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STATE OF NEW HAMPSHIRE
PUBLIC UTILITIES COMMISSION

October 22, 2020-9:18 a.m. DAY 2
MORNING SESSION ONLY

[Remote Hearing conducted via Webex]

RE: DW 19-131
OMNI MOUNT WASHINGTON, LLC:
Complaint by Omni Mount Washington
Hotel, LLC, against Abenaki Water
Company, Inc.
[Hearing]

PRESENT:

Chairwoman Dianne Martin, Presiding
Commissioner Kathryn M. Bailey
Commissioner Michael S. Giaimo

Doreen Borden, Clerk
Eric Wind, PUC Remote Hearing Host

APPEARANCES:

Reptg. Omni Mount Washington, LLC.:
Thomas B. Getz, Esq. (McLane...)

Reptg. Abenaki Water Company, Inc.:
Marcia A. Brown, Esq. (NH Brown Law)

Reptg. Bretton Woods Property Owners
Assoc. (BWPOA):
Paul Mueller

Reptg. Commission Staff:
Christopher Tuomala, Esq.
Jayson Laflamme, Asst. Dir./Gas & Water

COURT REPORTER: SUSAN J. ROBIDAS, N.H. LCR NO. 44

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I N D E X

WITNESS: DOUGLAS BROGAN

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1 P R O C E E D I N G S

2 CHAIRWOMAN MARTIN: All right.

3 Good morning, everyone. We're here this
4 morning in Docket 19-131 to continue the
5 hearing on a complaint filed by Omni Mount
6 Washington, LLC against Abenaki Water
7 Company, Incorporated. We made the necessary
8 findings for this remote hearing on the first
9 day, but I would like to remind everyone that
10 if anybody has a problem during this hearing,
11 please call 271-2431. And in the event the
12 public is unable to access the hearing, the
13 hearing will be adjourned and rescheduled.

14 All right. Let's take roll call
15 attendance of the Commission. I am Dianne
16 Martin. I am the Chairwoman of the Public
17 Utilities Commission.

18 Commissioner Bailey.

19 COMMISSIONER BAILEY: Kathryn
20 Bailey, Commissioner at the PUC, and I'm
21 alone.

22 CHAIRWOMAN MARTIN: Good point. I
23 forgot to mention that one. I am alone.

24 Commissioner Bailey.

1 COMMISSIONER BAILEY: What do I
2 need to say?

3 CHAIRWOMAN MARTIN: Did you say you
4 were alone? I didn't catch the end.

5 COMMISSIONER BAILEY: Yes.

6 CHAIRWOMAN MARTIN: All right.

7 Let's take appearances, starting with
8 Attorney Brown.

9 MS. BROWN: Good morning,
10 Commissioners. Thank you again for
11 continuing the hearing until today. And with
12 me today is Don Vaughan and Bob Gallo. Nick
13 Lachance is also listening in. All three of
14 them are with New England Service Company,
15 Abenaki Water, representing Rosebrook in this
16 proceeding. And also attending is Nancy
17 Oleson, who is a -- who was a witness last
18 time, and she is listening in. And also
19 Steve St. Cyr, who is an accountant for the
20 Company, is also listening in. Thank you.

21 CHAIRWOMAN MARTIN: All right.
22 Thank you.

23 And Attorney Getz.

24 MR. GETZ: Tom Getz with McLane

1 Middleton, on behalf of Omni Mount
2 Washington. Here with me in the room is Doug
3 Brogan, an expert witness testifying on
4 behalf of Omni. And also listening and
5 available is Chris Ellms from Omni.

6 CHAIRWOMAN MARTIN: Okay. Thank
7 you.

8 And Mr. Mueller.

9 MR. MUELLER: Good morning. My
10 name is Paul Mueller. I'm representing
11 Bretton Woods Property Owners Association,
12 and I am alone.

13 CHAIRWOMAN MARTIN: All right.
14 Thank you.

15 And Mr. Tuomala.

16 MR. TUOMALA: Good morning, Madam
17 Chairwoman, Commissioner Bailey. My name is
18 Chris Tuomala. I am an attorney for Staff
19 here at the Public Utilities Commission.
20 Jayson Laflamme, the assistant director of
21 the Gas and Water Division, is an attendee
22 listening in on this hearing today. I don't
23 anticipate calling him as a witness, but he
24 is there just in case questions arise that

1 only Staff can answer. Thank you.

2 CHAIRWOMAN MARTIN: All right.

3 Great.

4 And my recollection is that when we
5 left, Attorney Getz was conducting direct
6 examination of Mr. Brogan. So we will pick
7 up there today.

8 Mr. Brogan, I will remind you that
9 you are still under oath at this time.

10 Attorney Getz.

11 MR. GETZ: Thank you, Madam Chair.

12 And I would like it if Mr. Brogan could
13 briefly summarize, since it's been several
14 weeks, what he went through last time and
15 then pick up into the remainder of his
16 direct, if that's acceptable.

17 CHAIRWOMAN MARTIN: That's fine.

18 Thank you.

19 DIRECT EXAMINATION

20 BY MR. GETZ:

21 Q. Good morning, Mr. Brogan.

22 A. Good morning.

23 Q. If we could go back to briefly summarizing
24 your testimony from September 28th, please.

1 A. I focused on two key points. One is that the
2 shut-off to the Mount Washington Hotel is
3 10 feet away from the building, 1870 feet
4 away on Base Road; also, the Commission
5 records indicate that the 8-inch main through
6 the hotel is the responsibility of Abenaki
7 Water Company.

8 First, I'll just quickly run down the
9 different exhibits we looked at last time.
10 The first was Exhibit 23, which is the 1988
11 as-built plans of the system. It's a
12 representation of water lines owned by the
13 water company at that time. It includes the
14 8-inch main to the hotel, and it also
15 includes the 6-inch offshoot to the Bretton
16 Arms Inn.

17 We next looked at Exhibit 22, which were
18 some 1980s engineering reports. And those
19 indicated that the hotel, on the east side of
20 302 and the ski area on the other side of
21 302, were served by separate water systems at
22 that time, that both of those systems were
23 under the control of Rosebrook Water Company,
24 and that the connection of the hotel to the

1 ski area system on the other side of 302 was
2 anticipated in 1985.

3 Next we looked at Exhibit 17, a
4 three-page attachment in that exhibit showing
5 a portion of a more detailed set of as-built
6 plans done by Provan & Lorber in 1995. And
7 those plans show that 8-inch main to the
8 hotel beginning at the entrance to Mount
9 Washington Place and running roughly
10 4,000 feet all the way to the hotel. Those
11 plans also show the 6-inch main to the
12 Bretton Arms, and they show the 16-inch
13 backbone of the system being extended from
14 the same entrance to Mount Washington Place,
15 running parallel to the 8-inch main at Base
16 Road, and turning into and running through
17 the Fairway Village development.

18 The next exhibit was Exhibit 2, Pages 3
19 to 4, which I'm calling the "original CPRs,"
20 or continuing property records. All four of
21 the mains in the vicinity of the hotel appear
22 on those records as main extensions: The
23 8-inch to the hotel; the 6-inch main to the
24 Bretton Arms; the 16-inch Fairway Village

1 main; and the 8-inch main behind the hotel,
2 which did not appear on the 1995 plans
3 because the 8-inch behind the hotel wasn't
4 installed until 2001.

5 Then we looked at Exhibit 25, which was
6 just a one-page table addressing the level of
7 accuracy of the main extension lengths of
8 those four mains near the hotel. And I
9 indicated that the general accuracy of the
10 lengths, combined with the deeds, and the
11 diameters and the explicit descriptions on
12 the original CPRs, really leaves no doubt
13 that each main extension entries on those
14 CPRs is referring to exactly what it purports
15 to be.

16 Then we looked at Exhibit 18,
17 Attachment 1, which is an aerial photo-based
18 map of the same four mains near the hotel.
19 And I noted my belief that, for a number of
20 reasons, that the 16-inch Fairway Village
21 main was always intended, I believe, to be
22 part of a future looping of mains in that
23 area. And that looping would benefit all of
24 the customers from the entrance of Mount

1 Washington Place eastward, including all of
2 the residential customers in the Stickney
3 Circle development and in the Fairway Village
4 development. And I alluded to the fact that
5 Omni clearly does not want to find itself
6 suddenly in the water main-owning business,
7 now or in the future, any more than any other
8 customer of the system would.

9 And finally, we took an initial look at
10 Exhibit 16, at Attachment A to the Omni
11 Complaint, which is where I'd like to pick up
12 again. It's kind of a zoomed-in map of the
13 immediate vicinity of the hotel, based on the
14 1995 plans.

15 Q. So Mr. Brogan, can you briefly review those
16 plans and the Omni buildings and service
17 lines, et cetera?

18 A. Yup. So on Attachment A to Exhibit 16, I
19 think we're familiar with this. But the pink
20 is the boundary of the Omni property. Omni
21 property is to the south at the bottom of the
22 page of the pink line. The 8-inch main to
23 the hotel enters from the upper left of this
24 exhibit and runs to the hotel. The 6-inch

1 main to the Bretton Arms is an offshoot from
2 that 8-inch main. There are five Omni
3 buildings on this exhibit, obviously the
4 hotel in the lower right. And we're going to
5 look at photos shortly of both the exterior
6 shut-offs and the interior plumbing which is
7 in the buildings.

8 Just to orient ourselves for that
9 purpose, so the hotel, the 8-inch main runs
10 all the way to the hotel, and there's an
11 exterior shut-off 10 feet outside the
12 building. The Easter water main break last
13 year is pointed out. There's an arrow to it
14 near the hotel. The caretaker's residence is
15 near where the break was; it's the yellow
16 building. It has its own service line. That
17 service line has its own exterior shut-off.

18 Then if we look at the three buildings
19 served by the 6-inch main in the -- at the
20 end of the main on the right is the Bretton
21 Arms Hotel or Inn. It has its own service
22 line off of that 6-inch main. That service
23 line has its own exterior shut-off.

24 To the left there is the hotel admin

1 building. Same thing. It has its own
2 service line and shut-off.

3 And then if we move back up to the
4 stables building, the little service line
5 should have been highlighted in blue I guess.
6 But it's shown as a 2-inch service line, and
7 it has an exterior shut-off. We'll talk more
8 about the hotel's exterior shut-off as we
9 proceed.

10 I had also noted, again, that the two
11 valves on Base Road, one on the 8-inch line
12 and one on the 6-inch line, are just
13 isolation valves on those distribution mains.
14 And again, it's very common. It's typical to
15 put valves on one or two or sometimes all
16 three sides of a T just to be able to isolate
17 portions of the distribution system. And
18 you'll find that done throughout the
19 Rosebrook system. Again, as we go on, we'll
20 discuss more why those isolation valves are
21 not curb stops. A point was made at the last
22 hearing about having kept these two isolation
23 valves clear of snow in the winter. I think
24 that does not imply that they are curb stops.

1 I think it makes a lot of sense to keep those
2 isolation valves, especially the one to
3 the -- on the main, the single main running
4 to the largest customer on the system, which
5 is a New Hampshire Grand Hotel, to keep that
6 valve free and clear and located through
7 winter months. And especially with those
8 valves, I almost wish we had entered pictures
9 of them as an exhibit. But they're off the
10 pavement in the brush a little bit. So it
11 would make a lot of sense to keep them clear
12 and located.

13 Q. So Mr. Brogan, have you observed these
14 facilities in the field?

15 A. Yes. Two of the next exhibits are -- we did
16 a walking tour last month, myself and a few
17 other people, looking at these different
18 buildings, both east and west of 302, looking
19 at the interior plumbing and the exterior
20 shut-offs.

21 So Exhibit 26 is our photos of the
22 buildings on the east side near the hotel, on
23 the east side of Route 302. Again, I'd like
24 to just walk through the photos quickly, just

1 to give a sense of typical building plumbing
2 and exterior shut-offs.

3 From the summary page, the first page,
4 you can see the stables' exterior shut-off
5 was not found, but again it's shown on the
6 map. It's a wooded area. We just didn't
7 find it. But you can see for the four
8 exterior shut-offs that were located, they're
9 relatively close to the buildings, the
10 respective buildings.

11 CHAIRWOMAN MARTIN: Mr. Brogan, are
12 you looking at Exhibit 26, Page 1?

13 THE WITNESS: Yes.

14 CHAIRWOMAN MARTIN: Okay. Just
15 want to confirm that.

16 THE WITNESS: Sorry.

17 A. And then if we go to Exhibit 26, Page 2, I
18 don't know if you can see it on your screens.
19 That tape measure is sitting on top of the
20 valve cover for the exterior shut-off,
21 10 feet outside the hotel. That's the valve
22 on the 8-inch main that's 10 feet outside the
23 hotel.

24 If we go to Page 3, the next page,

1 you'll see the actual valve cover. So the
2 valve would obviously be, you know, 6 or
3 7 feet down in the ground below that cover.
4 You can also see some remnants of blue paint
5 on the cover. Omni does not paint valve
6 covers blue. So we can only assume the water
7 company painted this valve 10 feet outside
8 the hotel blue at some point.

