

STATE OF NEW HAMPSHIRE

PUBLIC UTILITIES COMMISSION

March 27, 2012 - 9:08 a.m.
Concord, New Hampshire

Day 4

MORNING SESSION ONLY

NHPUC APRO6'12 PM 4:13

RE: DW 07-105 LAKES REGION WATER COMPANY:
Investigation Into Quality of Service.
DW 10-043 LAKES REGION WATER COMPANY:
Affiliate Agreement with LRW Water Services.
DW 10-141 LAKES REGION WATER COMPANY:
Petition for a Change in Rate Schedules.
DW 11-021 LAKES REGION WATER COMPANY:
Petition for Approval of Long-term Debt.

PRESENT: Chairman Amy L. Ignatius, Presiding
Commissioner Robert R. Scott
Commissioner Michael D. Harrington

Clare Howard-Pike, Clerk

APPEARANCES: Reptg. Lakes Region Water Company:
Justin C. Richardson, Esq. (Upton & Hatfield)

Reptg. Property Owners Association at
Suissevale, Inc. (POASI):
Douglas L. Patch, Esq. (Orr & Reno)

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

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APPEARANCES: (C o n t i n u e d)

Reptg. Residential Ratepayers:

Rorie E. P. Hollenberg, Esq.

Stephen R. Eckberg

Donna McFarland

Office of Consumer Advocate

Reptg. PUC Advocate Staff:

Marcia A. B. Thunberg, Esq.

Mark A. Naylor, Director - Gas & Water Div.

Reptg. PUC Non-Advocate Staff:

Alexander Speidel, Esq.

James Lenihan, Gas & Water Division

Douglas Brogan, Gas & Water Division

Jayson Laflamme, Gas & Water Division

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I N D E X

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1 Advocate Mark Naylor, who's already in the witness box.
2 Thank you.

3 MR. SPEIDEL: Good morning,
4 Commissioners. Alexander Speidel, on behalf of Staff,
5 Jayson Laflamme, Jim Lenihan, and Doug Brogan.

6 CHAIRMAN IGNATIUS: Good morning,
7 everyone. So, we see, Mr. Naylor, you're ready to go.
8 Are there any procedural matters, before we begin with Mr.
9 Naylor's testimony?

10 MR. RICHARDSON: I'll just note that the
11 Company sent out electronically, and I have with me today,
12 responses to data requests -- or, excuse me, Record
13 Requests 3 and 4. I can hand those to the Commissioners
14 now, if you'd like?

15 CHAIRMAN IGNATIUS: That would be great.
16 They weren't in our box this morning, I know. So, if you
17 have them, extra copies, that would be ideal.

18 MS. THUNBERG: Chairman Ignatius, with
19 respect to Record Request Number 4, Staff does have a
20 clarification to ask. Because the record request states
21 that they cannot locate the document that was requested, I
22 would like to know whether this is going to be
23 supplemented and by when it will be allowed to be
24 supplemented? Thank you.

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1 MR. RICHARDSON: The Company located the
2 document at about 4:07 yesterday. And, so, we had -- we
3 had the response ready to file, and then we suddenly had
4 the document in hand, having essentially explained to the
5 Commission what we had done to try and find it, what the
6 document meant. So, we just put a note in the response
7 that you'll see that has -- that indicates that there's an
8 update; the document was found, the time it was found, and
9 we included it.

10 CHAIRMAN IGNATIUS: So, when will the
11 actual document itself be circulated?

12 MR. RICHARDSON: I have it. I have it
13 right here with the response. It was just that the
14 timing, you know, we were just about to give up, figuring
15 we wouldn't be able to provide it, and then it was found.
16 So, --

17 CHAIRMAN IGNATIUS: All right. So, can
18 we file only the updated Number 4, rather than do it in
19 two steps?

20 MR. RICHARDSON: I have it all as one
21 package that's stapled.

22 CHAIRMAN IGNATIUS: Okay.

23 MR. RICHARDSON: And, actually, 3 and 4
24 together.

1 CHAIRMAN IGNATIUS: All right.

2 (Attorney Richardson distributing
3 documents.)

4 MS. THUNBERG: Chairman Ignatius?

5 CHAIRMAN IGNATIUS: Yes.

6 MS. THUNBERG: Staff Advocate still has
7 another question. Because --

8 CHAIRMAN IGNATIUS: Before we move on,
9 is it relating to Number 4?

10 MS. THUNBERG: This is, again, another
11 question regarding Record Request Number 4, a copy of
12 which you were provided. And, I've had Attorney
13 Richardson confirm that what was emailed to Staff and the
14 parties yesterday is what was presented to you. And, the
15 record request requests a letter between Mr. Mason, Sr.,
16 and the Water Company. And, I just want to get some
17 clarification, how this January 30th, 2009 letter from
18 Barbara Mason relates to that?

19 CHAIRMAN IGNATIUS: I think that's a
20 good question. I guess, let's take it one step at a time,
21 though. Record Request Number 3 is a stand-alone,
22 separate, there's no updates or additional pieces to it,
23 correct?

24 MR. RICHARDSON: That's correct.

1 CHAIRMAN IGNATIUS: So, let's just log
2 that in, Number 3, as a separate request response. Then,
3 Number 4 has numerous attachments to it. And, flipping
4 through, is the last page, the handwritten page from
5 Mrs. Mason, the response to the question "what's the
6 authority for use of the Mount Roberts test waters for the
7 Lakes Region customers?"

8 MR. RICHARDSON: That's correct. The
9 letter that Tom Mason referred to in his testimony is the
10 last page of Record Request 4. And, just for the
11 Commissioners' understanding, as we were going through
12 trying to locate it, and preparing to explain or apologize
13 for being unable to find it, we went through the process.
14 And, in evaluating what was done before the Planning
15 Board, it was eventually realized that that's where the
16 letter might have been produced, because the Planning
17 Board regulations required the owner give permission, you
18 know, to the applicant for the change in use. And that,
19 as it turns out, is where the letter was located.

20 CHAIRMAN IGNATIUS: So, the Planning
21 Board in the Town of Moultonborough was reviewing it, and
22 that's why the letter is written to the Town of
23 Moultonborough?

24 MR. RICHARDSON: That's right. The use

1 of the property as a well field required both site plan
2 approval and a special exception from the Planning Board.

3 CHAIRMAN IGNATIUS: And, "Balmoral Water
4 System", help me again, does that also include the
5 Suissevale units?

6 MR. RICHARDSON: Balmoral is owned by --
7 the water system is owned by Lakes Region Water Company.
8 And, Suissevale is served off of that system as a
9 wholesale customer, and Suissevale owns its own water
10 system. So, when people refer to "Paradise Shores", it
11 often refers to both Balmoral and Suissevale. But this
12 was -- and the Mount Roberts' property was serving both
13 the wholesale customer and Balmoral.

14 CHAIRMAN IGNATIUS: Yes, Mr. Harrington.

15 CMSR. HARRINGTON: Yes. I notice it
16 says at the very end here "on a temporary basis", but
17 there's no date. Is it intended to be an open-ended
18 commitment, "temporary, as long as it's not rescinded", or
19 is there some agreement with the Town of Moultonborough
20 that it was "temporary" meant some period of time?

21 MR. RICHARDSON: Are you referring to --

22 CMSR. HARRINGTON: I'm referring to the
23 letter on the very last page, the handwritten letter
24 signed by Barbara Mason. The January 30th, 2009, letter,

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1 the very last sentence, "on a temporary basis".

2 MR. RICHARDSON: I assume that would be
3 until -- well, first, I don't actually know the answer to
4 your question. But, reading it, I'm assuming that that
5 refers to "as long as it's put to that use". Or, the
6 other way of looking at it is, is that the parties were
7 obviously contemplating that they would come before the
8 PUC and seek to include this in rates, at which point the
9 Company would have to acquire it.

10 CMSR. HARRINGTON: Okay. I guess my
11 question is then, and there seems to be a lot of
12 information here with the Zoning Board. Was there any
13 time set on the Zoning Board's approval that says "you can
14 use this for so long", two years, three years, whatever,
15 or is it just, "as long as you want to keep using it, you
16 can"?

17 MR. RICHARDSON: No. No. The Zoning
18 Board minutes approving the project are attached, as is
19 the decision of the Planning Board issuing the site plan
20 approval.

21 CMSR. HARRINGTON: There is no end date
22 to the permit?

23 MR. RICHARDSON: No.

24 CMSR. HARRINGTON: Okay. Thank you.

1 MR. RICHARDSON: No. The DES permits
2 are the ones that are temporary in nature. And, you know,
3 the Company is moving towards getting a Small Production
4 Well Permit for those.

5 CHAIRMAN IGNATIUS: Mr. Patch, did you
6 have any comments on Record Request 3 or 4?

7 MR. PATCH: Well, I think the question
8 from the Chair about what Balmoral is is helpful, because,
9 if you look at that letter, it only refers to the "for the
10 Balmoral Water System". That's somewhat ambiguous. I
11 mean, it doesn't say "for Paradise Shores", it doesn't say
12 "to include Suissevale". But I just point that out.

13 CHAIRMAN IGNATIUS: But would you agree
14 with Mr. Richardson's description of that Balmoral
15 includes -- can be read to include Suissevale and --

16 MR. PATCH: Well, I mean, it's pretty
17 hard to say what Barbara Mason intended when she wrote
18 that letter. I mean, she's not here to testify to it.
19 But, as I think has come out during the course of this
20 hearing, and I don't disagree with what Mr. Richardson
21 said. Balmoral is generally regarded as being separate,
22 and then Suissevale, and then altogether it's Paradise
23 Shores. I mean, that's the way we talk about it.

24 CHAIRMAN IGNATIUS: Do you have any

1 objection to the admission of Record Request 4?

2 MR. PATCH: I mean, with that
3 understanding, that she's not here to testify, and we
4 don't know exactly what she meant. I mean, you know,
5 clearly, the Commission can give it the weight they deem
6 appropriate. So, we don't have an objection.

7 CHAIRMAN IGNATIUS: Okay. Thank you.
8 Does OCA have a concern about Record Request Number 4 or
9 either of the Staff attorneys?

10 MS. THUNBERG: The Staff Advocate has no
11 other comments on this record request. Thank you.

12 CHAIRMAN IGNATIUS: All right.
13 Mr. Speidel, any objection to that?

14 MR. SPEIDEL: I have no objection. But,
15 as this proceeding continues, I would recommend that we be
16 careful to at least enter into the record orally some
17 chain of authentication for dated documents such as this.
18 There might be a moment at which the Commissioners find it
19 appropriate or one of the attorneys find it appropriate to
20 discuss briefly the providence of specific documents
21 entered into the record.

22 CHAIRMAN IGNATIUS: Always a good bit of
23 advice. Thank you.

24 MS. HOLLENBERG: Madam Chair?

1 CHAIRMAN IGNATIUS: Yes.

2 MS. HOLLENBERG: Sorry I didn't respond
3 to you earlier.

4 CHAIRMAN IGNATIUS: No problem.

5 MS. HOLLENBERG: I was just consulting
6 with my colleague here. We don't take any position
7 specifically on the record request. I guess only just
8 noting that the Commission has the discretion to give it
9 the weight that it deems appropriate. Thank you.

10 CHAIRMAN IGNATIUS: Well, that's true.
11 But, I guess what I'm wondering is, do you find reasons to
12 not give it much weight?

13 MS. HOLLENBERG: Well, we received --
14 it's hard to give -- we haven't had a lot of time to look
15 at it, we haven't had an opportunity to ask any questions
16 about it. You know, the witness or the person sponsoring
17 one of the documents isn't available. So, I don't
18 necessarily view it as something that I would give a lot
19 of weight, in terms of my presentation to the Commission
20 of the OCA's position.

21 CHAIRMAN IGNATIUS: All right. Thank
22 you. All right. Well, let's include it in the record,
23 and we will consider it at the close of the proceedings.

24 Shall we move toward then with

[WITNESS: Naylor]

1 Mr. Naylor?

2 MS. THUNBERG: Has Mr. Naylor been
3 already sworn? Thank you.

4 CHAIRMAN IGNATIUS: Steve, can you do
5 that?

6 (Whereupon **Mark A. Naylor** was duly sworn
7 by the Court Reporter.)

8 **MARK A. NAYLOR, SWORN**

9 **DIRECT EXAMINATION**

10 BY MS. THUNBERG:

11 Q. Mr. Naylor, could you please state your name and
12 position with the Commission for the record.

13 A. My name is Mark Naylor, N-a-y-l-o-r. And, I am the
14 Director of the Gas & Water Division here at the PUC.

15 Q. Can you describe more specifically what your
16 responsibilities are in that position?

17 A. As Director of the Gas & Water Division, I am
18 responsible for all of the Staff work in the Gas/Water
19 Division. I also oversee the Audit Division. And,
20 participate, on a day-to-day basis, primarily in the
21 water and sewer dockets that come before the
22 Commission.

23 Q. Can you please describe what you consider to be your
24 area of expertise?

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[WITNESS: Naylor]

1 A. Yes. I have an accounting background.

2 Q. And, do you use that area of expertise in the job
3 responsibilities that you just described?

4 A. Yes, I do.

5 Q. And, do you consider your testimony, your prefiled
6 testimony and your testimony today to be within that
7 area of expertise?

8 A. Yes, I do.

9 Q. Have you -- can you please describe your specific
10 involvement with this docket, or the four dockets that
11 have been consolidated for this hearing?

12 A. I've been involved in reviewing all of the matters in
13 these four dockets that are before the Commission
14 today. Particularly, the Docket DW 07-105, was opened
15 at the request of Staff in 2007. I have reviewed all
16 of the materials that have been generated, including
17 the Company's rate filing in the rate case;
18 participated in discovery; I have participated in the
19 quarterly monitoring meetings that are part of the
20 record in 07-105; and, ultimately, filed testimony in
21 October of 2011.

22 Q. And, I'd like to have you identify a document and
23 confirm whether this is the prefiled testimony you
24 filed in the 07-105 docket?

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[WITNESS: Naylor]

1 A. Yes, it is.

2 Q. What is the date of that document, Mr. Naylor?

3 A. October 14th, 2011.

4 Q. And, Mr. Naylor, is it fair to say that you created
5 this testimony under your direct supervision and
6 control?

7 A. Yes.

8 Q. Are there any corrections that you are aware of that
9 need to be made to this document?

10 A. No.

11 Q. And, can you please briefly summarize what you relied
12 on in making the recommendations that you set forth in
13 your testimony?

14 MR. RICHARDSON: May I ask the Chair, is
15 it -- I understood it's customary to have the witness
16 simply adopt their testimony, not -- I mean, obviously, if
17 there are changes or updates, that's typically allowed.
18 But, I'm curious, I mean, why we're doing or appear to be
19 heading towards a direct presentation?

20 CHAIRMAN IGNATIUS: I think that's a
21 fair question. Ms. Thunberg?

22 MS. THUNBERG: I was just laying some
23 more foundation as to the context of the testimony. It's
24 from October, and was going to merely point out that it

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[WITNESS: Naylor]

1 does not cover any issues that were subsequently raised in
2 the Company's reply testimony. We weren't going to get
3 into any rebuttal on the reply, but just wanted to lay out
4 that scope.

5 CHAIRMAN IGNATIUS: Well, if you can do
6 it in a matter of a question or two, that's fine, as just
7 a summary. But, really, that's all.

8 MS. THUNBERG: Yes. And, that's the
9 last question I have for the witness.

10 BY MS. THUNBERG:

11 Q. Do you recall the question or --

12 A. Yes, I do. You asked me what I relied on in
13 formulating the testimony that I provided. And that,
14 the answer to that would be, essentially, all of the
15 materials that have been generated in 07-105, as well
16 as the other dockets that are pending before the
17 Commission. The discussions that we have had with the
18 Company and the other parties in the monitoring
19 meetings. As well as my own experience with the
20 Company, going back a number of years.

