not parties
6 to this proceeding in the room, but that's how we will
7 treat the transcript out of this proceeding.

8 MS. HOLLENBERG: I guess it would just
9 be my concern that it would exist within "the record", and
10 don't think that it necessarily is an appropriate part of
11 the record, even if it were kept confidential. My
12 request, and I thought I understood Attorney Camerino's
13 request, was that that statement be stricken from the
14 record, and not necessarily kept in a separate part of the
15 record.

16 CHAIRMAN GETZ: Well, I guess there's a
17 few ways of looking at this. Whether it's confidential or
18 whether -- is it your larger concern that we don't make a
19 decision based on what was said or we act as if it was
20 never said and we never heard it, and there's no written
21 record anywhere?

22 MS. HOLLENBERG: It would be my
23 preference that it not be incorporated into the record
24 considered by the Commission for purposes of this

[WITNESS PANEL: Hartley|Ware|Patenaude]

1 decision, and existing. And, I guess the other concern
2 that I have is that I don't agree with the statement. I
3 don't think it accurately categorizes -- or, captured what
4 the OCA's position was in the context of those settlement
5 discussions. So, I believe it's inaccurate. And, I don't
6 have a witness here to put on to take that to the next
7 level. So, I'm not quite sure what to do.

8 CHAIRMAN GETZ: Okay. Well, we'll
9 certainly take under consideration all that you've said.

10 MS. HOLLENBERG: Okay.

11 CHAIRMAN GETZ: And, so, maybe it's more
12 a question of the mechanics of what Mr. Patnaude does.
13 And, I guess my inclination would be that there would be a
14 blacked out area of the transcript, and no other rendition
15 of what was said during that period of the cross.

16 Does anybody have any objection to that
17 process?

18 (No verbal response)

19 CHAIRMAN GETZ: Okay. Thank you. Then,
20 let's proceed.

21 CMSR. IGNATIUS: Thank you. And, just a
22 couple more areas.

23 BY CMSR. IGNATIUS:

24 Q. There's reference in the prefiled testimony of

1 Mr. Teebom that there's been no inventory made of the
2 property that's being -- well, I was going to say
3 "transferred", but I'm not even sure that's the right
4 word. So, I won't -- let me not state -- speak to his
5 testimony, but just tell me, are properties that are
6 currently held by any of the utilities changing their
7 status in any way as a part of -- as a result of this
8 proposed transaction?

9 A. (Mr. Patenaude) What we're doing is we're buying the
10 shares of the parent company, Pennichuck Corporation.
11 That's the only thing that's changing here. And, all
12 the other properties stay the same. If they're owned
13 by PWW, then they're owned by PWW, and PAC, and PEU.
14 So, none of that changes. The only thing that changes
15 is the ownership of the shares. The shares that are
16 owned by public shareholders today will be owned by the
17 City after the transaction.

18 Q. And, in the testimony from the City and others that one
19 of the benefits of this transaction would be that the
20 control of the real estate, and specifically the
21 watershed, would be now held by the City. Could you
22 explain --

23 A. (Mr. Patenaude) The ownership itself does not change,
24 *per se*. So, if land is owned by Pennichuck Water

1 Works, it's owned by Pennichuck Water Works. So, by
2 the City owning the shares of Pennichuck Corporation,
3 it owns everything else that's underneath it, *per se*.
4 While, in actuality, the land, the buildings, and
5 whatever other assets, trucks and pipes, are still
6 owned by their respective utilities and subsidiaries.

7 Q. And, any decision-making about changes to those
8 properties, and I'm particularly thinking about the
9 physical real estate, is that any different as a result
10 of this transaction than it would have been otherwise?

11 A. (Mr. Patenaude) There is no difference, other than, you
12 know, the City's ownership.

13 Q. Okay. But I'm trying to understand what the "City's
14 ownership" means when you say that?

15 A. (Mr. Patenaude) Well, it means, in other words, at the
16 end of the day, the shareholders of Pennichuck were to
17 develop land or selling land, under the City's
18 ownership, that's not the City's mantra, so to speak,
19 to develop undeveloped land. But it will hold that
20 land and not develop it. So, while -- and there is a
21 provision in the By-Laws, I believe, it's either in the
22 articles or the By-Laws, that says any major
23 transactions, for instance, sale of a utility, sale of
24 land, would have to be approved by the sole

1 shareholder. So, that's the way it gets control, *per*
2 *se*.