9 If we go to Page 4, the next page,
10 that's the 8-inch main entering the basement
11 of the hotel at that location and -- let's
12 see. The next two pages as well are photos.
13 It's a very complex area there with lots of
14 valves and meters and pressure sensors, so I
15 didn't try to capture all of that. But the
16 point is that the customer, the hotel,
17 clearly has the ability to shut off its own
18 water inside, just immediately inside the
19 building. And I should note that this
20 entrance provides both fire protection for
21 the building sprinkler system and separate
22 meter for consumption for domestic use by
23 hotel -- people who stay at the hotel. So
24 that's the hotel.

1 Then if we go to Page 7 of Exhibit 26,
2 this is the caretaker's residence. And if
3 you look closely, right at the edge of the,
4 the far edge of the dirt, right in front of
5 the little rock is an exterior shut-off
6 sticking up there. That's the exterior
7 shut-off for the caretaker's residence on the
8 caretaker's residence service line. It's
9 about 4 feet outside the building.

10 If you go to the next page, Page 8,
11 you'll see the basement of the caretaker's
12 residence. The water comes in through the
13 wall at the bottom and up toward --

14 (Court Reporter interrupts.)

15 A. Up toward what appears to be a
16 pressure-reducing reducer and then the water
17 meter. Before either of those things is a
18 shut-off valve. So, again, the customer here
19 has the ability to shut off his own plumbing
20 inside this building.

21 If we go to the next page, Page 9 of
22 Exhibit 26, there are three valves here.
23 This is at of the 6-inch main to the Bretton
24 Arms. And the Bretton Arms is the building

1 in the background. The furthest away of the
2 three valve covers would be the exterior
3 shut-off on the service line to the Bretton
4 Arms.

5 Then, on the next page, Page 10 of
6 Exhibit 26, now we're inside the Bretton
7 Arms. And it's hard to see, but there's a
8 6-inch service line coming in through the
9 basement wall there, where fire protection
10 and the domestic, smaller domestic pipe is
11 capped off the top of that.

12 And the next page, Page 11, is the same
13 location. Again, without trying to go into
14 too much detail, the customer, the Bretton
15 Arms Inn, clearly has its own ability to turn
16 off all water to the building immediately
17 inside where the service line enters.

18 And then the next page, which is Page 12
19 of the same exhibit, we're back out at those
20 three valve covers, only this time we're
21 looking in the other direction toward the
22 admin building. So in this case, the
23 furthest valve cover would be the exterior
24 shut-off on the service line to that

1 building. And we were unable to gain access
2 on the day of our visit to the inside of that
3 building.

4 BY MR. GETZ:

5 Q. And why was that, Mr. Brogan?

6 A. I think the building is rented out to a
7 telephone company, and they didn't want to
8 let us in.

9 Q. Thank you.

10 A. And then the next -- let's see. Yeah, the
11 next page, Page 13 of this exhibit, this is
12 the stables building. On this one, this
13 is -- we were unable to locate the exterior
14 shut-off, but this is the interior plumbing.
15 And it's -- again without knowing what
16 exactly you're looking at -- the customer has
17 the ability to shut off its own water inside
18 of the building. And -- well, that's okay.

19 Q. Before we turn to the second exhibit, 27,
20 another set of photographs, are these
21 photographs that you took yourself during the
22 field visit in September?

23 A. Yes.

24 Q. If you could turn to Exhibit 27. Is that the

1 second set of photos?

2 A. Yeah. Before we do that, those are photos of
3 the west side of 302, but we have not looked
4 at the buildings on that side of 302. So
5 if -- what I'd like to do is look at
6 Exhibit 18, Attachment 2, which is a map of
7 that side of the system.

8 Q. Thank you. That would be -- provide better
9 context.

10 A. So on Exhibit 18, Attachment 2 -- actually
11 Attachment 2 to Staff Tech 2-2 to Omni, this
12 is a map of the portion of the water system
13 west of Route 302. The pink again is the
14 Omni boundary line.

15 Just to orient us, in the lower right of
16 this map is the water tank for the system
17 located way up on the hill there. The
18 16-inch main from the tank goes northward,
19 and once it enters Omni property it's
20 highlighted blue. The water mains that are
21 within Omni property on this map are all
22 highlighted blue. The water mains outside
23 Omni property are not highlighted. But the
24 16-inch main continues down and makes a

1 90-degree turn, more or less, around the base
2 lodge and keeps going. There's another jog
3 near the wells and pump station before it
4 heads out across Route 302 and on to Base
5 Road for the other side of the system. I
6 would also note that the tank itself and
7 16-inch main initially leaving the tank are
8 also on Omni property. It's just not shown
9 in ink, but they are indeed also on the Omni
10 property. And for the -- again, because
11 we're looking at each building, I'll just
12 point them out.

13 So the base lodge is kind of in the
14 middle of the Omni property there. To the
15 right of that is the Alpine Club. If you go
16 to the left, there's a tiny First Aid
17 building. And then to the left of that is
18 the ski area maintenance building. If you go
19 a little bit north, the other building is the
20 Rosebrook Recreation Center.

21 And I guess I should point out one other
22 building because it's in the photo exhibit.
23 So the northern boundary of the Omni property
24 runs along the 302 right-of-way. A little

1 bit north of that is an additional
2 right-of-way. That is for a railroad. And
3 between those two rights-of-way, the property
4 tucked right in the corner where the two
5 rights-of-way meet is also Omni property, and
6 it's where Fabyan's Restaurant is. I don't
7 know if you can see it, but it's a faint,
8 very elongated building that used to be a
9 train station.

10 And I would point out, although the
11 service lines are not shown on this map, each
12 building has its own separate service line
13 running from one of those mains to the
14 building and each building has its own
15 exterior shut-off on its service line and
16 each building also has its own independent
17 ability to shut off its own water inside the
18 building. It's also, I think, noteworthy
19 that almost the entire 16-inch backbone of
20 the system here is on Omni property and...

21 Q. Can you now turn to the Exhibit 27?

22 A. Yes. I'll try not to make this too painful
23 and maybe I can speed it up.

24 So Exhibit 27 is another photo exhibit

1 for the buildings west of 302. In this case,
2 three of the exterior shut-offs were not
3 found. And this was just a walking tour. We
4 didn't have measurements to these valves. We
5 didn't have a metal detector or anything
6 else. It's just whatever was obvious in the
7 ground. But it's what we found and took
8 pictures of.

9 Again, in the middle column on Page 1 of
10 Exhibit 27, you can see for the exterior
11 shut-offs we did find, they're relatively
12 close to the respective buildings.

13 So the next page, Page 2 of the exhibit,
14 is a picture of the exterior shut-off for the
15 base lodge. This is 12 feet outside the
16 building. The next two pages are the
17 interior plumbing of the base lodge. There's
18 actually two, because an addition was built
19 onto the base lodge some years back. There's
20 now -- there are two separate places where
21 the water main comes up through the floor.
22 And again, these -- well, so Page 3 is a
23 picture of the main -- the 6-inch service
24 coming up through the floor that provides

1 fire protection to the building.

2 The next page is Page 4. There's also a
3 6-inch main coming up -- actually a service
4 line. I shouldn't call it a main. But that
5 is now only used for domestic use. And you
6 can see the plumbing heading away from that
7 pipe.

8 The next page, Page 5, is the next
9 building over, the Alpine Club. You can see
10 the 6-inch, again, pipe, the service line
11 coming up through the floor for fire
12 protection. And a little bit above where it
13 comes up, you can see the domestic line
14 tapped off the side of it. And again, the
15 customer has ample ability to shut off his
16 own water inside the building.

17 The next page, Page 6 --

18 CHAIRWOMAN MARTIN: Mr. Brogan,
19 before you go to the next page, because I
20 don't want to have you come back to this
21 later, on Page 5, I see the shut-off valve on
22 the domestic water supply. Can you point out
23 how it can be shut off on the left side,
24 which I assume is the side for the fire

1 water?

2 THE WITNESS: Yes. I believe that
3 there's a yellow handle that's kind of
4 horizontal, running parallel to that smaller
5 pipe. I believe that's the valve handle.

6 CHAIRWOMAN MARTIN: And does that
7 shut off all water into the building?

8 THE WITNESS: That valve would shut
9 off all domestic, like drinking water into
10 the building. The big red valve up above
11 would shut off all fire -- water for fire
12 protection.

13 CHAIRWOMAN MARTIN: Okay. Thank
14 you. That's what I was looking for clarity
15 on.

16 THE WITNESS: You're welcome.

17 A. Page 6, the next page, is the tiny First Aid
18 building. This is the exterior shut-off.
19 It's about 7 feet outside the building.

20 And Page 7, the next page, is the
21 interior plumbing. You can see the water
22 line coming through the wall, and there's a
23 valve. The first thing you see is a valve
24 there before it gets to the pressure

1 regulator and the meter.

2 Page 8 is the ski area maintenance
3 building. We were unable to find the
4 exterior shut-off for that. Again, this is a
5 little hard to see. The copper down in the
6 pit to the right there is the water line.
7 You can see the meter; it's the black round
8 top. If you can move up the page from that,
9 there's a pressure regulator, and up the page
10 from that is the valve.

11 The next page, Page 9, is the Rosebrook
12 Recreation Center. We did not find the
13 shut-off. But the painted -- the blue paint
14 on the pavement says "WS," which would be for
15 water service, with an arrow, and then it
16 says "shut-off." And the corner of that
17 pavement was roughly 13 feet from the
18 buildings -- building.

19 Then Page 10 is inside the Rosebrook Rec
20 Center. In the lower right you have the
21 6-inch main -- 6-inch service line, sorry,
22 coming up through the floor. You know, maybe
23 3 feet or so up, you can see a smaller
24 domestic line. Coming off of that you can

1 see a valve with a blue handle there. And if
2 you go up to the top of the page, the first
3 red thing I believe is a valve. You can't
4 see the top of it, but the valve to shut off
5 the fire protection portion of the system as
6 well.

7 I think there's two more. Page 11 is
8 Fabyan's Restaurant, which is an Omni
9 property. This is the exterior shut-off on
10 that restaurant's own little service line.
11 It's just outside the building wall.

12 And then Page 12 is in the basement of
13 Fabyan's Restaurant. You can see the copper
14 pipe coming in through the wall with its
15 shut-off right there before heading to the
16 pressure reducer and water meter.

17 And I would also -- I don't believe
18 Abenaki would deny responsibility for any of
19 the mains that we looked at or any of the
20 service lines up to and including the
21 exterior shut-off.

22 CHAIRWOMAN MARTIN: Just a minute,
23 Mr. Brogan. Did anyone else just lose video?

24 (Pause in proceedings)

1 CHAIRWOMAN MARTIN: Okay. You're
2 back. So we can proceed. Hopefully it
3 doesn't happen again.

4 A. I don't think Abenaki would deny
5 responsibility for any of the mains or
6 individual building service lines up to and
7 including each exterior shut-off valve in
8 this portion of the system. But again, on
9 this side of 302, almost all of those things
10 lie within Omni property, the mains
11 themselves and the service lines and the
12 exterior shut-offs. There is no such thing
13 as a curb stop at a property line in this
14 resort system on the side of 302. And in
15 each case, the customer has its own ability
16 to shut off water, as is typical, inside the
17 building. He doesn't need his own personal
18 shut-off outside the building. The Company
19 owns that.

20 And so the purpose of an exterior
21 shut-off is for the Company, not the
22 customer, but for the Company to be able to
23 maybe shut off water if there's a leak on the
24 customer-owned portion of the service line or

1 if there's a leak inside the building that
2 the customer is unaware of or refuses to
3 address, or to shut off water for nonpayment
4 of bills. Or perhaps during a period of no
5 occupancy, the water company would want to
6 shut off the exterior shut-off. That
7 shut-off is primarily for the Company's
8 benefit, not the customer's. There are
9 obviously rare exceptions where maybe the
10 customer wants to do plumbing between the
11 outside plumbing and the inside plumbing or
12 something, in which case he could ask the
13 Company to close off the outside valve. But
14 basically those are for the Company's
15 benefit.

16 BY MR. GETZ:

17 Q. Are there any other points that you wanted to
18 address with respect to the system on the
19 west side of 302?

20 A. Yes. If we could go back to Exhibit 2, Pages
21 3 and 4, what I'm calling the "original
22 CPRs," or continuing property records.

23 CHAIRWOMAN MARTIN: Mr. Brogan,
24 what exhibit was that again?

1 THE WITNESS: Exhibit 2, Page 3
2 into 4.
3 A. We've looked at these before. But this is
4 basically -- the entries on this exhibit
5 provide basically a 30-year history of the
6 development and build-out of this water
7 system up through about 2005, give or take.
8 Abenaki accepts responsibility, I believe,
9 for entries that have an associated cost.
10 And its position regarding entries, main
11 extensions, for which there is no cost, I
12 think is a bit muddy: You know, we don't own
13 it if there's no cost shown, or maybe we do
14 if we have to flow water through that
15 extension to get someplace else; or maybe we
16 own it if it's on common land, wherever that
17 is. That's a whole other issue. But what I
18 would like to do is go through this -- first,
19 point out on this exhibit each of the main
20 extensions west of Route 302 and then go back
21 and look at those on the map.

