

STATE OF NEW HAMPSHIRE  
PUBLIC UTILITIES COMMISSION

May 8, 2017 - 1:34 p.m.  
Concord, New Hampshire

23 MAY '17 PM4:09

RE: DW 15-209  
LAKES REGION WATER COMPANY, INC.  
Request for Change in Rates.  
*(Hearing regarding rate case expenses)*

**PRESENT:** Chairman Martin P. Honigberg, Presiding  
Commissioner Robert R. Scott  
Commissioner Kathryn M. Bailey

Sandy Deno, Clerk

**APPEARANCES:** **Reptg. Lakes Region Water Company:**  
Justin C. Richardson, Esq. (Upton...)  
**Reptg. Indian Mound Property Owners Association:**  
Gary E. Blais, Esq. (Blais Law Assoc.)  
**Reptg. Residential Ratepayers:**  
D. Maurice Kreis, Esq., Consumer Adv.  
Office of Consumer Advocate  
**Reptg. PUC Staff:**  
John Clifford, Esq.  
Mark Naylor, Director/Gas & Water Div.  
Robyn Descoteau, Gas & Water Division

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

**CERTIFIED  
ORIGINAL TRANSCRIPT**

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Mr. Kreis

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Mr. Richardson

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Mr. Clifford

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**P R O C E E D I N G**

CHAIRMAN HONIGBERG: Good afternoon, everyone. We're here in Docket DW 15-209, which is Lakes Region Water Company's rate case. We're here on rate case expenses. A Staff recommendation to disallow certain amounts, a request for a non-evidentiary hearing by the Company, and a secretarial letter that gave those who were interested in it fifteen minutes a side to discuss this.

Before we do anything else, let's take appearances.

MR. RICHARDSON: Good afternoon, Mr. Chairman, members of the Commission. Justin Richardson, here on behalf of Lakes Region Water Company. With me at counsel's table I have Leah Valladares and Tom Mason from the Company.

MR. BLAIS: Attorney Gary Blais, Blais Law Associates, Providence, Rhode Island, for Indian Mound Property Owners Association.

CHAIRMAN HONIGBERG: I'm sorry. I didn't catch your name.

MR. BLAIS: I'm sorry. Is this on?

1 CHAIRMAN HONIGBERG: Maybe, maybe  
2 not.

3 MR. BLAIS: Gary Blais, for Indian  
4 Mound Property Association, an attorney from  
5 Providence.

6 MR. KREIS: Good afternoon,  
7 Commissioners. I'm D. Maurice Kreis of the  
8 Office of the Consumer Advocate, here on behalf  
9 of residential utility customers, a New  
10 Hampshire attorney.

11 MR. CLIFFORD: And John Clifford, on  
12 behalf of Commission Staff, and with me at  
13 counsel's table is Mark Naylor, Director of the  
14 Commission's Gas and Water Division; and Robyn  
15 Descoteau, Utility Analyst in the Gas and Water  
16 Division.

17 CHAIRMAN HONIGBERG: We had not, I  
18 guess, anticipated that the OCA and the Indian  
19 Mound Property Owners would be participating in  
20 this. As it was set up, it was Staff's  
21 recommendation, which made a representation  
22 about the OCA's position, and the Company's  
23 response and request for hearing.

24 Mr. Kreis, Mr. Blais, do you want to

1 give us very briefly what you anticipate your  
2 role being in this hearing?

3 MR. BLAIS: Thank you,  
4 Mr. Commissioner. Our position in regards to  
5 the various billings that have come in for the  
6 DW 15-209 petition were questioned by my  
7 committee. I represent approximately 170  
8 homeowners, who are also ratepayers. In  
9 particular, and I've discussed this with Mr.  
10 Richardson, the outside billing company owned  
11 or regulated by Steve St. Cyr, we had a problem  
12 coordinating or reconciling the total amounts  
13 he's demanding with the actual billing sheets  
14 we've received. It may just be that, in the  
15 calculations, the Committee or I have been off.  
16 But we're here, in fact, to question that bill  
17 relative to its accuracy.

18 CHAIRMAN HONIGBERG: Mr. Kreis.

19 MR. KREIS: I believe I can be very  
20 succinct, Mr. Chairman. We are here largely in  
21 potted plant mode, because we are very  
22 supportive of Staff's position with respect to  
23 rate case expenses.

24 I'm here principally because this

1 represents basically, perhaps because it's just  
2 a coincidence, but this represents, really, an  
3 important occasion for the Commission to apply  
4 and interpret its 1900 rules.

5 And, mostly, we would like to make  
6 sure that we do whatever we can to make sure  
7 that Staff prevails. So, I don't have an  
8 argument for you. I expect to listen largely.

9 CHAIRMAN HONIGBERG: Thank you,  
10 Mr. Kreis. I guess I'm interested in Staff's  
11 and the Company's view of Mr. Blais's  
12 participation in this. And whether -- whether  
13 the time is right for the issues that he's  
14 articulated to be raised, because it strikes me  
15 as fairly late in the game.

16 MR. RICHARDSON: We do,  
17 unfortunately, share that view, because we had  
18 filed the Company's request, I could show you  
19 today e-mails that I sent with -- to Mr. Blais,  
20 you know, reminding him that, you know, we'd be  
21 willing to provide any information he wanted.  
22 So, when we got the letter on Friday, I mean,  
23 it was too late for me to figure out what their  
24 position was, what they were looking for. I

1 don't know what discrepancies he's alluding to.  
2 So, I'm --

3 CHAIRMAN HONIGBERG: When you use the  
4 two words "the letter", --

5 MR. RICHARDSON: Uh-huh.

6 CHAIRMAN HONIGBERG: -- would that be  
7 a letter that is somewhere in our files, too?

8 MR. RICHARDSON: It was emailed to  
9 the service list. I don't know if you received  
10 the original copies. I have one copy here.  
11 It's a very general letter, though. There  
12 aren't really any specific tabulations to it.  
13 So, you know, I'm at a loss to understand what  
14 it is their argument is. It makes it more  
15 difficult to respond to it.

16 But, I think, as a general matter,  
17 it's the Company's burden of proof to show that  
18 its rate case expenses are just and reasonable  
19 under the rules. Any person disagreeing with  
20 that, asserting a particular proposition  
21 something's unreasonable or should be  
22 disallowed, I think they bear the burden of  
23 proof on that. I can't find, really, what  
24 their concerns are. So, it's hard for me to

1 respond to them.

2 But they're a party and they're  
3 entitled to make argument. It's just up to the  
4 Commission to sort through and decide, you  
5 know, what's timely and what isn't.

6 CHAIRMAN HONIGBERG: Mr. Clifford.

7 MR. CLIFFORD: On behalf of Staff, I  
8 can tell you that the Staff analyst has  
9 reviewed Mr. St. Cyr's bills/invoices, and had  
10 no issues with them during this process.

11 We're happy to have Mr. Blais make  
12 his statement. But I don't think that this is  
13 the proper place to pour over Mr. St. Cyr's  
14 invoices again. Staff's made its  
15 recommendation, made its concerns known. And I  
16 don't think it adds anything to the proceeding.

17 CHAIRMAN HONIGBERG: All right.  
18 Well, understanding this is not an evidentiary  
19 hearing, this was set up to be an oral argument  
20 for those who want to make arguments about the  
21 issues raised by Staff in their recommendation  
22 of February 24th of 2017. I think that's why  
23 we think we're here.

24 And, Mr. Blais, if there's -- if



1       there's other stuff you want to talk about,  
2       we'll give you a chance to do that. And we'll  
3       see -- we'll see what we want to do it with it,  
4       after we've had a chance to hear what you have  
5       to say.

6               I think the order we would go in  
7       normally would be the Company for 15 minutes,  
8       anybody else for however long they need up to  
9       15 minutes, and then Staff.

10              Anyone have any different views on  
11       that?

12              MR. RICHARDSON: Only a question, Mr.  
13       Chairman.

14              CHAIRMAN HONIGBERG: Sure.

15              MR. RICHARDSON: And that was whether  
16       that 15-minute contemplated, after you've heard  
17       the argument, questions, whether the 15 minutes  
18       was anticipated to include questions from the  
19       Commission?

20              I kind of thought that we'd do a  
21       brief presentation, but then there would be  
22       some discussion based on what you've reviewed.  
23       So, --

24              CHAIRMAN HONIGBERG: We may or may

1 not have questions, and we'll be reasonable.