21 MS. THUNBERG: Thank you. The witness
22 is available for cross.

23 CHAIRMAN IGNATIUS: Well, before you
24 move on, are you -- are you marking for identification any

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[WITNESS: Naylor]

1 of Mr. Naylor's testimony.

2 MS. THUNBERG: Thank you for that, my
3 oversight. Yes. I request that that be marked "Staff
4 Advocate 11", I believe is the next number.

5 CHAIRMAN IGNATIUS: Thank you.

6 MS. THUNBERG: Thank you.

7 CHAIRMAN IGNATIUS: Marked for
8 identification.

9 (The document, as described, was
10 herewith marked as **Exhibit Staff**
11 **Advocate 11** for identification.)

12 CHAIRMAN IGNATIUS: I think the order to
13 do these, and we're doing it slightly differently in this
14 case, would be Mr. Patch, Ms. Hollenberg, Mr. Richardson,
15 and then Mr. Speidel. All right? Mr. Patch.

16 MR. PATCH: Yes. Good morning, Mr.
17 Naylor.

18 WITNESS NAYLOR: Good morning.

19 **CROSS-EXAMINATION**

20 BY MR. PATCH:

21 Q. I'm going to direct your attention to Page 3 of your
22 testimony, where I believe you indicate that "Lakes
23 Region's capital needs going forward [are] in excess of
24 \$1 million", do you see that?

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[WITNESS: Naylor]

1 A. Yes, I do.

2 Q. Does that include the development of Mount Roberts?

3 A. I do not believe that includes the development of
4 additional supply for the Paradise Shores/Suissevale
5 combined system.

6 Q. And, I mean, I think it's been referred to a number of
7 times in this proceeding, but is your understanding
8 that what they originally sought at least was
9 approximately \$1.5 million for that capital need?

10 A. Yes. As I recall, the Company's original filing
11 requested approval of a step adjustment for wells and
12 land and other assets that carried a total value or
13 requested value of about \$1.5 million.

14 Q. And, do you know what the Company's total capital
15 assets are, you know, at this point in time, I guess,
16 before any additional 1 million or one and a half
17 million on top of that would be added to it?

18 A. I would have to locate some documents.

19 Q. Do you have a ballpark figure in your head?

20 A. It seems to me, the Company's rate base is somewhere in
21 the two and a half million dollar range. I'm kind of
22 reaching for that number, but --

23 Q. Okay. And, perhaps Mr. Laflamme can provide that when
24 he testifies. On Page 4 of your prefiled testimony,

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[WITNESS: Naylor]

1 you say that one of the factors contributing to the
2 Company's poor financial condition is that it "is not
3 structured to request and receive timely rate relief
4 for capital projects." Is that correct?

5 A. Yes.

6 Q. And, you also say that the Company "has never engaged
7 in a comprehensive planning process", is that correct?

8 A. Yes, it is.

9 Q. And, with regard to Mount Roberts, do you know if the
10 Company ever planned for the development of
11 supplemental sources, like Mount Roberts? Did it
12 evaluate alternatives?

13 A. I'm not sure. I don't recall any. As far as these
14 proceedings are concerned, the Company, as you recall,
15 dropped its request for a step adjustment related to
16 Mount Roberts. So, I have not focused on those issues
17 all that much.

18 Q. Do you ever recall seeing any document that suggested
19 that they had planned for Mount Roberts or for
20 supplemental sources within the Paradise Shores system?

21 A. I don't recall any. But I'm not sure as exactly what
22 the details are of that going back a number of years.

23 Q. On Page 5, you say that the Company "no longer has the
24 capability of obtaining capital", so that it can

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[WITNESS: Naylor]

1 "provide safe and adequate service". Is that correct?

2 A. Yes.

3 Q. And, you recommend on that same page, and this is Line
4 17, I believe, "that the Company seek a qualified buyer
5 and sell its assets." Is that correct?

6 A. Yes.

7 Q. And, if the Company were to do this, either of its own
8 volition or upon the direction of the Commission, what
9 process do you think should be followed? Have you
10 thought about that? Do you have some suggestions about
11 how that should be done?

12 A. Yes. I've given that some thought. I think that -- I
13 think it's a relatively simple matter for the Company
14 to put together some kind of document that would
15 provide information on all of its systems, that it
16 could circulate to utilities in the northeast United
17 States, perhaps, or perhaps across the country. But a
18 document which would give the information that
19 potential buyers would be interested in, such as the
20 location of the systems, size and age and current
21 status of the systems, the percentage of seasonal
22 customers, whether the systems' metered, information on
23 the Company's status with the Department of
24 Environmental Services, can include documents, such as

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[WITNESS: Naylor]

1 recent sanitary surveys from DES, copies of its current
2 tariff, its annual report, that kind of thing. So, I
3 think -- I think that kind of a document could be put
4 together fairly easily.

5 Q. And, then, the process from there, after the document
6 would be put together and distributed to potential
7 interested parties, would that process be overseen by
8 the Commission, Commission Staff, an outside expert?
9 Do you have any thoughts about that?

10 A. No. I haven't really, you know, taken the next steps
11 for considering those kinds of details. I think, if
12 the Commission were to accept my recommendation, I
13 would certainly expect that the Commission would
14 provide substantial details and direction to the
15 Company with respect to those matters. But I would
16 certainly expect that the Commission would have some
17 involvement in it, to some degree.

18 Q. Have any suggestion on timeframes? Do you think it
19 ought to be done within a particular period of time?

20 A. Well, I haven't -- I haven't provided any
21 recommendations along those lines. But I think the
22 issues that are most important here are the fact that
23 the Company, as I think the testimony so far in these
24 hearings has shown, is the Company is in very dire

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[WITNESS: Naylor]

1 financial circumstances. And, so, my recommendation is
2 that the Company be directed to move forward with
3 seeking a buyer for its assets. So...

4 Q. And, given your use of the word "dire", it sounds like
5 you think that ought to be done fairly soon, is that
6 fair?

7 A. Yes.

8 Q. Do you know of any precedent that the Commission could
9 look to with regard to a process like this? Or, is
10 this -- would this be kind of an unprecedented
11 approach?

12 A. Well, particularly with smaller utilities, the
13 Commission has had experience, and I have had
14 experience on the Staff in dealing with small water
15 companies that have had substantial financial
16 difficulties and so forth. But I think this would
17 probably be something pretty unique, at least in my
18 experience.

19 Q. You've been here for the entire proceeding, is that
20 correct?

21 A. Yes.

22 Q. And, do you recall the testimony about the unaccounted
23 for water in the Paradise Shores system?

24 A. Yes, I do.

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[WITNESS: Naylor]

1 Q. And, do you recall the testimony about how expensive
2 Mount Roberts and the water main that would be needed
3 to bring water to POASI would be?

4 A. I do recall testimony on that issue. I don't, right as
5 I sit here, recall the specifics of the dollar amounts,
6 but --

7 Q. I mean, you had already testified, I think, that you
8 believed that at least the original proposal was for
9 Mount Roberts, from the Company, was that Mount Roberts
10 would cost about \$1.5 million?

11 A. Yes. The 1.5 million, as I recall, is for the project
12 in total, as proposed. It included a value for the
13 Mount Roberts land, development of wells, and the other
14 assets that would be necessary to put those wells into
15 service.

16 Q. And, do you recall Mr. Skelton's testimony about the
17 fact that he understands the water main would cost
18 about \$700,000 in addition to that, and that the entire
19 expense would really be -- have to be borne by
20 Suissevale, not by Balmoral and Suissevale, because
21 that water main would only be used to bring water to
22 Suissevale. Do you recall that testimony?

23 A. I do recall that testimony, yes.

24 Q. And, you've -- you're familiar with the fact that POASI

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1 is looking at alternatives? You've heard Mr. Skelton
2 testify to that, and you've seen the prefiled testimony
3 and so forth, correct?

4 A. Yes.

5 Q. And, do you have some sense of what percentage of the
6 revenues that Lakes Region obtains come from POASI?

7 A. Yes. I'd kind of be guessing. I believe it's -- I
8 believe the revenues that POASI contributes to the
9 Company is somewhere around \$150,000 annually.

10 Q. And, the total revenues the Company obtains is
11 approximately?

12 A. I believe about a million dollars, maybe just a little
13 more than a million.

14 Q. And, just do you recall that I believe there's some
15 testimony in the record that suggests that some of the
16 -- just so that we're accurate, I think, in recent
17 years, what Suissevale has paid to Lakes Region is more
18 in the range of 125 to \$130,000 a year. It's
19 fluctuated some over the years. Does that refresh your
20 memory at all?

21 A. Yes, it does.

22 Q. So, we're talking, you know, somewhere in the range of
23 13 to 15 percent, perhaps, of the overall revenues of
24 the Company?

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[WITNESS: Naylor]

1 A. That sounds fair.

2 Q. Do you have any sense of a company that's looking to
3 purchase Lakes Region, how they would view Mount
4 Roberts? You know, and whether that would be an
5 appropriate project to proceed with? Especially given
6 the fact that Suissevale is in the process of looking
7 at alternatives. Do you have any sense of that?

8 A. Any sense of how a potential buyer would view that
9 contingency?

10 Q. Yes.

11 A. Well, it's certainly something that I think would have
12 to factor into their overall evaluation. There are 17
13 different systems, water systems owned by this company.
14 They each have their own set of circumstances. The
15 Company has a number of systems that are unmetered.
16 The Company has a fairly substantial percentage of
17 seasonal customers. Those are all the types of things
18 that a buyer would have to evaluate. It would
19 certainly also have to evaluate how much additional
20 capital they would need post closing to invest in the
21 systems. So, I think it's probably just one of a
22 number of things that a potential buyer would have to
23 take into consideration when contemplating an offer for
24 the Company's assets.

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1 Q. Do you, by any chance, have a copy of the response to
2 Record Request, I believe it's Number 4, in front of
3 you?

4 A. Yes, I do.

5 Q. Would you take a look at Page 3 of the Zoning Board of
6 Adjustment minutes.

7 A. I have that.

8 Q. Okay. Do you see the third paragraph on that page, it
9 begins "Mr. Hopkins noted his concerns about water
10 leaving the Town of Moultonborough"?

11 A. Yes, I see that.

12 Q. And, a couple of sentences down indicate that, maybe
13 it's four sentences down: "Mr. Mason stated that that
14 they average 15 trucks a year. Norm Roberge noted on
15 the worst year they have had, they trucked 50 tankers."
16 You see that?

17 A. Yes, I do.

18 Q. And, is it your understanding that, since the concern
19 is about water leaving the Town of Moultonborough, that
20 that's water being drawn from the water resources being
21 used to serve Paradise Shores?

22 A. It certainly appears that way, yes.

23 Q. I mean, when you put that together with unaccounted for
24 water, which was I think in the range of 23 or

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1 24 percent, and you look at the overall proposal to,
2 you know, to develop Mount Roberts, I mean, doesn't it
3 seem as though there are a number of outstanding issues
4 that it would need to be addressed first, to see if
5 they might be addressed in a way that would obviate the
6 need to spend a million and a half dollars on Mount
7 Roberts?

8 A. Well, I understand your point. I'm not sure I really
9 have a -- you know, anything profound to say about it.
10 It's a circumstance that's not new, and certainly not
11 unique. Where you have small systems that, in this
12 case, 17 of them, for this company that each has their
13 own set of circumstances and issues, and, obviously,
14 appears the Company had a great need at another system,
15 such that they needed to move water from one to
16 another. So, certainly is a concern in some way.

17 Q. Your testimony was filed in October. And, subsequent
18 to that, the Company filed reply testimony. Is there
19 anything in that reply testimony that you wish to
20 comment on that you think would be helpful to the
21 Commission?

22 A. Well, I think there are a number of things that arise
23 from the reply testimony that are of note. My
24 testimony speaks primarily to the Company's lack of

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1 access to reasonably priced capital. And, the reply
2 testimony dealt with that issue to some degree. And, I
3 think my comments on it would be that -- that the
4 Company really was not able to provide much of a
5 response to that. They provided some indication that
6 they may request alternative rate treatment, ratemaking
7 treatment, in such a way that they would be permitted
8 to recover loan payments through rates, rather than
9 through the traditional ratemaking of a return on rate
10 base and depreciation expense. And, to me, that's a
11 real problem, for a number of reasons. So, I think
12 that's probably the largest issue. As I view it, the
13 Company was not able to provide anything of substance
14 to the question of its access to capital.

15 MR. PATCH: Okay. That's all our
16 questions. Thank you.

17 CHAIRMAN IGNATIUS: Thank you.
18 Ms. Hollenberg.

19 MS. HOLLENBERG: Thank you. Good
20 morning, Mr. Naylor.

21 WITNESS NAYLOR: Good morning.

22 BY MS. HOLLENBERG:

23 Q. Mr. Naylor, as you testified just a moment ago, and as
24 you testified in your prefiled testimony most recently

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1 in the rate case, you have concerns about the Company's
2 ability to access financial capital for purpose of the
3 future environment and service to customers, is that
4 correct?

5 A. Yes, it is.

6 Q. You also, as you responded to Mr. Patch in
7 cross-examination, been present for the hearings that
8 have occurred in this case. Based on your
9 participation, would you also agree that customers
10 would and the Company would benefit from Lakes Region
11 Water Company having additional management resources?

12 A. Yes. In my testimony, I discuss the matter of, you
13 know, a more comprehensive planning process. And,
14 planning for not only the acquisition of capital, but
15 the deployment of capital and the filing for rate
16 relief when needed. And, on top of Page 5 of my
17 testimony, I discuss the issue relating to my
18 recommendations to the Company previously, that it
19 consider a business manager for those functions. So,
20 yes, I have addressed those issues in my testimony.

21 Q. Would it be fair to say that it would be reasonable for
22 the Company to have additional management expertise
23 going forward?

24 A. I guess the question would be, if the Commission

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1 rejected my recommendation?

2 Q. (Atty. Hollenberg nodding in the affirmative.)

3 A. Yes.

4 Q. And, I guess, in the interim, would that be your
5 position as well, until the Company was sold, would the
6 Company benefit from having some additional management
7 expertise on board?

8 A. Perhaps it would, yes.

9 Q. Thank you. Are you aware that Lakes Region Water
10 Company, I believe you testified about this a few
11 minutes ago, has several systems that are unmetered?

12 A. Yes.

13 Q. And, would you agree that, to the extent that these
14 customers could be metered, that that could be a source
15 of additional revenues for the Company?

16 A. I'm not sure if it would result in additional revenues.
17 I guess it would result in revenues in that the
18 Company's investments in meters for all of those
19 customers would then be something that they could
20 include in rates.

21 Q. Is it possible that the customers in the unmetered
22 systems are not billed for their consumption
23 commensurate with how other customers in other systems
24 are billed?

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[WITNESS: Naylor]

1 A. They're not billed for consumption, yes, because --
2 simply because their usage is not measured. Whether or
3 not there would be a difference in the rates, based on,
4 you know, the addition of those customers to the total
5 of metered customers, I'm not sure.

6 Q. And, would you agree that a cost of service study would
7 be something that would be useful in determining where
8 costs are more appropriately allocated amongst the
9 Company's systems?