22 So the first entry at the top of Page 3
23 is the 1973 initial construction of the water
24 system. The third line is the 8-inch ductile

1 iron mains to Fabyan's and Drummond's. And
2 again, I'm not commenting. I'm just pointing
3 out these item notes. I don't know how many
4 there are, maybe six or eight of these. I
5 just want to point them out on this exhibit
6 and then go to the map.

7 If you -- the next main extension down
8 is Rosebrook Condos Phase 1. There's no cost
9 shown for that one. Next one is Rosebrook
10 Condos Phase 2, there is a cost. These are
11 all on the other side of 302. The next is
12 Forest Cottages; there is a cost. Jump down
13 three extensions to Crawford Ridge, there's
14 no cost. Jump down three more, the last one
15 on this page, Riverfront Homes, no cost.

16 Then if we go to Page 4 --

17 MS. BROWN: Can I interject? Mr.
18 Brogan, you said Riverfront Homes? Is that
19 what you're referring to? I'm trying to
20 follow you.

21 THE WITNESS: Yes.

22 MS. BROWN: Where is that again?

23 THE WITNESS: It's the last main
24 extension listed on Page 3 of the exhibit.

1 MS. BROWN: Thank you.

2 BY MR. GETZ:

3 Q. 1988?

4 A. Yes. If I'm going too fast, feel free to
5 slow me down.

6 On the next page, Page 4, the fifth
7 extension down is to the Rosebrook Club.
8 That's the Rosebrook Recreation Center that
9 we looked at, and there is a cost. If you
10 jump down four more, the last one that I'm
11 referring to is Presidential View, and there
12 is no cost.

13 Then if we could go back to Exhibit 18,
14 Attachment 2 that we had just looked at,
15 which is the map of the system west of 302,
16 I'll try and point these out in the same
17 order that they were listed on the CPRs.

18 So we already looked at Fabyan's. I
19 won't comment on that. But if you -- at the
20 very northern part of Omni property, you'll
21 see a 16-inch main crossing the boundary.
22 And just coming off of that 16-inch main to
23 the left is an 8-inch main. That 8-inch main
24 is to serve Drummond's Ski Shop. That ski

1 shop is not an Omni customer. It's not
2 located on Omni property. But the water main
3 itself to Drummond's Ski Shop is on Omni
4 property. And there was a cost associated
5 with this main extension on this CPR. So I
6 believe Abenaki accepts responsibility for
7 that main.

8 The next one was Rosebrook Condos. On
9 this map it's called Rosebrook Townhomes, the
10 development. It's in the lower right, a
11 little bit north of the tan area. See the
12 label "Rosebrook Townhomes"? It's a small
13 development. The first entry on the CPR for
14 Phase 1, no cost involved, but it was only
15 for 300 feet of water main.

16 So the bulk of the development was
17 Phase 2, the next entry on the CPRs. There
18 is a cost associated with it on the CPRs.
19 And it's different, various-sized looped
20 mains serving that small development, and
21 they're supplied by the 16-inch main on Omni
22 property.

23 The next main extension entry on the CPR
24 is Forest Cottages, which is just a little

1 bit above Rosebrook Townhomes. Again, there
2 is a cost for these mains on the CPRs, again,
3 various looped mains. A portion of one of
4 those mains, the 10-inch loop, is on Omni
5 property.

6 The next development is Crawford Ridge,
7 which is if you start at Forest Cottages and
8 just keep going to the left, way over on the
9 other side of Omni -- outside Omni property,
10 you'll see the label "Crawford Ridge." There
11 is no cost on the CPRs for this main
12 extension. I can assure you it's a very real
13 development. There are real buildings there.
14 And the first half of the main serving
15 Crawford Ridge coming off of the 16-inch
16 main, the first half of that 12-inch main is
17 on Omni property.

18 The next entry that I pointed out on the
19 CPRs is Riverfront Homes. It's not labeled
20 on this map, but it's the -- it's immediately
21 north of Crawford Ridge. It's that dead-end
22 cul-de-sac with eight or ten properties along
23 it. There is no cost on the CPRs for that
24 main extension.

1 There are two more here. Rosebrook Club
2 was the next entry on the CPRs. We looked at
3 that. It's in the upper right of Omni
4 property here. It's a single building with a
5 pool and other facilities inside. There is a
6 cost on the CPR. So Abenaki I believe
7 acknowledges ownership of this 8-inch main
8 extension to get to the Rosebrook Center.
9 That 8-inch main extension is off of a
10 10-inch Forest Cottages loop. The 8-inch
11 main extension is on Omni property, and it
12 exists for the sole purpose of serving an
13 Omni customer, except about halfway down that
14 extension there's a little -- you'll see a
15 small cap to the right, and that goes to a
16 non-Omni customer. It's a real estate agent,
17 or North Country Travel Agency, located
18 outside Omni property.

19 And then the last entry you look at on
20 the CPRs was Presidential View. It's in the
21 lower left of this map. There was no cost on
22 the CPRs. Again, there are very real
23 buildings, and I'm sure water mains as well.

24 So, again, I'm not aware that Abenaki

1 would deny responsibility for a single one of
2 the mains shown on this plan or that we have
3 discussed in this area; yet, every one of
4 them is listed on the CPRs, many without an
5 associated cost.

6 And I guess my other comment, just from
7 looking at this portion of the system, is
8 that to suggest that some industry convention
9 should, you know, like all of a sudden apply
10 to this unique resort development that is
11 such a hybrid compared to a conventional
12 municipal development really makes, I think,
13 very little sense.

14 Q. Mr. Brogan, how do these examples relate back
15 to Omni's complaint?

16 A. Let me find myself again here. Yup, if we
17 could go back to Exhibit 16, Attachment A,
18 which is the map of the immediate vicinity of
19 the hotel -- just excuse me for just a
20 second. I don't want to lose anything here.

21 Okay. So, typically a smaller service
22 line connects a larger water main to a
23 building. That's not always the case. It is
24 the case for three of the five buildings on

1 this exhibit: For the caretaker's residence
2 and for the admin building and for the
3 stables building. If we look at the Bretton
4 Arms, at the end of the 6-inch main, the
5 service line into the building is the same
6 size, the same diameter as the water main
7 itself. And obviously in the hotel's case,
8 the 8-inch main runs all the way into the
9 building. I would suggest that the only
10 reason that 8-inch main was not reduced in
11 diameter before it entered the building was
12 because it didn't need to be. It shouldn't
13 have been. If we -- we don't have -- well,
14 we won't -- the Golf/Nordic building that is
15 at the end of the main behind the hotel, I
16 think that we looked at last time, even
17 though that building is at the very end of
18 that 8-inch main behind the hotel, it only
19 has a 4-inch service entering the building
20 because it didn't need all 8-inch; you know,
21 it didn't need that much flow into the
22 building. If we were to go back to the other
23 side of 302, the base lodge and the Alpine
24 Club and the Rosebrook Rec Center all have

1 6-inch services entering the building off of
2 a larger main. They didn't need any more
3 than a 6-inch service. I think the point is
4 that the size of the main entering a building
5 is dictated by the needs of the building. In
6 the case of the hotel, that 8-inch main again
7 supplies all domestic use and all fire for
8 the sprinkler system for the entire hotel, so
9 they only needed 8 inches.

10 Q. So the secretary letter from September 4
11 raised a question about the location of the
12 limit of the highway. Can you address that?

13 A. Yes. On our walking tour last month, we
14 observed two pink -- two stakes, wooden
15 stakes, driven into the ground painted blue
16 on the top, marking the location of the two
17 valves on Base Road, one for the 8-inch and
18 one for the 6-inch line. Presumably, at
19 least one of those, the 8-inch, was operated
20 during the Easter water main break. The
21 8-inch valve is about 13 feet off the edge of
22 the pavement. The pavement width is 25-1/2
23 feet at that location. The Base Road
24 right-of-way is shown on the 1995 plans as

1 about 65 feet. And that right-of-way width
2 is shown on the Town of Carroll GIS mapping
3 as 60 feet. Using even the narrower of those
4 two right-of-way widths, and assuming the
5 road is in the middle of the right-of-way,
6 without going through the math, it works out
7 that the 8-inch valve is about 4 feet inside
8 the right-of-way, which agrees with the 1995
9 as-built plans.

10 More recently, through a little bit of
11 deed research, we were able to locate in the
12 field a State of New Hampshire Highway
13 boundary marker a little less than 200 feet
14 west of this location. It marks not only the
15 edge of the right-of-way, but also the
16 junction of Omni and Fairway Village
17 properties. Unfortunately, this concrete
18 bound is 4 feet long, and the concrete bound
19 had fallen over. It did have letters "NHHD"
20 for New Hampshire Highway Department in the
21 top. But the distance from its base where it
22 fell over to the Base Road center line
23 matches -- it was 30 feet, and it matches
24 almost -- it matches very closely the

1 measurements we took at the location of the
2 two valves. And I can say that because the
3 two valves are only about 4 feet apart. The
4 1995 plans show the 8-inch main inside the
5 right-of-way and the 6-inch valve barely
6 outside the right-of-way. So the
7 right-of-way should be between those two.
8 And so that's -- obviously, that fallen-over
9 bound is not conclusive. But also, even more
10 recently, a Forest Service aluminum boundary
11 marker was located --

12 CHAIRWOMAN MARTIN: Mr. Brogan --

13 THE WITNESS: Yes.

14 CHAIRWOMAN MARTIN: -- before you
15 move off the state bound, can you clarify for
16 me, was the bound installed into the ground
17 and had broken off so there is a remainder
18 still in the ground, or had the entire marker
19 fallen over and there was none left in the
20 ground?

21 THE WITNESS: Very good question.
22 It had not broken off. It had just fallen
23 over.

24 CHAIRWOMAN MARTIN: Was there a

1 date on that bound?

2 THE WITNESS: No.

3 CHAIRWOMAN MARTIN: Okay.

4 THE WITNESS: And I also forgot to
5 point out that Base Road is a state road.
6 It's actually a state, not a town road. The
7 deed led us to suspect that it had broken
8 off. So we looked pretty carefully, and it
9 had not broken. The bottom, you know, it had
10 just fallen over.

11 A. So more recently, about a quarter-mile east
12 on Base Road, on the other side of the road,
13 we found a Forest Service aluminum boundary
14 marker. Again, it's marking both the edge of
15 the right-of-way and the Forest Service
16 boundary. And that again is this is on the
17 other side of the road, but it's the same
18 30 feet from that boundary to the center line
19 of Base Road. So I think it's safe -- we
20 have some support that the road is indeed in
21 the middle of the right-of-way, which, in
22 turn, suggests that the 8-inch valve is
23 indeed inside that right-of-way as shown on
24 the 1995 plans.

1 And the other point I'd like to make is
2 that, personally, I don't think there would
3 have been any reason for the State of New
4 Hampshire to grant a special dispensation to
5 a private customer, a private entity, to own
6 a water main inside a state right-of-way, you
7 know, on the customer side of a, quote, "curb
8 stop." I just don't think there would have
9 been any reason to do that.

10 Q. Mr. Brogan, do you have concluding remarks
11 for your testimony?

12 A. I will in a second.

13 So Abenaki is indicating that the limit
14 of their responsibility is these two
15 isolation valves in this road. So, for
16 example, if they needed to shut off water to
17 the admin building because of a leak inside
18 the building, or any other number of other
19 reasons, they would simply shut off water to
20 all three buildings, including the Bretton
21 Arms Inn, because that's their curb stop they
22 would suggest. And then the same would be
23 true of a leak inside the caretaker's
24 residence. If they wanted to address that,

1 they would simply shut off the, quote, "curb
2 stop on Base Road" and shut off water to the
3 entire hotel, all of the accounts on the main
4 behind the hotel, and obviously the
5 caretaker's residence.

6 And there are -- I think there are other
7 problems with suggesting that the two
8 isolation valves on Base Road are curb stops.
9 I believe that the 8-inch main to the hotel
10 is and has always been a water main extension
11 in its entirety, all the way from the
12 entrance to Mount Washington Place to the
13 exterior shut-off 10 feet outside the hotel.
14 The original CPRs that we looked at are a
15 list of water main extensions. They do not
16 include associated service lines. This
17 8-inch main is obviously listed as a main
18 extension on those CPRs. If the isolation
19 valves on Base Road had been intended as curb
20 stops and the rest of the 8-inch main as a
21 service line, then that latter, almost half
22 of the 4,000 feet of 8-inch main, would
23 never, I believe, have appeared on company
24 CPRs in any form. Again, those CPRs do not

1 show service line entries for main
2 extensions, nor would the hotel's, quote,
3 "service line" have continued inside a state
4 right-of-way for another 270 feet; nor would
5 the hotel, the customer, have installed its
6 own exterior shut-off outside its building,
7 because the Company would have already had
8 one on Base Road.