2 If it looks like, because we have oodles of  
3 questions, we still want to talk to you, then  
4 we'll keep going.

5 But the idea here is, you know, think  
6 "oral argument". Because we're not -- we're  
7 not here to hear new facts and consider new  
8 evidence.

9 So, Mr. Richardson, why don't you  
10 proceed.

11 MR. RICHARDSON: Thank you. Lakes  
12 Region Water is requesting recovery of \$137,711  
13 in rate case expenses. That's shown at Tab E,  
14 I believe, which is an update to the Company's  
15 December request. You should have that on  
16 file. We submitted that about a week ago.

17 One thing I should draw your  
18 attention to, as the Company's request was put  
19 together, it includes, and you'll see a line  
20 here on Page 100, which is the first page of  
21 Tab E, you'll see there's a "Rate Case Audit  
22 Adjustment" expense, and that's for time spent  
23 by Mr. St. Cyr related to audit adjustments.  
24 And then you'll see there's also a figure in

1       there that's highlighted in red on Page 100,  
2       and that's "\$9,113". That is related to the  
3       Mount Roberts financing. Now, we think the  
4       financing was part of this. But I wanted the  
5       Commission to be clear that there's those two  
6       pieces that are out there.

7               Now, of the 209 -- or, \$2,906, as you  
8       flip through this, you'll see there's a  
9       breakdown of the audit expenses, and about 500  
10      of those audit expenses are also within the  
11      9,000 for Mount Roberts. So, there's some, you  
12      know, the numbers don't appear to reconcile at  
13      first, because they're in two boxes at the same  
14      time.

15             But that's -- so, that's a lot of  
16      money that we're requesting, and it sounds like  
17      that, and it is. We don't deny that. But  
18      Lakes Region has about 1,690 customers. We  
19      operate 18 different systems in New Hampshire.  
20      And what that means is they're subject to the  
21      same rate case rules, the same filing  
22      requirements that the larger companies, like  
23      the Pennichuck utilities, Aquarion are subject  
24      to. And they operate probably more systems

1       than many of those utilities, with perhaps the  
2       exception of Pennichuck East.

3               So, the question becomes, in our  
4       view, looking at the PUC rules, which is  
5       1906.01, "what is the standard for review?"  
6       And what that rule states is is that those  
7       expenses are to be recovered provided that the  
8       expenses are related to the rate case, they're  
9       just and reasonable and in the public interest.

10              Now, what that means, in my view, and  
11       I think in the correct view of the law, is is  
12       that effectively traditional rate principles  
13       are applied to figure out what is "just and  
14       reasonable". I've looked at the cases that the  
15       Supreme Court has decided. And there's really  
16       one case that I found to be most helpful, and  
17       that's the case of *State versus Hampton Water*  
18       *Works*, at 91 N.H. 278, Page 296. That's a 1941  
19       case.

20              And it says that, I'll just read this  
21       one sentence for you, because I think it's  
22       important. It says "Excessive and improper  
23       charges may be found in amount as well as a  
24       fact. If unreasonably incurred, if undue in

1 amount, if chargeable to other accounts, they  
2 may be to that extent reduced."

3 And I think that helps us understand  
4 what our role is today. Is to really look at  
5 "Okay. Are these amounts reasonable? Do they  
6 belong in some other category?" And, if they  
7 do not, if the amounts are correctly decided  
8 and they're correctly towards the rate case,  
9 and they don't appear to be excessive or  
10 unreasonable, then those are entitled to  
11 recovery.

12 Now, there's a statutory and both a  
13 constitutional basis for that, because our rate  
14 case expenses are not included in the test  
15 year. And, so, if we reduce these cases --  
16 excuse me, reduce these expenses, and they're  
17 not, for example, excessive or unreasonable,  
18 then effectively what we're doing is is we're  
19 depleting the Company's earnings, and it's  
20 right to have rates that are, in fact, just and  
21 reasonable. And that's very important, because  
22 the Commission's rules don't allow interest  
23 charges to be collected. So, it's the  
24 Company's -- the Company's only real source of

1 revenue to pay for these expenses is out of  
2 their rates. And, if those expenses are  
3 arbitrarily reduced, without a finding that  
4 they're excessive or they were unreasonable,  
5 then the Company is left with something that it  
6 can never recover, and it's effectively  
7 deprived of its statutory and constitutional  
8 right to earn a reasonable return on its plant  
9 that's prudently incurred, used and useful,  
10 according to all the criteria that are there.

11 And I think, when you look at the  
12 Commission's rules, so that turns to the issue  
13 I alluded to before, which is our burden is to  
14 show that our expenses meet the requirements of  
15 the rules, the rules require the expenses to be  
16 just and reasonable. But, if you look at the  
17 burden of proof, under 203.25, this is PUC  
18 rules, it says "Unless otherwise specified by  
19 law, the party seeking relief through a  
20 petition, application, motion or complaint  
21 shall bear the burden of proving the truth of  
22 any factual proposition by a preponderance of  
23 the evidence."

24 So, to the extent that parties may

1       argue that we have imprudently acted, I think  
2       it's their burden of proof, if they want to  
3       have the Commission make that finding, to  
4       produce evidence or facts. And there's really  
5       none in the record. Clearly, there's a  
6       disagreement about the application of AFUDC.  
7       But the Settlement Agreement simply says that  
8       we have agreed to withdraw that. There was  
9       never a factual finding that our use of AFUDC  
10      was imprudent or it was unreasonable.

11               And what I would like to do is just  
12      draw your attention to the Uniform Chart of  
13      Accounts, because there is a specific rule that  
14      the Commission has. And it's in the plant  
15      instructions, I believe it's Section (e)(2),  
16      Subset 17. And I can provide you with a copy.  
17      I don't know if you've read it before, it's a  
18      copy of your rules. But what it says is is  
19      that --

20               CHAIRMAN HONIGBERG: You can assume  
21      that we have read our rules. We may not  
22      remember as we sit here what a specific rule  
23      says. So, if you think it would be helpful for  
24      us to know what that language is, you might

1 want to tell us.

2 MR. RICHARDSON: I think I will.

3 And, because it's a rule, I don't think we need  
4 to mark it as an exhibit. But why don't I give  
5 it to you and to the parties, just so you have  
6 it for your benefit.

7 *[Atty. Richardson distributing*  
8 *documents.]*

9 CHAIRMAN HONIGBERG: All right. So,  
10 we're all looking at the rule.

11 MR. RICHARDSON: Yes. So, this is --  
12 we're in Section (1) of the rule, and it's sub  
13 portion (e), and it's the instructions of how  
14 utility plant is to be recorded. And I've  
15 highlighted on the first page, which is Page 12  
16 of the rule, just that utility plant is to be  
17 recorded at cost, and then there are components  
18 of construction cost. And there's a list that  
19 goes on, and I've skipped a page here, but it  
20 lists 17 items that are includable as to cost  
21 of property, and number 17 is the allowance for  
22 funds used during construction.

23 So, while there may have been a  
24 disagreement in this case about whether it was



1 the right approach or the best approach to use  
2 AFUDC, the Company proposed it because the  
3 Commission's rules allow it. And, ultimately,  
4 we negotiated a settlement to use a different  
5 approach.

6 Now, I'd like the Commission to  
7 understand the reasons we did that. When we  
8 filed this case in 2015, this was a very big  
9 case for us. The Indian Mound Project was  
10 about \$195,000, that was in service at the time  
11 we filed. It was actually completed just after  
12 the test year. So, that was 195,000.

13 About 525,000, and this is all -- the  
14 numbers are in, actually, Jayson Laflamme's and  
15 in the Settlement schedule, was for the Mount  
16 Roberts Project. That's without the AFUDC.  
17 The Company's test year rate base is about  
18 \$3 million.

19 So, if you take those two projects,  
20 at about 712,000, Indian Mound and Mount  
21 Roberts. You deduct that out of the test year  
22 rate base of \$3 million, what that leads to is  
23 is the Company's proposal to add to the rates  
24 represented 31 percent of rate base. That's

1 enormous. I mean, that's a huge capital  
2 investment.

3 And, so, not only is Lakes Region a  
4 company that's subject to the same rules and  
5 regulations of a Pennichuck or an Aquarion, the  
6 same filing requirements for a rate case, this  
7 was, in fact, a case that rivaled or could be  
8 comparable to something like PSNH adding the  
9 Seabrook Nuclear Power Plant. It was a huge,  
10 huge project, that was, in part, mandated by  
11 service requirements in Indian Mound due to the  
12 aging infrastructure, regulatory DES  
13 requirements due to the need to meet the  
14 capacity in Mount Roberts. And the Company was  
15 required to complete these projects in order to  
16 serve customers.

