

STATE OF NEW HAMPSHIRE  
PUBLIC UTILITIES COMMISSION

April 13, 2018 - 10:06 a.m.  
Concord, New Hampshire

27 APR '18 10:23:30

RE: DW 18-026  
ABENAKI WATER COMPANY, HAMPSTEAD  
AREA WATER COMPANY, AND LAKES  
REGION WATER COMPANY: Joint  
Petition for Declaratory Ruling or  
Rulemaking regarding the Return of  
Equity for Small Water Systems.  
(Prehearing conference)

PRESENT: Chairman Martin P. Honigberg, Presiding  
Commissioner Kathryn M. Bailey  
Commissioner Michael S. Giaimo

Sandy Deno, Clerk

APPEARANCES: Reptg. Abenaki Water Company:  
Stephen P. St. Cyr  
Donald Vaughan  
Pauline Doucette  
  
Reptg. Hampstead Area Water Company:  
Robert C. Levine, Esq.  
Harold Morse  
John Sullivan  
Christine Lewis Morse  
  
Reptg. Lakes Region Water Company:  
Justin C. Richardson, Esq. (Upton...)  
Leah Valladares

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

CERTIFIED  
ORIGINAL TRANSCRIPT

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

**Reptg. the Omni Mount Washington:**

Thomas B. Getz, Esq. (McLane...)  
Viggo Fish, Esq. (McLane Middleton)  
Christopher Ellms

**Reptg. Residential Ratepayers:**

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Brian D. Buckley, Esq.  
Pradip Chattopadhyay, Asst. Cons. Adv.  
Office of Consumer Advocate

**Reptg. PUC Staff:**

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Stephen Frink, Dir./Gas & Water Div.  
Jayson Laflamme, Asst. Dir/Gas & Water  
Robyn Descoteau, Gas & Water Division

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

1  
2 CHAIRMAN HONIGBERG: We are here this  
3 morning in DW 18-026, which is a Petition that  
4 was filed by Abenaki Water Company, Hampstead  
5 Area Water Company, and Lakes Region Water  
6 Company regarding the return of equity, to have  
7 a proceeding that would affect all of them.  
8 And there's a lot of people here because of  
9 that.

10 Before we start the prehearing  
11 conference this morning, let's take appearances  
12 from the parties and the OCA and Staff.

13 MR. ST. CYR: Good morning. My name  
14 is Stephen P. St. Cyr. I work with all three  
15 of the Companies. And I have been asked to  
16 coordinate this effort to get the ROE issue  
17 before the PUC.

18 And I'll let the Companies introduce  
19 themselves.

20 MR. VAUGHAN: Good morning,  
21 Commissioners. Donald Vaughan, Abenaki Water  
22 Company.

23 MS. DOUCETTE: Good morning. Pauline  
24 Doucette, Abenaki Water Company.

1 MR. LEVINE: Good morning,  
2 Commissioners. I'm Attorney Robert Levine, for  
3 Hampstead Area Water Company. With me is  
4 Harold Morse, our President; John Sullivan, our  
5 Controller; and our Vice President, Christine  
6 Lewis Morse.

7 MR. RICHARDSON: Good morning, Mr.  
8 Chairman, Commissioners. Justin Richardson,  
9 with Upton & Hatfield, here on behalf of Lakes  
10 Region Water Company. With me at counsel table  
11 I have Leah Valladares, who is the Company's  
12 Utility Manager.

13 The president, Mr. Mason, sends his  
14 regrets from an island in the Caribbean, due to  
15 plane tickets he had purchased a year ago. And  
16 so, he's not here with us today.

17 CHAIRMAN HONIGBERG: All of the  
18 things going through my mind are inappropriate  
19 to say.

20 *[Laughter.]*

21 MR. GETZ: Good morning, Mr.  
22 Chairman, Commissioners. I'm Tom Getz, from  
23 the Law Firm of McLane Middleton, here on  
24 behalf of Omni Mount Washington Hotel. With me

1 are Viggo Fish, from McLane Middleton, and  
2 Chris Ellms, from the Omni Mount Washington.

3 MR. KREIS: Good morning, Mr.  
4 Chairman, Commissioners. I'm D. Maurice Kreis,  
5 the Consumer Advocate. My job is to represent  
6 the interests of residential utility customers  
7 pursuant to RSA 363:28. With me today are the  
8 Assistant Consumer Advocate, Pradip  
9 Chattopadhyay, and our Staff Attorney, Brian  
10 Buckley.

11 MR. SPEIDEL: Good morning,  
12 Commissioners. Alexander Speidel, representing  
13 the Staff of the Commission. And I have with  
14 me Jayson Laflamme, the Assistant Director of  
15 the Gas & Water Division; Stephen Frink,  
16 Director of the Gas & Water Division; and  
17 Utility Analyst Robyn Descoteau of the Gas &  
18 Water Commission -- Division, excuse me.

19 CHAIRMAN HONIGBERG: I'm not going to  
20 characterize the request for relief. I'm going  
21 to focus first on what the Order of Notice said  
22 we were going to do today.

23 And one of the things we're going to  
24 do is ask all of you to provide argument or

1 your position on how best to proceed in this  
2 matter. Mr. Kreis has already given us his  
3 thoughts in writing, but he's welcome to share  
4 whatever he'd like to do in order. And I  
5 think -- I'm assuming that other parties are  
6 going to want to respond to Mr. Kreis, which  
7 they will probably want to do in writing under  
8 the rules.

9 There is a technical session  
10 scheduled for this after the prehearing  
11 conference, I believe. And we will leave you  
12 to that when we're done with our part of this.

13 Is there anything people want to talk  
14 about before we get to the -- before we get to  
15 the positions of parties?

16 Actually, let me start with one, that  
17 Mr. Getz represents a prospective intervenor  
18 with one of the companies. Is there an  
19 objection to his participation? Mr. St. Cyr?

20 MR. ST. CYR: Abenaki has no --  
21 Abenaki has no objections to their  
22 participation.

23 CHAIRMAN HONIGBERG: Mr. Richardson?

24 MR. RICHARDSON: The same can be said

1 for Lakes Region Water. We take no position,  
2 obviously depending on the direction things go  
3 in. I mean, this case is obviously broader  
4 than just one customer and one issue. We're  
5 really looking at this from an industry  
6 perspective.