9 I think that the reality is that this
10 resort development and the way it evolved
11 just doesn't fit the conventional mold that,
12 you know, some would pretty much like it to
13 fit.

14 MR. GETZ: Madam Chair, that
15 completes Mr. Brogan's direct testimony.

16 CHAIRWOMAN MARTIN: All right.
17 Thank you.

18 Attorney Brown.

19 MS. BROWN: Yes. Can I have ten
20 minutes to formulate some additional
21 questions? I've got notes coming in from my
22 client. And then I can launch into my cross.

23 CHAIRWOMAN MARTIN: We'll take a
24 ten-minute recess until 10:35.

1 MS. BROWN: Thank you very much.
2 (Brief recess was taken at 10:27 a.m.,
3 and the hearing resumed at 10:40 a.m.)

4 CHAIRWOMAN MARTIN: Back on the
5 record.

6 CROSS-EXAMINATION

7 BY MS. BROWN:

8 Q. Okay. Good morning, Mr. Brogan. I would
9 like to start with an exhibit that you
10 started off with, which is the gargantuan
11 Exhibit 23, the plan. If you could put that
12 in front of you, and in particular, the
13 section that has the legend in it. And are
14 you there?

15 A. Yes.

16 Q. Okay. Mr. Brogan, just for the record, I
17 want to make sure that you agree that this is
18 an as-built utilities plan with a date of
19 September 23rd, 1988.

20 A. Yes.

21 Q. And this is a Bretton Woods master plan?

22 A. Yes. It's the utilities plan as drawn on top
23 of a master plan map.

24 Q. Where is that noted?

1 A. Give me just a second, please. Yeah, I'm
2 looking at the blue water lines drawn on this
3 base plan do not all appear on the base plan.

4 Q. Okay. That leads me to my next question.
5 Can you put these blue and what on my map is
6 an orange-ish color -- who made these marks?

7 A. I do not know. I only know this was entered
8 as an exhibit in a PUC case as an as-built
9 plan of the water system.

10 Q. Okay. So with respect to this being an
11 as-built plan of the water system, this
12 underlying map says it's for Bretton Arms,
13 not Rosebrook; right?

14 A. Again, it's drawn on top of a -- they could
15 maybe have picked any base map they wanted to
16 draw on top of, but this was entered as an
17 exhibit in a Rosebrook Water Company case.

18 Q. Okay. And I think you've already testified
19 to that.

20 The plan in Exhibit 23 has orange marks.
21 And what are those?

22 A. The legend indicates they are as-built sewer
23 lines.

24 Q. Mr. Brogan, does Rosebrook Water Company own

1 the sewer lines?

2 A. It does not.

3 Q. And how do we know from this map?

4 A. I don't believe we do know.

5 Q. Okay. And how do we know from this map that
6 all of the blue represents Rosebrook-owned
7 water infrastructure?

8 A. Again, my only comment is that it was entered
9 as a representation of the Rosebrook water
10 system in that case.

11 Q. Is that fact that you're putting forth record
12 evidence in this proceeding?

13 MR. GETZ: Madam Chair, if I may, I
14 believe Mr. Brogan was presenting this as
15 evidence in this proceeding. This is a
16 document from a case that was an exhibit
17 provided by the water company in that case,
18 and he's presenting it as evidence.

19 MS. BROWN: If I may respond,
20 Chairwoman Martin?

21 CHAIRWOMAN MARTIN: You can. I
22 don't think we have an objection on the
23 record at this point, so --

24 MS. BROWN: I'm taking Mr. Getz's

1 comments as a pre-emption on my objection.

2 And I will just be honest, Mr.
3 Getz, that I believe your witness just
4 testified as to basically hearsay on how the
5 Commission viewed these lines. We don't have
6 that evidence in the record for Abenaki to
7 cross-examine. You've put forth Exhibit 23,
8 and I'm just making a point, you know,
9 outside of an objection, as to the character
10 and nature and strength of Mr. Brogan's
11 testimony. So, again, my question is how do
12 we -- you know, if you object to it, you
13 know, so be it. But my question is, again,
14 how do we know that in the underlying
15 proceeding that Mr. Brogan is alluding to
16 that these blue lines were deemed to all be
17 owned by the Rosebrook Water Company?

18 MR. GETZ: Well, now I will object,
19 Madam Chair. I don't think Mr. Brogan ever
20 testified as to what the Commission thought
21 or deemed in this proceeding. What Mr.
22 Brogan was testifying to is here are as-built
23 plans provided by the water company as an
24 exhibit in a prior proceeding before the

1 PUC --

2 MS. BROWN: I can withdraw the
3 question.

4 MR. GETZ: -- and used today to
5 show the Commission that there is evidence of
6 ownership by the water company in the past.

7 CHAIRWOMAN MARTIN: I believe
8 Attorney Brown has retracted her question.
9 And I also believe that the Commission can
10 take administrative notice of the prior
11 filings that are being referenced here for
12 the purposes described by Attorney Getz.

13 So go ahead, Attorney Brown.

14 BY MS. BROWN:

15 Q. Mr. Brogan, what did you do to confirm the
16 accuracy of these 1988 maps?

17 A. To confirm the accuracy? I'm not sure I did
18 anything. Again, they were entered as an
19 exhibit by the water company.

20 Q. Now, Mr. Brogan, you've also noted that
21 there's sewer infrastructure denoted on this
22 map; right?

23 A. Correct.

24 Q. And you've also testified that Rosebrook

1 water does not own sewer; correct?

2 A. Correct.

3 Q. And so if this were a water utility map,
4 wouldn't expenses on determining the location
5 of sewer company infrastructure not be a
6 reasonable cost for a water utility?

7 A. I don't know -- I don't know the origin of
8 the map, obviously, why it was created, you
9 know, for what company it was created. All I
10 know is someone took this map, which is an
11 as-built map, and entered it in a Rosebrook
12 Water Company rate case as a representation
13 of the water system.

14 Q. Then I get back to your statement right now
15 about the representation that this was the
16 water system. How do we know from this map
17 that this is a representation of Rosebrook's
18 assets?

19 A. Again, I think I'd just let the as-built plan
20 speak for itself, for whatever weight the
21 Commission wants to give it.

22 Q. And just to wrap this up, Mr. Brogan, these
23 are as-built utility plans for Bretton Woods
24 master plan; correct?

1 A. Again, as I look at it, the Bretton Woods
2 master plan is nothing more than a base map
3 to draw the as-built plans on.

4 Q. And we have nothing to confirm the accuracy
5 of these as-builts if they're denoted in
6 orange and blue; correct?

7 A. Just glancing at them here, they certainly
8 appear to agree with this system, as I'm
9 familiar with it.

10 Q. Okay. Mr. Brogan, can you please turn to
11 Exhibit 17. Let me know when you have that
12 in front of you.

13 MS. BROWN: For the record, this is
14 Doug Brogan's response to Omni 2-1.

15 A. I have it.

16 BY MS. BROWN:

17 Q. Thank you. And Mr. Brogan, just for the
18 record, you were the Respondent for this data
19 response; is that correct?

20 A. Yes.

21 Q. And what did you review in your preparation
22 of this response?

23 (Witness reviews document.)

24 A. Partly the 1995 plans. I think in the

1 discussion about -- well, the total length of
2 the main to the hotel was corrected to
3 reflect the actual point of entry at the
4 hotel because I had been there and I know
5 that the carpenter shop is not in the wing
6 denoted on the 1995 plans. And obviously I
7 was comparing lengths to the CPRs as well.

8 Q. Okay. Now, Mr. Brogan, there are maps
9 attached to this Exhibit 17. And do those go
10 to your response 2-1?

11 A. Let me find them. Yes.

12 Q. And are these attached maps that the Provan &
13 Lorber maps you were referring to in your
14 first paragraph of your response?

15 A. They are a portion of them, yes.

16 Q. And if you could please turn to Page 8 and
17 look at the legend and just put in for the
18 record what date these plans are, please.
19 I'm choosing Page 8 because that seems to be
20 the most visible.

21 A. Can you tell me what page of the attachment
22 Page 8 is?

23 Q. Page 8 is a Provan & Lorber plan, Attachment
24 Staff Omni 2-1, Attachment Page 3 of 3, if

1 that helps.

2 A. Yes. And so you're asking --

3 Q. I'm asking you to put the date into the
4 record, please. What is the date of the
5 maps?

6 (Witness reviews document.)

7 A. It looks... it looks like January 1995.

8 Q. 1995. Thank you very much.

9 And Mr. Brogan, if you could turn to
10 your response to Omni 2-3.

11 A. Yes.

12 Q. Are you there?

13 A. Yes.

14 Q. And for that response, what did you rely on?

15 (Witness reviews document.)

16 Q. Or I can rephrase the question. What did you
17 review in your preparation for this response?

18 A. This is talking about, again, the erroneous
19 point of entry of the 8-inch main to the
20 hotel shown on the 1995 plans. And how -- so
21 again, I reviewed those plans. I had visited
22 the site. I had seen the entrance of the
23 8-inch main in the hotel basement, in the
24 carpenter's shop. I discussed the situation

1 with Omni Staff who had been there more than
2 two decades. I reviewed aerial photography.
3 It was very clear that an entire wing of the
4 hotel was not shown on the 1995 plans. And I
5 think -- I mean, I looked at historic topo
6 maps and other things. My memory is probably
7 a little vague. That's about it.

8 Q. Okay. Thank you. And so you found some
9 discrepancy in these as-built plans similar
10 to what Nancy Oleson testified to? Is that
11 sort of a fair statement?

12 A. That would be one discrepancy. I'm honestly
13 not sure I remember what Nancy -- what
14 discrepancies Nancy referred to.

15 Q. Thank you. If you could just set Exhibit 17
16 aside, I'm going to get back to it, but I do
17 want to move on to Exhibit 18 for a bit,
18 please.

19 A. I have it.

20 Q. You have that? Can you please turn to
21 Page 3?

22 A. I think I'm on Page 3. My copy does not have
23 page numbers.

24 Q. Okay. But you are on the response to Staff

1 Tech 2-2 to Omni; is that right?

2 A. Correct.

3 Q. And you were one of the respondents?

4 A. Correct.

5 Q. Okay. And if you could turn to your page --
6 the last page for me. It's Page 5 of
7 Exhibit 18, where there are the pink and blue
8 lines that you just this morning testified
9 about.

10 A. Yes.

11 Q. And who added the pink and blue lines?

12 A. I did.

13 Q. And on what did you rely when you created
14 these lines?

15 A. For the pink lines, I looked at Town of
16 Carroll GIS property system and identified
17 which lots were Omni's. And the property
18 boundaries agreed well with the 1995 plan,
19 you know, the ones shown on the 1995 plans,
20 which are the basis of this map.

21 Q. And when you say "the 1995 plans," you're
22 talking about the Provan & Lorber plans; is
23 that right?

24 A. Yes, but let me correct that. This map is

1 actually -- so Horizons Engineering was a
2 later kind of spin-off of Provan & Lorber.
3 And this map was based on a July 2016
4 Horizons plan. But I believe that Horizons,
5 you know, they go -- they relied in large
6 part on the 1995 plans as well.

7 Q. Okay. I'll cut to the chase and collapse
8 some of my questions because I was going to
9 ask you, would agree that most of these
10 plans, Horizons, yours, use as the backbone
11 plan the Provan & Lorber 1995 plan that was
12 revised; or sometimes, you know, they grabbed
13 the 1995 plan or either grabbed the updated
14 1999 plan? Would you agree with that?

15 A. Generally, yes. I'm not sure what the 1999
16 plan is. But, yes.

17 Q. Okay. All right. Going to -- back to Page 4
18 of Exhibit 18. And the yellow line, who drew
19 that? Or are you there?

20 A. If you're -- I believe I am. Is it the
21 aerial photo map? Is it Attachment 1?

22 Q. It is Attachment A, Map 1. It is Page 4 of
23 Exhibit 18, and it has an aerial with a
24 couple blue, green, yellow lines on it.

1 Looking from your camera, I'm thinking it is.

2 A. I'm looking at this. So I think I have it.

3 Mine says "Attachment 1" not "Attachment A."

4 That was my confusion.

5 Q. Okay. I want to stick to Exhibit 18, Page 4,

6 if I could please.

7 A. I have it. I see Page 4.

8 Q. Okay. So, yellow line, do you see that?

9 A. Yes.

10 Q. Who drew that line?

11 A. I did.

12 Q. And you've testified that this is the --

13 you're suggested looping?

14 A. No. In my data response I said that was one

15 possible looping, and it was a logical one.

16 Q. And is your argument that, because of this

17 potential looping, that there was an intent

18 to loop by the water company?

19 A. Not because -- I would say, independent of

20 this yellow line, that my argument is that

21 there was a definite intent to loop at some

22 point somewhere in this vicinity in the

23 future.

24 Q. And that intent, whose intent was it? The

1 Bretton Woods owners or the water company?

2 MR. GETZ: Excuse me, Madam Chair.

3 Can Attorney Brown clarify when she's
4 referring to "Bretton Woods," who she's
5 referring to?

6 MS. BROWN: I'm happy to do that.

7 On Exhibit 23, there was a master plan from
8 Bretton Woods. Someone owns, or there may be
9 multiple owners of Bretton Woods. So I'm
10 just trying to ask, when Mr. Brogan is saying
11 there was a definite intent to loop, I'm
12 asking on whose part.