17 So, I think that it's very important  
18 to understand how significant this case was.  
19 The case, obviously, given the size of the  
20 plant additions, you know, Staff did their  
21 jobs, the OCA did their jobs. There were five  
22 technical sessions. You know, the Company had  
23 a new accounting system that they had  
24 implemented during the test year. There were

1 staffing changes, retirement and benefit  
2 changes. Everything was thoroughly reviewed.  
3 There was 40 audit requests. Obviously, we're  
4 not asking for those responses to be part of  
5 this case, but just to illustrate the size of  
6 it. 405 data requests, we have a box with the  
7 responses there. I believe 161 from Staff, 20  
8 follow-up responses, as we basically provided  
9 further information in response to those 161.  
10 Forty-seven (47) from the OCA; 32 from  
11 Suissevale, or "POASI" as it's called; 17 from  
12 Mark Evitts, an intervenor; 17 requests from  
13 Indian Mound; 8 from Mr. Movitz. We have an  
14 "Evitts" and a "Movitz". And data requests, as  
15 the Commission knows, are not always, you know,  
16 one question per request.

17 So, what we'd like to do, and we  
18 included in Attachment F to the filing we gave  
19 you on Monday, because Staff has done a  
20 comparison that compared Lakes Region's request  
21 to some smaller utilities, Rosebrook, a few  
22 others that were below the 600 customer  
23 threshold that we're above. When you look at  
24 F, what you'll find is is that our request is I

1 think on the low end of what is reasonable for  
2 a rate company -- for a rate case. The problem  
3 that we face is is that we don't have as large  
4 a customer base. We have 17, now 18 systems we  
5 have to deal with, those all have significant  
6 capital needs that have to be balanced, and we  
7 don't have the same customer need. But that  
8 doesn't mean that we are not subject to the  
9 requirement to provide service that's  
10 reasonably safe and adequate. We have to do  
11 all of those things that these other companies  
12 do, but with fewer resources. We don't have an  
13 in-house accounting team, there's no in-house  
14 legal team.

15 So, Lakes Region, when we look at  
16 Attachment F, we're at 137,711, less the audit  
17 amount. That's \$3.40 per customer per month,  
18 or about \$40 per year, over a two-year period  
19 is what we're proposing.

20 If you look at Aquarion's rate case,  
21 that was 225,000, for I think about a 6,000  
22 customer system, with one hydraulically  
23 connected system, a publicly traded company  
24 that has much, much greater in-house resources.

1                   The same thing for the Pennichuck  
2                   case, that was at 182,000. They have in-house  
3                   engineers we don't have, accountants we don't  
4                   have. They have, I think, approximately 100  
5                   employees in their company last I knew.

6                   Abenaki is a comparable example, and  
7                   that's less money than the expenses we  
8                   incurred, but that's also a publicly traded  
9                   company. They operate systems in three  
10                  different states. And they have access to a  
11                  lot greater resources.

12                 CHAIRMAN HONIGBERG: Okay. You're at  
13                  14 minutes now.

14                 MR. RICHARDSON: Okay.

15                 CHAIRMAN HONIGBERG: I think  
16                  Commissioner Scott has a question for you. And  
17                  we'll circle back to you in a minute, but --  
18                  all right, and Commissioner Bailey may have a  
19                  question as well.

20                 Commissioner Scott.

21                 CMSR. SCOTT: Thank you. Right where  
22                  you left off, so help me, connect the dot for  
23                  me. I understand the chart on Attachment 7  
24                  [Attachment F?] that you were just talking to.

1       So, you know, I think we're right in line with  
2       where you just stopped talking.

3               MR. RICHARDSON: Uh-huh.

4               CMSR. SCOTT: So, connect the dots  
5       for me. Why is this relevant *per se*, right?  
6       So, we have some disagreement over rate case  
7       expenses. And there's a potential for a  
8       disallowance that's being requested. So, help  
9       me why this is germane.

10              MR. RICHARDSON: So, I think the  
11       underlying obligation or burden of proof is to  
12       show that our expenses are related to the case.  
13       They're not excessive as in the cases  
14       identified. And what I'm providing you is is  
15       the list of companies that are in the same size  
16       category, over 600 customers, that were not in  
17       Staff's comparison. And we appear to be just  
18       about in the middle, when you look at it on a  
19       per customer charge. Abenaki was at 5.77 per  
20       customer per month; we're at 3.40. We're just  
21       over Aquarion's at \$2.05.

22              CHAIRMAN HONIGBERG: Put another way,  
23       Mr. Richardson, you would say -- you could say  
24       that Staff's argument made that relevant, made

1 the comparisons relevant, right?

2 MR. RICHARDSON: But I think it's  
3 good to see in the market what does it cost to  
4 do all these filings, to go through this  
5 process. Because, while every case is  
6 different, and we can't say that, you know, the  
7 two are exactly alike, I think you have some  
8 yardstick that's provided by the experience of  
9 others.

10 And that's really all this is. I  
11 mean, it's informative. It might not be  
12 dispositive, but I thought it was useful. And  
13 I was concerned by the comparison to the  
14 smaller utilities that were below 600, because  
15 they're really entirely different animals, in  
16 our view.

17 CMSR. SCOTT: And it sounds like  
18 you're going to agree with the statement I'm  
19 about to make, but maybe not. This is just  
20 illustrative. It doesn't mean, *per se*, that  
21 certain things should be disallowed. You  
22 could, for instance, be much higher than  
23 everybody else, but they could be very  
24 prudently incurred costs, and they should be

1 incorporated, for instance, right?

2 MR. RICHARDSON: And that relates to  
3 my earlier comment about how the additions that  
4 had been included in our permanent rate  
5 proposal were 31 percent of rate base. So,  
6 this was not just a "okay, we're trying to  
7 catch up with inflation" type of rate case.  
8 This was a major change in the nature of the  
9 Company's business. And the number of data  
10 requests of that 405, they're obviously not in  
11 the record, but all of those details were gone  
12 through by all of the parties. And that's what  
13 led to where we are.

14 CHAIRMAN HONIGBERG: Anything else  
15 you feel we really need to hear?

16 I think Commissioner Bailey has a  
17 question, too.

18 MR. RICHARDSON: Why don't we take  
19 Commissioner Bailey's question, and I'll look  
20 at my notes to try to summarize. Thank you.

21 CMSR. BAILEY: On your Tab F in your  
22 filing, with the table that compares the  
23 different rates, it says that the Lakes Region  
24 charge per customer per month is going to be



1       \$3.40 over eight quarters?

2               MR. RICHARDSON: That's correct.  
3       Both the Company and Staff proposed eight  
4       quarters.

5               CMSR. BAILEY: Okay.

6               MR. RICHARDSON: And we don't bill  
7       monthly. So, that's why you'll see, in the  
8       "Amortization" column --

9               CMSR. BAILEY: I understand that.  
10       So, my question is, on Staff's memo from  
11       February, it says that you want to charge  
12       "12.87 over eight billing quarters". And, so,  
13       three months times \$3.40 is less than that.  
14       Can you tell me what the difference in the  
15       numbers is?

16               MR. RICHARDSON: Thank you. Staff's  
17       memo includes, and the Staff and the Company  
18       are in agreement on what the permanent rate  
19       recoupment is. And, so, that's where that is.  
20       In this presentation, because we're only  
21       focused on rate case expenses, that's --

22               CMSR. BAILEY: Okay.

23               MR. RICHARDSON: I've tried to  
24       exclude the recoupment anywhere from the

1 discussion.

2 CMSR. BAILEY: All right. Thank you.

3 MR. RICHARDSON: And I meant to state  
4 that at the onset.

5 So, really, where we get to, and what  
6 I want to say in conclusion is is Staff, I  
7 think, has applied the wrong standard. They  
8 have said that our application of AFUDC, which  
9 I understand to be the primary reason for  
10 recommending a lower amount, is because it was  
11 erroneous. But the standard for -- in the  
12 cases and under the Commission's rules, is  
13 whether the expenses are just and reasonable.

