

1                                   **STATE OF NEW HAMPSHIRE**  
2                                   **PUBLIC UTILITIES COMMISSION**

3  
4   **October 22, 2020 - 1:33 p.m.**                                   **Day 2**  
5                                                                                   **Afternoon Session ONLY**

6                                   *[Remote Hearing conducted via Webex]*

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8                   **RE: DW 19-131**  
9                   **OMNI MOUNT WASHINGTON, LLC:**  
10                   **Complaint by Omni Mount Washington**  
11                   **Hotel, LLC, against Abenaki Water**  
12                   **Company, Inc.**

13                   **PRESENT:**           Chairwoman Dianne Martin, Presiding  
14                                   Cmsr. Kathryn M. Bailey  
15                                   Cmsr. Michael S. Giaimo

16                                   Doreen Borden, Clerk  
17                                   Eric Wind, PUC Remote Hearing Host

18                   **APPEARANCES:**   **Reptg. Omni Mount Washington, LLC:**  
19                                   Thomas B. Getz, Esq. *(McLane Middleton)*

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

22                                   **Reptg. Bretton Woods Property Owners**  
23                                   **Association (BWPOA):**  
24                                   Paul Mueller

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

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

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[WITNESS: Brogan]

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

*(Hearing resumed at 1:33 p.m.)*

CHAIRWOMAN MARTIN: All right. Let's go back on the record. And, Attorney Brown, you were going to wrap up.

MS. BROWN: Yes. And I just have a few questions, which, hopefully, will take me less than five minutes.

**CROSS-EXAMINATION (resumed)**

BY MS. BROWN:

Q Mr. Brogan, do you have Exhibit 20 in front of you? If you could turn to that, and specifically to Page 71.

A I'm there.

Q And I believe you're already familiar with Paragraph 21, are you?

A Generally, yes.

Q Okay. And does this tariff -- does this provision of the tariff require that, when there are extensions of mains or facilities to serve new customers, that plans need to be reviewed by the Company?

A Yes.

Q And are you aware that -- of whether Abenaki has

[WITNESS: Brogan]

1 received plans from Omni?

2 A I think, in response, I need to make a correction  
3 to my testimony for a moment.

4 So, there had been a service line off  
5 of the 8-inch main behind the Hotel to the spa  
6 building from back in 2007 or '08, and -- from my  
7 understanding. And, so, that service line has an  
8 exterior shut-off. So, we believe the water  
9 company owns the main and the service line up to  
10 the exterior shut-off. It's my understanding  
11 that the connections for this new addition remain  
12 downstream of that exterior shut-off. And, so,  
13 they were made on the Omni-owned service line.  
14 They were a -- it was a tap or a branch or  
15 whatever, I don't know the details, off of the  
16 Omni-owned portion of that service line.

17 So, this main extension clause in the  
18 tariff, there was no main -- obviously, no main  
19 extension involved.

20 Q Okay. So, with respect to the 2001 extension,  
21 the red line on Exhibit -- excuse me -- 18, --

22 A Yes.

23 Q -- then that -- are you saying that that would or  
24 would not trigger this main extension policy at

[WITNESS: Brogan]

1 Paragraph 21?

2 I'm just trying to follow you on where  
3 the service line is, because I thought you were  
4 saying that this red line was a transmission  
5 main?

6 MR. GETZ: Well, I'm sorry, Madam  
7 Chair. Can we clarify? Would the main extension  
8 policy trigger or be applied to the current  
9 expansion? Or, is the question relative to that,  
10 you know, the previous 8-inch main extension?

11 Sorry, Marcia. I wasn't sure what you  
12 were applying to.

13 CHAIRWOMAN MARTIN: Can you just  
14 clarify? Before you were asking about the new  
15 addition, and now we're talking about the red  
16 line on Exhibit 18. Can you just clarify the --

17 MS. BROWN: Yes. I was -- sorry,  
18 Steve, I didn't mean to talk over Chairwoman  
19 Martin.

20 BY MS. BROWN:

21 Q Thank you for the clarification, Mr. Brogan. Am  
22 I correct in understanding that the red line on  
23 Exhibit 18, Page 4, is a transmission line and  
24 not a service line?