13 A. I can at least partially answer that.
14 Whoever put this 16-inch main through Fairway
15 Village, that oversized main that extended
16 all the way through Fairway Village and onto
17 Omni property, I mean, that was a water
18 company main. So whoever -- I would suggest
19 whoever installed that water main had a
20 concept of a future looping in that area.

21 BY MS. BROWN:

22 Q. Now I also want to clarify that I understand
23 your position correctly.

24 Is it that because there is this

1 potential to loop that it means that Abenaki
2 bought the hotel resort's water line?

3 A. I think the point -- I'd have to think about
4 that one. I don't think that was my -- the
5 main point in regard to looping. I think the
6 main point there was that the 8-inch main to
7 the hotel can't be viewed as only ever
8 serving the hotel alone. I think there's a
9 clear, larger picture in this area.

10 Q. Okay. Mr. Brogan, moving on to the red line.
11 Did you also draw that?

12 A. I did.

13 Q. So that line was not in any granite layer?

14 A. Correct.

15 Q. And Mr. Brogan, what did you rely on for the
16 accuracy of when you drew this red line?

17 A. Primarily -- I'm trying to remember back.
18 There may have been more than one factor, but
19 in large part, I think information from hotel
20 personnel who have been there a long time.

21 Q. The hotel personnel? You didn't rely on
22 Rosebrook?

23 A. That's correct.

24 Q. Can I have you please turn to Exhibit 32.

1 A. Yes.

2 Q. And Mr. Brogan, in your time at the PUC, were
3 you familiar with the chart of accounts?

4 A. Barely.

5 Q. Barely? So would you know that --

6 A. That's why I'm an engineer and not an
7 accountant.

8 Q. Okay. So what is the 8-inch line behind the
9 hotel? Is it a T and D main?

10 A. I believe so. Yeah, I believe so.

11 Q. Okay. I understand I may be going outside of
12 your lane here because I was going to ask you
13 would this red line be an Account 331 asset.
14 So are you able to answer that question?

15 A. I believe it would be.

16 Q. Okay. And then if you believe it would be a
17 331 main on Exhibit 32, is it listed in the
18 water company's CPRs; and if so, where is it?

19 A. I would say it is not listed on these CPRs,
20 which were created more recently, because the
21 only water, I believe, water main extensions
22 included in these CPRs are the ones that had
23 an associated cost. But that does not mean
24 the water company can absolve itself of

1 ownership and responsibility for the many
2 other mains in the system.

3 Q. Are you familiar with the concept of "CIAC"?

4 A. Yes, again, as an engineer, not an
5 accountant.

6 Q. And what's your understanding of CIAC?

7 A. It's planned-for funds that are contributed
8 to a company.

9 Q. And do you have any knowledge of whether this
10 red line appears in the CIAC listing that is
11 in this Exhibit 32, at Pages 8 and 9?

12 A. I believe the answer is that it does not.
13 And again, I certainly can't explain all the
14 gaps in the Company's accounting, in its
15 originals CPRs or otherwise.

16 Q. Do you know what the installed value of this
17 8-inch main would be that you've got in red?

18 A. No, I don't.

19 Q. Are you familiar with the concept of
20 "prudent, used and useful"?

21 A. Yes.

22 Q. And do you believe that this 8-inch main in
23 red is prudent, used and useful?

24 A. I don't see why it wouldn't be. It's in

1 service and serving a number of accounts.

2 Q. Are you aware of whether the Commission has
3 ever included this red-denoted main in
4 Rosebrook's revenue requirement?

5 A. I don't know the answer. I think that you
6 could ask, obviously, the same question of
7 the 8-inch main to the hotel and the 6-inch
8 main to the Bretton Arms because of gaps in
9 the accounting records.

10 Q. Okay. I'd like to move on to Exhibit 14,
11 please, and have you go to -- I'm sorry. Do
12 you have Exhibit 14 in front of you?

13 A. I'm getting there.

14 Q. Thank you.

15 A. Yes, I do.

16 Q. And can you please turn to Page 45?

17 MS. BROWN: For the record, this is
18 a Horizons map.

19 A. I'm there.

20 BY MS. BROWN:

21 Q. Okay. Do you see where the hotel is on this
22 map?

23 A. Yes.

24 Q. And do you see the line going into the hotel?

1 A. Yes.

2 Q. And I believe you've testified through either
3 Exhibits 26 or 27 that you have a picture of
4 this line coming into the hotel; is that
5 right?

6 A. I'm sorry. Ask that again, please?

7 Q. Where you see the line coming into the hotel,
8 didn't you just testify earlier on direct,
9 and I can't remember if it was either
10 Exhibit 26 or 27, that the 8-inch line comes
11 into the basement in this area of the hotel?

12 A. Correct. Not to the wing shown here, but --
13 correct.

14 Q. Okay. And on Exhibit 14, Page 45, there is
15 no red line behind -- or there's no line
16 behind the hotel as you had denoted in red on
17 Exhibit 14; is that correct?

18 A. That is correct.

19 Q. Okay. And there's also no yellow line noted
20 on this map?

21 A. No. I would never expect my -- you know,
22 that yellow line to be noted anywhere, nor
23 would I -- I mean, the main behind the hotel
24 was installed after the 1995 plans that, as

1 you noted, many of these subsequent plans
2 relied on.

3 Q. Okay. And can you look at the references on
4 this Page 45? And you may need a magnifying
5 lens.

6 A. I have a magnifying lens.

7 Q. Okay. And can you correct me? Reference
8 No. 3 states, "Piping locations. Size and
9 materials is from plans titled 'Bretton
10 Woods, Utilities As-built Drawings, Bretton
11 Woods, NH, Water Main and Sanitary Sewer,'
12 dated Jan. '95, revised 10/99 by Provan &
13 Lorber, Inc."

14 A. I believe you read that correctly.

15 Q. So is it fair to say, then, Horizons lifted
16 from Provan & Lorber this underlying plan to
17 do its work?

18 A. I don't know if "lifted" is the right word.
19 But, yeah, I believe they started --
20 (connectivity issue)

21 Q. I'm happy to use a different verb.

22 (Court Reporter interrupts.)

23 CHAIRWOMAN MARTIN: Mr. Brogan, Ms.
24 Robidas has a question.

1 (Court reporter inquiry.)

2 A. I believe they started with the 1995 plans.

3 BY MS. BROWN:

4 Q. And Mr. Brogan, are there resort waste
5 facilities, sewer facilities, depicted on
6 this plan?

7 A. Yes.

8 Q. So is it fair to say this is, again, a plan
9 of the utilities for Bretton Woods and not
10 necessarily just water supply infrastructure?

11 A. Well, I mean, all I see is the resort waste
12 treatment facility. I don't think I see any
13 sewer mains. So I think, you know, again,
14 it's probably a leftover. They just left
15 that little bit on the base map that they
16 showed their water mains on here.

17 Q. Okay. I just -- you answered some questions
18 in your response, so I'm going to cut over to
19 Exhibit 17, if you don't mind.

20 A. Okay.

21 Q. And I think you've already noted that the
22 date on these is January 1995. And so my
23 next question is these were --

24 MS. BROWN: I'm sorry. I'm looking

1 at Pages 6, 7 and 8 of Exhibit 17, for the
2 record.

3 A. I have them.

4 BY MS. BROWN:

5 Q. Okay. And these plans are of all utilities
6 for Bretton Woods, and that means sewer and
7 water; is that right?

8 A. I believe that's correct.

9 Q. And on Page 7, this map shows sewerage
10 infrastructure, I believe. I can point you
11 to, on Page 7, the Car Barn Court, if you see
12 that next to Fairway Drive.

13 A. Yeah, I believe it does show sewer as well,
14 yes.

15 Q. And the sewerage pump station is a square
16 next to the circle where the Car Barn Court
17 is; is that right?

18 A. Correct.

19 Q. Okay. And this map, if we go to Page 7,
20 shows a blue line from Base Road up to the
21 general vicinity of the hotel; is that right?

22 A. Yes.

23 Q. And do you know who put this blue line on the
24 green line?

1 A. I did.

2 Q. You added those colors?

3 A. Yes.

4 Q. And on what did you base your -- what does
5 the blue represent?

6 A. The 8-inch main to the hotel.

7 Q. Does blue signify any ownership?

8 A. No.

9 Q. Okay. So then, the blue line coming up to
10 the valves at Base Road could be owned by
11 Rosebrook on this map, and then the blue line
12 from the valves up to the hotel could be
13 owned by the hotel on this map; right?

14 A. Yeah, apart from all of my testimony to date,
15 I guess that's true.

16 Q. I just wanted to make sure that there's no
17 implication on this map that you are
18 asserting that just because it's blue means
19 it's Rosebrook's property. Is that correct?

20 A. No, that's correct. Blue is just to help
21 make the mains visible.

22 Q. Okay. And on these Provan & Lorber maps,
23 there is no reference to Rosebrook; is that
24 right?

1 A. I believe that's true.

2 Q. And there's no reference to who owns the
3 sewer infrastructure; is that right?

4 A. I suspect that's true as well.

5 Q. And on Page 8, there's like a quarter-inch of
6 blue that goes to the hotel. Do you see
7 that?

8 A. Yes.

9 Q. And that -- did you say that this is
10 incorrect or correct, the location where it
11 enters the hotel?

12 A. This one is incorrect.

13 Q. How so?

14 A. There's kind of like a central wing to the
15 hotel that's not shown on this plan that
16 extends northerly -- it's like just a
17 northern direct extension of the hotel
18 itself. That's where the water main enters.
19 It does not -- it never has entered this
20 right fork of the Y there.

21 Q. And Mr. Brogan, what is the function of
22 transmission and distribution mains?

23 A. To transport water.

24 Q. Do they normally provide service directly to

1 a customer, like what is shown on this map?

2 A. I mean, more typically -- again, I've covered
3 this in my testimony. But more typically,
4 you would have a smaller service line and a
5 larger main. Clearly that's not the case
6 with the hotel.

7 Q. Thank you. Now, Mr. Brogan, this map --
8 sorry -- Page 7 and Page 8, the only valves
9 that are mentioned on the length of line
10 serving the hotel are the ones near Base Road
11 that appear on Page 7; is that correct?

12 A. On Page 7, yes. There's another valve on
13 Page 6. But on Page 7, that's correct.

14 Q. But Page 6 does not involve the hotel campus
15 property; correct?

16 A. It's not on Omni property. I mean, neither
17 of these two valves is on Omni property.

18 Q. And Mr. Brogan, can I have you turn to
19 Exhibit 20, please?

20 A. I have it.

21 Q. Page 36.

22 A. I'm there.

23 Q. And what is the date, the effective date of
24 this tariff?

1 A. April 30, 1996.

2 Q. Okay. And you just testified that this map
3 that is in Exhibit 17 is dated from January
4 of '95; right?

5 A. Correct.

6 Q. So with the valves at Base Road, if I'm
7 looking at Exhibit 20, and Single-Family
8 Home, you see where it says, "Service pipe
9 connections will be made in the street which
10 is nearest to the premises served"? I'm
11 looking at Original Page 2, No. 1.

12 A. I see that, yeah.

13 Q. Okay. Although this hotel campus is not a
14 single-family home, is the -- the valves at
15 Base Road, would you agree that they are
16 consistent with service pipe connections
17 shall be made in the street nearest the
18 premises served?

19 A. I mean, in light of all of my testimony to
20 date, I think the closest you can possibly
21 get to making that case is only the fact that
22 they happen to be in the road near the
23 property line.

24 Q. Moving on to Condominiums and Other Multi-

1 Family Residences in Paragraph 1b -- I'm
2 sorry -- 1b(2), "All service pipes up to the
3 [units] exterior shut-off valve shall be
4 owned and maintained by the Company." Do you
5 see that?

6 A. Yes.

7 Q. And even though we don't have a business
8 section in this tariff, all we have are
9 single-family homes and condos, if we apply
10 the condo language, there's no other valve
11 shown on Page 7 and 8 that goes up to the
12 hotel; correct?

13 MR. GETZ: Madam Chair, can
14 Attorney Brown establish why the Commission
15 might apply the tariff rules applicable to a
16 condominium to a commercial customer when
17 commercial customers are not addressed in
18 this tariff?

19 MS. BROWN: I can respond to that.

20 CHAIRWOMAN MARTIN: That would be
21 good. Thank you.

22 MS. BROWN: In that, Nancy Oleson
23 had testified, I believe it was in
24 examination under Commissioner Bailey, that

1 there was no -- you know, the Commission
2 pointed out that there was no business, so
3 which tariff term did Nancy apply. And
4 paraphrasing her testimony, it was that
5 either the single-family or condo would
6 apply. And so I am approaching this line of
7 questioning for Mr. Brogan, acknowledging
8 there's no business section of the tariff,
9 knowing that the tariff has been approved by
10 the Commission, I'm walking through how these
11 valves on Page 7 of Exhibit 17 would comport
12 with the requirements of the tariff
13 provisions for single-family and condo.