14 In every settlement case or every  
15 utility case that I've been involved in,  
16 there's always a settlement agreement, where  
17 there's some concessions on one side and some  
18 concessions on the other. That doesn't mean  
19 that anything the Company concedes, though, is  
20 immediately deducted from rate case expense.  
21 And, in fact, the Settlement Agreement said  
22 that the Company was entitled to request its  
23 rate case expenses under the criteria in the  
24 PUC rules.

1           So, I think that, while I understand  
2       where they are coming from, we need to  
3       understand that this was a project that was in  
4       service for many years, without any charge to  
5       the Company. So, the Company had given this  
6       for free for a long time.

7           We've tried to figure out ways that  
8       would allow this to be brought in. If we  
9       brought it in as equity, that would have messed  
10      our capital structure up. We would have been  
11      at like 65 or 70 percent equity.

12          What happened during the case was is  
13      the capital projects that we agreed to add to  
14      offset the equity addition came to fruition.  
15      The Paradise Shores Drive, which is one of the  
16      step increases; the Dockham Shores improvement,  
17      which was a proposal to buy a company, that  
18      wasn't signed until the middle of the case, so  
19      it couldn't have been included at the outset,  
20      the Company was at its debt limit. So, it was  
21      really the circumstances of the case that  
22      allowed us to withdraw the AFUDC request. But  
23      those circumstances weren't present at the  
24      beginning, and I think that timing, and I

1 apologize for the long explanation, but that's  
2 what you need to know in order to understand  
3 how we ultimately got to the Settlement  
4 Agreement, and why that wasn't something we  
5 could have just done at the beginning and  
6 avoided the whole AFUDC question. We didn't  
7 propose AFUDC because we wanted to, and  
8 Mr. Mason discusses this in his testimony, we  
9 did it because we were trying to find the best  
10 answer. And the rate impact is actually almost  
11 identical down to the penny. It's slightly  
12 less for AFUDC, but not materially different.

13 CHAIRMAN HONIGBERG: Okay.

14 Mr. Blais?

15 MR. BLAIS: Yes, sir.

16 CHAIRMAN HONIGBERG: What is it you  
17 feel we need to know? And I guess, as you  
18 offer that up, would you also please explain  
19 why it is we are only hearing about it today,  
20 since this has been going on for some time, and  
21 it is unusual for us to be having a special,  
22 separate hearing on an issue regarding rate  
23 case expenses like this. We could have issued  
24 an order after we got Staff's recommendation.

1 We could have issued an order after we got the  
2 Company's response. So, why it is that you  
3 waited so long to bring this to our attention,  
4 and then substantively what it is you feel we  
5 need to know?

6 MR. BLAIS: Well, I'm sorry if I am  
7 coming from left field today, Commissioner.

8 *[Court reporter interruption.]*

9 CHAIRMAN HONIGBERG: Off the record.

10 *[Brief off-the-record discussion*  
11 *ensued.]*

12 MR. BLAIS: I'm generally informed I  
13 don't have a problem being heard.

14 However, as I started to say, I'm  
15 coming out of left field today, unfortunately.  
16 As I stated, I represent Indian Mound, has  
17 approximately 170 ratepayers. I have a busy  
18 practice in Massachusetts and Rhode Island.

19 I received an e-mail last Tuesday  
20 from Ed Hyde, who's the president of Indian  
21 Mound, and he was concerned about several of  
22 the billings that appeared, I believe, in  
23 Attachment E and Attachment D, of St. Cyr and  
24 Norman Roberge. I quickly tried to review it.

1 I got a quick e-mail off to Justin on Friday, I  
2 wish I had done it sooner.

3 However, I'm aware of two things.  
4 One is that Staff's recommendations, I believe,  
5 required that the original amount requested by  
6 Lakes Region of \$175,000 was reduced to the  
7 current \$135,000, if I'm correct. We do agree  
8 with the Staff's recommendations in that  
9 regard.

10 My clients, however, have been  
11 referring me, and I have reviewed them in the  
12 past, to two orders of the PUC requiring that  
13 Lakes Region finally hire in-house either  
14 counsel or accountants to do this service they  
15 have been using for Mount Roberts' petition and  
16 others. I don't wish to raise that issue right  
17 now, but I'm just telling you the concerns that  
18 I'm here for today generate from that issue  
19 from my clients.

20 I would encourage, and I would like  
21 to listen to Staff's recommendations, if  
22 they're along those lines that I believe I've  
23 read.

24 My objections to anything today are

1 based on what I think are handwritten or  
2 hand -- subjective notes by Mr. St. Cyr of his  
3 billings. We couldn't read through some of the  
4 handwritten notes on there. We didn't know if  
5 those were referring to actual costs on this  
6 case or some other.

7 I would suppose, and to the larger  
8 issues that Mr. Richardson has given  
9 information on today and has provided  
10 appendices and attachments, this is a  
11 relatively small issue to the Commission, and I  
12 apologize for bringing it up now. My clients  
13 are of limited funds, as you may or may not be  
14 aware. They're encouraged by the Staff's  
15 recommendations. However, their water rates  
16 are going to be approximately, if the  
17 appendices that have been provided,  
18 approximately a thousand dollars a year, based  
19 on these new calculations, 102.98 of which I  
20 understand from Mr. Richardson's submissions  
21 will be for the costs of the rate case.

22 I have no specific objection  
23 otherwise. I had wished I could have spoken  
24 with Mr. Richardson more in-depth last week.

1 But the general objection just is is that, with  
2 prior orders having been ordered -- or,  
3 entered, excuse me, by the Commission in  
4 regards to various expenses incurred by Lakes  
5 Region over a number of years, my clients just  
6 wish to be heard on that issue.

7 I think I have propounded it and  
8 proffered it sufficiently. I won't take any  
9 more of the Commission's time.

10 CHAIRMAN HONIGBERG: Thank you,  
11 Mr. Blais. Would the potted plant wish to  
12 offer anything at this time beyond what you've  
13 already said?

14 MR. KREIS: Very, very, very, very  
15 briefly, Mr. Chairman. I'm glad I do have a  
16 chance to say a couple of things, because I  
17 heard a few comments from Mr. Richardson with  
18 which I have to respectfully disagree. If  
19 nothing else, the law professor in me always  
20 bristles whenever I hear a utility refer to its  
21 statutory and constitutional right to earn a  
22 reasonable return. What utilities have a  
23 statutory and constitutional right to do is to  
24 have an "opportunity to earn a reasonable



1       return" on their shareholders' investment.

2               And, in this situation, the way that  
3       a utility secures that opportunity to itself  
4       is, in part, based on its meeting the burden of  
5       proof that is allocated to it in RSA 378:8.

6       And, so, I again respectfully disagree with Mr.  
7       Richardson when he suggests that the burden is  
8       on the Staff or perhaps on us or some other  
9       intervenor to demonstrate that the proposed  
10      recovery of rate cases -- rate case expenses  
11      are somehow unjust and unreasonable. It's  
12      always the Company's burden to demonstrate that  
13      these costs that they seek to include in rates  
14      are just and reasonable.

15             This is an important case, because it  
16      represents, as far as I can tell, the first  
17      opportunity for the Commission to rule in a  
18      contested setting on how it intends to apply  
19      the 1900 rules that it promulgated I believe  
20      about four years ago. Those rules were  
21      promulgated, I think in large part, based on  
22      three decisions that the Commission happened to  
23      make in October of 2011. And, if you look at  
24      those three decisions, they provide I think you

1       could call it sort of a "common law basis" for  
2       how the Commission is going to process these  
3       things according to the rules that it  
4       eventually promulgated. And those three orders  
5       were the orders entered in the Pittsfield  
6       Aqueduct Company rate case, 10-090; the  
7       Pennichuck Water Works rate case, which was  
8       11-018, I'm referring to Order 25,279 and  
9       25,278, they were both issued on October 21st  
10      of that year. But I think the most interesting  
11      and useful precedent is actually one that the  
12      Commission set four days later, in Order Number  
13      25,280, in the EnergyNorth Natural Gas case,  
14      back from the era when EnergyNorth was owned by  
15      National Grid. And, at the risk of making the  
16      Office of the Consumer Advocate look bad, I  
17      think what the OCA tried to do, and what the  
18      Commission said was unacceptable, is exactly  
19      what we're not looking at today. Basically,  
20      the Commission rejected OCA efforts to make an  
21      amorphous determination that, because the  
22      Company had proceeded in an inappropriate way  
23      in its underlying rate case, there would be  
24      these massive disallowances of rate case

1 expenses. Instead what the Commission accepted  
2 was Staff's recommendation. And Staff's  
3 recommendation in that case was based on a  
4 meticulous analysis of the actual evidence that  
5 was in the record with respect to rate case  
6 expenses in that proceeding.