7 CHAIRMAN HONIGBERG: Anyone else want  
8 to offer anything? Mr. Levine.

9 MR. LEVINE: Mr. Chairman, Hampstead  
10 has no objection to the intervention.

11 CHAIRMAN HONIGBERG: All right.  
12 Anything else people want to talk about, before  
13 we hear preliminary positions?

14 *[No verbal response.]*

15 CHAIRMAN HONIGBERG: All right. Why  
16 don't we get to that. Mr. St. Cyr, why don't  
17 you start us off.

18 MR. ST. CYR: All right. Thank you.  
19 Good morning. Thank you for the opportunity to  
20 present a preliminary statement and to comment  
21 on the best procedural approach to be taken by  
22 the Commission on behalf of Abenaki Water  
23 Company, Hampstead Area Water Company, and  
24 Lakes Region Water Company, collectively

1 referred to as the "Companies".

2 Abenaki is presently franchised in  
3 the Towns of Belmont, Bow, Carroll, and  
4 Bethlehem, New Hampshire. It has 663  
5 customers. It's presently before the  
6 Commission for a rate increase in DW 17-165 for  
7 its Rosebrook system. In that proceeding, it  
8 is utilizing a cost of common equity of 11.6  
9 percent for *pro forma* purposes. The  
10 11.6 percent is the current PUC-approved cost  
11 of equity of 9.6 percent plus 2 percent. It  
12 should be pointed out that two of Abenaki's  
13 water systems are currently earning below the  
14 PUC-approved 9.6 percent, with an ROE of 9.4,  
15 believed to be the lowest ROE by a regulated  
16 water utility in the state, because Abenaki was  
17 confronted with an opposing expert witness and  
18 subject to questioning and data requests  
19 significantly beyond its field of expertise in  
20 DW 15-199.

21 Hampstead is presently franchised in  
22 most areas of Hampstead and Atkinson, New  
23 Hampshire, and has franchised satellite systems  
24 in various towns in Rockingham County. It has

1 3,578 customers. It's presently before the PUC  
2 for an increase in its consolidated rate in DW  
3 17-118. In that proceeding, it is utilizing  
4 the cost of -- it's utilizing the  
5 Commission-determined cost of common equity of  
6 9.6 percent plus 2 percent, or 11.6 percent for  
7 *pro forma* purposes. Hampstead respectfully  
8 requests that its rate case not be delayed by  
9 these proceedings, but that it be allowed to  
10 apply the results, if favorable, in that  
11 proceeding afterwards.

12 Lakes Region owns and operates 18  
13 very small water systems, serving a total of  
14 1,755 customers in the Lakes and Mount -- in  
15 the Lakes and White Mountain Regions. It has a  
16 number of water systems fewer than 100  
17 customers per system. It's last general rate  
18 case was approved in Docket DW 15-209, by Order  
19 dated November 28, 2016. In that case, Lakes  
20 Region proposed a cost of equity of 9.6  
21 percent, plus a premium of 2 percent, due to  
22 the risk in the very small water systems that  
23 it operates. It wanted to retain a cost of  
24 equity witness in that case, but the cost was

1 too high for the Company and its customers.  
2 The OCA did hire an expert, who opposed Lakes  
3 Region's request. As a result, the Company  
4 settled on the PUC-approved cost of equity of  
5 9.6 percent, which was a reduction from the  
6 rate the Commission had approved in its  
7 previous case.

8 The result of the above is that  
9 Abenaki, Hampstead, and Lakes Region's rates  
10 are based on a cost of equity that is the same  
11 or even lower than much larger companies here  
12 in the state, including Eversource, Liberty  
13 Utilities, Unitil, Aquarion, that are order of  
14 magnitude larger than these Companies.

15 The problem of small water systems  
16 are well known. The risks associated with  
17 owning and operating the water systems are  
18 increasing. The problem is not hypothetical.  
19 The Companies seek an actual determination  
20 based on the application of the requirement to  
21 provide a reasonable return on equity based on  
22 the known risks inherent in these systems  
23 today. The small water companies need  
24 recognition from this Commission of a size

1 premium as has been allowed in other  
2 jurisdictions.

3 In the alternative, the Company  
4 requests that the Commission adopt an amendment  
5 to its rules to provide a reasonable rate of  
6 return on equity for utilities operating  
7 satellite systems.

8 With respect to Ms. Ahern's  
9 testimony, the Companies' cost of equity expert  
10 witness, the purpose of her testimony is to  
11 provide support on behalf of the Companies as  
12 to the appropriate small size premium  
13 reflected -- reflecting the smaller size of the  
14 Companies and to propose a generic formula ROE  
15 methodology for consideration of the Commission  
16 to be used in determining an authorized rate of  
17 return for the Companies going forward. Based  
18 on her analysis, the range of the size premium  
19 is 2.64 to 5.27 for Abenaki; 2.30 to 4.59 for  
20 Hampstead; and 2.23 to 4.46 for Lakes Region.  
21 She has also proposed that the New Hampshire  
22 PUC consider establishing a generic ROE formula  
23 based on the Florida Leverage Formula, but with  
24 certain modifications. A generic formula would

1 eliminate the need for small companies to  
2 retain a cost of service equity -- cost of  
3 equity witness, which would ultimately reduce  
4 time, effort, and money.

5 It's simply too expensive and too  
6 difficult to each of the Companies to hire a  
7 cost of equity expert and to conduct analysis  
8 of the company and the market conditions, and  
9 to make recommendations each time the Companies  
10 pursue a rate case. As such, the Companies  
11 have pooled together their resources, hired one  
12 expert, asked that expert to review each  
13 Company's financial position and the current  
14 market conditions, and to make a  
15 recommendation. She's also been asked to make  
16 a recommendation regarding a generic formula  
17 that can be used in future proceedings. The  
18 Companies need this now and need this going  
19 forward.

20 For too long, really forever, the  
21 Companies have had to settle on a return  
22 clearly designed for much larger, publicly  
23 traded companies as if they are all the same.  
24 Now, is the time to fix this and make this

1 right for the Companies.

2 Thank you.

3 CHAIRMAN HONIGBERG: Thank you, Mr.  
4 St. Cyr. Mr. Levine or Mr. Richardson, do you  
5 want to add anything to what Mr. St. Cyr said?