14 A. I think I can take a stab at that. If you
15 look at the 1995 plans, in Fairway Village --

16 BY MS. BROWN:

17 Q. I think I'd like to ask my question. I
18 appreciate your explanation, but maybe if you
19 need to, you can do that on redirect.

20 But my question was, if I were to apply
21 the condo terms that have "all service pipes
22 up to the exterior shut-off valve shall be
23 owned and maintained by the Company," and I'm
24 looking at these 1995 plans, wouldn't that

1 exterior valve be the only one that's down at
2 Base Road for the hotel?

3 A. No, because the exterior shut-offs are not
4 shown on the vast majority of the cases on
5 the 1995 plans.

6 Q. So you're saying that even though there's a
7 valve located in Base Road, noted on these
8 plans, that somehow there's a valve at the
9 hotel, on Page 8, that's not listed?

10 A. Absolutely. Just like --

11 Q. And didn't you just --

12 A. Just like at Fairway Village.

13 Q. And didn't you just testify that the line
14 goes straight into the hotel earlier today?

15 A. Yes.

16 Q. Okay. So I'd like to move on to Exhibit 16.
17 You have it there? Because I'm still looking
18 for 16. Okay, 16, Page 2, Mr. Brogan.

19 A. I have it.

20 Q. Okay. And is this map also based on the 1995
21 Provan & Lorber plan?

22 A. Yes.

23 Q. It does not appear to be based on a revised
24 1995 plan; is that right?

1 A. Again, I'm not sure where the 1995 revision
2 is, so I think all I'm aware of is the 1995
3 plans, unless I'm forgetting --

4 MR. GETZ: Mr. Brogan, do you mean
5 to say the 1999 revision?

6 THE WITNESS: Yes.

7 MS. BROWN: Thank you, Mr. Getz.

8 BY MS. BROWN:

9 Q. Okay. Mr. Brogan, on this map, it does show
10 the valves by the hotel that you were just
11 talking about; is that correct?

12 A. Yes. And if I could back up. I do see --
13 I'm looking at the actual 1995 plans, and
14 there is a revision block that shows 10/99.

15 Q. And which exhibit are you referring to?

16 A. Sorry. I'm looking at an actual copy of a
17 full-size version of the 1995 plans, which I
18 don't think you have.

19 Q. I do need you to be referring to the exhibits
20 that we've premarked and not other evidence
21 that we haven't exchanged.

22 A. I can do that if it's important.

23 If we go back to Exhibit 17, the last
24 three pages I think all have a revision block

1 at the bottom center. Let's see. It looks
2 like two of the three are as recent as 1999.

3 Q. Thank you, Mr. Brogan, for helping me refresh
4 my recollection on where the revision of the
5 1999 plan came from. And I would agree with
6 you that the revision box in the middle of
7 Exhibit 17, Pages 6 and 7 at least have a
8 10/99. Is that what you are seeing?

9 A. Yes.

10 Q. Thank you.

11 Now, Mr. Brogan, getting back to page --
12 or Exhibit 16, Page 2, and the valves that
13 are noted by the hotel, who made these
14 notations?

15 A. I did.

16 Q. Were these valves by the hotel in the
17 underlying map?

18 A. No, they were not.

19 Q. Okay. And Mr. Brogan, on what did you rely
20 to base your decision to mark valves by the
21 hotel?

22 A. I thought it was critical for the Commission
23 to understand where those valves were located
24 and what they were for.

1 Q. I understand the reasoning. But I asked on
2 what did you rely --

3 A. Oh.

4 Q. -- in determining that, placing a notation of
5 valve and exterior hotel shut-off, or hotel
6 exterior shut-off at this location of the
7 hotel. What did you rely on in order to make
8 these marks on Page 2 of Exhibit 16?

9 A. Oh, I'm sorry. I misunderstood.

10 Q. That's okay.

11 A. It was discussions with hotel personnel. And
12 actually, I mean, they found these two
13 valves. I've seen the valves since then. I
14 had seen pictures, you know, marked-up
15 photographs of the valves and the mains and
16 what went where.

17 Q. Okay. Did you -- so it doesn't sound like
18 you contacted the water company to determine
19 the location of valves next to the hotel.

20 A. No, I did not.

21 Q. Do you know when these valves went in?

22 A. The valve on the main behind the hotel I
23 assume would be 2001. That's when that main
24 came in. And I would assume the hotel

1 exterior shut-off is original to the 8-inch
2 main to the hotel.

3 Q. And I have the same, similar question when I
4 was asking you about the red line, which is
5 now, on this map, denoted in blue. Do you
6 know if the valves here are in the Company's
7 CPRs or CIAC records?

8 A. Based on all of the testimony on both sides
9 to date, I suspect they are not. But other
10 than -- I don't believe they're in the new
11 CPRs, but I believe they're in the original
12 CPRs.

13 Q. Who installed these valves?

14 A. I would assume it's whoever installed the
15 respective water mains.

16 Q. Okay. Thank you.

17 Now, Mr. Brogan, I would like you to
18 turn to Exhibit 29, please. Let me know when
19 you're there.

20 A. I'm there.

21 Q. Okay. I'd like you to turn to Page 6.

22 A. Trying to find, locate a page number on
23 these.

24 Q. It's the last page of Exhibit 29.

1 A. Okay. I have it.

2 Q. Now, the Company's records do not show any
3 valves before entering the hotel; is that
4 correct? Would you agree with that?

5 A. Yeah. I mean, I don't know the origin on
6 this drawing. I know that it's wrong, in
7 that it shows the water main still angling
8 down toward the far wing of the Y fork.

9 Q. Do you think it's wrong because perhaps it's
10 because Abenaki didn't install this line and
11 therefore wouldn't know where it was
12 installed?

13 A. No, I absolutely do not believe that the
14 errors in the plans all the way back to 1995
15 are because Rosebrook Water Company did not
16 install the mains.

17 Q. Okay. Thank you.

18 Now, Mr. Brogan, in your testimony back
19 on September 28th, and again this morning,
20 you were mentioning that the Commission's
21 records established that Abenaki owns the
22 8-inch water line at issue in this
23 proceeding, in part due to easement deeds.
24 Do you recall that testimony?

1 A. I don't think I addressed easement deeds.

2 Q. Just go back to your testimony on the 28th.

3 (Pause in proceedings)

4 Q. Well, I won't waste any time while I'm
5 looking for this. But I thought you had
6 stated in your testimony that easements had
7 established -- were the source of the
8 ownership nexus between Abenaki and the
9 8-inch line. Is that close to what you have
10 testified about easements?

11 A. Again, I don't think I addressed easements at
12 all, to my recollection.

13 Q. Okay. So is it your position, then, that the
14 ownership of the water line by -- or the
15 argument that Abenaki owns the 8-inch water
16 line on the hotel is supported by easements?
17 Is that not your argument?

18 A. No, I don't think I addressed it. I think it
19 was raised in the original complaint.

20 Q. Okay. All right. So I do want to just ask
21 you about some of the deeds, if you could
22 turn to Exhibit 24, please.

23 MS. BROWN: And for the record,
24 these are a somewhat poor quality of deeds

1 that Abenaki was able to secure to supplement
2 the complaint, Omni's complaint, which is
3 Exhibit 16, because some of the pages were
4 missing. Some of the deeds had not actually
5 been included in the list of purchased -- or
6 behind the purchased assets.

7 BY MS. BROWN:

8 Q. So with that explanation of this Exhibit 24,
9 Mr. Brogan, are you at the exhibit?

10 A. Yes.

11 Q. Okay. And with respect to Page 1, this
12 Quitclaim Deed, is it between Institutional
13 Investors Trust and Bretton Woods
14 Corporation -- oops, I'm sorry --
15 institutional Investors Trust, Bretton Woods
16 Corporation and Rosebrook Water Company?

17 A. It appears to be, yes.

18 Q. I'm trying to read to help you along.

19 Now, in the closely-spaced section of
20 this Page 1, do you see "the exclusive right
21 and easement to the sole use of all land
22 lying within a radius of 200 feet"? Do you
23 see this language?

24 A. Yes.

1 Q. And so is this quitclaim deed essentially a
2 deed for the protective well radius?

3 (Witness reviews document.)

4 MR. GETZ: Madam Chair, is counsel
5 asking for a legal opinion from Mr. Brogan as
6 to what this quitclaim deed provides?

7 MS. BROWN: I'm asking for an
8 engineering opinion because he's a P.E. and
9 is familiar with the water industry. And I
10 am presuming, and he can correct me if I'm
11 wrong, that he also understands that the
12 Department of Environmental Services, et
13 cetera, would require -- or that protective
14 well radii are generally common in the
15 industry.

16 CHAIRWOMAN MARTIN: Mr. Brogan, if
17 you can answer it within your own expertise,
18 go ahead; otherwise, let Attorney Brown know
19 that.

20 A. I would just -- I mean, I'm familiar
21 generally with deeds and would just comment,
22 without studying this or having a map, that
23 first closely-spaced paragraph, at first
24 glance, appears to relate to well radii. But

1 the second paragraph talks about all kinds of
2 other water facilities, including hydrants
3 and meters and pump stations. And so I'm
4 really not -- again, without -- you're
5 catching me a little bit cold on this one.
6 But I'm not sure it's limited to addressing
7 well radii.

8 BY MS. BROWN:

9 Q. I can -- I understand that comment. So why
10 don't I baby-step this through.

11 When you mentioned that you saw pump
12 stations on here, there are no pump stations
13 or wells on the hotel parcels; is that
14 correct?

15 A. That's correct. But there are hydrants and
16 meters and pipe lines. Again, I'm looking at
17 the second closely-spaced paragraph. I'm not
18 suggesting this deed applies there. I just
19 don't know.

20 Q. Okay. Fair enough. So if you could turn to
21 page -- I'm sorry -- Exhibit 16, Page 85.

22 A. I'm there.

23 Q. Okay. And do you see the deeds listed on
24 this purchased asset list?

1 A. Yes.

2 Q. Okay. And so I just want to make sure that
3 I'm understanding the limits of your
4 expertise. I was going to walk you through
5 Exhibit 24 and have you confirm the content
6 of what is listed on Page 85. But what I
7 understand you to tell me is that you are
8 not -- or your expertise is that you are not
9 able to confirm that, for instance, purchased
10 asset deeds No. 1 and 2 are for the
11 protective well radii.

12 A. I think that's true.

13 Q. Okay.

14 A. I didn't --

15 Q. That's fine.

16 (Court Reporter interrupts.)

17 A. -- study the deeds very closely.

18 (Discussion off the record.)

19 BY MS. BROWN:

20 Q. Just a follow-up question, Mr. Brogan. Are
21 you aware of any water supply wells on the
22 hotel property for the Rosebrook system?

23 A. Not that are active and in service, no.

24 Q. So is it fair to say that the wells for the

1 system are on the west side of Route 302?

2 A. Yes.

3 Q. And so they are on -- to the extent they're
4 on Omni property over there, the wells are on
5 those parcels, not on the hotel parcels; is
6 that fair?

7 A. Yes.

8 Q. Okay. My silence is that I'm cutting out
9 questions.

10 Mr. Brogan, I want to go back to your
11 aerials that are in Exhibit 18. Mr. Brogan,
12 on Page 5 of Exhibit 18, and the blue lines,
13 are you aware that Abenaki does not dispute
14 the ownership of the transmission mains on
15 this west side of Route 302?

16 A. I guess it depends on what you call a
17 "transmission main." I would consider the
18 8-inch main all the way to the hotel. I'm
19 not sure what you're asking.

20 Q. I think this morning you were testifying that
21 the blue lines, even the 16-inch line, is a
22 backbone of the Abenaki system, and that if
23 it owns the lines on Omni property over here,
24 shouldn't it own the line on Omni property on

1 the east side of 302. Is that a fair
2 characterization of your argument?

3 A. I think I might turn that around and say, if
4 they acknowledge they own the 16-inch line
5 and there's no differentiation on the
6 original CPRs, then why don't they own all of
7 the other lines?

8 Q. Okay. Now, Mr. Brogan, you noted on here
9 that there's Forest Cottages; correct?

10 MR. GETZ: Madam Chair, there may
11 be some confusion about exhibits here.

12 MS. BROWN: I'm on Exhibit 18,
13 Page 5.

14 A. I'm sorry. I was looking at Page 4. I
15 apologize. The page before. I apologize.

16 BY MS. BROWN:

17 Q. So I draw your attention, Mr. Brogan, on
18 Exhibit 18, Page 5. And you talked -- and
19 you made note of Forest Cottages and
20 Rosebrook Townhomes. Do you see those --

21 A. Yes.

22 Q. -- here?

23 A. Yes.

24 Q. Okay. And are those owned -- are there

1 homeowners associations associated with
2 Forest Cottages and Rosebrook Townhomes?