10 A. I'm not sure about that. I know that that's something
11 that Mr. Eckberg discussed in his testimony. It
12 certainly could be helpful. But you just don't know.
13 For the most part, this Company's systems are highly
14 seasonal. So, when you get into a situation where you
15 have a very unusual usage pattern, very
16 seasonally-driven usage patterns, you really need
17 different kinds of data to make some judgments about
18 how you might be able to set better rates, you know,
19 rates based more on economic principles. And, a study
20 would certainly help with that. But I don't know, I
21 think, in measuring what the cost of a study would be,
22 versus the benefit, it's hard to say.

23 Q. And, you've seen in other water utilities, with other
24 water utilities, for instance, with Pittsfield Aqueduct

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1 Company, that they have done, in other rate cases, a
2 cost of service study that may not be as complicated as
3 a larger water company would use. So, there's a way of
4 accommodating a small size of the Company, would you
5 agree with that?

6 A. Yes. Yes. To a certain extent, that's true.

7 Q. Thank you. Are you aware, from your involvement in
8 this proceeding, of certain water systems which Lakes
9 Region Water Services Company was providing services
10 for Thomas Mason, Sr.?

11 A. Yes.

12 Q. So, just in other words, there were systems, that these
13 systems were not owned by Lakes Region Water Company,
14 the utility, and they were -- and Lakes Region Water
15 Company Services -- sorry -- Water Services Company,
16 the affiliate was providing services to Mr. Mason,
17 Sr.'s systems?

18 A. Yes. I think, Mr. Mason, when he testified earlier in
19 these hearings, he spoke to that issue to some extent.
20 Yes. We -- Staff has been aware that Mr. Mason, Sr.,
21 had a number of clients that he provided service to.
22 Personally, not in his capacity as President of the
23 utility.

24 Q. And, those -- and that agreement, with regard to Mr.

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[WITNESS: Naylor]

1 Mason, Sr.'s systems, is not covered by the Affiliate
2 Agreement currently before the Commission, is that
3 correct?

4 A. That's correct.

5 MS. HOLLENBERG: If I could just have a
6 minute please. Thank you.

7 (Atty. Hollenberg conferring with Mr.
8 Eckberg and Ms. McFarland.)

9 MS. HOLLENBERG: Thank you. I don't
10 have any other questions.

11 CHAIRMAN IGNATIUS: Thank you.
12 Mr. Richardson.

13 MR. RICHARDSON: Thank you. Good
14 morning.

15 WITNESS NAYLOR: Good morning.

16 BY MR. RICHARDSON:

17 Q. You state in your testimony, I think on Page 1, Line
18 15, that "the purpose of [your] testimony is to provide
19 recommendations with respect to concluding this
20 docket." And, that's -- by that, I assume you mean the
21 07-105 docket?

22 A. That's correct.

23 Q. Okay. Now, I assume you agree that any recommendations
24 would have to be approved by the Commission?

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1 A. Yes, I do.

2 Q. And, that the Commission has a legal standard that it
3 has to apply in evaluating those recommendations?

4 A. Yes.

5 Q. Okay. I want to show you a document.

6 MR. RICHARDSON: Are we on Lakes Region
7 22 now?

8 MS. HOWARD-PIKE: Correct.

9 MR. RICHARDSON: Okay. And, it's a copy
10 of RSA 374:47-a.

11 (Atty. Richardson distributing
12 documents.)

13 CHAIRMAN IGNATIUS: We'll mark this for
14 identification as "Lakes Region Exhibit 22"?

15 MR. RICHARDSON: 22, please.

16 MS. HOWARD-PIKE: Correct.

17 (The document, as described, was
18 herewith marked as **Exhibit LRW 22** for
19 identification.)

20 BY MR. RICHARDSON:

21 Q. Now, have you had a chance to review it?

22 A. I'm familiar with it, yes.

23 Q. So, the first sentence says that "whenever the
24 Commission finds that a public utility regulated by the

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1 Commission", and it goes on, and it says "is failing to
2 provide adequate and reasonable services to its
3 customers, and that such failure is a serious and
4 imminent threat to the health and welfare of the
5 customers of the utility, the Commission may appoint a
6 receiver", and then it goes on to say "or direct its
7 staff to take such temporary action as is necessary to
8 assure continued service."

9 Now, is it your testimony that there is
10 a "serious and imminent threat to the health and
11 welfare of the customers of the utility"?

12 A. No, it's not. I'm also not advocating for receivership
13 either.

14 Q. Okay. Let me go on then to the next part of this.
15 Which I believe Commissioner Ignatius last week pointed
16 out that there is a second sentence or a third
17 sentence, let me find it for a moment. Okay. It says,
18 would be the next sentence: "The Commission may also
19 appoint a receiver or direct its staff to take such
20 temporary action as is necessary to assure continued
21 service, if, after notice and hearing, the Commission
22 finds that any public utility regulated under this
23 chapter is consistently failing to provide adequate and
24 reasonable service." Is it your position that the

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1 Company is "failing consistently to provide adequate
2 and reasonable service"?

3 A. It's my position that the Company's lack of access to
4 reasonably priced capital will lead to adequate and
5 reasonable service.

6 Q. But, today, as of the date of this hearing, is the
7 Company "consistently failing to provide adequate and
8 reasonable service"?

9 A. It's pretty close.

10 MR. RICHARDSON: I'm going to show you a
11 document I'd like to mark for identification as "LRW
12 Exhibit --

13 MS. HOWARD-PIKE: Thirteen.

14 MR. RICHARDSON: -- 23".

15 MS. HOWARD-PIKE: I'm sorry, 23,
16 correct.

17 CHAIRMAN IGNATIUS: This is a response
18 to a data request, LRWC 1-1. We'll mark for
19 identification as "Lakes Region 23".

20 (The document, as described, was
21 herewith marked as **Exhibit LRW 23** for
22 identification.)

23 BY MR. RICHARDSON:

24 Q. Let me know when you've had a chance to see that.

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[WITNESS: Naylor]

1 A. I recall this response. It's written by me.

2 Q. Uh-huh. You say -- you see the question asks, with
3 respect to progress that has been made by DES, or
4 comments made by DES, and asked if you considered
5 those, just by way of summary. And, I see your
6 response, in the second sentence -- or, third sentence
7 says: "My testimony does not discuss the Company's DES
8 compliance except to state that "the Company has made
9 progress in addressing some of the problems it has with
10 its physical water systems." And, then, it goes on to
11 say: "The testimony centered on the fact that the
12 Company does not appear to have access to capital at
13 [this] time when it appears it will need more than
14 1 million in new capital", and summarizes I think what
15 you've already said today.

16 But, so, my question to you is, how can
17 you reach the conclusion that the Company is close to
18 being unable to provide service that -- or, close to
19 being able to -- unable to consistently provide service
20 that is reasonably adequate, without evaluating DES's
21 compliance status?

22 A. I don't think I said that "I did not evaluate the
23 Company's compliance status with DES."

24 Q. Okay. So -- but it's not addressed in your testimony

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1 then?

2 A. Yes, I think it is addressed in my testimony. I
3 acknowledge that the Company has made progress in
4 addressing some of the problems it has had with its
5 physical water systems.

6 Q. Uh-huh. Isn't it reasonable to assume that, by stating
7 that "the Company is making progress", you're
8 essentially agreeing that there isn't a looming DES
9 compliance issue that's going to threaten the
10 disruption to the Company's service?

11 A. My recommendation is not necessarily wholly centered on
12 the Company's compliance with DES. It's all of the
13 issues, with respect to the need for capital going
14 forward that this company faces. And, I think, if you
15 look at all of the other documents that have been
16 generated, with respect to the Company's financial
17 status, if you look at Mr. Mason's testimony, which
18 contains a appendix of capital projects going out the
19 next four or five years, that's what I'm most concerned
20 about. The Company has made some progress. There's no
21 question about it.

22 Q. But the --

23 A. But it has substantial capital needs going forward from
24 here. And, it has no access to reasonably priced

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1 capital. That is the issue.

2 Q. But the statute that the Commission has to evaluate
3 this proceeding under authorizes the Commission to act
4 when a utility "is consistently failing to provide
5 adequate and reasonable service". And, if I understand
6 correctly, what you're saying is, is "at some point in
7 the future, the Company is likely to reach that point."
8 Isn't that essentially what you're saying?

9 MS. THUNBERG: I'd like to add an
10 objection here, Chairman Ignatius. I'd like the question
11 to be simplified, because Mr. Naylor has already testified
12 that his testimony does not recommend receivership. Yet,
13 the framing of the questions are using as a basis whether
14 Mr. Naylor considered the threshold of "consistently
15 failing to provide adequate and reasonable service", which
16 is not the threshold that Mr. Naylor testified to or used.
17 So, I object to the complexity of the question, the legal
18 assumptions that they're based on, and would ask that they
19 be simplified.

20 CHAIRMAN IGNATIUS: Mr. Richardson.

21 MR. RICHARDSON: Well, I will. I share
22 in Attorney Thunberg's desire for me to ask better
23 questions.

24 BY MR. RICHARDSON:

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1 Q. But let me state this. Just with respect to this
2 statutory provision, and we'll get to whether that is
3 the one that applies or whether something else applies.
4 But evaluating this case under this provision, my
5 question to you is, is it sounds -- was it sounds to me
6 like you're saying that there is a threat or a
7 potential threat in the future, but there's not a
8 consistent failure to provide adequate and reasonable
9 service today?

10 A. Well, I don't know how the Company is doing the work
11 that it's doing now. I think we had some testimony
12 from Mr. Mason that his own company, Lakes Region Water
13 Services, is kind of carrying the ball right now for
14 the utility. So, the Company appears to be living on
15 credit. It has substantial accounts payable that
16 certainly appear to be a problem. So, I guess you
17 could parse the words, you know, "when is the threat
18 imminent?" You know, is it tomorrow? Next week? Next
19 month? I don't really think it's all that important
20 that we sort of nail down at what point, you know,
21 somebody comes and locks the doors. But there's --
22 there is a clear threat to the Company's ability to
23 continue to provide service. And, the Company does not
24 appear to have access to the capital it needs to get

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1 out of this situation. So, --

2 Q. But --

3 A. And, I'm not recommending receivership. I have not
4 discussed that in my testimony, and I don't believe
5 that's the appropriate course of action for the
6 Commission to take at this time.

7 Q. But, yes or no, setting aside the financial issue, in
8 terms of the service that people receive today, the
9 customers receive today, is it your position that today
10 that service is "consistently failing" to be reasonable
11 and adequate?

12 A. I have some concerns about it.

13 Q. Uh-huh.

14 A. I think there's testimony in the case to this point,
15 that there continue to be Notices of Violation or LODs
16 from DES.

17 Q. But you --

18 A. I think, for the most part, the Company is able at this
19 time to provide service. It appears that, you know,
20 it's continuing to keep it rolling. But, I mean, the
21 question is very, very open as to how long that's going
22 to continue.

23 Q. And so the ream question then becomes how is it going
24 to be paid for because if the rates are adequate to

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1 support the service then we don't run into a service
2 and problem and there's just a question of whether the
3 rates are reasonable?

4 A. No, I disagree with that completely.

5 Q. Okay?

6 A. Customer rates that are paid for service provided do
7 not provide investment capital going forward for any
8 utility.

9 Q. But they do provide a return, or they're required by
10 law to provide a return?

11 A. They provide a return on assets that have already been
12 put into service to customers.

13 Q. And, a company would use that return, including its
14 return on equity, to either declare a dividend or to
15 reinvest into the service that it's providing. Those
16 are two of the options, aren't they?

17 A. Financially healthy companies, yes. Financially
18 healthy companies will have a flow of revenue dollars
19 that are based on depreciation.

20 Q. Okay.

21 A. And, it will have a flow of revenue dollars that are
22 based on the return on equity portion of the rate base.
23 This is not a financially healthy company.

24 Q. And, that's because it hasn't earned its allowed return

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[WITNESS: Naylor]

1 in quite some time?

2 A. Yeah. I would agree with that.

3 Q. Okay. Let me, before we go further into that topic, I
4 want to get back to the question that Attorney Thunberg
5 raised. And, I want to show you what's already been
6 marked as "LRW Exhibit 11". And, I want to turn your
7 attention to what's on the first page, in the first
8 paragraph.

9 MS. THUNBERG: Attorney Richardson, can
10 you just remind us what "LRW 11" is?

11 MR. RICHARDSON: It's the Order of
12 Notice in the 07-105 docket.

13 BY MR. RICHARDSON:

14 Q. And, you see here it says "Staff of the New Hampshire
15 Public Utilities Commission filed a letter with the
16 executive director of the Commission seeking the
17 commencement of formal proceedings to determine whether
18 Lakes Region Water Company should be placed in
19 receivership pursuant to RSA 374:47-a in light of
20 concerns over whether Lakes Region continues to have
21 the managerial and financial capacity to provide safe
22 and adequate service to its customers". And, I'll stop
23 there. But, my question to you is, is didn't the
24 Commission's Order of Notice state that this was a

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1 receivership docket?

2 A. They cite the receivership statute, yes. I do not
3 believe this docket ultimately is limited to
4 consideration of receivership or not. I don't think
5 the Commission is prevented from making findings that
6 it feels are appropriate. I'll let you and
7 Ms. Thunberg and the other attorneys debate the legal
8 aspects. But, you know, I'm presenting to the
9 Commission my recommendations with respect to what I
10 see with this company on a financial basis, and what I
11 think the future holds.

12 Q. Uh-huh. So, if you didn't evaluate -- or, your
13 testimony isn't evaluating the Company under the
14 receivership criteria, what criteria are you using to
15 make your decisions?

16 A. Whether this company should continue to own and operate
17 public utilities that provide service. Whether the
18 Company has the requisite capabilities to continue to
19 provide service.

20 Q. But that's -- what statutory criteria are you applying?
21 Is there a statute? Did you review one?

22 MS. THUNBERG: This is a legal question.
23 To the extent, I mean, you're familiar with the statutes
24 that you use in your job responsibilities. I guess that's

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1 the limit that you can offer for your testimony.

2 CHAIRMAN IGNATIUS: Well, I think it's
3 fair to allow Mr. Richardson to ask if Mr. Naylor was
4 basing his testimony on any statutes. He's not asking to
5 interpret them, just what he relied on.

6 **BY THE WITNESS:**

7 A. Well, I think it goes back to the granting of
8 franchises. I think, unless I'm mistaken, and I'm not
9 an attorney, but I believe that the Commission has the
10 power to revoke franchises.

11 BY MR. RICHARDSON:

12 Q. Uh-huh.

13 A. I think it's clear from, when a utility is granted
14 permission to provide utility service, whether it's a
15 brand-new utility or one that's acquired systems in the
16 state, that the Commission is required to make findings
17 of managerial, technical, and financial capability.

18 So, --

19 Q. Uh-huh. But, if the Commission is going to act to
20 revoke a franchise, and I assume by that you mean under
21 RSA 374:28, doesn't that statute require notice and a
22 hearing?

23 A. Well, I guess -- well, it's up to the Commission,
24 obviously, to decide if you're correct. To me, that's

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1 just a technicality. And, I think it's avoiding the
2 issues that are really front and center here. But the
3 Commission certainly could, if the Commission agreed
4 with you, they could close the docket and open a new
5 one with the correct notice. I mean, it doesn't change
6 the fundamental question here. Doesn't change it at
7 all.

8 Q. Well, --

9 A. The Company doesn't have access to capital. How is it
10 going to make the capital improvements that it needs to
11 make in the coming years? There's no answer for that.

12 Q. But, I guess it does change it in my mind, because, if
13 the Commission has issued an order of notice to
14 consider a case under the receivership statute, and not
15 under some other statute, how is the Company to know
16 what criteria has to be applied and what evidence it
17 has to present?