6 MR. LEVINE: Mr. Chairman, no. We  
7 concur with Mr. St. Cyr's position.

8 MR. RICHARDSON: Thank you, Mr.  
9 Chairman. Lakes Region concurs with Mr. St.  
10 Cyr's presentation. There are a couple things  
11 I'd like to add, though, because we differ from  
12 the other two companies in that Lakes Region is  
13 not currently going through a rate case the way  
14 that they are. So, our focus is more on --  
15 more on a long-term solution, whereas theirs is  
16 perhaps more immediate.

17 I've thought about this a little bit.  
18 And I think that one of the possibilities that  
19 could allow relief in both situations would be  
20 for the Commission to ultimately consider in  
21 the other cases, where Lakes Region isn't  
22 involved, something like a step increase for  
23 whatever adjustment comes out of this  
24 proceeding, if the Commission finds one to be

1 appropriate.

2 I think that a rulemaking proceeding  
3 is ultimately the best way to go for the long  
4 term. Because equity and cost of equity varies  
5 based on the companies. It varies based on  
6 market conditions. And so, those -- what Lakes  
7 Region would hate to see would be a  
8 determination of what the cost of equity should  
9 be today, only to have the markets change in a  
10 year or two from now, or, as companies buy new  
11 systems, modify their operations, different  
12 factors change over time.

13 So, I think what really needs to be  
14 done is to develop a rule. And I think a rule  
15 in a reasonable timeframe, because this is  
16 important. The Companies are under earning in  
17 many cases. Lakes Region has done fairly well  
18 and has earned a little bit less than its  
19 allowed return in 2017, but I want to talk  
20 about that in a second and use that as an  
21 example. But I think, at the end of the day,  
22 what needs to come out of this proceeding,  
23 among other things, is a determination of  
24 "where are we at today?" and "how do we solve

1 the problem going forward?" There's no reason  
2 why both cannot be accomplished.

3 The solution of a generic formula,  
4 whether it's the one proposed by Ms. Ahern, or  
5 some of the others that are referenced in Mr.  
6 Vaughan's testimony, I think is appropriate.

7 And Lakes Region apologizes for not  
8 having already submitted its testimony, which  
9 we have been working on. Obviously, the  
10 changes in the tax laws have thrown a curve in  
11 the Company's earnings and factors that we felt  
12 we needed to evaluate before we submitted our  
13 testimony. So, we're a little bit behind on  
14 that. But we expect to propose a schedule  
15 coming out of this to accomplish that shortly.

16 And what that will point the  
17 Commission's attention to are the documents  
18 published by DES that recognize the unique  
19 challenges that small water systems face, which  
20 are dramatically different than larger  
21 utilities, than even those that exist in New  
22 Hampshire.

23 It's also a nationwide problem. And  
24 the National Association of Regulated Utility

1           Commissioners, NARUC, in 2013, adopted a series  
2           of "Best Practices for the Regulation of Small  
3           Water Systems". And one of the things that the  
4           NARUC noted was that the small water company  
5           viability issues continue to be a challenge for  
6           regulators. "Viability" is a fairly  
7           significant word. What that means is is that  
8           this industry, particularly small water  
9           systems, is in peril. We've used and  
10          recommended in the Petition a threshold of  
11          3,300 residents served per system, because  
12          that's what the DES uses, that's what EPA uses,  
13          and that number isn't arbitrary, as I think has  
14          been suggested. It actually comes directly  
15          from the United States Safe Drinking Water Act,  
16          based on EPA reviews that have found that to be  
17          a tipping point, where costs of regulated  
18          financing, rate case approvals, becomes  
19          extraordinarily difficult for companies.

20                        What NARUC recommended in the Best  
21                        Practices resolution was simplified rate of  
22                        return mechanisms that may include formulaic  
23                        rate of return calculations. That's precisely  
24                        what we're trying to do here. We're not --

1 we're not doing anything that's unusual, and,  
2 in fact, the Commission has done this before.  
3 In the existing PUC 610 rules, there are rules  
4 for small water systems, but the threshold is  
5 set at a total of 600 customers total per  
6 utility. So, it's not a relief that's  
7 available to Lakes Region, Abenaki or  
8 Hampstead. We're too big to qualify for the  
9 solution that's been proposed. And I don't --  
10 as far as I'm aware, I think the problem is is  
11 that it's a mechanism that hasn't worked. It  
12 hasn't been available for the companies that  
13 need it. So, it's a rule that's sitting out  
14 there.

15 So, I think the best starting point  
16 would be to examine the existing rules.  
17 Clearly, we know the OCA has challenged the  
18 absence -- or, has suggested there is an  
19 absence of rulemaking authority. We disagree.  
20 The Commission obviously had the authority to  
21 adopt rules when it made its PUC 610 rules.  
22 They're within the scope of I believe it's  
23 365:8, II. And they were intended to develop a  
24 streamlined process that benefits both

1 customers and investors.

2 The NARUC, there's a companion  
3 resolution that goes with the Best Practices  
4 for Small Water Utilities that also recognizes  
5 that, and I'll read from it, it's dated July  
6 24, 2013, and we intend to provide these  
7 documents with our testimony, so they will be  
8 in the record shortly. What NARUC advises is  
9 is that traditional "ratemaking that has worked  
10 reasonably well in the past for water and  
11 wastewater utilities no longer addresses the  
12 challenges of today and tomorrow. Revenue  
13 driven by declining use per customer is flat to  
14 decreasing, while the nature of investment,  
15 rate base, has shifted, largely from plant  
16 needed to serve new customers, to  
17 nonrevenue-producing infrastructure  
18 replacement."

19 Now, that resolution concerns the  
20 entire water industry. NARUC is saying this is  
21 a challenge that all the companies in New  
22 Hampshire and the United States face. Lakes  
23 Region, Hampstead, and Abenaki, on top of that,  
24 face a challenge that's unique to small water

1 systems. So, the need is very urgent.

2 So, to conclude, I just want to turn  
3 the Commission's attention to the last page of  
4 Lakes Region's Annual Report. And I'll read to  
5 you the numbers that are there, but there's a  
6 summary that the Company has historically  
7 provided of where it stands, and I think it  
8 highlights the challenge. Lakes Region's net  
9 income was \$236,984 in 2017. Now, objectively,  
10 that's a pretty good number, because it  
11 represents, on the Company's rate base of  
12 about -- the average rate base for that year of  
13 3.4 million, a return of 6.895 percent. Now,  
14 that sounds pretty good.