3 A. I believe so.

4 Q. And what about Crawford Ridge?

5 A. I believe so.

6 Q. And what about Presidential Views?

7 A. I'm not -- I believe that they are all
8 associations. I could be wrong on one or
9 two, but I think they all are. That's my
10 understanding.

11 Q. Okay. And are you aware that homeowners
12 association documents in this proceeding have
13 showed that there are common areas within
14 those subdivisions?

15 A. Yes.

16 Q. And are you familiar that Abenaki's tariff
17 provides ownership obligations on the part of
18 Abenaki within common areas of water
19 infrastructure?

20 A. I'm aware that the language is in the tariff.

21 Q. Thank you.

22 A. That is very unclear to me where those areas
23 are and how the tariff applies.

24 Q. And as part of your preparation for

1 testimony, did you review Exhibit 11?

2 A. Yes.

3 Q. And you're still of the opinion that the
4 location of common areas is unclear?

5 A. Let me just -- give me just a few seconds.
6 I'm looking for something.

7 (Witness reviews document.)

8 A. Okay. Here it is. Yeah. To me, I mean, I
9 looked through all the different articles of
10 agreement, and it seems clear the roadways
11 are a common area. But how much of the rest
12 of -- I'm addressing developments, where it's
13 multiple buildings on a single lot. So it's
14 very unclear to me, in spite of all the
15 articles and the maps in this response, where
16 the common areas are. I think the articles
17 of agreement generally list -- they have
18 other descriptors, like "landscaping" or
19 "green areas," and then there's like this
20 other all-inclusive clause about "and other
21 property incidental thereto." So I have no
22 idea if the common area includes everything
23 but the buildings. I just can't tell.

24 Q. Okay. And these articles of agreement are

1 legal documents; is that correct?

2 A. Correct.

3 Q. Mr. Brogan, I would like to turn your
4 attention to Exhibit 5, please.

5 A. I have it.

6 Q. Okay.

7 MS. BROWN: For the record,
8 Exhibit 5 is documents from Docket DW 11-117.

9 BY MS. BROWN:

10 Q. And Mr. Brogan, can you please turn to
11 Page 3.

12 A. I'm there.

13 Q. And did you write the recommendation in this
14 docket?

15 A. I did.

16 Q. And was it true and accurate at the time, as
17 of the time that you wrote it?

18 A. I hope so.

19 Q. I direct your attention to paragraph lettered
20 "D" on Page 3 that states, "Staff has also
21 identified issues with the Company's tariff
22 needing clarification of resolution and is
23 awaiting the Company's response to same."
24 Did I read that correctly?

1 A. You did.

2 Q. And then if you could please turn to Page 24.

3 A. I'm there.

4 Q. And was this what you were awaiting, the
5 Company's response? Was this the response
6 you were waiting for?

7 A. I guess I would comment, if you could back up
8 a little. I was the engineer. I was asked
9 to write the letter because probably the
10 majority of it had to do with capital
11 improvements. The tariff issues were
12 definitely not my issue. I was just asked to
13 write the letter. So this page you just
14 asked about I think is part of what the Gas
15 and Water Division was waiting for. I'm not
16 sure I was.

17 Q. Okay. We'll see how this proceeds, but I do
18 have some tariff questions because I didn't
19 have the aid of that clarification you just
20 offered. But on Page 40 of Exhibit 5 --

21 A. I'm there.

22 Q. And would you agree that the definition of
23 "curb stop" was a new addition to the tariff?

24 A. Just from glancing at this, it appears as if

1 maybe the Definition section was a new
2 addition.

3 Q. Okay. And I'm on Page 42. If you could go
4 forward a couple pages to the Terms and
5 Conditions, Service Pipe. See that
6 paragraph?

7 A. Yes.

8 Q. And under Section 1b(1), Single-Family Home,
9 do you see the last sentence says that all
10 new exterior shut-off valves shall be placed
11 at the property line? Do you see that?

12 A. I do.

13 Q. And as a regulator, would you consider that
14 sentence to essentially grandfather prior
15 curb stop -- or shut-off valve locations for
16 single-family homes?

17 A. Well, I mean, it explicitly says new -- "all
18 new exterior shut-off valves," so I would
19 have to assume that's the intent.

20 Q. Okay. And do you agree that there's no
21 similar grandfathering clause in Paragraph 2
22 for condominiums and Paragraph 3 for
23 commercial buildings?

24 (Witness reviews document.)

1 A. I think that's true.

2 Q. Okay. Now, if a tariff is silent on an
3 issue, do the administrative rules kick in
4 and cover the issue?

5 MR. GETZ: Again, Madam Chair, it
6 appears that Attorney Brown is asking for a
7 legal conclusion from Mr. Brogan.

8 MS. BROWN: I am asking for him as
9 a regulator, and so I would -- I do
10 appreciate he's not a lawyer. And so, Madam
11 Chair, I am only asking his viewpoint when he
12 was a regulator and dealing with
13 administrative rules under his agency.

14 CHAIRWOMAN MARTIN: You can ask him
15 for his experience. I would note that he is
16 not currently a regulator.

17 A. Yeah, it seems like a broad question. I'm
18 not sure I can answer it.

19 BY MS. BROWN:

20 Q. So, Mr. Brogan, if a water utility tariff did
21 not have a provision for disconnections, and
22 the Commission's rules had provisions
23 regarding how to conduct disconnections,
24 would you agree that the relationship between

1 the regulated utility and its customers would
2 be governed by the Commission's rules or the
3 tariff for disconnections?

4 A. I'm sorry. I'm taking too long. I wasn't
5 much of a tariff person either, as much as an
6 engineer. I suppose if push came to shove
7 and someone filed a complaint with the
8 Commission, say a customer did, probably the
9 Commission would apply its rules. But I'm
10 not sure I have the qualifications to really
11 answer that for sure.

12 Q. Okay. Mr. Brogan, how long were you at the
13 Commission?

14 A. Over 20 years.

15 Q. During what years, if you could be more
16 specific? Thank you.

17 A. Let's see. 19 -- I'll get this right. 1989
18 to 2012.

19 Q. And so are you -- would you be familiar with
20 the 600 Rules?

21 A. Yes.

22 Q. And the 600 Rules, is it fair to characterize
23 they govern water utilities?

24 A. Yes.

1 Q. And so are you familiar with PUC 602.06 which
2 states, "'Customer service pipe' means that
3 section of service pipe from the customer's
4 property line or the curb stop to the
5 customer's place of consumption"? Are you
6 familiar with that definition?

7 (Witness reviews document.)

8 MR. GETZ: Madam Chair, if I could
9 just point out, I've provided Mr. Brogan a
10 copy of the rules.

11 CHAIRWOMAN MARTIN: Thank you.

12 (Witness reviews document.)

13 A. Yes.

14 BY MS. BROWN:

15 Q. And Mr. Brogan, are you also familiar -- when
16 you were working at the Commission, were you
17 familiar also with PUC 606.04 which states,
18 "Curb stops shall be placed at the customer's
19 property line, except in unusual situations
20 such as service to an apartment or to a
21 condominium"?

22 (Witness reviews document.)

23 A. Yes.

24 BY MS. BROWN:

1 Q. Okay. And would you agree that Abenaki has
2 served condominium associations via its
3 tariff?

4 A. Has what?

5 Q. Would you agree that Abenaki serves
6 condominium developments via its tariff?

7 A. Yes. And if we could back up to the last
8 question. I'm seeing an effective date of
9 that last rule of 1997, which would be well
10 after the 1985 line to the hotel.

11 Q. Is that the last effective date or the first
12 effective date?

13 A. The first, I believe.

14 Q. Did you say that the red line behind the
15 hotel was constructed and installed in 2001?
16 I thought that was your testimony.

17 A. Correct.

18 Q. And those valves were not installed at the
19 property line; is that correct?

20 A. Absolutely correct.

21 Q. Okay. Mr. Brogan, do you have any experience
22 with water systems constructed on college
23 campuses?

24 A. Probably not. Not specific.

1 Q. Can I have you turn to Exhibit 26, please,
2 which was your pictures --

3 A. I have it.

4 Q. -- and turn to Page 8, please?

5 A. I have it.

6 Q. And in this picture, isn't the shut-off
7 before the meter? Would you agree?

8 A. Yes.

9 Q. Okay. Can you turn to Page 13?

10 A. Yeah.

11 Q. And doesn't -- does this picture, would you
12 agree, show the shut-off before the meter?

13 A. It's hard to see in this one. But I
14 generally agree.

15 And I think in most cases the water
16 company owns the meter. But the customer can
17 certainly own the valve upstream of the
18 meter.

19 Q. Right. And if I can have you turn to
20 Exhibit 27, Page 12.

21 A. Yes.

22 Q. And it looks like, from this picture, that
23 the shut-off valve is also before the meter,
24 as well as the pressure-reduction valve; is

1 that right?

2 A. Yes.

3 Q. Isn't it common -- would you agree that it's
4 standard protocol to have a shut-off valve
5 ahead of meters and pressure-reduction
6 valves?

7 A. Yes.

8 Q. Does that make it easier, having a valve at
9 that location make it easier to swap out
10 meters, for instance?

11 A. Yes.

12 Q. Okay. Mr. Brogan, when you -- actually, we
13 can probably use a map to facilitate this
14 discussion. Look at your Exhibit 18 and
15 Page 4.

16 MS. BROWN: And I realize it's
17 12:12. And I'm wrapping up with my
18 questions. So, within a half-hour?

19 CHAIRWOMAN MARTIN: Okay. Ms.
20 Robidas, are you able to continue that long?

21 (Court Reporter nods affirmatively.)

22 MS. BROWN: Thank you.

23 BY MS. BROWN:

24 Q. Mr. Brogan, are you there?

1 A. Yes.

2 Q. Now, I just want to revisit this. When I'm
3 looking at the 8-inch main behind the
4 building that's denoted in red, is it your
5 position that this red line is a transmission
6 main?

7 A. I mean, without -- I guess you could get into
8 a debate over transmission versus
9 distribution. But it's a required main, not
10 a service line.

11 Q. Okay. And are you arguing that the red line
12 has the same character as the blue line?

13 A. As far as water company responsibility, yes.

14 Q. I'm talking functionally, as far as it being
15 a transmission or distribution main.

16 A. Yes. Both of those lines, for example, have
17 other accounts coming off of them.

18 Q. And does the red line go to the Nordic
19 Center?

20 A. Yes.

21 Q. And is the Nordic Center part of the hotel
22 resort?

23 A. Yes.

24 Q. And the Nordic Center is not a public

1 building; is that right?

2 A. That's correct.

3 Q. And I just want to also get your -- my
4 understanding of your argument. These
5 assets, the blue line and the red line, even
6 though it only -- it does not serve public
7 buildings, that these assets are benefitting
8 the rest of the customers? And when I say
9 "the rest of the customers," the non-Omni
10 customers.

11 A. I think, again, that goes back to the history
12 and how this area evolved and the early
13 intention to do some looping in this area
14 that clearly would benefit this entire
15 portion of the system.

16 Q. I'm not talking about future benefit. I'm
17 talking about present benefit. Is there a
18 present benefit to the remaining customers of
19 this red line and this blue line right now?

20 A. Well, I mean, you could -- again, not to be
21 tricky, but you could argue the same thing
22 for the Fairway Village main; it only
23 benefits Fairway Village customers.

24 Q. Fairway Village is a development; correct?

1 A. Correct.

2 Q. With common areas?

3 A. I believe so.

4 Q. We don't have common areas, to my knowledge,
5 on this hotel campus. Would you agree?

6 A. I would agree with that.

7 Q. Now, Mr. Brogan, are you familiar with the
8 material of the 8-inch main that broke; and
9 if so, what was that material?

10 A. Yeah, I believe it was PVC. And probably
11 where you're going is in the original CPRs
12 it's listed as ductile iron. I certainly
13 can't explain. Those original records were
14 not a model of high accuracy. So I can't
15 explain why that happened.

16 Q. I wasn't going there, but that was a fair
17 guess.

18 Can I have you look at Exhibit 29?

19 MS. BROWN: And these are the
20 Company maps, again, for the record. And the
21 Company maps appear at Pages 4, 5 and 6 of
22 Exhibit 29.

23 A. I have them.

24 BY MS. BROWN:

1 Q. Now, if I start at Page 4, and you may need
2 your magnifying lens, are most of these
3 transmission lines ductile iron?

4 A. Are you asking from this map or from my
5 general knowledge?

6 Q. From the map. If I look at Page 4, over on
7 the left it says "Ammonoosuc River" and
8 "Railroad." That 16-inch line is ductile
9 iron line; is that right?

10 A. Yes. And it looks... probably all of the
11 lines appear to be ductile iron on this.

12 Q. Okay. And so the lines on the hotel campus
13 that are at issue in -- or the 8-inch that's
14 at issue in this proceeding, that is not
15 ductile iron; right?

16 A. That's correct. And nor do we know what the
17 8-inch between the entrance to Mount
18 Washington Place and, you know, the isolation
19 valves on Base Road is. That may very well
20 be PVC as well, in spite of what the plans
21 said.