[WITNESS: Brogan]

1 A A main extension, not a service line. Correct.

2 Q And that was done in 2001, is that right?

3 A I believe so, yes.

4 Q All right. So, Paragraph 21, or let me just go  
5 to the correct tariff. And I'm on Page 41 then  
6 of Exhibit 20, the "Main Extensions, Paragraph  
7 21, if you see that, on Page 41?

8 A Yes.

9 Q So that main extension would have applied to the  
10 red line behind the Hotel, correct?

11 A Assuming it was -- that the extension was not  
12 done by the water company itself, and I'm not  
13 sure I know who put that in.

14 Q And, if it was done by the Hotel, like this new  
15 construction, then it would have had to -- the  
16 contractor or owner would have had to have  
17 complied with Paragraph 21, correct?

18 A Correct.

19 Q Now, where can we see on maps the service  
20 line/transmission main distinction that you were  
21 just now clarifying from your earlier testimony?  
22 Is there a map that shows that service line that  
23 you're referring to?

24 A The service line to the spa building, is that

[WITNESS: Brogan]

1 what you're asking about?

2 Q I'm asking about, you're saying that the Main  
3 Extension provision, if I understand you  
4 correctly, the Main Extension in Paragraph 21  
5 does not apply to the new 66-unit building,  
6 because the -- I guess, 4- and 6-inch lines  
7 serving the new building are tapped into a  
8 service line, and not a main? Is that what  
9 you're saying?

10 A The last part is what I'm saying. And, without  
11 trying to decipher how much of the Main Extension  
12 clause would apply, I mean, in general, the  
13 customer should absolutely be communicating with  
14 the water company, you know, about that kind of  
15 connection. And I think there has been  
16 communication, I haven't been a part of it.  
17 Whether it was flawed communication, delayed  
18 communication, I haven't been involved in it.

19 Q Okay. So, if Abenaki were to tell you that it  
20 didn't receive any prior notification of this new  
21 building, do you have -- did you know about that  
22 and would you have known about that position or  
23 not?

24 A I think I have seen it in previous filings. I

[WITNESS: Brogan]

1 mean, the new addition was all over the news.  
2 You know, there's two sides to communication.  
3 I'm not sure what happened.

4 Q Okay. And, so, I guess, just by analogy, if I  
5 had a -- if the Company had a developer tapping  
6 into what's purported to be a company-owned  
7 transmission line for a single-family home, just  
8 for this hypothetical, and put that curb stop  
9 well within the property bounds, would you --  
10 would that violate the main -- or, Paragraph 21  
11 of the tariff?

12 A And, again, I think the service line preexisted  
13 this new addition by quite a number of years.  
14 And, so, it would be more analogous to a  
15 single-family home -- if you have two  
16 single-family homes on one property, and the  
17 second home taps into the first one's  
18 customer-owned portion of the service line. I  
19 mean, --

20 Q Is that referred to as a "tandem connection"?

21 A Yes. Could be.

22 Q Are tandem connections allowed under Abenaki's  
23 tariff? If you don't know, that's fair.

24 A I don't know, without looking.

[WITNESS: Brogan]

1 Q Okay. But, regardless, I just want to make also  
2 that I'm sure that your testimony earlier that  
3 the exterior valves associated with this new  
4 building, if they are considered "curb stops",  
5 they would not be compliant with Abenaki's tariff  
6 on placement of curb stops. Is that correct?

7 A I don't think that's correct. I mean, you have  
8 the whole rest of 302 where there are exterior  
9 shut-offs right on -- there are no curbs, right?  
10 They're all within Omni property. This is such a  
11 distinct resort development. I don't think  
12 that's the issue at play here.

13 Q So, with respect to the Commission's rule that  
14 says that "curb stops should be placed at the  
15 property line", are you saying that Omni should  
16 be waived from -- or, that rule should not be  
17 applied to this new development behind the Hotel?

18 A If you have a water main extension that already  
19 goes onto customer property, and the curb stop is  
20 already on customer property, and everything --  
21 and then you tap into that main extension,  
22 everything else we're talking about is already on  
23 customer property. It's a distinction without a  
24 difference. I mean, you're not talking about

[WITNESS: Brogan]

1 curb stops at property lines in this resort  
2 development.