3 Q. And, the mechanism, when you say "approval by the sole
4 shareholder", which is the City, would be what, a vote
5 of --

6 A. (Mr. Paternaude) Board of Aldermen.

7 Q. Similarly, in testimony earlier today, I think it was
8 you, Mr. Paternaude, who said, or it may have been Mr.
9 Ware, who said that you would require -- "it would be
10 required that the Aldermen would vote on any amount to
11 be borrowed", and I wanted to compare that against the
12 statement in the testimony from the Town of Merrimack,
13 which is Exhibit 16, at Page 2, that says, I'll just
14 quote this one sentence, "One of these limitations is
15 that the Aldermen have final say regarding capital
16 expenditures." Do you agree with that sentence,
17 "capital expenditures"?

18 A. (Mr. Paternaude) I would disagree with that. I'll let
19 my --

20 A. (Mr. Ware) My understanding is that I would disagree
21 with that as well. That the City, as shareholder, has
22 say over bonding amounts, but not over specific capital
23 projects.

24 Q. So, what -- is there a list of the items that require

1 approval not just from the Board, but from the City's
2 Aldermen?

3 A. (Mr. Patenaude) The By-Laws have a list of items that
4 require the sole shareholder's approval. I'm trying to
5 think of the section, that's a reservation,
6 "reservation of rights", I think it was.

7 MR. CAMERINO: Could I, just maybe to
8 move this along, Commissioner?

9 CMSR. IGNATIUS: Please.

10 MR. CAMERINO: If you look at Exhibit A
11 to the Merger Agreement, which is attached to Mayor
12 Lozeau's February 18th testimony, it's Bates Page 79, the
13 second page of the "Amended and Restated Articles of
14 Incorporation". And, there are the "Reserved Powers" that
15 Mr. Patenaude is referring to. Exhibit A to the Merger
16 Agreement attached to Mayor Lozeau's testimony.

17 CMSR. IGNATIUS: Thank you.

18 BY CMSR. IGNATIUS:

19 Q. And, I haven't gone through this very slowly here, but
20 it sounds like we would agree that borrowing by the
21 corporation is on this list of the things that would
22 require Aldermen approval?

23 A. (Mr. Patenaude) Yes, that's correct.

24 Q. And, did you just mention another one a moment ago?

1 I'm losing track here. Sale of --

2 A. (Mr. Patenaude) Either major acquisitions or
3 dispositions.

4 Q. Okay. But more routine decision-making on the part of
5 the utilities would go through the review and approval
6 of the Board?

7 A. (Mr. Patenaude) It would be management and the Board.

8 Q. And, not have that higher further requirement of the
9 City's approval by the Aldermen?

10 A. (Mr. Patenaude) Yes.

11 CMSR. IGNATIUS: Thank you. Nothing
12 else.

13 BY CHAIRMAN GETZ:

14 Q. Okay. Mr. Patenaude, I just have one area I want to
15 ask about, and it's the eminent domain costs. And, in
16 your second supplemental testimony from October 18th,
17 on Page 7, you know, and it's between Line 7 and 17,
18 you refer to the Settlement Agreement -- actually, I
19 think you refer to "III.B.4", but I think it may be
20 III.D.4, on Page 16 in the Settlement Agreement. And,
21 I'm just trying to understand clearly how the potential
22 recovery of eminent domain costs works.

23 And, I guess I can think of this in at
24 least two ways. That you can recover up to \$500,000 a

1 year, and I guess, in one scenario, you'd have ten
2 years and ten chances to get your \$500,000 each year,
3 and that would be it. Or, in the first year, if you
4 didn't get the \$500,000, or you got some lesser number,
5 that you'd have whatever number of years it takes to
6 get the opportunity to recover the 5 million. So, --

7 A. (Mr. Paternaude) It's the latter.

8 CHAIRMAN GETZ: Okay. That's all I had.
9 Any redirect, Mr. Camerino?

10 MR. CAMERINO: Yes, just very briefly.
11 A couple of items.

12 **REDIRECT EXAMINATION**

13 BY MR. CAMERINO:

14 Q. And, starting with where the Chairman left off, Mr.
15 Paternaude. If you look at the Settlement on Page 16,
16 and that -- there's a Paragraph 4 there, and that's the
17 section that describes the payment of dividends and
18 distributions to Pennichuck Corporation, is that
19 correct?