22 Q. And on what are you basing that hypothetical
23 on?

24 A. It's not -- I'm not saying that it is PVC.

1 I'm saying it could -- I don't know what it
2 is. I would assume that entire main was run
3 in one shot, and so it may very well be PVC,
4 just like the main, the portion of it on Omni
5 property is.

6 Q. Well, I'm looking at Page 5, and that one
7 does say 8 inches of PVC up to the hotel.
8 Would you agree?

9 A. I'm sorry. I'm having trouble with page
10 numbers. Are you on the second of the three
11 plan sheets?

12 Q. Correct.

13 (Witness reviews document.)

14 A. I'm sorry. So you're saying somewhere it
15 says it's PVC?

16 Q. I'm directing your attention to Page 5 of
17 Exhibit 29. There's yellow lines on the
18 hotel campus fed by a green line that's
19 running along Base Road. And that green line
20 has 8, looks like inch, and the letters "PVC"
21 on it, and it's running next to a 12-inch
22 ductile iron, I believe. Do you see that,
23 and do you agree?

24 (Witness reviews document.)

1 A. I do see that.

2 Q. Okay. So would you agree that laying PVC is
3 a departure from the ductile iron
4 construction?

5 A. I mean it's different. But both are -- there
6 are AWWA standards for both. Both are
7 routinely used in the industry.

8 Q. And the PVC that's on the hotel parcel,
9 that's -- would you agree that's C900? Or do
10 you not know?

11 A. I believe it is.

12 Q. Blue Brute? Does that ring a bell?

13 A. Yes, I believe that's what it is.

14 Q. And don't ductile iron and Blue Brute have
15 differing lives? And I'm not talking about,
16 you know, amortization for CIAC. But in an
17 engineering sense, doesn't ductile iron have
18 a slightly longer life than PVC?

19 A. It's a very much contested issue. I guess it
20 depends on which industry you ask, I guess.
21 It depends on the soils and a little bit
22 maybe on the water quality inside the pipe.

23 Q. Fair enough. And I'm not an engineer. I
24 will admit I'm just a lawyer. Okay.

1 So, Mr. Brogan, just cleaning up here.
2 Are you aware that the actual spot that broke
3 on the 8-inch line was actually a tapping
4 saddle?

5 A. I believe it was, yes.

6 Q. And how did you know that?

7 A. From the -- partly from the pictures in the
8 Omni complaint, partly from talking to hotel
9 personnel.

10 Q. Okay. Thank you.

11 Now, I know I'm pressing you on the CIAC
12 concept here. But would you agree that there
13 would be little benefit for a regulated
14 utility to accept this volume of 8-inch PVC
15 pipe as CIAC, because wouldn't that mean that
16 it has to accept the expenses, but there's no
17 return depreciation expense on this type of
18 CIAC?

19 A. Yeah, this is a little bit beyond my area.
20 Are you suggesting if you take that to its
21 ultimate conclusion, then no water company
22 would ever accept contributed mains to expand
23 their system, I don't think that's the case.

24 Q. Would you consider the Rosebrook system in

1 the league of troubled systems?

2 A. Hmm. Are you talking historically or today?

3 Q. Historically.

4 A. Well, they certainly had their accounting
5 problems and I guess changes in ownership
6 over the years.

7 Q. Mr. Brogan, are you aware that a regulated
8 utility wouldn't be responsible for the
9 property taxes on receipt of CIAC?

10 A. I believe they would, yes.

11 Q. Okay. Now I'm getting into rate subsidies a
12 little bit with this question. Please feel
13 free to caveat, to the extent you know.

14 If this 8-inch line in question was
15 given or to become Abenaki's responsibility,
16 would you agree that payment of the expenses,
17 operations and maintenance expenses and taxes
18 would be subsidized by the remaining
19 customers in Rosebrook?

20 A. Yeah, that's a rate design. Somebody is
21 always subsidizing, you know, a water system
22 I think. That's not my area. I'll stay away
23 from that.

24 Q. Fair enough. Mr. Brogan, are you aware of

1 the new building that Omni is constructing on
2 the hotel property?

3 A. Yes.

4 Q. And are you aware that it's about a
5 66-unit-size building?

6 A. Something like that, yes.

7 Q. Do you know where this building is on the
8 hotel campus?

9 A. I do, yes.

10 Q. And could we use your Exhibit 18, perhaps the
11 aerial map on Page 4, for you to tell us
12 where it is?

13 A. So at the southern end of the hotel, the spa
14 building that was -- I can't remember dates,
15 but put in maybe 2007 or 2008. It's that
16 kind of big, rectangular building sticking
17 out there. And then the new addition was
18 added kind of just onto the south of that,
19 more or less.

20 Q. Okay. I'm having a hard time. Can you tell
21 me where -- this new addition you said was
22 south of the spa building. Is this below the
23 number 2 that's shown on this map?

24 MR. GETZ: Go back to here.

1 A. Wait, let me -- we're trying to...

2 (Witness reviews document.)

3 A. Trying to find the number 2. We're not
4 having much luck so far.

5 BY MS. BROWN:

6 Q. I'm looking at Exhibit 18, and I'm on Page 4.
7 And underneath this notation on the red line
8 it says "8-inch main behind hotel" and
9 there's a number 2. Do you see that?

10 And again if you're using documents that
11 aren't in the record, maybe we should reserve
12 exhibit numbers for them.

13 A. I know what you're referring to. I can
14 explain where the new addition is without
15 reference to that number if you want me to.

16 Q. I'm just offering, you know --

17 A. Okay.

18 Q. I'd like to know where it is, and your
19 explanation so far hasn't helped me.

20 MR. GETZ: I'd like to clarify,
21 Madam Chair. We're looking at Exhibit 18,
22 Page 4, which I believe to be a copy of what
23 was filed, but we're not seeing a number 2.

24 CHAIRWOMAN MARTIN: I don't see it

1 either.

2 MS. BROWN: So I have the erroneous
3 copy?

4 CHAIRWOMAN MARTIN: You may.

5 MS. BROWN: Sorry about that.

6 A. Do you want me to keep going?

7 BY MS. BROWN:

8 Q. Please, in relation to the red line or any
9 significant landmarks, if you could help us
10 orient where this new building is, that would
11 be helpful.

12 A. So if you go about halfway down the red line,
13 there's an outdoor pool that has a little bit
14 of blue in it. Do you see that?

15 Q. Yes.

16 A. So immediately to the left of that is the spa
17 building, which was put in, you know, a while
18 back. Then, not shown on this, and
19 immediately to the south, below the spa
20 building, is the new addition, between the
21 spa building and the red line.

22 Q. Okay. Thank you very much.

23 A. You're welcome.

24 Q. Now, did you contact the water company to

1 find the location of this new building or the
2 hotel? Or how did find out the location of
3 this new addition?

4 A. You mean the new addition? I just know from
5 newspaper articles and then having seen it.
6 But I don't think it's anywhere in my
7 testimony or shown on any of my exhibits.

8 Q. Okay. Mr. Brogan, have you seen Exhibit 33,
9 which is the invoice from New England Service
10 Company to the hotel for work regarding this
11 new addition?

12 A. I have it, yes.

13 Q. Do you see reference on Page 1 to 6-inch and
14 4-inch valves?

15 A. Yes.

16 Q. Are you aware that there are -- that there's
17 been installed a 4-inch and 6-inch line up
18 there?

19 A. There are, to my understanding, you know,
20 several metered, Omni metered accounts off of
21 that 8-inch main. And so they would be
22 served by their own separate service lines.
23 So I assume -- I had a lot of trouble
24 deciphering what this invoice was even

1 talking about. But I would assume it had
2 something to do with mains off that --
3 service lines off of that main.

4 Q. Are you familiar with the size of the lines
5 feeding the new addition that you just
6 located for us?

7 A. I think I've seen them on plans, but I'm not
8 sure I remember what they were.

9 Q. Okay. Do you know what type of water service
10 the new building is receiving, such as
11 domestic and fire service?

12 A. I believe it's both.

13 Q. Would there be one or two lines to
14 accommodate those types of services?

15 A. Trying to remember. I'm just going off my
16 memory of seeing some plans. And there may
17 have been separate lines for each, but I'm
18 not certain.

19 Q. Do you know who has installed these lines to
20 the new building?

21 A. I do not.

22 Q. Do you know who installed the valves?

23 A. I do not.

24 Q. Now, Mr. Brogan, on this Page 1 of

1 Exhibit 33, do you see the reference in the
2 middle description that the technician was
3 unable to locate two valves? Do you see
4 that?

5 A. Yes.

6 Q. If this line had been ductile iron, do you
7 think it would have been easier to have
8 located the valves on these lines?

9 A. If they were -- assuming he's talking about
10 lines -- how do I say this? Typically, no
11 matter what the pipe material is 6 feet down
12 in the ground, you have a valve box coming up
13 to a valve cover. The cover is typically
14 metal. So you can find it no matter what the
15 water main is down in the ground.

16 Q. Fair enough.

17 Mr. Brogan, in your experience at the
18 Commission, when a customer is tying into
19 water company infrastructure, doesn't the
20 water utility typically need to inspect the
21 interconnection?

22 A. I think there's -- you know, should Omni and
23 the water company in this case have been
24 communicating? Absolutely. But it's a

1 two-way street. And somewhere along the way,
2 Abenaki apparently provided the water meters
3 for this new building. So I don't know what
4 the communication has been, but it should
5 have been there.

6 Q. My question was when a customer is tapping
7 into water company infrastructure, doesn't
8 the water utility normally need to inspect
9 the interconnection to make sure it complies
10 with technical specifications?

11 A. I would say yes.

12 Q. Okay. And I think your response, though,
13 then talked about you understand that there
14 was some communication difficulties between
15 the two parties to effectuate an inspection?
16 Would that be fair?

17 A. That's what I suspect, yes.

18 Q. Okay. Now, Mr. Brogan, these two valves that
19 are discussed in Exhibit 33, Page 1, are
20 these, in your opinion, going to be the new
21 curb stops for the new building?

22 A. I didn't know if -- I mean, they're
23 relatively small. I didn't know if they were
24 related to the pool, to be honest. But I

1 don't really know what those valves are. If
2 I had to guess, I would not associate them
3 with the entrance to the new addition. But
4 again, I'm not sure what this invoice is
5 about.

6 Q. So, Mr. Brogan, are you aware if the new
7 building that's under construction at the
8 hotel campus, whether they are going to have
9 exterior shut-offs?

10 A. From the plans, I believe there are, yes.

11 Q. And are those exterior shut-offs going to be
12 considered curb stops for purposes of the
13 tariff and Abenaki's obligations to maintain?

14 A. I mean, yes.

15 Q. Are these -- let me just go to Exhibit 12, if
16 you could, please, and on Page 1. Do you see
17 the -- do you accept that this is a screen
18 capture from the Town of Carroll GIS tax
19 database?

20 A. Yes.

21 Q. And do you accept that the yellow denotes the
22 property boundaries?

23 A. Yes. I mean, I think there's a third Omni
24 property that's not highlighted yellow. But

1 I think what is highlighted appears to be
2 Omni property.

3 Q. And these two new valves, potential curb
4 stops that we're talking about for this new
5 building, are they being installed at or near
6 the property lines of this yellow parcel?

7 A. No. Absolutely not. Just like the entire
8 system on the west of 302.

9 MS. BROWN: I believe I am done my
10 line of questioning, but I just need to check
11 with the consult -- the client to make sure I
12 don't have anything that I've missed. And I
13 can't see my client.

14 So do you think I've missed
15 anything, and do we need to caucus?

16 You know, we would normally be
17 passing notes back and forth at the counsel
18 table, but we don't have that here.

19 THE WITNESS: I think you did
20 great. I think we're done.

21 MS. BROWN: Thank you, Doug, but
22 you're not at my table, not this time.

23 MR. VAUGHAN: I think we need to
24 caucus.

1 MS. BROWN: Madam Chair, may I have
2 five minutes?

3 CHAIRWOMAN MARTIN: Why don't -- I
4 mean, my thought is perhaps we break for
5 lunch at this point, unless you think that
6 interrupts your process now.

7 MS. BROWN: I don't think that
8 gives me too much time. Thank you very much.

9 CHAIRWOMAN MARTIN: Okay. So let's
10 break for lunch and return at 1:30.

11 MS. BROWN: Thank you very much.

12 CHAIRWOMAN MARTIN: All right. Off
13 the record. Thank you, Ms. Robidas.

14 (Lunch recess taken at 12:41 p.m. and
15 concludes Day 2 Morning Session. The
16 hearing continues under separate cover
17 in the transcript noted as Day 2
18 Afternoon Session.)

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C E R T I F I C A T E

I, Susan J. Robidas, a Licensed Shorthand Court Reporter and Notary Public of the State of New Hampshire, do hereby certify that the foregoing is a true and accurate transcript of my stenographic notes of these proceedings taken at the place and on the date hereinbefore set forth, to the best of my skill and ability under the conditions present at the time.

I further certify that I am neither attorney or counsel for, nor related to or employed by any of the parties to the action; and further, that I am not a relative or employee of any attorney or counsel employed in this case, nor am I financially interested in this action.

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