18 A. Well, I think you need to go back to the Settlement
19 Agreement that was entered into in 07-105. I believe
20 that was between Staff and the Company, although I'm
21 not sure if OCA may have been a party or Suissevale is
22 a party, I'm not sure about that. That Settlement
23 Agreement provided for a number of things to happen,
24 over a period of time. And, it was approved by the

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1 Commission in an order, which I believe was issued in
2 June or July of 2008. I'm not quite sure.

3 Q. And, that was an order that was approved pursuant to
4 this Order of Notice that we just looked at under the
5 receivership statute, is that correct? If you know?

6 A. It was issued under the 07-105 docket. So, yes.

7 Q. Okay. And, are you aware of any other provision that
8 was included in the order of notice in that proceeding?

9 A. I'm sorry. Any other what?

10 Q. That, as far as you know, there was no other order of
11 notice to proceed under a different proceeding, such as
12 -- or, statute such as 374:28?

13 A. Not that I'm aware of.

14 Q. Okay. Let me get out, if I can find it, you just made
15 reference to the Settlement Agreement. Do you have the
16 Settlement Agreement in front of you?

17 A. I do.

18 Q. Okay. I'm referring to LRW Exhibit 12. Is that how
19 yours is marked?

20 A. I don't have a marked copy.

21 Q. Okay.

22 A. But it's the Settlement Agreement that is dated "May
23 7th, 2008".

24 Q. Okay. All right. Let me give you my copy, just so you

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1 have -- we're sure we're referring to the same
2 document. Now, on what's marked as "Page 1" of LRW
3 Exhibit 12, you see where it says "The settling parties
4 agree that [the] proceeding should become a monitoring
5 docket for a limited period of time into the future,
6 pending completion of two other processes; a filing by
7 Lakes Region for financing approval and rates, and the
8 AG's investigation into the issues surrounding the
9 re-connection of a well at the Tamworth system." Do
10 you agree that that's what the Settlement Agreement
11 provided for?

12 A. I believe you read that correctly.

13 Q. Okay. So, I guess what is curious to me is, is the
14 monitoring, a big part of the monitoring proceeding was
15 that the Company would meet on a quarterly basis with
16 DES and with Staff, right?

17 A. Yes, and the other parties to the case. That's
18 correct.

19 Q. Uh-huh. And, if you look at Page 3 of the Settlement
20 Agreement, that was supposed to occur for a period of,
21 at the bottom, it says "for the next two years". And,
22 excuse me, I left out that the OCA was also involved in
23 that. Do you see -- do you follow me there?

24 A. Yes, I do.

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1 Q. Okay. So, now, two years would have expired when?
2 June 24th, 2008 to June 24th, 2010?

3 A. Yes.

4 Q. Okay. Now -- so, during the monitoring phase, I mean,
5 wouldn't it be safe for the Company to assume that,
6 once the monitoring phase has expired, that the Company
7 has concluded that process?

8 A. No. I don't agree with that.

9 Q. Okay. But Staff recommended, let me see if I can grab
10 the dates here for you, I think, first in April of
11 2010, and then again on September 29th of 2010, that
12 the monitoring meetings for two years, and we're
13 basically at two and a half years by the time we reach
14 September of 2010, that those be subsumed in the rate
15 case?

16 A. Correct.

17 Q. Okay. So, the two years have gone by. We're now
18 merging those monitoring meetings into the rate case.
19 Isn't it reasonable to assume that we're no longer at
20 the point of considering receivership for the Company?

21 A. No, I don't think that's the case. I think -- I think
22 you need to review the Settlement Agreement in its
23 entirety. And, I think you need to read the
24 Commission's July 2008 order in its entirety.

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1 Q. Uh-huh.

2 A. And, look at Page 10 of the Commission's order --

3 Q. I'm sorry, what are you -- is there an exhibit number
4 you're looking at, because I'm not sure I have it in
5 front of me?

6 A. I think the Commission is aware of what its orders are.
7 And, it's Order 24,877.

8 Q. Okay. Hold on for a minute. I'd like to pull that
9 out, so I can follow you.

10 CHAIRMAN IGNATIUS: This is Lakes Region
11 Exhibit 13?

12 MR. RICHARDSON: Yes. Yes, I'm trying
13 to find my own exhibit here.

14 BY MR. RICHARDSON:

15 Q. I'm sorry. Where are you on the exhibit now?

16 A. Well, you could start on Page 7 of the Commission
17 order, which is the first full paragraph under "IV.
18 Commission Analysis". The last sentence of that
19 paragraph says: "Staff and Lakes Region request that,
20 in light of Lakes Region having made a number of
21 changes in its management and operations, the
22 Commission allow Lakes Region time to integrate these
23 changes before ruling on whether Lakes Region has the
24 requisite managerial, technical, and financial

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1 capabilities to maintain its utility franchise."

2 Q. Uh-huh. So, I agree with you that that's what it says.
3 So, we go through two and a half years of quarterly
4 monitoring meetings, and Staff doesn't recommend that
5 the receivership docket be reopened or that the Company
6 be placed into receivership.

7 A. Is that a question? I'm not --

8 Q. Do you agree with that statement?

9 A. I don't think we needed to recommend that the docket
10 remain open.

11 Q. Uh-huh.

12 A. I think, if you look at this order, it is very clear
13 the Commission, by issuing this order, had no intention
14 of closing the document -- the docket. If you look at
15 the very last --

16 Q. Okay. But --

17 A. -- full paragraph in the "Commission Analysis" section,
18 it says: "Other issues remain unresolved."

19 Q. Right. And, one of those issues is the Tamworth well,
20 right?

21 A. Yes, it is.

22 Q. And, that's been resolved, hasn't it?

23 A. No. I don't think it's been resolved before this
24 Commission.

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1 Q. Well, let's look at something. But, before we move on
2 from that, this was really a simple "yes" or "no"
3 question. Two and a half years went by of quarterly
4 meetings, and Staff did not recommend at that point
5 that the Company -- or, that the receivership docket be
6 reopened?

7 A. We had no reason to ask an open docket be reopened.

8 Q. Okay. You didn't ask within that two and a half year
9 period of quarterly meetings, more than what the
10 Settlement Agreement provided for, that the Company
11 then be placed into receivership?

12 A. I think, if you look at everything that's been filed
13 with the Commission, in DW 07-105, until the point that
14 we filed testimony last October, everything that was
15 filed was by agreement of all the parties in the
16 proceeding.

17 Q. I'm trying to get a "yes" or "no".

18 A. The docket was extended by request of all parties. I
19 don't think there's any question about that. The
20 Company has never objected to the docket remaining
21 open.

22 Q. In fact, the Company asked to have it remain open,
23 because it thought it was helpful, right?

24 A. It may have indicated that to the parties. But I don't

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1 believe that the Company ever filed anything with the
2 Commission to that effect. But --

3 Q. But you were at the meetings, and you know that the
4 Company asked to keep the quarterly meetings open,
5 because they thought they were helpful, right?

6 A. Absolutely. Yes.

7 Q. But I'm trying to get a "yes" or "no" answer to a
8 simple question. And, that is, at the end of the two
9 and a half years of quarterly meetings, Staff did not
10 request at that time that the companies be placed again
11 into receivership?

12 A. I can't give you a "yes" or "no" answer.

13 Q. Well, did Staff request it or not?

14 A. There was no reason to make any such request.

15 Q. Did Staff request it, yes or no?

16 A. There is no question in my mind, I mean, I'm trying to
17 be helpful to you here and give you the information
18 you're looking for. There's never been any question
19 that this docket remained open.

20 MS. THUNBERG: I would like to ask that
21 any questions not start until the witness has fully
22 answered, because there seems to be some talking over each
23 other going on right now.

24 MR. RICHARDSON: Could the Commission

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1 ask the witness to respond to the question, as whether or
2 not Staff recommended that the Company be placed in
3 receivership following the two and a half years of
4 quarterly meetings?

5 CHAIRMAN IGNATIUS: Well, Mr. Naylor has
6 already testified that his testimony does not ask for
7 receivership, and it recommends the sale of the Company.

8 MR. RICHARDSON: Uh-huh.

9 CHAIRMAN IGNATIUS: So, I'm wondering --
10 he said that ten minutes ago. So, I don't -- truly, I'm
11 not following what you're hoping to get from him that's
12 different right now?

13 MR. RICHARDSON: I simply want an
14 acknowledgment that Staff didn't submit a request
15 following the quarterly meetings, when the quarterly
16 meetings were subsumed into the rates, there was no
17 request that was made. I understand what the witness is
18 trying to say, but that we're -- I'm trying to ask a
19 different question than what the answer is that I'm
20 getting at.

21 CHAIRMAN IGNATIUS: Well, can I ask you
22 to clarify, because I'm a little bit confused.

23 MR. RICHARDSON: Uh-huh.

24 CHAIRMAN IGNATIUS: Are you suggesting

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1 that Mr. Naylor's testimony about the sale is beyond the
2 scope of the proceeding, the consolidated proceeding?

3 MR. RICHARDSON: Yes. Because a -- if
4 you read, and I apologize for not having my book right in
5 front of me, but 374:28 says that "the Commission can
6 revoke a franchise, after notice and hearing." And, the
7 Commission has never issued an order of notice under
8 374:28. And, the Company had no reasonable basis to
9 believe that this 07 docket was about anything except for
10 receivership under that statute.

11 CHAIRMAN IGNATIUS: Well, we've
12 consolidated four dockets.

13 MR. RICHARDSON: Yes.

14 CHAIRMAN IGNATIUS: So, it's not just
15 07.

16 MR. RICHARDSON: Yes.

17 CHAIRMAN IGNATIUS: Did you move to
18 strike Mr. Naylor's testimony when he made that
19 recommendation in October 2011?

20 MR. RICHARDSON: No. But, in LWR [LRW?]
21 Exhibit 6, Mr. Mason responded to why he didn't believe
22 that receivership was appropriate in this case, which is
23 really meant to get at the heart of what the 07-105 docket
24 was about.

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1 CHAIRMAN IGNATIUS: But I'm asking
2 about, you seem concerned about the request for a sale,
3 and that that's not appropriately within this docket?

4 MR. RICHARDSON: You know, I feel that,
5 you know, a sale might have some benefits. I mean,
6 certainly, a larger company, with more capital, I mean, I
7 this we can all agree that's a better thing. But the
8 question really comes down to whether or not this
9 Commission has the authority to issue the requested
10 relief. And, Mr. Mason, in his testimony, and my
11 cross-examination is trying to explore the receivership
12 issue. But I believe that Mr. Naylor has indicated that
13 he's not evaluating this as a receivership issue. So, I
14 mean, I can -- I'm just about ready to move on on this
15 topic.

16 CHAIRMAN IGNATIUS: If there's a request
17 to strike the testimony regarding sale, based on what I've
18 heard, it would not be granted. It was not moved to
19 strike it early on. You, in your own reply testimony,
20 have taken up the issue in questioning, both direct and
21 cross have taken up the issue. So, let's move on.

22 MR. RICHARDSON: Yes. And, I don't
23 think it would be productive to move to strike. I mean,
24 it really is, you know, whether or not testimony is

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1 admissible is different from whether or not it's relevant
2 or should be -- the recommendation should be followed.

3 BY MR. RICHARDSON:

4 Q. So, let me turn to a different issue, or to close this
5 issue out. I'm looking at Page 3 of your testimony.
6 And, you state, this is just above the section that
7 Attorney Patch asked you to read: "While the Company
8 has made progress in addressing some of the problems
9 that it had with its physical water systems, the
10 Company's most urgent problem is financial." Now, I
11 guess, aren't we making a little bit of a stretch to go
12 from a financial issue to one -- strike that. You
13 agree with that statement, right?

14 A. Yes.

15 Q. Now, a financial threat is different from the threat to
16 public health and safety, right?

17 A. The two certainly can be connected. A company that's
18 in difficult financial circumstances may find itself
19 unable to deal with public health and safety issues.

20 Q. Uh-huh. But, based on your response to the data
21 request that we looked at, you didn't make any analysis
22 in your testimony of the DES compliance issues?

23 A. Well, I referenced -- I referenced them to some degree,
24 and I think they're certainly part of the capital needs

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1 of the Company going forward over the next few years.

2 Q. Right. So, you agree with Mr. Mason -- or, do you
3 agree with Mr. Mason that the Company's resolved all
4 but one of its Letters of Deficiency that were
5 outstanding back in 2008?

6 A. I'm not sure what the scorecard, if you will, looks
7 like at the moment. I think I acknowledged in the
8 testimony that the Company has addressed some of its
9 problems. So, certainly, that would include addressing
10 and closing out Letters of Deficiency.

11 Q. And, it takes money to do that?

12 A. Yes. Usually, it does.

13 Q. Okay. So, let me ask you, and I want to look at a
14 document that's -- let me pull out my exhibit list, so
15 I can do this faster. It's LRW, let's start with
16 Exhibit 18. Do you have that in front of you?

17 A. No, I do not.

18 (Atty. Richardson handing document to
19 Witness Naylor.)

20 BY MR. RICHARDSON:

21 Q. And, it's really just the first paragraph. It says,
22 I'll read it to you, and I can ask you for your
23 reaction or I'll ask you a question. It says: "It is
24 widely recognized that small public water systems carry

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1 a much higher burden to maintain compliance with the
2 Safe Drinking Water Act. This is due not only to their
3 smaller user base, but often the shortage of financial,
4 managerial and/or technical resources to ensure the
5 continued and reliable delivery of safe water to all
6 customers." And, then, it says: "In New Hampshire,
7 systems serving fewer than 250 people incur about
8 77 percent of the drinking water violations in the
9 state", and then it references the "Triennial Capacity
10 Development Report [of] September 30th, 2008".

11 Now, I guess my question to you is, is
12 did you try, in your recommendations, to distinguish
13 what was attributable to the Company's management
14 versus what was attributable to essentially the
15 industrywide trend, where the small water systems have
16 a much higher burden, for those reasons stated?

17 A. I think the Staff's evaluation of this company, all
18 throughout the last three or four years, has been to
19 balance the capabilities of the Company and its
20 management with the challenges that it faces in the
21 field. I think we are very aware of all the challenges
22 that a company like this faces, as well as the other
23 small systems that we regulate.

24 Q. Uh-huh. Let's look at the -- what I'll call the

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1 "wheel" that's below those top two paragraphs. And,
2 you see where it says "Regulatory requirements [are
3 the] same as larger systems", and that's certainly true
4 for Lakes Region, right?

5 A. Most of the regulatory requirements are the same as
6 larger systems, yes.

7 Q. Yes. And, what I want to do is ask you if you agree
8 that the challenges that are listed in this wheel are
9 ones that face Lakes Region. So, I'm going to go
10 clockwise. "Aging or inadequate infrastructure".
11 That's a problem that Lakes Region faces, right?

12 A. Yes, it does.

13 Q. And, would you agree with me that the assets it
14 acquired were generally developer-built systems?

15 A. Yes, I believe that's true.

16 Q. And, so, some of that problem is certainly attributable
17 to the condition the systems were in when the Company
18 got them?

19 A. Yes, that's true.

20 Q. "Incomplete" -- the next one, "Incomplete as-built
21 plans & system records". Is that another thing that
22 you think Lakes Region has had to deal with?

23 A. Lakes Region, and many of the other small utilities
24 that we regulate, yes.

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1 Q. "Issues with quantity and quality"?

2 A. That is another problem that all small water systems
3 face.

4 Q. Uh-huh. Now, this next one I suppose is a bit more
5 complicated. "Part time and volunteer operations &
6 maintenance staff". And, that's not the case today
7 with Lakes Region, is it?

8 A. No, I don't think that's the case. I think this is
9 intended to reflect a variety of circumstances that may
10 face small utilities, throughout the universe of
11 companies that this state and other states regulate.