20 A. (Mr. Paternaude) That is correct.

21 Q. Okay. And, you may recall a question from Commissioner
22 Ignatius regarding whether excess profits or available
23 profits for payment of the eminent domain costs is
24 described anywhere. Is this a description of the

1 circumstances and monies from which those funds can be
2 paid? I direct your attention to Paragraph -- the
3 beginning of Paragraph ii there, under 4.

4 A. (Mr. Patenaude) Yes.

5 Q. So, to the extent that the City is determining whether
6 funds are available for that, such distribution, it
7 would refer to this paragraph?

8 A. (Mr. Patenaude) Yes.

9 Q. Mr. Ware, there was a discussion on cross-examination
10 by Mr. Boutin regarding the CBFRR, and if there were
11 shortfall in funds available. You recall that
12 questioning?

13 A. (Mr. Ware) Yes.

14 Q. And, Mr. Boutin asked you, talked about there being a
15 first call on funds available to the Company in order
16 to pay the CBFRR. Do you recall that?

17 A. (Mr. Ware) Yes.

18 Q. Would you turn to Exhibit C of the Settlement Agreement
19 please. And, what's the purpose of this exhibit? What
20 does it describe?

21 A. (Mr. Ware) It's to describe the procedures to be used
22 with the Rate Stabilization Fund, and also a view of
23 the establishment of the CBFRR account and how its
24 revenues would be handled.

1 Q. And, I suppose there are numbers of ways, if the
2 Company comes in for a rate case, or the Companies come
3 in for a rate case, and they have a revenue requirement
4 set, there are a number of ways in which it could turn
5 out that there would be insufficient funds available to
6 pay, theoretically, let's say, to pay the CBFRR, or
7 excess funds. Is that a fair statement?

8 A. (Mr. Ware) Yes.

9 Q. One of those ways could be that it's a very wet summer,
10 and the sales are not what's assumed in setting the
11 revenue requirement. Is that a fair statement?

12 A. (Mr. Ware) Yes.

13 Q. And, is that one of the kinds of circumstances that
14 this mechanism for drawing from the Rate Stabilization
15 Fund is intended to apply to?

16 A. (Mr. Ware) Yes.

17 Q. Another such situation would be, the Company's regular
18 operating expenses go up from what was assumed in
19 setting the revenue requirement, correct?

20 A. (Mr. Ware) Relative to withdrawal on the RSF account?

21 Q. That the total revenue -- well, that's actually what my
22 question is. The total revenues might be less than was
23 assumed in the rate case, correct?

24 A. (Mr. Ware) If you had a wet summer.

1 Q. Not a wet summer. We have an exactly normal summer.

2 A. (Mr. Ware) Okay.

3 Q. The total revenues -- and, I'm sorry, not the revenues
4 would be off, the net income available, let's say, to
5 the Company would vary from what was assumed in the
6 rate case, correct?

7 A. (Mr. Ware) If your premise was, if expenses went up
8 above those that were in the establishment of the
9 revenue requirement?

10 Q. That's right. So, just to be clear, we have a
11 perfectly normal, same as assumed in the rate case,
12 summer, in terms of weather. The revenues come in as
13 anticipated, but the expenses are higher than was
14 assumed. Do you have that in mind?