3 Q And, so, back in 2011, when the new tariff  
4 changes came in, and the "curb stop" definition  
5 being at the -- actually, let me just rephrase  
6 this.

7 With the 2011 tariff revisions, and if  
8 you recall the testimony where I walked you  
9 through the single-family home had a  
10 grandfathering provision, are you saying that a  
11 grandfathering provision applies for the  
12 placement of curb stops with respect to Omni?

13 MR. GETZ: Again, Madam Chair, I think  
14 it's calling for a legal conclusion. And I  
15 expect that all of these issues will be put in  
16 play during oral argument about tariff  
17 interpretation, and whether it's grandfathering  
18 or whether it's an unconstitutional retroactive  
19 application, those are the legal issues that I  
20 think are going to be addressed later.

21 CHAIRWOMAN MARTIN: Attorney Brown.

22 MS. BROWN: Mr. Brogan was in the Water  
23 Division dealing with enforcement and compliance  
24 with the PUC's rules. And I think he can fairly

[WITNESS: Brogan]

1 answer the question within that scope. I don't  
2 think it necessarily is just a legal issue.

3 I understand Attorney Getz's argument,  
4 but --

5 CHAIRWOMAN MARTIN: Mr. Brogan, if you  
6 are able to answer that based on your expertise,  
7 please go ahead. Otherwise, let's move on.

8 WITNESS BROGAN: I think I'd have to,  
9 to even get it a shot, I would have to go back  
10 and look at the specific tariff language, and  
11 whether it applies -- who it applies to and what  
12 it says. And I'm not sure even then that it's my  
13 area.

14 MS. BROWN: Thank you, Mr. Brogan. I  
15 don't have any other follow-up questions.

16 CHAIRWOMAN MARTIN: All right. Thank  
17 you.

18 Mr. Mueller, do you have questions?

19 MR. MUELLER: I do. Thank you, Madam  
20 Chair.

21 BY MR. MUELLER:

22 Q Mr. Brogan, if I can take you to Exhibit 28, the  
23 one-page exhibit?

24 A It's blank.

[WITNESS: Brogan]

1 MR. GETZ: I apologize, Mr. Mueller.  
2 Our copy of this, our hard copy of this is a  
3 blank. Can you tell me what Exhibit 28 is?

4 MR. MUELLER: Yes.

5 MR. GETZ: And I'll pull it up  
6 electronically.

7 MR. MUELLER: Exhibit 28 is the exhibit  
8 with -- there's two columns. "Column A" is  
9 "Length in Accounting Entry", which is derived  
10 from the continuing property records. And then,  
11 "Column B" shows the "Length from 1995 Provan &  
12 Lorber Plans". And the third column shows a  
13 "Percentage of A to B".

14 CHAIRWOMAN MARTIN: Which page are you  
15 on, Mr. Mueller?

16 MR. MUELLER: It's just one page, I  
17 believe.

18 MR. GETZ: It may be Exhibit 25.

19 CHAIRWOMAN MARTIN: I have Exhibit 28  
20 as a multipage document.

21 MR. MUELLER: I'm sorry. It's 25. I  
22 wasn't able to print out all the exhibits, sorry.

23 WITNESS BROGAN: I have it.

24 MR. MUELLER: Okay. Sorry about the

[WITNESS: Brogan]

1 confusion.

2 BY MR. MUELLER:

3 Q Can you just explain what this exhibit does and  
4 what your conclusion was from it?

5 A It starts with the lengths for each of these  
6 mains in the original CPRs. And, admittedly,  
7 there are some inaccuracies in those lengths.  
8 So, it's just an attempt to then compare those  
9 lengths to lengths that were measured off the  
10 1995 plans. Just to give a sense of how accurate  
11 or inaccurate the original CPRs may have been in  
12 that specific regard.

13 Q And what was your conclusion from this?

14 A I think, I mean, they're close enough to give me  
15 no concern that the main extension entries refer  
16 to the main extensions that they indeed purport  
17 to.