7 That's what you are asked to do here  
8 today. And we believe that the analysis that  
9 Staff has placed before you is a sound and  
10 reasonable approach to rate case expenses here.

11 I think that's all I have to say.

12 CHAIRMAN HONIGBERG: Thank you, Mr.  
13 Kreis. Mr. Clifford.

14 MR. CLIFFORD: Thank you. To  
15 outline, I just wanted to mention where we  
16 started. The Company originally requested  
17 \$174,035.44 in rate case expenses, and this  
18 essentially goes to the question that  
19 Commissioner Bailey asked earlier, and the  
20 reconciliation of temporary and permanent  
21 recovery of rates with the quarterly surcharge  
22 of \$12.87 per customer over eight quarters.  
23 And that Lakes Region has approximately 1,700  
24 customers, give or take. So, the \$38,575.31

1 was a reconciliation between temporary and  
2 permanent rates as outlined in the Staff's  
3 recommendation, and \$135,460.13 were the actual  
4 rate case expenses.

5 So, the rate case expenses included  
6 \$62,724 in outside consultant fees and \$68,639  
7 in legal fees, and that's in Attachment B to  
8 the Staff recommendation. So, Staff supported  
9 the recovery of the \$38,575 in the rate  
10 recollect -- excuse me -- temporary to perm.  
11 rate reconciliation, but only recovery of  
12 \$90,000 on rate case expenses for two reasons:  
13 The erroneous application of the Allowance for  
14 Funds Used During Construction to the proposed  
15 Mount Roberts property acquisition; and, two,  
16 as Mr. Blais pointed out, continued reliance on  
17 outside consultants despite having hired a  
18 utility manager in 2013.

19 So, the PUC has the authority to make  
20 its own rules regarding rate case recovery.  
21 So, that's authorized by statute at 365:8, X,  
22 or "10", Roman numeral X. So, AFUDC must be  
23 deducted from the rate base as these are funds  
24 investors are not entitled to any return on.

1 And my citation for that is *Windham Estates*  
2 *Association versus State*, that's 117 NH 419, in  
3 1977.

4 And the Company was put on notice  
5 rather early on in this case, despite the  
6 statements made by the Company, of where the  
7 Commission and Staff -- excuse me -- Commission  
8 Staff stood on AFUDC. I note that this case  
9 was filed initially in I believe it was  
10 January -- excuse me -- June 3rd of 2015 there  
11 was a request for a change in rates, and then  
12 the formal petition actually came in on August  
13 5th, 2015.

14 Now, Jayson Laflamme, the Staff  
15 analyst who was assigned to this matter at the  
16 time, filed testimony on the temporary rate  
17 case, the position on the temporary rates. And  
18 I'm going to quote from his testimony that was  
19 filed on December 2nd, 2015 in this docket. He  
20 said, and I quote at Page 10 of his prefiled  
21 testimony: "However, based upon its initial  
22 review of this transaction, Staff believes that  
23 the inclusion of AFUDC in the total cost of  
24 construction and ultimately rate base is

1       inappropriate for a number of reasons. Chief  
2       among which is because LRWC", that being Lakes,  
3       "neither borrowed money nor employed its own  
4       funds for the construction of these assets.  
5       Rather, LRWC's shareholder funded the  
6       construction. As such, Staff believes that an  
7       AFUDC component for inclusion in rate base  
8       should not apply in this circumstance." And  
9       then Mr. Laflamme went on to state the reasons  
10      why he applied the deduction at that time.

11               So, the Staff had put the Company on  
12      notice very early on in this case about its  
13      position, and that it had no -- believes it had  
14      no merit and shouldn't carry any further  
15      weight.

16               CHAIRMAN HONIGBERG: So, how much of  
17      the proposed disallowance is attributable to  
18      the AFUDC?

19               MR. CLIFFORD: Well, the  
20      recommendation doesn't state with any measure  
21      of specificity about what portion is allocated  
22      to that. But the Staff proposal is that, based  
23      on the two, the erroneous application of AFUDC  
24      and continued reliance on outside consultants,

1       it thought that that deduction -- that the rate  
2       case expenses in the amount of \$90,000 was  
3       appropriate.

4               CHAIRMAN HONIGBERG:  Yes.  I got  
5       that, too.

6               MR. CLIFFORD:  Okay.

7               CHAIRMAN HONIGBERG:  But just play  
8       the game with me for a minute.  Assume we agree  
9       with you on one issue and disagree on the  
10      other.  How do we calculate what the right  
11      disallowance should be?

12              MR. CLIFFORD:  Well, the Commission  
13      has power under its own rules to make that  
14      determination, and that leads me to my second  
15      point.  Which is, under 1907(a), expenses that  
16      are not allowed, and it's written into the  
17      rules, that are "expenses for matters handled  
18      by service providers that are typically  
19      performed by utility management and staff of  
20      the utility, based on their experience,  
21      expertise and availability."  Okay?  So, the  
22      Commission has pretty broad, I would say,  
23      discretion.  If you look at the rules, under  
24      1904.02, it outlines the criteria that the

1 Commission uses for determining allowed rate  
2 case expenses.

3 Now, one of those is -- one area that  
4 I would focus the Commission's attention to is  
5 Puc 1906.01, which talks about "Allowed  
6 Expenses". And 109 -- oh, excuse me,  
7 1906.01(a) talks about "actual, known, and  
8 measurable rate case expenses" provided that  
9 they are "just", "and reasonable", and "in the  
10 public interest". So, I would argue that  
11 leaves the Commission a lot of discretion.

12 That, to me, suggests a three-part  
13 test, and you have to meet all three prongs.  
14 It suggests the "justness" prong, the  
15 "reasonableness" prong, and the "public  
16 interest" prong. And, so, which gets me to  
17 "What's in the public interest?"

18 Mr. Richardson talked about the other  
19 New Hampshire case, which I think, and I have  
20 not read it, it's the first time it's been  
21 pointed to me, but he talks about that it seems  
22 to be that "oh, the expense was in the wrong  
23 category" or it's not -- it's this other  
24 category standard.



1 I'm suggesting that we look at, and I  
2 ran this search, as to where do we ever define  
3 what's in the public interest. So, I would  
4 point the Commission to the *Appeal of Pinetree*  
5 *Power*, which is 152 NH 92, in 2005, and it was  
6 in the context of some intervenor wood plants  
7 that appealed a decision of a PUC -- of the PUC  
8 where PSNH authorized it to modify one of its  
9 energy generation assets, and maybe you guys  
10 are familiar with that.

11 But it's whether -- the question  
12 was -- it was not about rate case expenses, but  
13 it was whether the modification of the plant  
14 met the public interest test of 369-B:3-a. And  
15 the New Hampshire Supreme Court couldn't find  
16 the definition in the statute, and so looked to  
17 other relevant sections of 369-A. And it  
18 cobbled together an opinion in which it said  
19 "well, there is a discussion about greater  
20 competition, more efficient regulation, and  
21 things like increased customer choice, and  
22 lower and more competitive rates." And, so, it  
23 found the benefits of the restructuring  
24 included the rate relief. And it also noted

1       that the public interest encompassed more than  
2       simply just rates. And, so, I think that's  
3       what we're talking about here, is the duty of  
4       the Commission and its Staff to actually come  
5       up with "well, what's in the public interest?"

6               The rough calculation is that the  
7       Company is attempting to collect \$79.68 per  
8       customer, and Staff is recommending \$52.94.  
9       Again, using roughly 1,700 customers as the  
10      number of customers.

11             And I don't think it's appropriate,  
12      and while I see what the point Staff was trying  
13      to make and Mr. Richardson is trying to make  
14      with these charts showing the rate case  
15      expenses approved in other cases, it's kind of  
16      like this balancing test that they're asking to  
17      apply, but it's not really appropriate.  
18      Because that's like -- it's like judging kind  
19      of whether a particular line is longer than a  
20      particular, like, rock is heavy. You just --  
21      it doesn't make a lot of sense.

22             So, I would ask the -- I would think  
23      that the Commission might -- this might be a  
24      useful study in terms of if we wanted to just

1       prepare a chart about rate case expenses  
2       approved in other cases, but every case sits on  
3       its own merits. And I think that Staff's made  
4       a at least decent and colorable argument here  
5       about where it stood on the position of rate  
6       case expenses, and we're going to stand by  
7       their recommendation.