15 Their authorized rate of return is  
16 7.49. Obviously, we'd like to be at that  
17 number, but the world's not a perfect place,  
18 and that's usually the way things turn out.

19 So, the Commission would be right to  
20 ask, from a company perspective, "Well, where's  
21 the problem? Can't we look at Lakes Region as  
22 an example and say 'well, we don't need to  
23 change anything if the Company is earning its  
24 allowed rate of return'?"

1           So, let's stop and look at that last  
2           page. Because what it shows is, to go from  
3           year-end in 2016 to year-end in 2017, the  
4           Company added \$616,000 in new plant. It's  
5           earnings were only 236. So, it's basically, in  
6           order to maintain service, maintain compliance  
7           with drinking water systems, to provide all of  
8           the benefits to customers that it provides, it  
9           ended up having to put three times the amount  
10          of plant in that it actually made during that  
11          year. And that's a real significant challenge.

12                 What did the investors get? The  
13          investors, for years, because the Company had  
14          some financial problems, it had some compliance  
15          problems, it retained all of its earnings to  
16          put it into new plant. In April of 2016, the  
17          Company said it really could no longer starve  
18          off its investors entirely, and it adopted a  
19          policy, a dividend policy of \$2,500 per month  
20          to its sole shareholder. That number is  
21          \$30,000 per year. It represents a rate of  
22          return that the shareholder actually received  
23          of 0.87 percent, less than 1 percent of a  
24          return on its -- on its rate base.

1           The reason that's significant is is  
2           what it shows is is that, even where a company  
3           works very hard, it achieves compliance, it  
4           does everything right, small water systems, the  
5           capital demands, the 616,000 in new plant that  
6           they had to add, effectively prevents the  
7           Company from ever earning a return.

8           The cost per customer of doing  
9           financing or a rate case are so extraordinarily  
10          high that it prevents the Company from really  
11          utilizing the debt markets and the things that  
12          the Commission and Staff like to see.

13          The solution is two-fold. One is, a  
14          higher rate of return is needed, so that the  
15          revenues are there to attract investment and to  
16          attract debt. As long as the company's rate of  
17          return is the same as larger companies, like  
18          PSNH, Aquarion, other utilities, but Lakes  
19          Region is more risky, we're not going to be  
20          able to attract debt capital, we're not going  
21          to be able to attract equity. That means that  
22          customer revenues are really the only source of  
23          funds that are available to keep the Company in  
24          compliance.

1           That is fundamentally the reason why  
2           Lakes Region is here today. We need a solution  
3           so that, when Lakes Region looks at future  
4           projects, it knows what its authorized rate of  
5           return should be, it knows what its return  
6           based on plant additions should be. They can  
7           make decisions about whether to do financing,  
8           whether to do rate increases, without this huge  
9           question mark of "Is our rate of return going  
10          to be 9.6 percent on equity or is it going to  
11          be some other number?" And we have to spend  
12          \$30,000 on a cost of equity expert just to  
13          resolve one of the most important variables in  
14          the rate process.

15                 It's, really, that's the bottom line.  
16          That's the practical consequences of the model  
17          that we're currently in, and the one we wish to  
18          change, through a rulemaking process and by  
19          having discussions with Staff, the Office of  
20          Consumer Advocate, and the other parties.

21                         CHAIRMAN HONIGBERG: Thank you, Mr.  
22          Richardson.

23                         Mr. Getz, we're granting your Motion  
24          to Intervene. You want to share your thoughts

1 on this?

2 MR. GETZ: Thank you, Mr. Chairman.  
3 Yes. I'll be brief.

4 First, Omni Mount Washington supports  
5 the Motion to Dismiss filed by the Consumer  
6 Advocate. And it does so because there's --  
7 essentially, there's a basic mismatch between  
8 the relief that is sought by the water  
9 companies and the process they propose to  
10 pursue that relief. Whether a premium is  
11 appropriate for small water companies is a  
12 factual determination that the -- that the  
13 Commission can address through an adjudication.  
14 And there's also the secondary question, if the  
15 Commission were to conclude that a premium were  
16 indeed justified, what would be the level of  
17 that premium?

18 And we see the problem here is a  
19 practical problem of neither a motion for  
20 declaratory ruling nor a rulemaking puts the  
21 Commission in a position where it can pursue  
22 the determination of those factual  
23 underpinnings for the relief.

24 CHAIRMAN HONIGBERG: Thank you, Mr.

1 Getz. Mr. Kreis.

2 MR. KREIS: Thank you, Mr. Chairman.  
3 In the Order of Notice the Commission issued in  
4 this docket, the Commission said "it must  
5 decide the best procedural approach for the  
6 case, either: a generic Commission  
7 investigation" or "a declaratory judgment  
8 proceeding".

9 CHAIRMAN HONIGBERG: And you're going  
10 to offer us "(c) none of the above"?

11 MR. KREIS: That's exactly what I'm  
12 here to offer you. I am absolutely convinced,  
13 on behalf of the residential ratepayers that  
14 are customers of these three utilities, that  
15 the Commission simply does not have the  
16 authority, under the powers delegated to it by  
17 the Legislature, to resolve this case either  
18 through some kind of declaratory judgment or  
19 through rulemaking.

20 When Mr. St. Cyr addressed you, he  
21 didn't even mention the issues that I raised in  
22 the OCA's dismissal motion, because they know,  
23 the water companies know that they're basically  
24 making this up as they go along.

1           They are essentially whining to the  
2 Commission about the fact that the OCA had  
3 recourse through an outside ROE expert in two  
4 rate cases that were pending two years ago,  
5 when I took office, and my predecessor decided  
6 that ROE was a very serious issue in water  
7 company rate cases, and she hired an outside  
8 expert. But that argument is a red herring,  
9 because sitting right next to me is my Deputy  
10 Consumer Advocate. He is the best ROE witness  
11 in the business. And I will not hesitate to  
12 use him in any rate case where any utility of  
13 whatever size is requesting an excessive return  
14 on equity.

15           Return on equity is an essential  
16 component of the cost of service ratemaking  
17 formula. This Commission has a longstanding,  
18 well articulated, well reasoned policy against  
19 single issue ratemaking. And that's what this  
20 Petition asks you to do; conduct single issue  
21 ratemaking. That is a huge problem, and we  
22 take that problem very, very seriously.