18 MR. MUELLER: Okay. Thank you. That's  
19 all I had, Madam Chair.

20 CHAIRWOMAN MARTIN: All right. Thank  
21 you.

22 Attorney Tuomala, do you have  
23 questions?

24 MR. TUOMALA: Yes, I do, Madam

[WITNESS: Brogan]

1 Chairwoman. Thank you.

2 Good afternoon, Mr. Brogan.

3 WITNESS BROGAN: Good afternoon.

4 MR. TUOMALA: I have a few just  
5 clarifying questions, so I can make sure it's on  
6 the record.

7 BY MR. TUOMALA:

8 Q If I could direct your attention to Exhibit 2,  
9 and Page 3? Again, it's the old records  
10 submitted. And, under the entry for "1985", in  
11 the middle of the page there, it has the "8-inch  
12 water main" at "4,450 linear feet", I believe.

13 When I questioned the Company, they  
14 said that the section of the pipe that ruptured  
15 on Easter of last year is not included in that  
16 4,450 linear feet. Is it your professional  
17 opinion that the rupture did occur within those  
18 4,450 linear feet?

19 A Yes. I believe that 4,450 intends to describe  
20 the entire 8-inch main from the entrance to Mount  
21 Washington Place, all the way to the Hotel. So,  
22 yes.

23 Q Okay. Thank you for that. And, in your  
24 examination and this record, were you able to

[WITNESS: Brogan]

1           definitively determine where that 4,450, or, as  
2           Mr. Mueller just referenced, the other exhibit,  
3           Exhibit 25, conclusively where that footage lies  
4           on these maps?

5   A       I can't. I cannot explain why there appears to  
6           be some extra footage.

7   Q       And, again, in summary, for your position, is  
8           that this -- the length of pipe that ruptured on  
9           Easter is considered a main extension, not a  
10          service line, correct?

11   A       That's correct.

12   Q       Okay. And, so, by definition of their tariff, if  
13          we were to read the tariff, we would go to the  
14          section regarding, in your opinion, go to the  
15          section regarding "Main Extensions" to determine  
16          ownership, and not the section regarding "Service  
17          Lines" to determine ownership?

18   A       Correct.

19                       MR. TUOMALA: Okay. I don't have any  
20                       further questions, Madam Chairwoman. Thank you,  
21                       Mr. Brogan.

22                       WITNESS BROGAN: You're welcome.

23                       CHAIRWOMAN MARTIN: All right.

24                       Commissioner Bailey.

[WITNESS: Brogan]

1 CMSR. BAILEY: Thank you. I just have  
2 a couple of clarifying questions. Good morning,  
3 Mr. Brogan.

4 WITNESS BROGAN: Good afternoon.

5 BY CMSR. BAILEY:

6 Q Can you look at Exhibit 29 please? And you're  
7 looking at a paper copy, and I can blow it up  
8 with electronic copy. And it looks like, along  
9 Base Road, right before the yellow line in  
10 question, it shows "8-inch PVC" and "12-inch  
11 ductile iron". Do you see that?

12 A Yes.

13 Q Can you explain that to me? Are there two lines  
14 there?

15 A It's my understanding the 12-inch ductile iron  
16 may or may not actually exist. It's drawn up on  
17 some plans. I think Horizons Engineering told us  
18 at one point that they're not sure it's actually  
19 there. But I think it's unrelated to the Hotel.

20 Q Okay. And it's not a sewer line, right?

21 A Correct.

22 Q Okay. It's just extraneous information?

23 A Yes. It's a possible water main that might be  
24 there.

[WITNESS: Brogan]

1 Q If it's there, it might be there, is it not used?

2 A If it is there, I think it's just a dead-end.

3 Yes. I don't believe there are any customers

4 further down Base Road.

5 Q Okay. But there's no controversy that the water

6 that's coming through to the Hotel is being fed

7 through the 8-inch PVC pipe line on Base Road

8 there?

9 A I believe that's correct.

10 Q Okay. And, so, that green line that says "8-inch

11 PVC" is actually PVC?

12 A The only knowledge I have of what the material

13 actually is is from the Easter main break on

14 Hotel property further down this pipe. It would

15 make total sense to me that the entire main, and

16 I think it was laid in one shot, I would suspect

17 the whole thing is PVC, but I don't know that.

18 Q Okay. Do you know who laid it?

19 A I do not.

20 Q Do you know whether it was the water company or

21 an affiliate of the water company or the Hotel?