8               And I would further add that I think  
9       what we're trying to talk -- Mr. Richardson was  
10      trying to talk about earlier about a little bit  
11      what went on in the settlement discussions,  
12      that's off the table. Because, in the midst of  
13      the settlement, the rate case expenses never  
14      came up, and would never come up, because this  
15      is at the end of the game.

16             So, we're asking that you approve the  
17      rate case expense settle -- amount that was set  
18      forth in Staff's memo filed with the  
19      Commission.

20             CHAIRMAN HONIGBERG: On the AFUDC  
21      portion, is another way to say what you're  
22      saying that they never even should have made  
23      that argument, and they spent a lot of money  
24      making it. And whatever they spent pursuing

1 the AFUDC is what should be taken out on the  
2 AFUDC portion? Is that sort of a plain English  
3 way of looking at what you're saying?

4 It's more complicated.

5 MR. CLIFFORD: It's a little more  
6 complicated than that. But we would say that,  
7 yes, and the part that resulted in schedules  
8 being redone, to actually take that part out.

9 As you could see from Mr. Laflamme's  
10 testimony, I mean, we think that was a  
11 nonstarter from the getgo. So, maybe -- So, as  
12 a compromise, I would say you could take -- I'm  
13 not going to be in a position to ever tell, and  
14 nor should we, to specifically tell a company  
15 how to bring a rate case. But, I think, at the  
16 point of which we had the agreement filed on  
17 temporary rates, and the Company had already  
18 decided to back off its AFUDC position,  
19 anything else on that is out.

20 CHAIRMAN HONIGBERG: Commissioner  
21 Scott.

22 CMSR. SCOTT: Thank you. Attorney  
23 Clifford, on the -- I'm using Staff words here,  
24 "the continued extensive use of outside

1 consultants". So, that's the other component,  
2 if I recollect, which Staff effectively is  
3 recommending a disallowance. Is that correct?

4 MR. CLIFFORD: That is correct. And  
5 that's also discussed in the rules as well,  
6 which I think I read to you. But go ahead.

7 CMSR. SCOTT: Yes, you did. So, help  
8 me here. I'm not saying it's a requirement,  
9 but -- so, the Company hired a manager in 2013.  
10 So, how would the Company have foresight to not  
11 do what you're saying should be disallowed,  
12 right? So, the implication is is they should  
13 have relied on inside expertise, not hired  
14 outside. Is there some kind of communication  
15 with Staff? Again, I'm not saying that's a  
16 requirement, but --

17 MR. CLIFFORD: Again, it's pointed  
18 out to me by Staff, is that the Company was  
19 given a step adjustment particularly to hire an  
20 outside manager -- I mean, excuse me, to hire  
21 an inside manager. And, again, these are --  
22 the Commission has broad discretion. And,  
23 again, I point to you, it's 1907 -- 1907.01,  
24 and then you can even look at (g), it says

1 "Such other similar expenses that are not  
2 related or material to the preparation or  
3 presentation of a full rate case, as determined  
4 by the Commission after its review." So,  
5 really, this is a pretty broad discretionary  
6 power, it's left to the Commission after its  
7 review, and they decide to make a  
8 recommendation.

9 CHAIRMAN HONIGBERG: I think we  
10 all -- I think we all understand.

11 MR. CLIFFORD: Right.

12 CHAIRMAN HONIGBERG: I mean, case law  
13 gives us a lot of discretion in a lot of areas.  
14 I think we all appreciate that. It gives us  
15 some comfort --

16 MR. CLIFFORD: Right.

17 CHAIRMAN HONIGBERG: -- that we have  
18 a lot of discretion.

19 But we're still trying to understand  
20 what the factual basis is for what you're  
21 asserting and how it would work. I mean, I'm  
22 looking at, I'm sure this is in a number of  
23 different places, but in what Mr. Richardson  
24 filed last week, his Attachment B lists, you

1 know, 12,800 for Norman Roberge, just under  
2 50,000 for St. Cyr, 68 and a half thousand for  
3 Mr. Richardson, and then, you know, many  
4 smaller figures. Those are the big dollars.  
5 Those are the outside consultants.

6 MR. CLIFFORD: Uh-huh.

7 CHAIRMAN HONIGBERG: The Staff is not  
8 asserting that the Company should have an  
9 in-house lawyer, an in-house -- and some  
10 combination of in-house consulting and  
11 accounting services on staff, are they?

12 MR. CLIFFORD: No. Absolutely not.  
13 But --

14 CHAIRMAN HONIGBERG: So, how does a  
15 company, a small company with a small staff, do  
16 this without hiring experts?

17 MR. CLIFFORD: I concede your point  
18 on this matter, is that, sure, at some point  
19 you have to -- a small company needs to reach  
20 outside, because there's technical expertise  
21 that it just can't get. But we specifically  
22 point to the fact that we've given the Company  
23 additional funds, at least as early as 2013, to  
24 start to get its arms around some of the

1 financial and reporting that it needed to do.  
2 And we think that some of the -- some of the  
3 charges that were presented here could have  
4 been more -- could have been done more  
5 efficiently by staff in house. And, again, I'm  
6 not saying they need an in-house lawyer and  
7 they need a, you know, MBA finance person  
8 inside Lakes Region Water Company, but they  
9 have someone there.

10 CHAIRMAN HONIGBERG: These two are  
11 falling all over each other trying to get the  
12 next word. So, Commissioner Scott.

13 CMSR. SCOTT: Again, just from my  
14 recollection, so, if I remember correctly, they  
15 had hired a Mr. Fontaine, does that sound  
16 correct?

17 MR. CLIFFORD: That's correct.

18 CMSR. SCOTT: And when was the  
19 transition made, do we know that, since he's  
20 not an employee now?

21 MR. CLIFFORD: I don't have the  
22 answer to that. I didn't hire him. So, I  
23 think that maybe that question is better  
24 directed at the Company. Maybe a year ago.



1 CMSR. SCOTT: And my question is is  
2 how would that transition relate to the time  
3 period we're talking about, if that makes  
4 sense?

5 MR. CLIFFORD: Well, it's the time  
6 period during which this rate case was being  
7 brought.

8 CMSR. SCOTT: So, again, maybe I  
9 should be talking to the Company, but that  
10 would be another factor, it makes sense to me,  
11 if you're in transition for that employee, and  
12 you're in the middle of a rate case, that would  
13 lend me to go outside, I think. I'm just  
14 trying to understand the --

15 MR. CLIFFORD: Yes. I would think  
16 that, too. But you try -- you know, it would  
17 behoove the Company to try to keep as much --  
18 as much work done in house as is reasonably  
19 possible. Remember, that the -- right. People  
20 do go through transitions. We try -- you try  
21 you're best to accommodate and get through  
22 those. And I don't know exactly what happened  
23 here. But, clearly, a wholesale reliance on  
24 outside consultants would be, you know, a

1 bridge too far. And, obviously, if you've left  
2 absolutely everything to an army of inside  
3 consultants, we'd be arguing the other extreme,  
4 saying "This Company is spending way too much  
5 money on staff, when, you know, when, but for a  
6 few times every few years, when you have a  
7 full-blown rate case, they're sitting around,  
8 you know, not really -- customers shouldn't be  
9 paying for that."

10 So, this is one of those cases where  
11 maybe it's a tough call. But we think that the  
12 reduction here is reasonable. There is no  
13 right to recover your rate case expenses. You  
14 know, they have been disallowed in prior cases.  
15 And we believe -- we stand by Staff's  
16 recommendation.

17 Now, is it a perfect one? No. But  
18 they did make it -- they did go through all the  
19 invoices, and this is their just and reasonable  
20 best determination about what should and should  
21 not be included.

22 CHAIRMAN HONIGBERG: Commissioner  
23 Bailey.

24 CMSR. BAILEY: Do you know if the

1 schedules that had to be refiled because they  
2 were incorrectly filed the first time were done  
3 by consultants or were they done by the  
4 in-house staff?

5 MR. CLIFFORD: I do not know the  
6 answer to that, because it -- actually, it  
7 would have predated my participation in this  
8 case. As I said, I think they were refiled in  
9 2015.