23           I listened with great interest to  
24 what Mr. Richardson just had to say to you on

1           behalf of the Lakes Region Water Company. And  
2           his comments illustrate the "we'll make this up  
3           as we go along" character of this whole  
4           proceeding. He thinks he can file testimony on  
5           behalf of his client whenever he wants to.  
6           That's not the way this process works.

7                         Making rates is supposed to be an  
8           orderly process that's conducted according to  
9           principles of due process after a hearing. How  
10          do I know that? Because that's what RSA 378:7  
11          says that you have to do when you conduct  
12          ratemaking proceedings.

13                        It is true that RSA 365:8, in  
14          Paragraph II, says that the Commission has the  
15          authority to adopt rules for "standards and  
16          procedures for streamlined review or other  
17          alternative processes to enhance the efficiency  
18          of the commission and respond to the needs of  
19          the utility's ratepayers and shareholders."  
20          You adopted such rules when you adopted your  
21          Puc Part 610 rules. Those are standards and  
22          procedures for streamlined review and  
23          alternative processes.

24                        But there's nothing in those rules

1 and there's nothing in your rulemaking  
2 authority that gives you the power to determine  
3 by rule the results of discrete parts of rate  
4 cases. You simply lack the authority to do  
5 that. How do I know that? Again, because RSA  
6 378:7 says, that when you use your delegated  
7 ratemaking authority, you have to do that  
8 through adjudicative proceedings that include  
9 hearings.

10 I made an elaborate and I think well  
11 reasoned argument about why this is not an  
12 appropriate case for declaratory judgment. The  
13 problem there is that, considered in isolation,  
14 an ROE premium, based on small size, is  
15 hypothetical.

16 The ROE testimony that Ms. Ahern has  
17 made is rate case testimony. There's nothing  
18 that prevents the two companies with pending  
19 rate cases from submitting her testimony in  
20 those two rate cases. Indeed, I would be happy  
21 to help those companies figure out a way to do  
22 that.

23 But this proceeding is totally  
24 outside the Commission's authority. We will

1           oppose it vigorously.

2                         CHAIRMAN HONIGBERG: Thank you,  
3           Mr. Kreis. Mr. Speidel.

4                         MR. SPEIDEL: Thank you, Mr.  
5           Chairman.

6                         As a general matter, Staff doesn't  
7           want to necessarily box in the Commission with  
8           a specific provision of positions regarding all  
9           of these matters, but we will provide some  
10          thoughts and perspectives from Staff's side.

11                        As a general issue, we don't  
12          necessarily believe that the rulemaking rubric  
13          would be the most efficient or appropriate  
14          vehicle for addressing this issue, especially  
15          in light of the fact we hear from one of the  
16          Companies' representatives, Mr. Richardson,  
17          that he believes that a rulemaking should be  
18          expeditious.

19                        In any instance, rulemakings tend to  
20          be paced and governed by a lot of the standards  
21          and procedures of the Joint Legislative  
22          Committee on Administrative Rules, or JLCAR,  
23          down at the Legislature. The Commission is not  
24          in sole control over any flow of rulemaking

1 work or corrections or additions. And there's  
2 no telling how they would respond to a  
3 rulemaking of this sort.

4 That said, a declaratory judgment, as  
5 Mr. Getz indicated, that sort of proceeding  
6 seems to be more geared towards a scenario  
7 where there's questions of law that are being  
8 adjudicated rather than questions of fact. And  
9 historically, the Commission has said that  
10 returns on equity determinations are generally  
11 issues that are decided within a factual  
12 context for each individual company.

13 We don't necessarily believe that a  
14 declaratory judgment ruling would be completely  
15 foreclosed, but we do have a concern regarding  
16 the factual determination piece of that  
17 consideration.

18 Moving on to the generic docket or  
19 the generic investigation, that may be the most  
20 appropriate vehicle that the Commission could  
21 use, if it were to decide that it would like to  
22 take up this Petition, insofar as there is  
23 potential scope for more procedural features  
24 and more participation by the various parties

1 in this proceeding.

2 We do understand that we have  
3 different states, such as Florida,  
4 Massachusetts, and Connecticut, that do have a  
5 common return on equity approach for small  
6 water companies. And we definitely understand  
7 and share the concerns of the small water  
8 companies regarding some of the challenges that  
9 they face from a financial perspective.

10 But that said, we have reviewed the  
11 Petition, and Ms. Ahern's testimony in  
12 particular, and we have a concern that the  
13 return on equity ranges proposed there tend to  
14 be on the high side. So, the right answer, in  
15 the view of the Commission, may eventually be  
16 "yes, it is useful to have a module of common  
17 return on equity methodologies for small water  
18 companies to save costs". But the figures  
19 presented within the testimony don't really sit  
20 well with Staff's perspectives, in terms of  
21 some of the precedents and standards we've  
22 applied to ROE in recent years, even granting  
23 the idea that perhaps, in theory, a small water  
24 company may be entitled to a slightly higher

1 rate of return.

2 So, those are our general thoughts at  
3 the present time. We leave it to the  
4 Commission to decide how to proceed  
5 procedurally. But we will discuss with the  
6 other parties in the technical session the  
7 potential for maybe more opportunity for  
8 briefing, as an initial phase, and also start  
9 talking about pacing of discovery. We might  
10 not necessarily have a procedural schedule  
11 proposal until the Commission addresses the  
12 Motion to Dismiss by the Consumer Advocate.  
13 But at least, in the interim, we can talk about  
14 what we're going to be looking for during this  
15 proceeding.

16 Thank you.

17 CHAIRMAN HONIGBERG: Well, clearly,  
18 those who want to respond to the Consumer  
19 Advocate's motion should do that within the  
20 timeframe set forth in the procedural rules.

21 Mr. Speidel, and others, I guess, if  
22 the rulemaking process were, you know, were a  
23 great process to work with, and we all agree, I  
24 think, that it can be a challenge, is a way to

1 approach this still through the rules, but  
2 create an analogue to the small water company  
3 provision that's in 610 now, just with a larger  
4 number attached to it, larger number of  
5 customers, a mechanism that, again, it's an  
6 analogue, it's not going to be identical, but  
7 it will have to be developed, that would apply  
8 to these larger, but not large companies?