15 A. (Mr. Ware) Yes.

16 Q. Would there be a draw in the Rate Stabilization Fund in
17 that situation?

18 A. (Mr. Ware) No.

19 Q. How do we know that?

20 A. (Mr. Ware) Because the mechanism that's established and
21 described here is the first thing that happens is that
22 the revenues that were allowed or, you know, the
23 revenue requirement established by the rate case will
24 be known, the amount of the CBFRR payment will be

1 known. I'll use the easy numbers, 9 million and
2 27 million. The mechanism says that 33 percent of each
3 month's revenues flow into the CBFRR account. So, if
4 your revenues are on par, the portion of revenues going
5 over to the CBFRR will be on par, and there will be no
6 shortfall in that area. The shortfall would be in the
7 remaining 67 percent that are generated through the
8 conventional process, which is meant to cover the
9 expenses associated with a conventional process.
10 That's where the shortage would be. And, that's where
11 you would then have to depend upon other sources of
12 cash. You would not go into the Rate Stabilization
13 Fund.

14 Q. And, if that recurred for another year, let's say we
15 had a second year, normal weather, the revenues were as
16 anticipated, but the expenses continued to be higher,
17 what would the Company do?

18 A. (Mr. Ware) We would seek rate relief.

19 Q. Would it draw from the Rate Stabilization Fund to pay
20 the CBFRR?

21 A. (Mr. Ware) No, you would not.

22 MR. CAMERINO: Okay. Thank you.

23 CHAIRMAN GETZ: Mr. Teebom.

24 MR. TEEBOM: I have one question with

1 this whole revenue business.

2 CHAIRMAN GETZ: Well, wait a second. Is
3 this a question following up on the redirect from
4 Mr. Camerino?

5 MR. TEEBOM: Yes, I think so, or you can
6 decide. I'll ask the question.

7 **RECROSS-EXAMINATION**

8 BY MR. TEEBOM:

9 Q. In the Hartley exhibits, Schedule 1, it talks about
10 water sales. Under Pennichuck ownership is
11 \$24 million; under Nashua ownership is \$14 million.
12 Customer base stays the same. So, how can there be a
13 \$10 million drop in water sales?

14 CHAIRMAN GETZ: Well, this is beyond the
15 scope of recross, doesn't respond to the redirect of
16 Mr. Camerino. So, we're not going to permit the question.

17 Mr. Serell, do you have any redirect?

18 MR. SERELL: I do not, Commissioner.

19 CHAIRMAN GETZ: Okay. Then, Mr. Boutin,
20 do you have --

21 MR. BOUTIN: Yes.

22 CHAIRMAN GETZ: -- brief proposed
23 recross related to Mr. Camerino's questions?

24 MR. BOUTIN: Yes. Yes, I do.

1 CHAIRMAN GETZ: Okay.

2 MR. BOUTIN: Just one question, or two
3 questions.

4 BY MR. BOUTIN:

5 Q. First of all, if the Rate Stabilization Fund is drawn
6 down, because there's a deficiency in paying off the
7 CBFRR portion or for whatever reason, ultimately, it's
8 got to be replenished, isn't that so?

9 A. (Mr. Ware) That is what's proposed, yes.

10 Q. So, ultimately, either operating revenues are down or
11 the Rate Stabilization Fund is drawn down, you're
12 looking at a rate case, am I correct?

13 A. (Mr. Ware) The Rate Stabilization Fund may go down or
14 up over time. So, that will not be the indicator of
15 the need for a rate case, at least in my estimation.

16 Q. But, if -- excuse me, I'm sorry. I thought you were
17 done. Did you have something else? If the Rate
18 Stabilization Fund is designed to be replenished, and
19 you've got to find the money to do it, then a rate case
20 is one of the ways to do it, and the most likely
21 outcome, if it has to happen?

22 A. (Mr. Ware) I'm not -- again, it will only be
23 replenished at a rate case.

24 Q. And, the residency of the Rate Stabilization Fund is in

[WITNESS PANEL: Hartley|Ware|Patenaude]

1 Pennichuck Water Works, that operating utility, right?

2 A. (No verbal response).

3 Q. So, that's the Company that's going to come in for a
4 rate case?

5 A. (Mr. Ware) Yes.

6 MR. BOUTIN: Thank you.

7 CHAIRMAN GETZ: Mr. Camerino, --

8 MS. HOLLENBERG: I actually now have a
9 question, and I would beg the Commission allowing me to
10 ask the question, to follow up on a question Mr. Boutin
11 asked?