12 Q. Uh-huh. And, do you recall Mr. Mason testifying at one
13 point that the Company has gone from two certified
14 operators, in 2008, to now having, I believe, five or
15 six?

16 A. I don't specifically recall that testimony, but I
17 wouldn't dispute it.

18 Q. Okay. The next bullet, I think, sounds more like a
19 municipal issue, but I'll ask it anyways. "Volunteer
20 boards [and] frequent turnover". Is that something
21 that you would characterize as a "challenge" that Lakes
22 Region faces?

23 A. No. And, I think you're probably correct, that it
24 refers to municipal systems that rely on volunteers to

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1 oversee the utility.

2 Q. Uh-huh. The next one, I believe, is really what your
3 testimony is about. "Lack of reserves [and] access to
4 funding"?

5 A. I would agree that my testimony deals with that issue.
6 I think lack of reserves, again, probably refers to
7 municipal systems, where they are permitted to recover
8 in rates capital for future plant additions. Access to
9 funding would be both municipal and investor-owned, I
10 would think.

11 Q. And, then, the last one in the wheel is "smaller
12 revenue base [and] fewer customers". You agree that's
13 an issue that Lakes Region has to face?

14 A. Yes.

15 Q. In fact, if you were to -- the Company has, I believe,
16 1,625 customers. Is that right?

17 A. That sounds about right.

18 Q. And, 17 separate divisions or water systems?

19 A. I believe that's correct.

20 Q. So that, if we were to average that out, that's less
21 than 100 customers, on average, in each of its systems?

22 A. That's correct.

23 Q. And, that's a pretty challenging environment to operate
24 in?

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1 A. It's a very challenging environment, as many of the
2 other small water utilities are as well.

3 Q. Uh-huh. But, I guess my question then is, is that, I
4 mean, it's easy to say that "Lakes Region should be
5 doing a better job", but Lakes Region is facing
6 essentially all of the challenges that small water
7 systems face?

8 A. I don't think it's easy to say that "Lakes Region needs
9 to do a better job." This is a very difficult case,
10 and I certainly don't take my recommendation lightly.
11 It is a very serious matter. And, I realize that it
12 involves a lot of money to the shareholders of this
13 company.

14 Q. Uh-huh.

15 A. But this Commission is charged with balancing the
16 interests of shareholders and customers.

17 Q. Uh-huh.

18 A. So, there needs to be equal weighting on the customer
19 side. What is the concern of the customers? And,
20 whether or not this utility, and all the utilities this
21 Commission regulates, continue to have the requisite
22 capabilities to provide service.

23 Q. Uh-huh. But the capabilities, obviously, access to
24 capital is a little bit different, but the Company's

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1 really making efforts to comply with these
2 requirements. But, you know, the problem is the rates,
3 isn't it?

4 A. No, I don't agree it's the rates. I disagree.

5 Q. Let me -- let me rephrase this then. Let's go back.
6 And, you'd agree -- well, let me -- let's talk about
7 "capital planning" a little bit. I want to show you a
8 document. Actually, before we leave this, I'm sorry,
9 I'm going to change the facts a little bit. Are we up
10 to LRW Exhibit 24 now?

11 MS. HOWARD-PIKE: That's correct.

12 MR. RICHARDSON: And, I'd like to do
13 this so that the Commission understands, in context, some
14 of the evidence it's heard with respect to violations.

15 BY MR. RICHARDSON:

16 Q. Have you seen this report before?

17 MR. PATCH: What is it?

18 MR. RICHARDSON: Oh, I'm sorry. I meant
19 to hand this out to everybody.

20 MR. MASON: I'm sorry. That's my job.

21 CHAIRMAN IGNATIUS: For the record, this
22 is entitled the "DES Triennial Report to the Governor and
23 USEPA", and we'll mark for identification as "LRW 24".

24 (The document, as described, was

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1 herewith marked as **Exhibit LRW 24** for
2 identification.)

3 MR. SPEIDEL: Mr. Richardson, are there
4 any more copies for the Staff Non-Advocate counsel?

5 MR. RICHARDSON: Yes. Yes. I
6 apologize. I realized I was one short.

7 CHAIRMAN IGNATIUS: Mr. Richardson,
8 we're going to take a break soon. Is this a good time,
9 maybe people can take a look at this and not be doing it
10 on the fly?

11 MR. RICHARDSON: Absolutely.

12 CHAIRMAN IGNATIUS: All right. Why
13 don't we take a break until, it's 10:45, we'll break until
14 10:55, a ten minute break, and be back. Thank you.

15 (Whereupon a recess was taken at 10:45
16 a.m. and the hearing reconvened at 11:02
17 a.m.)

18 CHAIRMAN IGNATIUS: All right.

19 Mr. Richardson.

20 MR. RICHARDSON: Thank you.

21 BY MR. RICHARDSON:

22 Q. So, do you have in front of you, Mr. Naylor, LRW
23 Exhibit 24?

24 A. Yes, I do.

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1 Q. Okay. And, these questions go to really the issue of
2 NOVs, and I understand you've been here for the
3 testimony on that. So, I'm going to ask you to turn to
4 Page -- let's see, Page 3 of that document, and it's
5 labeled on the bottom. Page 4, if you count the cover.
6 And, you see where it says "Violations by System Size",
7 and it says a "Review of the number of violations in
8 the past fiscal year reveals that the highest number of
9 violations, both for health-based standards as well as
10 for monitoring and reporting (failure to provide a
11 sample or provide public notice), are incurred by very
12 small systems (less than 250 people). And, have you
13 ever seen this report before?

14 A. I believe I have, yes.

15 Q. Okay. And, do you agree with that conclusion?

16 A. Yes. Based on what's presented here, what data the
17 Department is providing here, I have no reason to
18 dispute it. I have not verified it independently, of
19 course, but --

20 Q. Yes. Well, I guess what I want you to tell me is, is
21 that do you have any sense -- or, let me give you the
22 calculation, because I've gone through, and I've just
23 done the math, as it were. I'm sorry, I'm looking for
24 my data on DES compliance, and it's from this report.

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1 And, what I have done is I've compiled this into a
2 spreadsheet for you, so we can look by category at the
3 number of violations or NOV's that are issued by system.

4 (Atty. Richardson distributing
5 documents.)

6 MR. RICHARDSON: Why don't we go to -- I
7 can call this "25". "LRW 25", excuse me. And, I'll give
8 you a copy.

9 (Atty. Richardson distributing
10 documents.)

11 CHAIRMAN IGNATIUS: So, this is, just
12 for the record, this is a one-page "New Hampshire Water
13 System Data", --

14 MR. RICHARDSON: Yes.

15 CHAIRMAN IGNATIUS: -- "LRW 25" for
16 identification.

17 (The document, as described, was
18 herewith marked as **Exhibit LRW 25** for
19 identification.)

20 CHAIRMAN IGNATIUS: And, if you can
21 explain where this comes from, Mr. Richardson.

22 MR. RICHARDSON: Sure. Sure.

23 BY MR. RICHARDSON:

24 Q. And, Mr. Naylor, I'll represent to you that the data

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1 that is shown at the top of Page 3, in LRW 24, and also
2 the data shown in -- on the previous page, Page 2, of
3 LRW Exhibit 24, has been compiled into this table,
4 that's "LRW Exhibit 25". And, you see where it says
5 the "total number of systems" subject to check, does it
6 sound like there are approximately "706" community
7 water systems in New Hampshire?

8 A. Yes.

9 Q. And, is that -- is that consistent with what your
10 knowledge of the industry is?

11 A. Well, as you know, this Commission does not regulate
12 municipal systems.

13 Q. Uh-huh. Okay.

14 A. So, I'm not as familiar with the utilities that are
15 municipally owned. But I'll accept that as a good
16 number.

17 Q. Uh-huh. Now, what this shows here is, is when you look
18 at each category of violations that are in LRW 24, by
19 size, and you divide that by the number of systems, you
20 come up with a number of violations, or NOVs, per
21 system per year, in this case, I believe the data year
22 was 2011. And, I'll represent to you, subject to
23 check, that you end up with a number that's
24 approximately, if you add them all up and divide the

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1 total, you end up with about 0.67 violations per
2 system, on a statewide basis. Does that sound right?

3 A. And, your numbers are based on the chart at the top of
4 Page 3 of LRW 24.

5 Q. Uh-huh.

6 A. The "164", is that correct, which are "Health-based MCL
7 violations"?

8 Q. Yes. They're both shown, health-based and reporting,
9 and then there's a total. And, so, you add those
10 numbers up, and I believe -- you add up all the system
11 size categories, and you get 475. Then, when you
12 compare that to the number of drinking water systems,
13 you get a statewide average of 0.67, approximately.
14 So, approximately 70 percent of the systems, on
15 average, are -- you have about a 0.67 chance, as it
16 were, of having a violation at any given system.

17 A. Okay. I understand.

18 Q. Yes.

19 A. I understand where you got that from.

20 Q. So, I guess I'd like to ask you, because I don't
21 believe you reviewed this in your testimony, if a
22 company owns 17 separate drinking water systems, and
23 particularly ones in the smaller size categories, you
24 would expect a certain number of violations to occur

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[WITNESS: Naylor]

1 just based upon the statewide average?

2 A. Would I expect a number to occur? Yes. I think I
3 would, of course. I'm not -- I would not dispute that.

4 Q. Yes.

5 A. All of our regulated companies have violations from
6 time to time.

7 Q. Okay. And, so, it's not simply the fact that a
8 violation occurs, but you have to evaluate it on a
9 deeper level and get to the root of the problem?

10 A. In evaluating each particular violation?

11 Q. Uh-huh.

12 A. Yes.

13 Q. Now, you're aware that I think more recent data
14 provided by Sarah Pillsbury indicated that, in 2011, I
15 guess the calendar year, there were close to 1,900
16 violations cited by DES?

17 A. I'm not aware of that information having been discussed
18 in the record.

19 Q. Okay. Well, were you given a copy of an e-mail from
20 Ms. Pillsbury recently -- Pillsbury, excuse me, about
21 the number of violations statewide?

22 A. Yes.

23 MR. RICHARDSON: Let me pull it out for
24 you. Let's call this "LRW Exhibit" -- we're on 26 now?

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[WITNESS: Naylor]

1 MS. HOWARD-PIKE: Correct.

2 CHAIRMAN IGNATIUS: And, this is not the
3 e-mail from Ms. Pillsbury that was marked as "LRW
4 Exhibit 20"?

5 MR. RICHARDSON: No, it is not.

6 CHAIRMAN IGNATIUS: So, we will mark for
7 identification "LRW 26", a March 22, 2012 e-mail from
8 Sarah Pillsbury of DES.

9 (The document, as described, was
10 herewith marked as **Exhibit LRW 26** for
11 identification.)

12 BY MR. RICHARDSON:

13 Q. Now, have you seen this document before?

14 A. Yes. I was on the distribution list when this was sent
15 out last Thursday.

16 Q. Okay. I'm sorry, I hadn't seen that before I asked the
17 question. So, I mean, the numbers appear to indicate
18 that there's, in fact, a significant number of
19 violations that are issued that aren't even counted in
20 the DES Triennial Report? I mean, if you look at
21 "Violations by System Size", we're going back to LRW
22 Exhibit 24. And, you total those numbers up, I believe
23 you get to "475". Does that look about right?

24 A. Yes. It's somewhere in the 400s, based on Figure 4, on

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1 Page 3 of Exhibit LRW 24.

2 Q. Yes. Now, and, in fact, if you were to take that 1,900
3 number, and divide it by the number of systems in New
4 Hampshire, you'd get a much greater number of
5 violations per system in the 2011 calendar year?

6 A. Well, it appears that way.

7 Q. Yes.

8 A. Assuming that we're looking at apples and apples here.

9 Q. Yes. Yes. And, I --

10 A. I note that Ms. Pillsbury's e-mail references "public
11 water system violations occurring in 2011". I would
12 assume that means the calendar year. And, the Figure 4
13 on Page 3 of the exhibit references "July 2010 to
14 June 2011". So, that's a 12-month period as well, but
15 they're slightly different timeframes.

16 Q. Yes. And, so, in fact, it looks like, based on the
17 1,900 number, the number of violations has jumped up in
18 2011 significantly.

19 (Mr. Mason distributing documents.)

20 MR. RICHARDSON: And, to address your
21 concern about the discrepancy, why don't we look at this
22 document, which is LRW 26?

23 MS. HOWARD-PIKE: Twenty-seven.

24 MR. RICHARDSON: Twenty-seven now. And,

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[WITNESS: Naylor]

1 I apologize, I need one more copy.

2 CHAIRMAN IGNATIUS: So, this is, for the
3 record, an additional e-mail from Sarah Pillsbury, --

4 MR. RICHARDSON: Yes.

5 CHAIRMAN IGNATIUS: -- dated March 26,
6 2012.

7 MR. RICHARDSON: Yes.

8 (The document, as described, was
9 herewith marked as **Exhibit LRW 27** for
10 identification.)

11 BY MR. RICHARDSON:

12 Q. And, you'll see, because she makes a reference to a
13 question that I asked her about the discrepancies
14 there. And, she's indicated that, if you go down the
15 middle of this first page, one of her employees is
16 saying that "there were approximately 764 violations
17 for which NOVs were sent for violations in 2011 at
18 community water systems." And, so, I take it to mean,
19 and let me know if you agree, that there are 764 for
20 community systems, and then a much greater number for
21 the non-communities?

22 A. That does appear to be the case, yes.

23 Q. Uh-huh. But, so -- but, looking at this data, if you
24 were to take the 764 number, and apply that to the

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[WITNESS: Naylor]

1 total number of systems that are shown in LRW 25 and
2 24, which is 706 systems in New Hampshire, you're
3 looking at a violation rate of greater than one per
4 system per year?

5 A. For 2011, yes.

6 Q. In forming your testimony about the Company's access to
7 capital, did you review improvements that the Company
8 has made since the Settlement Agreement was entered
9 into?

10 A. The Settlement Agreement in 07-105?

11 Q. Yes.

12 A. In preparing my testimony, I reviewed all of the
13 materials that had been generated in the docket, and in
14 the related dockets, including the minutes of the
15 monitoring meetings and so forth.

16 Q. Uh-huh. But the monitoring minutes -- meetings ended
17 sometime ago, in 2010. Did you ever undertake a review
18 of the capital improvements the Company has made in the
19 last several years, since those, well, really since
20 this rate case was filed?

21 A. Certainly.

22 MS. THUNBERG: Just a minute, Mr.
23 Naylor. I'd like to just object to the frame of the
24 question, because it's interspersing a fact that's not

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[WITNESS: Naylor]

1 established in the record. Mr. Richardson is stating that
2 "the monitoring meetings have ended", when I believe
3 filings in the docketbook state that they would be
4 subsumed into the rate case and technical sessions
5 therein. So, I guess I ask for a rephrasing of the
6 question.

7 CHAIRMAN IGNATIUS: Mr. Richardson.

8 MR. RICHARDSON: I honestly don't want
9 to argue the point. But the Settlement Agreement approved
10 by the Commission said they would last for two years, and
11 they were extended on a voluntary basis. And, then, they
12 were, I guess, "subsumed", was the word, into the rate
13 case. But that really wasn't my intent. So, why don't I
14 withdraw the question and rephrase it.

15 BY MR. RICHARDSON:

16 Q. In preparing your testimony, did you review the
17 improvements that the Company has made in the last
18 three years to its water system, capital improvements?