10 *(Atty. Clifford conferring with*  
11 *Dir. Naylor.)*

12 MR. CLIFFORD: We're not certain who  
13 provided them to the Commission, and maybe the  
14 Commissioners might want to ask --

15 CHAIRMAN HONIGBERG: We're about to  
16 do that. Mr. Richardson.

17 MR. RICHARDSON: Thank you. Can I  
18 just ask for a clarification? Is it Staff's  
19 position that the Company refiled its schedules  
20 due to an error? I don't remember that ever  
21 happening.

22 *(Atty. Clifford conferring with*  
23 *Dir. Naylor.)*

24 MR. CLIFFORD: I'm being told that

1 the case was actually put on hold while the  
2 Company resubmitted filings that had been filed  
3 inaccurately.

4 MR. RICHARDSON: No, but to reflect  
5 Dockham Shores and the capital projects. Isn't  
6 that what we did? I mean, and then the final  
7 schedules were off of Jayson Laflamme's, but we  
8 agreed to use those, not because it was -- the  
9 other ones were erroneous. We just thought it  
10 was easier to agree to Staff than to argue  
11 about our own. So, --

12 CHAIRMAN HONIGBERG: All right. I  
13 think you may have another piece of information  
14 that --

15 MR. RICHARDSON: Yes. No, no.  
16 That's fine.

17 CHAIRMAN HONIGBERG: -- that  
18 Commissioner Scott was asking about related to  
19 the employee.

20 MR. RICHARDSON: Yes. So, let me try  
21 to just reply to the issues that I heard.

22 CHAIRMAN HONIGBERG: Wait. Wait. I  
23 thought there was one -- I thought there was  
24 one additional piece of information. Let's

1       make sure we're done with Mr. Clifford, before  
2       we circle back and give you the last word,  
3       which is what I'm planning on doing.

4               MR. RICHARDSON:   Okay.

5               CMSR. BAILEY:   So, I'm trying to  
6       figure out how Staff determined that a third of  
7       the rate case expenses should be disallowed.  
8       And I thought maybe it was for work that was  
9       done unnecessarily when they had to refile the  
10      schedules.   But now I'm not sure about that.  
11      So, is there --

12              MR. CLIFFORD:   I wish I had a better  
13      explanation.   And a lot of times your given the  
14      facts you're dealt with.   I've got a number,  
15      and I don't have any sheets underneath me to  
16      say how that number was arrived at.

17              But I could defer to Mr. Naylor.

18              CHAIRMAN HONIGBERG:   Mr. Naylor, you  
19      want to offer something up here, is that -- or  
20      do you want to confer with Mr. Clifford for a  
21      moment?

22              DIR. NAYLOR:   I think I can help  
23      answer the question.

24              CHAIRMAN HONIGBERG:   All right.   Why

1 don't we give the microphone to Mr. Naylor and  
2 let him try to help answer the question.

3 DIR. NAYLOR: With respect to the  
4 AFUDC, it was clear from the beginning that it  
5 was erroneously applied. There was no way,  
6 reading the Chart of Accounts, you could  
7 interpret that to permit the application of  
8 AFUDC. That's just -- there's no possible way  
9 that it can be interpreted.

10 But -- so, given that, we know that  
11 there is additional work that had to be done.  
12 Now, Mr. Richardson indicates that it was Staff  
13 that did the additional work, I'm not so sure  
14 about that. I don't think there's any question  
15 that there was additional work that needed to  
16 be done that was caused by a decision to  
17 erroneously apply AFUDC.

18 We had many discussions about it at  
19 very beginning of this case. And it doesn't  
20 apply. You cannot apply.

21 Secondly, with respect to the use of  
22 outside consultants. There's a number of  
23 dockets going back ten years with this Company,  
24 beginning in '07, '08, and on, all the way

1 through till now, where issues have been  
2 discussed with respect to the Company's rates,  
3 and a number of other issues, and its reliance  
4 on outside consultants to get its important  
5 work done, particularly its regulatory work.

6 And, in 2013, as part of one of those  
7 proceedings, I don't recall the docket, I  
8 believe it was an '08 docket, or maybe '10,  
9 doesn't matter, it was, by the time it rolled  
10 around, 2013. And we put in the Staff  
11 recommendation the order number, 25,496. The  
12 Company was given a step adjustment to rates  
13 specifically, including benefits, of just about  
14 \$60,000, so it could hire a utility manager,  
15 bring that person on board, and gain some  
16 efficiencies and some cost efficiencies, rather  
17 than paying consultants. And this was someone  
18 that was a utility manager, someone with a  
19 finance or accounting background.

20 And Staff's view of these rate case  
21 expenses is that, if you look at Mr. St. Cyr's  
22 bills or you look at other consulting bills,  
23 Mr. Roberge, it's not so much that the  
24 expenses -- some of the expenses they incurred

1 are ineligible for recovery, it's that they  
2 should have been done by someone in house.  
3 They had a step adjustment of \$60,000 a year.

4 And, admittedly, we can't perfectly  
5 quantify it. But we got to a number of  
6 \$90,000, and that's what we thought was  
7 reasonable.

8 CMSR. BAILEY: So, whose work should  
9 have been done by the in-house person? Mr. St.  
10 Cyr's or Mr. Roberge's?

11 DIR. NAYLOR: Probably some of both.  
12 Mr. St. Cyr was more heavily involved in the  
13 case. I believe the initial filing is Mr. St.  
14 Cyr's work, the initial schedules are Mr. St.  
15 Cyr's work. And that's fine. He does a fine  
16 job, except for the AFUDC part. But that's a  
17 significant cost. And the utility manager was  
18 hired specifically for this type of thing.

19 Because, go back to previous dockets,  
20 as I said, '07, '08, '10, '12, whatever, they  
21 were astronomically expensive for the Company  
22 to prosecute, because they had -- they were  
23 using tens of thousands of dollars a year, if  
24 not hundreds, on outside consultants. You can



1 do better with somebody in house.

2 CMSR. BAILEY: Were these numbers  
3 lower than the previous years? Yes, the  
4 previous -- were these rate case expenses lower  
5 than previous rate case expenses?

6 DIR. NAYLOR: I'm sorry. I don't  
7 recall what their last rate case expense level  
8 was.

9 CMSR. BAILEY: Okay. All right.  
10 Thank you.

11 CHAIRMAN HONIGBERG: Mr. Clifford?

12 MR. CLIFFORD: I just have one more  
13 thing to add. I know the Company talked about  
14 analyzing rate case expenses approved in other  
15 cases, for example, the Pennichuck case, DW  
16 13-126. And I noted in that case, and I think  
17 it's of critical K-L importance here and maybe  
18 moving forward, is that what was done in that  
19 case, where there were costs of consulting  
20 services, as well as not to agree -- "not to  
21 exceed" stipulations. Which means that,  
22 apparently, the other companies are aware of  
23 this, and include that kind of language in an  
24 agreement so you don't end up with runaway

1 consultants, where the company comes in and  
2 says "well, I got to put all these expenses in,  
3 because I got billed for them." And I think  
4 that it seems like there was an attempt there  
5 to try to deal with that up front. So that  
6 there must have been some way written into the  
7 contract that we're going to give you a license  
8 to go this far, and you're not going to go any  
9 further. And, purportedly, if you did go any  
10 further, you'd have to come back to us to get  
11 approval.

12 And, as you know, during the rate  
13 cases, the company is supposed to be filing its  
14 expense reports as the case is occurring, so  
15 you're kind of given a heads-up along the way.  
16 I'm not sure whether that was actually fully  
17 done in this particular case or not, but I've  
18 seen it done in other cases.

19 CHAIRMAN HONIGBERG: All right.  
20 Thank you, Mr. Clifford.

21 Mr. Richardson, we're going to give  
22 you the last word.

23 MR. RICHARDSON: Thank you, Mr.  
24 Chairman. So, I'm just going to go through

1 kind of in the order that I heard them, some  
2 responses, and I'll try to avoid duplicating  
3 myself.

4 First, on the issue of outside  
5 consultants. I think this is an important one,  
6 and I heard, I believe you, Mr. Chairman,  
7 identify really what the key issue for us is.  
8 Is that, if you carry the expenses and the  
9 accounting capabilities to do a rate case in  
10 your test year expenses, our test year will be  
11 much higher. Because, you know, rate cases are  
12 a problem in that you have your normal workload  
13 that you're trying to do, and you want to keep  
14 your rates as low as you possibly can. Along  
15 comes a rate case, and all of a sudden you have  
16 three times the work to do. And that's really  
17 the fundamental problem.