9 I think Mr. Kreis has made at least a  
10 quick run at an argument that we don't have the  
11 authority to do that. Although, I'm not -- I  
12 also heard him say maybe that we do.

13 Mr. Kreis, why don't you clarify that  
14 for me.

15 MR. KREIS: I do think that you have  
16 the authority to do exactly that, under RSA  
17 365:8, Paragraph II. Whether that's a good  
18 idea or not, I don't know. I'd have to think  
19 about it.

20 CHAIRMAN HONIGBERG: Okay. Thank  
21 you. Mr. Speidel, any thoughts on that?

22 MR. SPEIDEL: I would concur with Mr.  
23 Kreis, and add that, in practical terms, the  
24 Legislature within our state system of

1 government, through the JLCAR process, reserves  
2 the right to itself to preinterpret the  
3 application of executive powers delegated to  
4 commissions of this state. So, a lot of it  
5 resolves around how the staff of the JLCAR  
6 feels about a commission approach to  
7 essentially either expanding something like 610  
8 or using a formulaic approach as proposed by  
9 the Companies. They have the ability to say  
10 "we are comfortable with that" or "not  
11 comfortable with that", as does the Legislative  
12 Committee.

13 And, so, and it really does depend on  
14 some of the unknowns that may revolve around  
15 their comfortable or uncomfortable posture  
16 towards a level of specificity within a  
17 rulemaking in terms of the class of affected  
18 persons or corporations, and the specificity of  
19 the information that is being decided or  
20 established through a rulemaking formula.

21 But, in general terms, if you're  
22 looking to streamline procedures in a general  
23 way, that's certainly a safe ground, because  
24 it's already been done before for the smaller

1 companies, the very smallest companies.

2 CHAIRMAN HONIGBERG: Talk about what  
3 a generic docket would look like, and how that  
4 would differ in practice from what the  
5 companies have proposed. If we just change  
6 the -- change the title of this, and said "this  
7 is a request to open a generic docket" and the  
8 Order of Notice were styled as "we want to  
9 start a generic docket", what would that look  
10 like and how would that proceed?

11 MR. SPEIDEL: Well, Staff has given  
12 some thought to this issue. And there's some  
13 potential parameters. Again, these are  
14 preliminary. We don't want to box in the  
15 Commission or the other parties.

16 CHAIRMAN HONIGBERG: And I don't -- I  
17 mean, we're not holding -- these are all  
18 preliminary positions. You know, this is not  
19 the last time Staff is going to get to weigh  
20 in. You're going to have a technical session  
21 where you're all going to discuss this, and try  
22 to find common ground on what the problems are,  
23 what the possible solutions are, and what  
24 limitations state law presents to all of us in

1 achieving those solutions.

2 MR. SPEIDEL: So, the Staff thinks  
3 that it may be a good approach to have a  
4 generic docket opened, and make clear and  
5 underscore the fact that there are these three  
6 specific companies that are the Petitioners in  
7 this investigation that led to the Commission  
8 opening it up. So, you have Petitioners  
9 bringing some sort of request for relief, and  
10 the Commission responds by saying "These three  
11 companies have presented a request for relief,  
12 and now we will investigate this as a  
13 Commission, and the Staff will investigate it  
14 with the participation of various parties."

15 And the first phase would be,  
16 ultimately, an opening up of a proceeding to  
17 other water companies and other interested  
18 persons that may be affected. And there may be  
19 some level of outreach to peer companies out  
20 there in the state that have not come in here,  
21 and telling them "Look, this may affect your  
22 financial interest going forward, would you  
23 like to intervene?" That could be a useful  
24 element.

1           The next piece that could be useful  
2           is to go through the usual discovery process.  
3           I think Staff would like to engage in  
4           comprehensive discovery. I imagine the  
5           Consumer Advocate, if this were an ongoing  
6           proceeding, would want to as well. And Staff  
7           has been thinking about potentially retaining  
8           an expert of return on equity to assist us in  
9           this effort.

10           And what we'll have is a series of  
11           discovery questions and technical sessions.  
12           And at the end of it, Staff would prepare a  
13           report for the Commission's review. And the  
14           Staff would essentially say "We feel that this  
15           is appropriate, this is inappropriate, this is  
16           our point of view on this." But the Staff  
17           recommendation would embed the following  
18           request for a Commission determination: The  
19           Staff would say "This generic return on equity  
20           determination, if approved by the Commission,  
21           if appropriate," again, I'm hedging here, "must  
22           be, in the first instance, applicable only to  
23           these three companies, and to other companies  
24           at their own election." So, if there are other

1 small water companies that do not want to  
2 accept this modular approach, it should be  
3 their right. And in future rate cases, small  
4 companies may say "We don't care to accept the  
5 modular approach developed in 2018 through the  
6 participation of these three companies."

7 The reason I'm going into the  
8 specifics of why we ought to underscore that  
9 these are three companies that are seeking  
10 relief is, because it is a generic approach,  
11 but it's not truly generic. Three companies  
12 have made an independent determination to seek  
13 this relief from the Commission, and therefore  
14 it really has the feeling of an adjudication,  
15 but it's an investigatory adjudication.

16 CHAIRMAN HONIGBERG: Can someone give  
17 me a sense of how many other companies are  
18 truly similarly situated here? Because we know  
19 the tiny ones aren't, and they're covered by a  
20 different rule, and then the larger ones  
21 aren't, because they're larger.

22 Mr. Richardson or someone?

23 Mr. Naylor? Mr. Naylor is not here.

24 *[Laughter.]*

1                   CHAIRMAN HONIGBERG: Mr. Frink? I'm  
2                   so used to saying that. Mr. Frink?

3                   MR. RICHARDSON: Mr. Chairman?

4                   CHAIRMAN HONIGBERG: Yes,  
5                   Mr. Richardson.

6                   MR. RICHARDSON: I don't have the  
7                   experience with the smallest water companies  
8                   that Mr. St. Cyr has. So, I would defer to  
9                   him. I just wanted to state that there are  
10                  some issues on the Motion to Dismiss that I'd  
11                  like to respond before we leave today.

12                  CHAIRMAN HONIGBERG: Okay. If you  
13                  want to do it orally, that's fine.

14                  Mr. Speidel.

15                  MR. SPEIDEL: Mr. Chairman, I had a  
16                  little conversation with Mr. Laflamme. And he  
17                  advises that there are roughly ten or eleven  
18                  other companies similarly situated that are not  
19                  participating at this present time. They're  
20                  not among the Petitioners' group.