19 A. Yes.

20 Q. Okay. Well, I'd like to show you a list, if we can?

21 MR. RICHARDSON: And, we're at "LRW 27"
22 now.

23 MS. HOWARD-PIKE: Twenty-eight.

24 CHAIRMAN IGNATIUS: Twenty-eight.

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1 MR. RICHARDSON: Twenty-eight, excuse
2 me. I'm trying to go really fast, so we get out of here.

3 (Mr. Mason distributing documents.)

4 CHAIRMAN IGNATIUS: Mr. Richardson,
5 before you get going, we're marking for identification
6 Exhibit 28.

7 (The document, as described, was
8 herewith marked as **Exhibit LRW 28** for
9 identification.)

10 CHAIRMAN IGNATIUS: If you can describe
11 where it comes from and who produced it?

12 MR. RICHARDSON: Sure. I'll represent
13 to you that the Company prepared for me a list of
14 improvements its made by system during the period from
15 2009, the test year, through to the present. And, I guess
16 what I'd like to ask the witness is, is if he's -- if
17 these are the improvements that he would have reviewed in
18 preparing his testimony.

19 CHAIRMAN IGNATIUS: And, can I just,
20 before we go into this, is this something that's been
21 shared with the parties before this moment?

22 MS. THUNBERG: No.

23 MS. HOLLENBERG: No.

24 MR. SPEIDEL: No.

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1 CHAIRMAN IGNATIUS: Is this -- it looks
2 to me effectively like more direct testimony from Mr.
3 Mason. So, I guess I'll allow you a couple of quick
4 questions to Mr. Naylor, but he can't speak to what the
5 Company has been doing and not doing. He can speak to his
6 knowledge, and that's fair. But it's not --

7 MR. RICHARDSON: Understood.

8 CHAIRMAN IGNATIUS: Excuse me. This is
9 not a time to begin the case anew with new direct
10 testimony from Mr. Mason. So, with that caveat, do you
11 have questions for Mr. Naylor on this?

12 MR. RICHARDSON: Understood.

13 BY MR. RICHARDSON:

14 Q. And, Mr. Naylor, with the understanding that you don't
15 have the opportunity to review all this in front of
16 you, but it appears to be quite a lengthy list. And, I
17 guess, is it your understanding that the Company has
18 been continuing to make capital improvements throughout
19 the process, I mean, subsequent from 2009 forward to
20 the present?

21 A. I indicated in my testimony, at the top of Page 3, that
22 the Company had made progress in addressing some of the
23 problems it has had with its water systems.

24 Q. Uh-huh. But that's in the past tense. You understand

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[WITNESS: Naylor]

1 that the Company is continuing to make improvements to
2 its system today, right?

3 A. I believe we had some discussion about that earlier
4 this morning, when I was discussing the financial side
5 of it, and indicating that the Company, for example, as
6 was testified to earlier in the proceeding, the Company
7 is continuing to comply with the permitting process
8 with respect to the Mount Roberts well field. And, --

9 Q. Uh-huh.

10 A. But was largely apparently relying on credit to do
11 that.

12 Q. But, based on the challenges that we know face small
13 water systems, you'd expect there to be a pretty
14 lengthy list for any small water system of things that
15 have to get done and approved, right?

16 A. Well, that wasn't the case with this company prior to
17 2007, 2006. I think I testified to that in my prefiled
18 testimony.

19 Q. Understood. But the issue before the Commission is
20 whether to sell the Company today or tomorrow. It's
21 not about 2007 at this point.

22 A. Well, I think the point is that the Company was able to
23 get by for a long period of time when it did not face
24 these kinds of significant capital challenges, if you

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1 will. And, that its financial difficulties, that have
2 been discussed earlier, have arisen at a period of time
3 when it has had substantial new capital requirements.
4 So, I think that is -- that is the point of my
5 testimony.

6 Q. So, setting aside what's shown in LRW Exhibit 28, what
7 conclusions did you reach about the improvements the
8 Company was making in the present day, before you
9 prepared your testimony?

10 A. I gave the Company credit for the progress that it's
11 made.

12 Q. Uh-huh. Did you have a list similar in length to this
13 one? Or, how did you evaluate that?

14 A. I've been participating in this docket from the very
15 beginning. I participated in all the monitoring
16 meetings, and in discovery in the rate case. I'm very
17 aware of how much capital the Company has invested in
18 the last number of years. In fact, in my testimony I
19 cite to the fact that the Company has increased its
20 plant in service by about a million dollars since the
21 end of 2006. So, I am very aware of how much capital
22 requirements this company has been facing.

23 Q. What's going to happen to that capital if the Company
24 gets sold for less than rate base?

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[WITNESS: Naylor]

1 A. Well, we don't know whether it's going to be sold for
2 less than rate base. We don't know --

3 Q. Uh-huh. We don't know anything about the price right
4 now, do we?

5 A. No, we don't. No, we don't.

6 Q. So, if the Company sold for less than rate base, the
7 Company presumably wouldn't earn any return, it would
8 lose what it invested?

9 A. I indicated just a short time ago that I am very aware
10 of the potential impact on the shareholders. But it's
11 clearly not the role of this Commission to do anything
12 other than balance the interests of shareholders and
13 customers.

14 Q. Uh-huh.

15 A. The Company has right now a balance of close to half a
16 million dollars in accounts payable. There's no way
17 that's ever going to be paid off other than through
18 shareholder equity. It's either going to come from an
19 additional cash infusion or from use of the proceeds of
20 a sale, for example. So, I'm very aware of the
21 potential impact. But the customers have a 50 percent
22 weighting, if you will, in the balancing act this
23 Commission must do. And, after evaluating all of the
24 data, all the information in this, in these cases, it's

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[WITNESS: Naylor]

1 come --

2 Q. But --

3 A. -- my conclusion is that a balancing of the interests
4 requires that the Commission direct the Company to seek
5 a buyer which has access to reasonably priced capital.

6 Q. But access to capital is only part of the equation.
7 Because, once you have access, and you go through the
8 process before the Commission, you ultimately have to
9 pay for that access, don't you? The customers do?

10 A. According to traditional rate of return rate setting,
11 yes.

12 Q. And, that's true -- well, let me give you an example.
13 You participated in the 08-052 docket, right?

14 A. Was that the Pittsfield Aqueduct acquisition of
15 additional water systems?

16 Q. It was the -- it was a rate case for Pittsfield
17 Aqueduct. And, I remember it well, because I was in
18 the room for the original hearing, and it was standing
19 room only.

20 MR. RICHARDSON: But let me show you a
21 document. I guess we're up to LRW Exhibit 29 now, is that
22 correct?

23 (Mr. Mason distributing documents.)

24 (The document, as described, was

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1 herewith marked as **Exhibit LRW 29** for
2 identification.)

3 BY MR. RICHARDSON:

4 Q. And, let's set aside for a second what's on Page 1. I
5 want you to look at Page 2, because that deals with the
6 North Country system that was part of PAC at the time.

7 And, let me ask you a question. I mean, Pittsfield
8 Aqueduct is part of the Pennichuck companies, right?

9 A. Yes, it is.

10 Q. And, they have a number of engineers that engage in
11 capital planning for the company, right?

12 A. To my knowledge, yes.

13 Q. Okay. And, they do a good job at it?

14 A. I think, for the most part, Commission Staff believes
15 they do a good job, yes.

16 Q. Uh-huh. Now, in this case, according to the
17 Commission's order of notice, they were seeking a
18 180 percent, 179.64 percent temporary rate increase.
19 And, presumably, there was a much higher permanent rate
20 increase. Do you remember that case?

21 A. Yes, I remember the case. I don't recall what the
22 Company's requested permanent rates were but.

23 Q. Uh-huh.

24 A. But the temporary rate request is reflected here, as

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1 you pointed out.

2 Q. But, I mean, that's a pretty -- I mean, that almost
3 begs the question to me that, despite the best planning
4 in the world, if you're trying to operate a small
5 system, and you have access to some of the best capital
6 and the best terms, you're still going to be facing
7 significant needs for rate increases, in order to
8 operate a small water company profitably?

9 A. It depends on the circumstances. In this particular
10 case, Pittsfield Aqueduct purchased the Birch Hill
11 system in Conway, the Sunrise Estates system in
12 Middleton, and the Locke Lake system in Barnstead. Two
13 of those systems had a lot of capital needs. They had
14 a lot of problems. The previous ownership did not have
15 access to enough capital, did not, in my opinion, have
16 the managerial capability to deal with those systems,
17 to improve them. And, so, yes, when Pittsfield
18 acquired those systems, they needed a lot of work, and
19 still do.

20 Q. Uh-huh. I'll, just because I realize that the
21 permanent rates aren't in that document, but I'll
22 represent to you that there was a settlement agreement
23 in that case. Do you recall that?

24 A. I believe we did present a settlement agreement to the

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[WITNESS: Naylor]

1 Commission in that case, yes.

2 Q. Uh-huh. And, that settlement agreement involved
3 transferring some of the assets to Pennichuck East,
4 right?

5 A. That's correct.

6 Q. And, that, let's see, for the Birch Hill customers,
7 there was an increase on the order of magnitude of
8 291 percent? Does that sound right?

9 A. Is that what the approved permanent rate increase was
10 or is that what the Company requested? And, I don't
11 recall myself.

12 Q. Why don't I do this. Why don't I show you the
13 document. I won't mark it for an exhibit. But, if you
14 could read along with me.

15 MR. RICHARDSON: Give that to the other
16 parties, if you will. It was 18 pages and I was trying to
17 save trees. Tom will give you a copy.

18 BY MR. RICHARDSON:

19 Q. But I'm looking at Page 6 of this order, and it's Order
20 Number 25,051. And, you see that, beginning on Page 4,
21 it talks about a "settling parties" and a "settlement
22 agreement". On the bottom of Page 4, it talks about a
23 Pittsfield increase of "39.79 percent". And, then, if
24 we go over to Page 6, actually, it shows a permanent

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1 rate increase of "57.89 percent". And, then, it talks
2 about proposed PEU rates for Locke Lake, an increase of
3 "170.57 percent". And, for Birch Hill,
4 "291.48 percent". And, for Sunrise Estates, the other
5 system, "128.85 percent".

6 A. I see that.

7 Q. And, is that consistent with what you recall the
8 Commission approved?

9 A. I believe the Commission approved the Settlement
10 Agreement. So, yes.

11 Q. Uh-huh. So, Lakes Region, according to your testimony
12 earlier today, has about 2.5, I believe Staff's
13 testimony shows 2.4 million in rate base. Does that
14 sound about right?

15 A. That's about right.

16 Q. Okay. We're looking at, I believe, a million dollars
17 in capital improvements, not including the Mount
18 Roberts property. Is that what your testimony says?

19 A. I believe it's in excess of \$1 million, --

20 Q. Okay.

21 A. -- plus the Mount Roberts property, yes.

22 Q. Yes. I mean, but, is there any reason to believe the
23 Company, you know, couldn't make those types of
24 improvements with a 300 percent rate increase?

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[WITNESS: Naylor]

1 A. Are you talking about a 300 percent rate increase
2 before the improvements are done? I'm not sure what
3 you're basing the question on.

4 Q. Well, let's assume that the Company came back with a
5 step increase, and came in with its costs, and
6 presented to the Commission what it needed to do. It
7 seems to me the question is not access to capital, but
8 the ability to pay for that access. And, wouldn't a
9 300 percent step increase, and I'm not suggesting this
10 is what the Company is going to ask for, but that
11 certainly would provide access to capital, wouldn't it?

12 A. I don't agree with the premise of your question.

13 Q. Well, --

14 A. Rates are set based on historical cost, based on
15 investment that is in service to customers.

16 Q. Okay.

17 A. Rates do not provide capital for the utility to make
18 capital improvements, except as its cash flow, through
19 depreciation dollars, through its return on equity
20 might allow it to.

21 Q. So, let's assume then that the Company is sold. And,
22 let's assume it's sold, just for purposes of keeping
23 the present rates the same, for a rate base of
24 \$2.4 million. Isn't the buyer, in order to execute

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1 those capital improvements, the in excess of
2 \$1.11 million, I mean, that's a, what, a 30 or
3 40 percent increase in rate base?

4 A. Yes. Yes.

5 Q. And, that's going to require a fairly substantial
6 increase in rates?

7 A. Putting that additional capital into rates is going to
8 result in a rate increase. There's no question about
9 it.

10 Q. And, if -- how would customers be better off, if --
11 then, if Lakes Region were, for example, to go out and
12 apply for SRF funds and amortize the cost of the note
13 over its life?

14 A. Mr. Richardson, this company had access to \$1.5 million
15 in ARRA funds, which had a substantial portion of
16 principal forgiveness, and it elected not to take those
17 funds.

18 Q. But you understand that the Company was concerned that
19 the revenues it would receive through rates wouldn't be
20 sufficient to pay for the note?

21 A. There are other companies smaller than Lakes Region
22 that have taken SRF and ARRA funds.

23 Q. That may be the case. But let's get back to the key
24 point. Which is, selling the Company isn't going to

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1 avoid what's going to be a significant rate shock,
2 whether it's owned by Lakes Region or whether it's
3 owned by some other entity?

4 A. An entity that has access to reasonably priced capital
5 may end up asking for a smaller rate increase than what
6 Lakes Region would have asked for.

7 Q. But, apparently, Pennichuck, the smallest rate increase
8 they were able to ask for, and that the Commission
9 Staff approved, was 291.48 percent for Birch Hill? I
10 mean, that --

11 A. How do you know you're comparing apples and apples
12 here?

13 Q. Let's, --

14 A. You don't know. You don't know.

15 Q. Let's take a look at some of the apples. Do you have
16 LRW Exhibit 6 in front of you?

17 A. I don't believe I do.

18 Q. I think it's Page 32, let me check that, that I want
19 you to look at. I'm sorry, it's not 32. I want you to
20 find the list of systems, that's on Page 20. You see
21 there that the Wentworth Cove system was transferred
22 for a dollar, because the water system didn't produce
23 adequate revenues? Is that your understanding of how
24 that system was acquired?

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1 A. I have no idea. That's something that took place
2 apparently in 1980.

3 Q. So, have you ever looked into the history of the
4 systems that were acquired? I mean, Mr. Mason put
5 references to the Commission orders. Did you ever --
6 we know that these are all developer-built systems that
7 had problems coming in, right?

8 A. That's my understanding, yes.

9 Q. Uh-huh. So, in terms of making an apples-to-apples
10 comparison, I think you would agree with me that both
11 Birch Hill and the LRW systems were acquired with
12 significant deficiencies right out of the get-go?

13 A. I'm not sure you can make that kind of "blanket"
14 statement. I think you have to look at each one
15 individually. I will agree with you that, in general
16 terms, the systems that Lakes Region acquired were
17 developer systems.

18 Q. Uh-huh. Well, how about the next one on the list on
19 Page 20, "Waterville Gateway"? That was purchased out
20 of a Chapter 11 bankruptcy sale. Did you know that?

21 A. I didn't, didn't know that, no.

22 Q. Uh-huh. The next one down, "Deer Run", it looks like
23 there's a quote from the Commission's order, that
24 "Staff was concerned about [the owners'] ability to

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1 operate the company." Did you know that?

2 A. I see it here.

3 Q. Okay. The Echo Lake and Woodland Grove, apparently the
4 Commission's order said "LRW has better financial,
5 managerial, and technical expertise than Demers", who I
6 assume was the owner at the time?

7 A. Yes. I see that. Yes, that's 1991.

8 Q. I mean, it seems to me that a big part of evaluating
9 the job that Lakes Region is doing comes down to
10 understanding the systems that they're trying to
11 operate, right?

12 A. Of course. I've taken that into consideration.

13 Q. And, I mean, the fact that -- the fact that we don't
14 have customers that are in the hospital for bacteria
15 violations is a significant thing, isn't it?