18 Turning specifically to the account  
19 manager that was hired in 2013, as a result of  
20 the last rate case, which was DW 10-141, it was  
21 a 2000 [2010?] case, there was a 2012, I  
22 believe, July 5th order that authorized the  
23 hiring of a utility manager. He was brought in  
24 in 2013 as a filing in that docket.

1                   What I'd like you to note, and if you  
2                   don't mind pulling this up, because I think  
3                   it's come up over and over again, and it's very  
4                   critical, there's a February 28th, 2017 filing  
5                   from the Company, that's the date on the  
6                   letter, in response to Staff's recommendation.  
7                   Ms. Valladares in that has put together a  
8                   timeline showing how the utility manager hired  
9                   by the Company has actually reduced the need  
10                  for outside consulting services.

11                  So, do you have the ability to pull  
12                  that up in front of you or --

13                  CHAIRMAN HONIGBERG: Well, let's make  
14                  sure we're talking about the same document. I  
15                  have a letter from Ms. Valladares dated "March  
16                  1".

17                  MR. RICHARDSON: And, if you flip it  
18                  over, actually the top of the letter says  
19                  "February 28th". So, Page 2 has a different  
20                  date on it.

21                  CHAIRMAN HONIGBERG: It took a lot of  
22                  time to write that letter.

23                  MR. RICHARDSON: Yes. And, so, the  
24                  expense of this letter should probably be

1 disallowed. Excuse me, we'll refile it. No,  
2 but that table is very helpful. Because what  
3 you see there is 2012 was the year the last  
4 rate case order came out, and there was \$71,000  
5 in accounting expenses, because the Company  
6 didn't have anyone. It was Mr. Roberge or it  
7 was effectively, you know, a secretary that was  
8 doing the data entry. 2013 it dropped to  
9 60,000. That's the year that Mr. Fontaine was  
10 hired. He was hired because he was really one  
11 of the only candidates that applied who had a  
12 lot of utility experience. So, he was very  
13 attractive to the Company.

14 But the first thing that the Company  
15 did was bring him on to completely, and I  
16 alluded to this before, transition the Company  
17 to a new accounting system. So, the goal was  
18 to say "let's, you know, first order of  
19 business is to get us onto a system that allows  
20 us to provide information more efficiently."  
21 And what you see is is, as that transaction  
22 took place, things get better and better.  
23 2014, we're now down to 43,000. Now, 2015,  
24 we're starting to see a rate case. There's

1 continued work from Mr. Fontaine, but  
2 Mr. Fontaine is actually retiring that year.  
3 His last date was in 2015. And that was an  
4 issue that Commissioner Scott raised, was is  
5 there was a transition, not only between  
6 utility managers, Ms. Valladares came on in  
7 2015, but that was also the year that the rate  
8 case was being filed. And Mr. Fontaine, as  
9 much as we liked him, trying to get him to --  
10 trying to get him to -- I may be incorrect, I  
11 just heard "2016", so maybe he was beginning to  
12 retire. He was headed towards retirement in  
13 '15.

14 The key is, though, that the -- he  
15 was working on transitioning the utility, doing  
16 a lot of important things, but the rate case  
17 was something that went beyond that. And, as  
18 he was getting closer and closer to retirement,  
19 you simply couldn't bring him in to do all  
20 these things.

21 The assumption in having a utility  
22 manager isn't that the person would be able to  
23 handle a rate case in any given year. You just  
24 can't do that. And, if we had to bring in that

1 level of support, it would be a huge cost to  
2 the customers.

3 So, that issue, I think, is an  
4 important one, and I think the Commission is  
5 headed in the right direction on that.

6 The Office of Consumer Advocate  
7 raised an issue, and I think this is an  
8 important one, because it also relates to  
9 Staff's comments about the "burden of proof".  
10 And I agree, I was speaking in shorthand when I  
11 said it is, in fact, the opportunity to earn a  
12 return. But I'm assuming that, as long as  
13 we're not acting imprudently or excessively or  
14 unreasonably, that we would, in fact, be  
15 allowed to demonstrate it.

16 But what the rule says, and that's  
17 the "burden of proof" rule, is that any party  
18 making a factual assertion bears the burden of  
19 proof of demonstrating that. And to say that  
20 the Company's AFUDC use was "erroneous" is, I  
21 think, a factual conclusion that should be  
22 supported in the record.

23 Now, Mr. Laflamme's testimony is  
24 there. But what he says is is that it's

1 "erroneous". That's the wrong legal standard.  
2 The question is is "was it imprudent or not?"  
3 Because the Company couldn't have brought in --  
4 well, let me get straight to the basis for  
5 that, because Attorney Clifford read you Jayson  
6 Laflamme's conclusion. And what he concludes  
7 was is is that the Company wasn't using their  
8 own funds, they were using the shareholder's  
9 funds, and, therefore, that's disallowed. But  
10 the problem is is that effectively would --  
11 that's not what the rule says. I mean, in  
12 effect, the shareholder's funds are the  
13 Company's funds, because that is capital that  
14 is basically contributed. It's not included in  
15 rates yet, because the project is being  
16 developed over time. The land is being bought,  
17 the permits are being obtained, the wells are  
18 being constructed, the utility power lines out  
19 there are being placed into service. All of  
20 these things are happening with shareholder  
21 funds that are given to the Company. And, in  
22 fact, the customer ultimately ended up using,  
23 once the permits were issued, and even before  
24 that on a temporary basis.



1                   So, it's -- what we have is a  
2                   disagreement over whether the AFUDC rule  
3                   applies and how it should be applied. But  
4                   we've given you the rule today, and you've seen  
5                   it. And the question was asked or the comment  
6                   was made "we're not here to tell the utility  
7                   how to file its rate case." Well, who is there  
8                   to do that? And the answer is "the rules".  
9                   And, so, we looked at the rules. And we said  
10                  "Okay, we're at our debt limit. We can't  
11                  borrow this money. We can't contribute it into  
12                  rate base, because that would put us up at like  
13                  a 60 or 70 percent equity capital structure,  
14                  which would not be approved." So, we tried to  
15                  find a way to blend it and to come in with a  
16                  proposal at about 7.5 percent for the AFUDC  
17                  allowance for the period from the initial  
18                  investment to 2012. The idea being, let's  
19                  follow what the rules say as best we can and  
20                  come up with a solution that was effectively  
21                  equivalent. We selected a different means. We  
22                  had a disagreement about whether it was  
23                  approved.

24                   CHAIRMAN HONIGBERG: Okay. You're

1 repeating yourself now.

2 MR. RICHARDSON: Yes. Okay. Thank  
3 you. All right. I'll leave that issue.  
4 So, --

5 CHAIRMAN HONIGBERG: Bring it home.

6 MR. RICHARDSON: We are there. So, I  
7 think the problem is, at the end of the day,  
8 Staff has put together a general  
9 recommendation, but it doesn't provide any  
10 helpful information for us to look at what  
11 should be in or what should be out. That was  
12 their burden if they wanted to say that our  
13 costs were unreasonable or not; they haven't  
14 done that.

15 The last piece of the question that I  
16 believe Commissioner Scott -- or, no, excuse  
17 me, Commissioner Bailey raised, was "what did  
18 the last rate case cost?" And that was  
19 \$152,000. And it's in the table, and subject  
20 to check, I should say, that's my recollection  
21 of what Staff's recommendation says. They have  
22 a table. They put our last rate case in as an  
23 example. And it's my recollection that that  
24 was about \$152,000 for what the Commission

1 approved. And I think what that does is it  
2 highlights things, even with a major case as  
3 this one, we are at 137. So, we're actually  
4 going down and we're seeing progress. Even  
5 though we changed utility managers, even though  
6 this was a challenging case with a 30 percent  
7 rate case addition -- addition to rate base, we  
8 still ended up with reduced costs.

9 And I think, taking all this into  
10 consideration, I think the Company's request is  
11 a reasonable one. The Commission should  
12 obviously remove the audit costs, because the  
13 rules specifically do not allow that, and  
14 that's in the table that we've submitted at Tab  
15 E.

16 And we thank the Commission for  
17 taking the time to hear this.

18 CHAIRMAN HONIGBERG: All right.  
19 Well, thank you all. We'll take the matter  
20 under advisement and issue an order as quickly  
21 as we can.

22 ***[Whereupon the hearing was***  
23 ***adjourned at 2:49 p.m.]***  
24