21                  CHAIRMAN HONIGBERG: That seems high.

22                  MR. ST. CYR: I would just comment  
23                  that, for better or worse, a number of those  
24                  are also clients of mine. And the one that

1 stands out is Bodwell Waste, which is a sewer  
2 company, 600 customers, roughly, I think.

3 CHAIRMAN HONIGBERG: Oh, I guess I  
4 hadn't thought about the sewer companies, which  
5 we don't see very often here.

6 MR. ST. CYR: Although, Abenaki does  
7 have a water system that is both water and  
8 sewer. And then, the next one I want to say is  
9 West Swanzey, which I think is 200 some odd  
10 customers. And most of them are smaller than  
11 that. So, if the number is ten or twelve, I  
12 would say there may only be one other that is  
13 kind of in the 600 -- five or 600 range.

14 CHAIRMAN HONIGBERG: Okay. Thank  
15 you. That's helpful for a perspective.

16 Okay. Mr. Richardson, why don't you  
17 do whatever it is you wanted to do.

18 MR. RICHARDSON: Sure. Thank you. I  
19 guess I was a little surprised by a couple of  
20 Mr. -- the Office of Consumer Advocate's  
21 comments. Because I believe, if I heard  
22 correctly, the argument was that the  
23 Commission -- well, first, that the Puc 600  
24 rules don't allow a generic form of equity.

1 And I'm looking at Rule Puc 610.03, which is  
2 precisely that. And it refers to the return of  
3 equity being determined generically based on a  
4 cost of equity formula. And that formula is in  
5 602.07, so --

6 CHAIRMAN HONIGBERG: Yes. I didn't  
7 hear Mr. Kreis put it that way. I think it's  
8 probably not productive for you to --

9 MR. RICHARDSON: Okay.

10 CHAIRMAN HONIGBERG: -- to argue your  
11 objection to the Motion to Dismiss. We're not  
12 going to rule on it while we're here. You're  
13 going to have a technical session where, as I  
14 said a moment ago, you're going to try and find  
15 common ground on the problems, because I do  
16 think you'll have some success there.

17 MR. RICHARDSON: Okay.

18 CHAIRMAN HONIGBERG: And you'll  
19 probably find some success in talking through  
20 the various approaches. You may disagree about  
21 what the preferred approach is to getting  
22 solutions to those problems, and we may end up  
23 having to resolve that for you.

24 But I don't think it's going to be

1           productive for you to respond to Mr. Kreis,  
2           unless there are some specific things you want  
3           to say?

4                       MR. RICHARDSON:    Sure.  No, and  
5           absolutely.  I mean, and I stated that more as  
6           a question than an argument, because I was  
7           surprised by the comment, with the  
8           understanding of my -- with the understanding  
9           of what the rules are.  And we can go over that  
10          in the technical session, I think would make  
11          sense, and ultimately respond, if we need to,  
12          with a written objection.

13                      The other issue that was raised that  
14          surprised me is that I think the Commission  
15          needs to understand, this is not a ratemaking  
16          proceeding.  Lakes Region isn't asking for any  
17          particular rate.  We're looking at the rules.  
18          This is not a proceeding where anyone's rates  
19          are going to change in this docket.

20                      So, it's, again, it's a separate  
21          issue.  And I sense that --

22                      CHAIRMAN HONIGBERG:  It's a tricky  
23          one, though.  Because it is absolutely true  
24          that one of the big issues that gets litigated

1 in every rate case is the rate of return. And  
2 if you take that issue out and make it a  
3 constant, you've identified that element.

4 And I understand that we have a rule  
5 that does it for the smallest companies. And  
6 if that is a sensible approach, then maybe it's  
7 a sensible approach here.

8 Mr. Kreis, you want to say something  
9 real quick?

10 MR. RICHARDSON: Sure.

11 CHAIRMAN HONIGBERG: We'll get back  
12 to Mr. Richardson.

13 MR. RICHARDSON: Okay.

14 MR. KREIS: I just want to clarify.  
15 You do have a rule that does it for small water  
16 companies. But that rule also contains a  
17 mechanism whereby the OCA or potentially some  
18 other party could say "You know, that is not a  
19 just and reasonable result in this rate case."  
20 And we have an opportunity to make that  
21 argument.

22 CHAIRMAN HONIGBERG: But it gives  
23 everybody a starting point.

24 MR. KREIS: Yes.

1                   CHAIRMAN HONIGBERG:  It's a marker.  
2                   And it does have the potential to save  
3                   significant money for these small companies.

4                   MR. KREIS:  And I'm not saying that  
5                   you don't have the authority to do that by  
6                   essentially raising the threshold of what --  
7                   how small you have to be before you can qualify  
8                   for the kind of streamlined process say in Rule  
9                   610.

10                  CHAIRMAN HONIGBERG:  And it might --  
11                  would you agree with me, thought, that it could  
12                  be a different streamlined process?

13                  MR. KREIS:  Yes.

14                  CHAIRMAN HONIGBERG:  It doesn't have  
15                  to be the same streamlined process?

16                  MR. KREIS:  Right.  My only point  
17                  is --

18                  CHAIRMAN HONIGBERG:  The 30s are  
19                  different from the 300s, might be different  
20                  from the 3,000s?

21                  MR. KREIS:  Yes.  All I'm saying is  
22                  what you can't do is resolve discrete parts of  
23                  rate cases by rule.  And that is what these  
24                  Companies are asking you to do.

1 CHAIRMAN HONIGBERG: Mr. Richardson.

2 MR. RICHARDSON: I think that  
3 clarification by Mr. Kreis, that the -- the  
4 earlier part, where we said, yes, we're not  
5 suggesting that the Commission lock a formula  
6 forever, never to be changed. It's a good  
7 suggestion. And I concur with Staff's  
8 explanation as well, that having the ability to  
9 opt in, under appropriate criteria, is what  
10 needs to be done. Because the Company has to  
11 make decisions when it does a financing, when  
12 it builds a major project, when it spends  
13 money, on where it would come out.

14 So, I think that that is the  
15 clarification I was hoping we would arrive at  
16 in this and the reason for my raising this.

17 CHAIRMAN HONIGBERG: Anything else  
18 anyone wants to offer on this, before we leave  
19 you to your technical session, which is  
20 probably going to be really interesting in a  
21 lot of ways?