16 A. No, I don't agree with that.

17 Q. Well, let me rephrase the question. Lakes Region Water
18 has provided a benefit to the public by taking systems
19 that the prior owners were unable to operate, and
20 consolidating their operations with its team, and now
21 it's -- and now it's providing a benefit today of
22 trying to keep these systems in compliance?

23 A. I recognized in my testimony that the Company operated
24 quite successfully for a number of years.

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1 Q. So, let's --

2 A. The Commission has made findings, when it has approved
3 the Company's acquisition of new systems, up to, I
4 believe, 2005.

5 Q. So, let's go back to the point then that, if all these
6 systems have significant capital needs, and we sell
7 Lakes Region Water Company to a new buyer, we're
8 looking at pouring in 1 or \$2 million, that's going to
9 close to double the Company's rate base, right?

10 A. I don't see that as a reason to say "well, the Company
11 shouldn't be sold."

12 Q. But --

13 A. I mean, any potential buyer will need to request
14 approval from this Commission to purchase these
15 systems.

16 Q. Uh-huh.

17 A. And, will need to demonstrate that it has the requisite
18 capabilities to own and operate public utilities.

19 Q. Sure. But, I guess my question is, is why wouldn't you
20 look at ways to, for example, extend the SRF loans for
21 30 years, as one possibility, that might enable Lakes
22 Region Water to make improvements and to run the system
23 effectively, as I think it's doing today?

24 A. You know there's no guarantee that the Company will

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1 qualify for SRF loans. The projects are ranked by DES
2 according to need. And, the Company may submit
3 applications for SRF money and not qualify for it.
4 It's not something that can be counted on as a
5 certainty.

6 Q. Right. But it's also not certain that, in fact, we can
7 almost guarantee that, if a buyer were to come in and
8 invest the type of capital that you're talking about,
9 the Company's rates would go from under \$500 per
10 customer per year, to something considerably higher?

11 A. I think I conceded that, in either scenario, rates
12 would have to go up. The question is, "who has access
13 to capital and who has access to reasonably priced
14 capital?"

15 Q. Uh-huh. But, if the Company is able to continue to
16 keep these systems, for the most part, obviously, not
17 perfectly, in compliance with drinking water
18 requirements, shouldn't the Commission consider that
19 before it decides to pass this off onto a larger
20 utility that's going to spend a lot of money to bring
21 these up to code, but it's going to dramatically
22 increase the cost?

23 A. I think the Commission needs to take everything into
24 consideration, with respect to the future of these

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1 water systems, and the health and safety of the
2 customers, and the reliability of their service.

3 Q. You were asked by Attorney Patch about trucking from, I
4 believe, the Paradise Shores system to another system,
5 which I'll represent to you was Hidden Valley. Do you
6 recall that?

7 A. Yes, I do.

8 Q. Do you know how long it's been since the Company last
9 did any trucking of that nature?

10 A. I couldn't tell you as I sit here, no.

11 Q. So, it might have been several years now?

12 A. I don't know.

13 Q. Okay. All right. You state in your testimony, "There
14 has not been any discovery...as the parties...have been
15 engaged in review of the Company's...rate case." I'm
16 looking at Page 1, Line 16. My question is, is why
17 couldn't you have submitted discovery in the rate case
18 about any issue you were concerned with?

19 A. I'm not sure you're reading my testimony correctly. I
20 think I'm making the point here that we are looking at
21 filing testimony in the 07-105 docket, in advance of a
22 anticipated hearing date. And, I'm indicating that
23 "there has not been any discovery with respect to the
24 matters raised in this docket", which is 07-105, "for

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1 any considerable length of time, as the parties to this
2 docket have been engaged in a review of the Company's
3 current rate case."

4 Q. But my question is a simple one, though. Why couldn't
5 Staff or why couldn't you have submitted discovery,
6 data requests, on any issue as part of the rate case?
7 If we've subsumed the quarterly meetings into the rate
8 case, was there anything that prevented you from asking
9 questions about the Company's service?

10 A. There was nothing preventing me from asking the Company
11 about any aspect of its service. I did so in many
12 different ways, through technical sessions and other
13 meetings, discovery. I don't believe that I was
14 lacking any information I needed when I filed this
15 testimony.

16 MR. RICHARDSON: I would like just a
17 second, because I may be at a breaking point, or I may
18 even be finished. I just need to make sure I've --

19 CHAIRMAN IGNATIUS: That's fine. Take
20 your time.

21 BY MR. RICHARDSON:

22 Q. Do you recall being asked -- or, excuse me, you were
23 not asked. Do you recall, I believe on Day 1 of the
24 hearing, it was either you -- it was either Tom Mason

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1 or Mr. St. Cyr, was asked about some missing deposits?

2 A. I do remember that, yes.

3 Q. What was the reason behind those questions, in your
4 mind?

5 CHAIRMAN IGNATIUS: Can you -- I don't
6 recall, who was asking the question?

7 MR. RICHARDSON: I believe it was
8 Attorney Thunberg asked questions of Mr. Mason --

9 CHAIRMAN IGNATIUS: All right.

10 MR. RICHARDSON: -- about money that --
11 deposits that were missing --

12 CHAIRMAN IGNATIUS: That's fine.

13 MR. RICHARDSON: -- as a result of the
14 Staff audit.

15 **BY THE WITNESS:**

16 A. What was the reason for the question?

17 BY MR. RICHARDSON:

18 Q. Uh-huh.

19 A. I would guess that the reason for the question was to
20 determine if the matter had been resolved.

21 Q. Uh-huh. And, the matter had been resolved, right?

22 A. I recall the testimony indicating that the deposit was
23 received by the bank, and that it apparently had been
24 misapplied to the wrong account, or something similar

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1 to that.

2 Q. All right. Let me --

3 MR. RICHARDSON: I really just want to
4 clarify the record on this point. So, Tom, could you
5 distribute those please.

6 MR. MASON: Sure.

7 (Mr. Mason distributing documents.)

8 CHAIRMAN IGNATIUS: Well, what is
9 unclear?

10 MR. RICHARDSON: What I'd like --

11 CHAIRMAN IGNATIUS: I'm asking an offer
12 of proof from you.

13 MR. RICHARDSON: Okay.

14 CHAIRMAN IGNATIUS: What is unclear that
15 needs to be clarified, as you say?

16 MR. RICHARDSON: Well, at the time Mr.
17 Mason was asked about this issue, the deposits had been --
18 the Staff audit -- the Audit Staff had already resolved
19 the issue, but that the resolution came after the audit
20 report. So that the audit report that the Company has
21 doesn't reflect what's in this e-mail.

22 CHAIRMAN IGNATIUS: Why didn't you put
23 that in as part of your redirect of Mr. Mason?

24 MR. RICHARDSON: I believe I asked him

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1 if it had been resolved, although I can't remember, that
2 was two or three weeks ago. And, I was subsequently
3 provided an e-mail from Staff, saying the issue has been
4 resolved. And, so, I thought it would be appropriate,
5 since it was a Staff Advocate question, to point out that
6 the issue has been, in fact, resolved.

7 CHAIRMAN IGNATIUS: Is there any
8 objection?

9 MS. THUNBERG: I would just like to
10 comment that the scope of the question or the reason for
11 the question was, as I recall, and not having the
12 transcript here, was to see if there were -- if the issue
13 not only was resolved, but were there processes in place
14 to prohibit -- prevent it from occurring in the future.
15 And, the testimony, as I recall, from Mr. Mason, was that
16 "yes, it was resolved" and "yes, it hadn't reoccurred."
17 So, thus, I concluded there were processes in place to
18 prevent it from reoccurring.

19 CHAIRMAN IGNATIUS: Is there any
20 objection to this coming in as an exhibit, at least being
21 identified, marked for identification?

22 MR. SPEIDEL: Chairman, if we may have
23 this identified as an exhibit for informational purposes,
24 because Staff would like to independently verify with

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1 Audit Staff that, indeed, it is satisfied with the
2 resolution of this issue.

3 CHAIRMAN IGNATIUS: All right. And,
4 there's no other objection to it coming in, at least being
5 marked for identification?

6 MS. HOLLENBERG: No.

7 CHAIRMAN IGNATIUS: All right. So, that
8 will be "LRW 30".

9 MS. HOWARD-PIKE: Thirty.

10 CHAIRMAN IGNATIUS: Thank you.

11 (The document, as described, was
12 herewith marked as **Exhibit LRW 30** for
13 identification.)

14 BY MR. RICHARDSON:

15 Q. Let me know when you've had a chance to review the
16 document please.

17 A. Okay.

18 Q. So, do you see where it says, in the penultimate
19 paragraph, "PUC Audit has researched the above most
20 recent Company information and confirms that [the]
21 Account 506709047" -- sorry, Steve -- "does include the
22 above debit and offsetting credit entries. Therefore
23 we agree that no adjustment needs to be made to the
24 LRWC rate filing"?

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1 A. I do see that.

2 Q. And, then, in the paragraph below, it explains that the
3 -- because this is after the audit report, that Audit
4 Staff would not be going back to revise it, but be
5 providing this e-mail?

6 A. I see that, yes.

7 Q. Yes. And, is that your understanding of how that issue
8 was resolved?

9 A. I have no reason to quarrel with this. I don't recall
10 seeing it. But the fact that the Audit Staff was able
11 to resolve it is fine.

12 MR. RICHARDSON: Okay. I'm too cowardly
13 to say that "I have no further questions". Because I'm
14 convinced, at the moment I do, I'll remember something
15 else.

16 CHAIRMAN IGNATIUS: That's all right.
17 Take your time and take a look at what you need to look
18 at.

19 MR. RICHARDSON: I'm going to go ahead
20 and say it anyways. That's it. Thank you. That's fine.

21 CHAIRMAN IGNATIUS: And, did anything
22 occur to you now?

23 MS. HOLLENBERG: It will.

24 CHAIRMAN IGNATIUS: All right. Thank

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1 you. Mr. Speidel.

2 MR. SPEIDEL: Well, I've just had a
3 brief discussion with Attorney Thunberg regarding the
4 authentication or the integration of this new information
5 into the record. I personally have never seen this e-mail
6 referred to by Mr. Richardson. I do see that there's a
7 list of recipients that includes Mr. Naylor, Mr. Laflamme,
8 and Mr. Roberge, and Mr. St. Cyr.

9 I think, if there is -- if we can get an
10 acclamation here in the hearing room that this would be an
11 acceptable expression of Audit Staff's point of view on
12 this point, I would also be satisfied that this can be
13 entered into as an exhibit and noticed. It's just that
14 Staff -- I personally haven't spoken to Mr. Hodgdon about
15 this issue.

16 CHAIRMAN IGNATIUS: Well, what I'm
17 finding odd about this is I thought this was an issue that
18 wasn't in controversy anyway. And, so, that we're tying
19 up in knots over confirming something that my recollection
20 was wasn't needing confirming. But maybe I missed
21 something.

22 MR. RICHARDSON: I was simply trying to
23 close the loop on an issue that I was not clear myself if
24 it had been resolved. Obviously, Mr. Mason was

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1 cross-examined. I redirected him, and he offered his
2 opinion that it had been resolved. And, I felt it was
3 important to show that the Company had a basis for
4 believing that. And, then, obviously, the choice would
5 have been, you know, tracking down the e-mail during the
6 hearing, which I'm not even sure we were sure existed at
7 that point, or recalling Mr. Mason or using it in this
8 manner. So, that was -- I opted for the latter, just for
9 the sake of speed and clarity.

10 CHAIRMAN IGNATIUS: All right. Well,
11 for the sake of moving us on, because we are going to
12 finish this case today. Ms. Moran, you're here in the
13 hearing room. Are you aware of the issue of the deposits
14 from the audit, and whether that issue has been resolved?

15 MS. MORAN: Unfortunately, I didn't work
16 on that portion of the audit. So, I can't speak to it.
17 And, Stu Hodgdon, the Chief Auditor, is not here today.

18 CHAIRMAN IGNATIUS: All right. Let's do
19 this. Let's reserve a record request for a statement from
20 Mr. Hodgdon as to the status of this issue. I assume he
21 would say "yes, that's my e-mail, and I'm good with what I
22 said in the e-mail in March of 2011." But, if there's any
23 uncertainty about that, let's resolve it that way. So,
24 Record Request 7?

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1 MS. HOWARD-PIKE: Correct.

2 CHAIRMAN IGNATIUS: Would be a statement
3 to the file from Stu Hodgdon of the PUC's Audit Division,
4 confirming or stating otherwise regarding this LR Exhibit
5 30 e-mail, purportedly from him, March 2nd, 2011.

6 **(Record Request 7 reserved.)**

7 CHAIRMAN IGNATIUS: Mr. Speidel, do you
8 have other questions?

9 MR. SPEIDEL: Of Mr. Naylor?

10 CHAIRMAN IGNATIUS: Yes.

11 MR. SPEIDEL: Yes. I have a couple of
12 brief questions.

13 BY MR. SPEIDEL:

14 Q. Mr. Naylor, you have available LRW Exhibit 22, this
15 ditto of Section 374:47-a of the RSA statutes?

16 A. Yes, I do.

17 Q. Excellent. Thank you. And, you are, in fact, the most
18 senior Staff person responsible for oversight and
19 regulation of water utilities, is that correct?

20 A. Yes.

21 Q. So, you have some working knowledge of a number of
22 Commission procedures and precedent?

23 A. Yes.

24 Q. Okay. And, in terms of what you know of that

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[WITNESS: Naylor]

1 procedural and precedential history, is it fair to say
2 that, aside from Staff making a recommendation for
3 receivership, the Commission may, on its own, come to
4 that conclusion of receivership being advisable?

5 A. I believe that is the case.

6 MR. SPEIDEL: Thank you. I have no
7 further questions.

8 CHAIRMAN IGNATIUS: Thank you.
9 Commissioner Harrington.

10 CMSR. HARRINGTON: Yes. I guess it's
11 "good afternoon" now. I'll apologize in advance, my
12 questions will tend to jump around a little bit, because
13 that's just the way they got written down.

14 BY CMSR. HARRINGTON:

15 Q. Let me just try to start with maybe what I'm
16 interpreting is kind of a summary of your testimony,
17 Mr. Naylor. It seems to me the situation is, the
18 Company can't borrow money at a reasonable rate to make
19 capital improvements, so it can't get the improvements
20 into rate base, so it cannot get rate increases. Is
21 that kind of where we're at?

22 A. Yes, I think that's accurate. It really is a
23 cornerstone of the utility's operations to have access
24 to capital to make investments into its system. So

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[WITNESS: Naylor]

1 really, the issue of rate increases really isn't
2 forefront here. It's a question of the access to
3 reasonably priced capital for making the investments
4 that are needed.

5 Q. Okay. Well, just to follow up on that, because this is
6 where I get a little confused. LRW Exhibit 28, which
7 is that new chart thing that just showed up today?

8 A. Yes.

9 Q. And, I just took a quick look through this. Looking
10 only at "year completed 2009" and "2010", and there is
11 a substantial amount of things that were listed here,
12 I'm not going to read them all. But there's, you know,
13 "entire street in Paradise Shores water system replaced
14 with new 2-inch PVC water main", there's "variable
15 frequency drive pumps" or motors being put in, "new
16 booster pump has been installed", "all three wells have
17 new pumps installed", "new storage tank", "four booster
18 pumps", and *etcetera, etcetera*. These are all from
19 2009 and 2010. Where did they get the money to pay for
20 those? And, are those improvements, the 2009/2010, in
21 the present rate base? Are they collecting money on
22 those?