12 CHAIRMAN GETZ: Is there any objection?

13 (No verbal response)

14 CHAIRMAN GETZ: Ms. Hollenberg.

15 MS. HOLLENBERG: Thank you.

16 BY MS. HOLLENBERG:

17 Q. Mr. Ware, could you point to the portion of the
18 Settlement Agreement that talks about replenishment of
19 the Rate Stabilization Fund?

20 A. (Mr. Ware) Yes. It is in Exhibit C. And, it is in
21 Paragraph 4, and the last sentence on that Page 1 of
22 Exhibit C.

23 Q. And, that sentence is "The replenishment or reduction
24 amount will be reflected in PWW rates through a

1 deferred debit or credit amortized over a three-year
2 period." Is that correct?

3 A. (Mr. Ware) Yes.

4 Q. Do you agree that there's no language in the Settlement
5 Agreement that talks about the process to be used for
6 the replenishment or reduction in the Rate -- in the
7 Rate Stabilization Fund? It doesn't specifically
8 mention that it will occur in a rate case, although it
9 talks about it being recovered --

10 A. (Mr. Ware) Well, it says "at the time of each PWW rate
11 case." That's the last sentence in Paragraph 4.

12 Q. Where does it say "at the time"?

13 A. (Mr. Ware) Paragraph 4.

14 CHAIRMAN GETZ: Well, I'm sorry. It's
15 the second to last sentence.

16 WITNESS WARE: Second, okay.

17 MS. HOLLENBERG: Oh. Okay.

18 CHAIRMAN GETZ: And, I think
19 Ms. Hollenberg previously read the last sentence.

20 MS. HOLLENBERG: Uh-huh. Okay. Thank
21 you.

22 CHAIRMAN GETZ: Is that all,
23 Ms. Hollenberg?

24 MS. HOLLENBERG: Yes. Thank you.

1 CHAIRMAN GETZ: Mr. Camerino, last
2 chance?

3 MR. CAMERINO: May I have just one
4 second to confer with co-counsel?

5 CHAIRMAN GETZ: Yes.

6 (Atty. Camerino conferring with Atty.
7 Serell and Atty. Ardinger.)

8 MR. CAMERINO: I apologize, Mr.
9 Chairman. I just have a -- wanted to clarify one thing
10 that Mr. Ware said in response to Mr. Boutin's recross.

11 CHAIRMAN GETZ: Re-redirect then.

12 **RE-REDIRECT EXAMINATION**

13 BY MR. CAMERINO:

14 Q. Mr. Ware, I'd like to address and focus your attention
15 on Exhibit C to the Settlement Agreement again. And,
16 you said, in response to a question from Mr. Boutin,
17 that the Rate Stabilization Fund is "only replenished
18 in a rate case". And, I just want to give you a
19 hypothetical, and ask you to explain to the Commission
20 what happens. I asked you about a normal weather year.
21 Assume we had a wet year, and, in fact, you did have to
22 draw from the RSF. And, so, now it's down to four and
23 a half million dollars. You don't come in for a rate
24 case. The next year is a dry year. And, the Company,

1 one of the companies, or Pennichuck Water Works has
2 higher than anticipated sales, and more revenues than
3 are needed to pay its expenses and pay the CBFRR. In a
4 year such as that, where the utility has additional
5 revenues, do any monies flow back in to the RSF to move
6 toward making it whole?

7 A. (Mr. Ware) Yes. The accounting, and, by your example,
8 let's say that the revenue requirement was 27 million.
9 But, we have a hot, dry year where we bring in
10 \$29 million. So, we have \$2 million of, if you will,
11 excess revenues. Thirty-three percent of that \$2
12 million, \$667,000 would flow into the CBFRR account and
13 back to the RSF account.

14 MR. CAMERINO: Thank you.

15 CHAIRMAN GETZ: Okay. With that, then
16 the panel is excused. Thank you. Let's go off the record
17 for a moment.

18 (Off-the-record discussion ensued.)

19 CHAIRMAN GETZ: Okay. So, let's go back
20 on the record. And, we're going to take the lunch recess,
21 and resume at 1:15. Thank you.

22 (Lunch recess taken at 11:55 a.m.

23 Hearing to resume under separate cover

24 identified as "**Afternoon Session Only**".)