22 A All I can think back to is the 1980s engineering

23 reports that -- like state agencies, were

24 communicating with Rosebrook Water Company, that

[WITNESS: Brogan]

1 owned both the Hotel system and this Rosebrook  
2 system, in -- you know, and Rosebrook Water  
3 Company, I think, anticipated doing the  
4 interconnection. That's all I have to go on.

5 Q Okay. Can we look at Exhibit 18?

6 A Yes.

7 Q Okay. If the blue and the red lines were  
8 actually service lines, would the Company be  
9 prevented from using those service lines to --

10 *[Court reporter interruption due to*  
11 *indecipherable audio.]*

12 BY CMSR. BAILEY:

13 Q If the blue and the red lines were service lines,  
14 and not mains, would the water utility be  
15 prevented from that future looping to the 16-inch  
16 Fairway main?

17 A I think it would, at least without some kind of  
18 agreement up front between the water company and  
19 the owner of the service line -- the "service  
20 lines".

21 CMSR. BAILEY: Okay. All right. Thank  
22 you. That's all I have.

23 WITNESS BROGAN: Thank you.

24 CHAIRWOMAN MARTIN: All right.

[WITNESS: Brogan]

1 BY CHAIRWOMAN MARTIN:

2 Q Mr. Brogan, you testified earlier in response to  
3 a question that the place or the pipe that broke  
4 was a "tapping saddle". Can you explain what  
5 that is?

6 A It's a -- So, you put something, or you're  
7 talking about a plastic water main, right, PVC,  
8 so you put something around it, so that you can  
9 then drill a hole into the side and have a small  
10 diameter service line coming out. So, the saddle  
11 is the part that goes around the water main  
12 itself. It just strengthens it, so you can tap  
13 in with no trouble.

14 Q Okay. Thank you. On Day 1, in your testimony,  
15 you stated that, in reference to the looping, the  
16 potential looping, "I know from my time at the  
17 Commission that the issue came up from time to  
18 time. And I could point you to a 1995 rate case,  
19 correspondence and so forth."

20 Can you speak specifically to that, the  
21 location of that, or of anything else that  
22 establishes looping was a consideration by  
23 Rosebrook at the time? Specifically?

24 A I think I may be getting questions from my

[WITNESS: Brogan]

1 attorney on the document from 1995. So, I don't  
2 know if you want me to address it now or wait  
3 until he does?

4 Q If you have the information available now, I  
5 would love to hear it.

6 A So, I'm looking at some material from DR 95-304,  
7 Rosebrook Water Company. And, well, let's see.  
8 In particular, right now I'm looking at a letter  
9 dated October 28th, 1996, from Robert Satter,  
10 President of Rosebrook Water Company, to the  
11 Commission. And there's a section on Page 3 of  
12 his letter addressing looping.

13 Now, it says, in part, "We agree that  
14 looping, particularly to the eastern section of  
15 the Mount Washington Hotel, would be a  
16 significant benefit. Unfortunately, this loop  
17 would probably cost \$50,000 or more. As you  
18 know, we" -- I don't know how much you want, I  
19 guess I can keep reading: "As you know, we asked  
20 the Hotel to consider making a contribution to  
21 this effort but never received a response." And  
22 it goes on. But looping was clearly a  
23 consideration back then.

24 Q Okay. Can you tell me again who the author of

[WITNESS: Brogan]

1 that letter was and who he was affiliated with?

2 A It was Robert Satter, S-a-t-t-e-r. And he was  
3 the President of Rosebrook Water Company at the  
4 time.

5 Q Okay.

6 A And there's -- I have -- I'm looking at a second  
7 letter, well, I guess it's only a few weeks  
8 earlier, so maybe it's not that relevant, that  
9 also addresses looping.

10 I'm sorry, yes. Okay. So, the second  
11 letter is October 8 --

12 *[Court reporter interruption due to*  
13 *indecipherable audio.]*

14 **CONTINUED BY THE WITNESS:**

15 A Yes. It was October 8th, 1996.

16 BY CHAIRWOMAN MARTIN:

17 Q And, Mr. Brogan, was that filed in the docket you  
18 referenced before, the DR 95-304?

19 A I believe it was filed -- oh, yes. It's stamped  
20 by the Commission on "October 9th, 1996" in that  
21 docket.

22 Q Go ahead. Thank you.

23 A So, this is from a member of Commission Staff to  
24 Mr. Satter. And, on Page 2, Paragraph --

[WITNESS: Brogan]

1           numbered Paragraph 4, "Looping", says "System  
2           looping would clearly benefit the system. In  
3           addition to the suggested looping to the Hotel,  
4           the company should evaluate looping --  
5           additional looping possibilities such as a second  
6           feed into the eastern section of the Mount  
7           Washington Place development or a tie to the  
8           Recreation Center and back toward the well. Such  
9           looping could provide a major improvement to  
10          system performance."