23 A. I believe most of the Company's capital improvements in
24 the last three to four years have been financed with

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1 shareholder equity infusions. I believe the
2 shareholders have put in additional capital, somewhere
3 in the \$700,000 range, 7 to \$800,000, in the last
4 several years. I do not believe the Company, except
5 for some small loans related to vehicles or something
6 that are the subject of Docket 11-021, I believe it is,
7 has acquired new debt financing. I believe it's mostly
8 through equity from the shareholders. And, certainly,
9 an extension of credit from its affiliate, LRW Water
10 Services, and from vendors, who are owed accounts
11 payable, as we heard about earlier in the proceeding.

12 Q. Now, would these -- so, they borrowed, they got the
13 money mostly from the shareholders in the form of loans
14 or in the form of equity. And, are these, the 2000 --
15 the ones that have been completed in year 2009/2010,
16 would they be in the present rate base? Are they
17 collecting returns on that investment?

18 A. The Company's rates, let's see, the Company's rate case
19 that is the subject of this -- part of the subject of
20 this hearing, is based on a 2009 test year.

21 Q. And, excuse me, just so I got that. That's the rates
22 we're looking at approving in this proceeding. I'm
23 talking about the present rates that they're collecting
24 today.

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[WITNESS: Naylor]

1 A. Right. Correct. The Company's present rates would
2 have been set in its 2005 rate case. Subject to check,
3 I believe that would have been a 2004 test year. And,
4 in addition to that, the Company had three step
5 adjustments approved by this Commission in Docket
6 08-070. And, it has currently in effect temporary
7 rates approved in this current rate case, I believe for
8 effect in September of 2011, or '10. I'm not sure.
9 It's been a while. So, it's a combination of
10 Commission approvals, which lead to what rates the
11 Company is charging now.

12 Q. But, for the most part, that you said was around a
13 \$700,000 capital investment, is not being reflected in
14 the present rates?

15 A. A certain portion of it probably is. And, I say that
16 because of the step adjustments approved in 08-070.
17 And, certainly, the 18 or so percent increase approved
18 for temporary rates in this case, you could say would
19 reflect some of the capital as well.

20 Q. Okay. All right. Just give me one second here. Okay.
21 Again, this is another one, a conclusion I think I'm
22 drawing, I want to make sure you agree with it.
23 Whatever path is selected, whether it be receivership,
24 sale, continued operation by the Lakes Region Water

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1 Company, it will involve substantial and multiple rate
2 increases? Do you consider that an accurate statement?

3 A. I think it's generally accurate. You know, I think the
4 testimony has been pretty clear, from all of the
5 witnesses so far, that the Company is looking at more
6 than a million dollars in additional new capital going
7 forward from here. And that, at some point, has to be
8 reflected in rates.

9 Q. Okay. There was a lot of questions and a lot of
10 exhibits on the status of small water companies and the
11 fact that most violations or concerns are found in
12 small water companies, not larger. If you had the same
13 concern with every other small water utility in New
14 Hampshire that you have with Lakes Region, would that
15 lessen your concerns with the Lakes Region Company,
16 just because everybody else had similar problems?

17 A. Well, I guess, you know, in hypothetical, I guess it
18 probably would. But, you know, this company has, and I
19 think we've recognized it, this company has had some
20 very unique challenges. In that it was able to operate
21 for many, many years without substantial capital needs.
22 We've taken a look at it. We have seen what the level
23 of investment the Company needed on an ongoing basis.
24 And, it really started to ramp up in the 2006, 2007

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[WITNESS: Naylor]

1 years. And, of course, you're looking at, as
2 Mr. Richardson has pointed out, you're looking at
3 originally developer-built systems, not always
4 engineered from the beginning, not always using the
5 best materials. And, so, a lot of them are starting to
6 fail, you know, 30 and 40 years in. And, so, the
7 Company has been hit with a lot of requirements.

8 Q. And, again, on this idea of the violations from other
9 companies and so forth, are you aware of any other
10 water utilities with recent felony convictions?

11 A. I am not.

12 Q. And, getting back to LRW Exhibit 28, which is this
13 chart again, it seems to list, starting from 2009,
14 going to 2012, a great deal of capital improvement
15 projects, replacements of equipment, rebuilding,
16 *etcetera, etcetera*, throughout the whole system. With
17 regard to that, you had these meetings were going on,
18 the quarterly meetings that were required by the
19 Settlement Agreement, and then you've had technical
20 sessions when those meetings stopped. Have you ever
21 seen a master plan and schedule, including a cash flow
22 analysis, for all these various projects, where it was
23 laid out so they could, you know, allocate resources
24 and allocate cash flow, to make sure they could pay

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[WITNESS: Naylor]

1 their bills, *etcetera*, associated with these many, many
2 projects that were ongoing?

3 A. It's just been the last couple of years that we have
4 seen those type of materials. And, I will say that
5 it's been primarily at the urging of the Staff and the
6 Consumer Advocate that those materials were generated.
7 I think, if you look at the reports of the monitoring
8 meetings, which began in 2008, and all of those are
9 filed in the docket with the Commission in 07-105, the
10 subject of a construction budget was raised. And, I
11 believe a couple of times, probably as late as December
12 of 2008, we were still looking for construction
13 budgets. So, it has been something that we've
14 requested. And, in the last couple of years, the
15 Company has provided them for us to look at, as part of
16 our overall review of the Company.

17 Q. Now, assuming just for one second we just step aside
18 from the availability of capital, because, obviously,
19 that's a huge question. But, assuming there was access
20 to capital, do you think that their present planning
21 process for laying out construction schedules,
22 addressing cash flow, scheduling of resources, is
23 adequate as presently being practiced by the Company?

24 A. Oh, I think so. I think the Company has made -- has

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1 made good progress. It has been -- I think we've
2 clearly acknowledged this and given them credit for the
3 work that's been done. And, I think they have done --
4 they have done a lot of the work that we expected them
5 to do, and they certainly have developed a more
6 coherent process, I guess you would say, for dealing
7 with capital improvements.

8 As I indicated in my testimony, I still
9 have concerns about the Company's process for, you
10 know, integrating those capital improvements into
11 rates. And, as I indicated in testimony, I have
12 encouraged the Company prior to this to consider a
13 business manager position in the Company that would
14 help with the capital planning, help with cash flow
15 analysis, help with preparation of rate relief, when it
16 was appropriate. I still have concerns along that
17 line. I don't think the process the Company has been
18 using is efficient.

19 Q. And, maybe you've kind of answered my next question,
20 which is, do you feel that they should have been
21 requesting more rate cases before this?

22 A. It's really the only way that the Company can maintain
23 its financial health, --

24 Q. Excuse me.

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[WITNESS: Naylor]

1 A. -- when it's faced with the level of capital
2 improvements that it's been faced with.

3 Q. Okay. Getting back to the kind of jumping around part
4 here, so, bear with me please. You said they needed at
5 least a million dollars in capital, or maybe a little
6 bit more than that. Now, is this due to a previous
7 lack of investment or is just sort of a normal
8 expectation or -- at the aging of these systems?

9 A. I think it's the latter, far more than it is the
10 former.

11 Q. Okay. And, this was addressed before, and so you just
12 please give it a short answer, because I wasn't quite
13 sure. There are some unmetered customers in the
14 system. Should all customers be metered in a system
15 like this?

16 A. The Commission's administrative rules require that
17 water service be provided on a metered basis. And, it
18 has been a topic of discussion in prior proceedings.
19 The Commission, at one point, and I'm not sure if it
20 was the '05 rate case, or exactly when it was, the
21 Commission did provide the Company an opportunity to
22 file for a step adjustment, after completed metering
23 projects. But other capital needs have since
24 intervened and --

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1 Q. So, there is -- the Commission has made them aware
2 that, if they were to put in meters of all their
3 customers, they could file for a step increase and
4 expect a reasonable return on that?

5 A. I believe the Company was given a certain period of
6 time, and I couldn't venture to guess. It's in a
7 Commission order.

8 Q. Okay.

9 A. And, it gave it a certain number of months or so to
10 complete metering and file for a step increase.

11 Q. Changing the subject completely again, there was a lot
12 of discussion on "unaccounted for water" or "lost
13 water". And, it seems as if there's -- that various
14 figures were put out in different parts of the system.
15 But it was a substantial amount of water. Has the
16 Staff engaged in any discussions with the Company on
17 how much this is affecting their, you know, revenue
18 basis and what can be done to, you know, stop losing
19 all this water?

20 A. Yes. I think we've had discussions about it. Keep in
21 mind, they have 17 separate systems, and scattered
22 around a whole number -- different number of
23 communities. So, the problem may be greater in one
24 system than it is in another. I think the testimony

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1 earlier was with respect to the Paradise Shore system
2 or the Balmoral system that's been discussed. It has
3 been a topic of conversation between the Company and
4 the parties to these dockets. I know it's something
5 that DES pays a lot of attention to. And, I believe
6 that DES has a -- I believe it's a 15 percent
7 threshold. And, I don't know if that comes from their
8 administrative rules or not. But, typically, with
9 systems that have water loss less than 15 percent,
10 there's not as much concern. Greater than 15 percent,
11 I believe DES pushes the companies to start to take
12 steps to mitigate water loss. Whether that's through a
13 leak detection program or some other way.

14 Typically, when you have water loss,
15 you're incurring additional variable costs. Chemicals,
16 pumping costs, electric bills, that's primarily the
17 cost of unaccounted for water or lost water.

18 Q. Well, in the case of this utility, though, if we're
19 talking about, because of its unique load profile, if
20 you will, that it's a very high demand for a very short
21 period of time in the summer months, loss of water
22 would seem to be also adding to capital costs. In
23 other words, they're expanding the capacity of the
24 system to account not only for the high usage during

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1 the July 4th Week, but also to account for the loss
2 during July 4th Week.

3 A. I agree.

4 Q. And, is their loss factor large enough so that it could
5 reduce some future capital improvements that otherwise
6 would be needed?

7 A. Yes. I mean, that's a good question, and I really
8 don't know the answer to that.

9 Q. Okay.

10 A. But, certainly, it is a factor, particularly when you
11 have very high seasonal demand.

12 Q. And, in going on that one, it was stated earlier, I'm
13 not quite sure by who, but someone for the Company,
14 said that their -- the average bill was, for their
15 metered customers, was \$490 a year. And, \$440 of that
16 was made up in, basically, a flat rate charge of \$110 a
17 quarter, which meant their volumetric base charge is
18 \$50 a year. So, having said that, with the fact that
19 they have a high seasonal demand, that peaks in a very
20 short period of time, would looking at a different rate
21 structure for this utility make sense, i.e., charging
22 different amounts for a gallon of water, depending on
23 the time of the year?

24 A. You would need the proper data to make that, that type

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1 of analysis, and, you know, to work your way towards
2 rates that would be based on peak usage. And, of
3 course, you need all the systems to be metered, so that
4 all the customers have metered data. But it's a
5 problem the Commission has struggled with for a long,
6 long time. When you have systems that have a high
7 percentage of seasonal customers, you need to make some
8 kind of a balancing act, between the impact on
9 year-round customers, if you have a high volumetric
10 rate; the impact on the seasonal customers, if you have
11 a high fixed portion of the rate. And, so, that's the
12 balancing that we need to do.

13 Q. But are you aware of any utilities that use a variable
14 time-of-year rate? In other words, in July, they're
15 charging more for water than they are in November?

16 A. No. No.

17 Q. But would you consider that a possibility to be looked
18 at?

19 A. Yes. I know we've had some internal discussions about
20 it.

21 Q. Okay.

22 A. The Aquarion system, in Hampton, is one of the systems
23 that we've had some discussions about with the company,
24 because of their high seasonal usage. But you need a

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1 lot of data to set those rates correctly.

2 Q. Okay. Well, that addresses my question. Thank you.

3 And, just kind of looking at, trying to wrap up here,
4 overall, it sounds as if, if we go back through the
5 historical record documents here where they have shown
6 acquisitions of different systems over time, some of
7 which was at the encouragement of the Commission. And,
8 it appears, I have the impression that the Lakes Region
9 Water Company was a smaller, fairly well-run company,
10 that sort of outgrew its management, its ability to
11 manage the larger system. Or, it seems like most of
12 the problems it's encountered have been over the last
13 three or four years. Just simply due to the aging of
14 the system or due to a lack of management expertise to
15 address those concerns?

16 A. Well, I think it's largely the impact of the failing
17 systems, and the fact that some of these developer
18 systems have sort of reached their, you know, the end
19 of their useful life. And, they have seen some of
20 their well yields declining and so forth, and the need
21 for upgrades. Certainly, the Company has been, as all
22 the water companies, have been hit with additional new
23 requirements in the Safe Drinking Water Act. And,
24 also, I think, you know, Mr. Mason's -- Mr. Mason, Sr.,

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1 who was reaching a point where he was struggling to, I
2 think, run the Company, and he started to have some
3 difficulties, physical difficulties and so forth. And,
4 so, the Company had a transition of management as well,
5 which I think has been -- has been difficult for the
6 Company and kind of set things back to some extent.

7 Q. But, as you said earlier, it sounds as if the
8 management, at least at the prompting of Staff, has
9 improved their planning process, has a much better plan
10 for how they're going to go down the road. But the
11 biggest single issue appears to be lack of access to
12 reasonably priced capital?

13 A. Yes. Yes.

14 Q. And, under the present management structure, do you see
15 anyway that can be resolved?

16 A. I, to be honest with you, I think if the Company had a
17 plan for access to reasonably priced capital, it would
18 have provided one in its reply testimony, I mean, --

19 Q. So, I --

20 A. -- I don't think this company is bankable, in looking
21 at their financial statements.

22 Q. So, simply coming up with a much improved plan for
23 going forward, as far as cash flow, capital
24 improvements, administrative schedule, all that stuff,

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1 that, in itself, is not going to be sufficient, in your
2 opinion, to allow them access to reasonably priced
3 capital?

4 A. Unless they can demonstrate, and I think I said this in
5 my testimony, unless the Company is able to demonstrate
6 that they have access to capital, that they can acquire
7 reasonably priced capital, my recommendation is what it
8 is.

9 Q. Okay. And, one last question then. Given that this
10 company, up until at least three or four years ago, was
11 sort of the "rescue company", if you will, for small
12 water companies in the Lakes Region, in that they
13 brought in additional small water companies into their
14 system, is it realistic to think that there's anybody
15 out there that's going to rescue them? Or, is that a
16 viable option, putting them up for sale and thinking
17 someone is going to buy it?

18 A. Yes. Yes. Yes. It came to Staff's attention last
19 year that there was at least one utility that was
20 interested. And, there had been interest expressed
21 prior to that.

22 CMSR. HARRINGTON: Thank you. That's
23 all I had.

24 CHAIRMAN IGNATIUS: Commissioner Scott.

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1 Off the record.

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

4 CHAIRMAN IGNATIUS: Let's come back at
5 1:30. My hope is to go, certainly to finish today, and I
6 think we can do that by normal time. But, if we have to
7 stay a bit longer, I think we're going to need to do it,
8 because we are not going to come back for a fifth day.
9 Ms. Thunberg, you look troubled?

10 MS. THUNBERG: Only because I need to be
11 out of here at 4:15 for another obligation.

12 CHAIRMAN IGNATIUS: Well, I'm sorry
13 about that.

14 MS. THUNBERG: Yes.

15 CHAIRMAN IGNATIUS: We are going to
16 finish today.

17 MS. THUNBERG: Yes.

18 CHAIRMAN IGNATIUS: So, let's do what we
19 can to keep it moving. Thank you.

20 (Whereupon the lunch recess was taken at
21 12:29 p.m., and the hearing to resume
22 under separate cover so designated as
23 **"Afternoon Session Only".**)
24

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