22 Mr. Kreis.

23 MR. KREIS: I just want to say that  
24 this problem doesn't get solved by simply

1           slapping the "generic docket" label on this  
2           thing. That label has been troublesome. The  
3           Commission has never confronted the fact that  
4           there are really only two ways to resolve  
5           things that are binding on people under the  
6           authority that's been delegated to the  
7           Commission. The Commission can either  
8           promulgate rules or it can conduct an  
9           adjudicative proceeding.

10                   And, you know, putting something out  
11           as a kind of a generic determination, that may  
12           or may not be okay, depending on the nature of  
13           the relief that is requested.

14                   CHAIRMAN HONIGBERG: I don't think I  
15           want to take that on right now. There's parts  
16           of that that I disagree with. But I understand  
17           what you're saying. I'm not sure that, if we  
18           had a longer conversation, we wouldn't end up  
19           agreeing on it.

20                   MR. KREIS: Right.

21                   CHAIRMAN HONIGBERG: But it's a  
22           little bit more subtle than that.

23                   Mr. St. Cyr, you look like you wanted  
24           to grab the mike.

1 MR. ST. CYR: I just wanted to say  
2 that, I don't know, from the Companies'  
3 perspective, is the process in and of itself is  
4 as important as the timeliness and the result.  
5 You know, the existing system isn't working.

6 You know, you indicated that "this is  
7 a significant issue that gets litigated every  
8 rate case". Well, it really doesn't get  
9 litigated at all, because the smaller companies  
10 are really forced to settle on whatever is  
11 determined for the larger companies. And  
12 that's really what's brought us all here to  
13 begin with. We wouldn't be here if the process  
14 worked.

15 And what I see is a lot of different  
16 approaches that all take a lot of time, that  
17 probably don't end up to the benefit of any of  
18 the Companies. And that's really what we don't  
19 want. We want something timely and something  
20 with a result, and we want to get it fixed once  
21 and for all.

22 CHAIRMAN HONIGBERG: And I think  
23 that's why it's important to keep making sure  
24 that the folks on the other side of the room

1 understand all of the problems with the current  
2 system that you have, because identifying  
3 solutions to those problems, people need to  
4 understand what the problems are. It's not  
5 just that it's expensive. It's not just that  
6 it is -- that you have unique challenges as  
7 companies operating at the size you're  
8 operating at. But you need something soon.

9 Mr. Kreis, you wanted to say -- I'm  
10 sorry. But let's let Mr. St. Cyr, then you,  
11 Mr. Kreis.

12 MR. ST. CYR: So, -- I'm sorry, I  
13 lost my train of thought. Go to Mr. -- it will  
14 come back, I'm sure.

15 CHAIRMAN HONIGBERG: I'm sure  
16 Mr. Kreis will refresh your memory right now.

17 MR. KREIS: Mr. Chairman, just  
18 because they don't like the answers they're  
19 getting out of the Commission doesn't mean that  
20 that process is broken.

21 And I -- you know, the idea that  
22 there's some kind of wall through the center of  
23 this room that makes us unable to understand  
24 the practical challenges that small water

1 companies face, that's not correct. I get  
2 that. I understand that it is extremely  
3 expensive to hire an ROE witness, and bring her  
4 or him into every rate case. I get that.

5 But the fact is, the Commission has  
6 approved just and reasonable rates in each of  
7 these Companies rate cases. You make an  
8 independent determination every time. If you  
9 thought that a 9.6 ROE was not just and  
10 reasonable, you would reject it, even if it is  
11 in a settlement agreement that these Companies  
12 felt like they signed because they claimed that  
13 there was some kind of gun to their head.

14 So, --

15 CHAIRMAN HONIGBERG: If they've got  
16 to spend \$100,000 to get 50, is that a sensible  
17 use of their resources?

18 MR. KREIS: No. But the fix for that  
19 is they could go to the Legislature and make  
20 the same argument at the Legislature. That's  
21 probably what they need to do.

22 CHAIRMAN HONIGBERG: Okay. Well, if  
23 that's the bottom line, then you'll have to --  
24 we'll get there eventually. But I encourage

1           you to have a nice conversation when we leave  
2           about what all of the problems are and what the  
3           possible solutions to those problems are.  If  
4           they require legislation, legislation it is.  
5           If it requires rulemaking, a rulemaking.  If  
6           there's some docket that can be processed here,  
7           we can do that.

8                         Mr. Getz, you look like you want to  
9           say something?

10                        MR. GETZ:  Yes.  Thank you, Mr.  
11           Chairman.

12                        From Omni Mount Washington's  
13           perspective, who has a rate case ongoing, I  
14           think this approach raises some issues.  The  
15           way I'm understanding, you know, what's going  
16           to go on in the prehearing conference, I think  
17           there's a pretty clear divide that some parties  
18           think this docket should be dismissed, because  
19           it's the wrong process that's proposed, either  
20           through a declaratory ruling or a rulemaking.

21                        So, is there some other way to  
22           approach the issue?  Maybe there is.  But  
23           that's going to require some, you know,  
24           refiling, renoticing, --

1                   CHAIRMAN HONIGBERG:   And some  
2                   flexibility on the part of those who are taking  
3                   procedural positions.  You know, let's be  
4                   reasonable.  If a different type of proceeding  
5                   is required, let's see how much can be done  
6                   with the filings as they are.

7                   But I hear you, Mr. Getz.  It may  
8                   require some different process, if that's where  
9                   we are.

10                  MR. GETZ:  But, you know, the  
11                  corollary to that is, if you have an ongoing  
12                  proceeding, how do you just then bring in a  
13                  number from elsewhere, what the timing is, how  
14                  does that then affect customers in those  
15                  proceedings?

16                  CHAIRMAN HONIGBERG:  It depends on  
17                  what it is, depends on how it got arrived at.  
18                  But it's an issue, clearly.

19                  Anything else people want to offer up  
20                  before we leave and you do your technical  
21                  session?

22                                            *[No verbal response.]*

23                  CHAIRMAN HONIGBERG:  All right.  
24                  Well, thank you for your thoughts.  The

1 prehearing conference is adjourned.

2 *(Whereupon the prehearing*  
3 *conference was adjourned at*  
4 *10:59 a.m., and a technical*  
5 *session was held thereafter.)*

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