11   Q       Okay. Anything else?

12   A       No. I think that's it.

13   Q       Okay. On the "curb stop" and "shut-off valve",  
14           are those words interchangeable, in your opinion?

15   A       In my opinion, practically speaking, they are. I  
16           mean, a curb stop, ideally, is at the curb, and  
17           that is the water company industry convention.  
18           It's where you would like to have the exterior  
19           shut-off. But, in many cases, that's just not  
20           what happens.

21   Q       Okay. Several times in your testimony, when you  
22           were describing the pictures of the piping coming  
23           into the building, you corrected yourself when  
24           you said "main", and then you corrected to say

[WITNESS: Brogan]

1 "service line". Can you describe the difference  
2 between the "service line" and the "main"?

3 A Yes. The service line, especially in that area,  
4 would be the smaller line coming off of the main  
5 and running to the building. So, a short,  
6 typically, a smaller diameter line off of the  
7 water main itself. And, so, when we were looking  
8 at the map of the eastern -- sorry, the western  
9 portion of the system, the service lines are  
10 not -- I don't think were shown on that at all,  
11 we were just looking at the water mains. The  
12 service lines would run between those mains and  
13 each building.

14 Q You testified that the diameter of the service  
15 line and the main was the same at that point of  
16 entry into the Hotel, is that right?

17 A At the point of?

18 Q Entry into the main Hotel?

19 A Yes. Correct.

20 Q Have you, in your professional experience, ever  
21 seen a service line that is the same diameter as  
22 the main?

23 A I'm not sure I can remember a specific offhand.  
24 But, I mean, there's another example right at

[WITNESS: Brogan]

1           Bretton Arms, next door here, where they're both  
2           6-inch. So, I think -- I don't think it's that  
3           odd.

4   Q       I was just wondering if you have seen at any  
5           other project or property than at the Bretton  
6           Arms or Mount Washington Hotel property?

7   A       I, typically, in my career at the Commission,  
8           didn't get into quite that level of detail. So,  
9           I probably am unable to remember specifics like  
10          that and give a specific example.

11   Q       Okay. Fair enough.

12   A       I'm also certain, for example, in the Pennichuck  
13          system in Nashua, there are cases like that.

14                   CHAIRWOMAN MARTIN: All right. Thank  
15          you. That's all my questions.

16                   Attorney Getz.

17                   MR. GETZ: Thank you, Madam Chair. I  
18          think, at this point, I only have a couple  
19          remaining.

20                                   **REDIRECT EXAMINATION**

21   BY MR. GETZ:

22   Q       So, Mr. Brogan, if you could turn to Exhibit 23,  
23          which is the -- I believe it's the As-Built Plans  
24          in Docket 89-031?

[WITNESS: Brogan]

1 A Yes.

2 Q So, in reference to the legend in the bottom  
3 right-hand corner?

4 A Yes.

5 Q So, it says "As-Built Utilities Plan reference  
6 date 9/23/88". Then, below it, it says "Bretton  
7 Woods Master Plan, Bretton Woods, New Hampshire  
8 for the Satter Companies of New England." Do you  
9 see that?

10 A Yes.

11 Q So, are you aware that, in 1988, in Docket  
12 88-101, that the Satter Companies acquired the  
13 capital stock of the Rosebrook Water Company?  
14 That was in --

15 A Yes. That sounds right. I'm not sure I remember  
16 those details. But I know Mr. Satter was heavily  
17 involved.

18 Q So, are you aware that, in addition to acquiring  
19 the Rosebrook Water Company in Docket DE 88-101,  
20 that, in Docket DS 88-102, regarding Resort Waste  
21 Services, Inc., that the Satter Company had  
22 succeeded to all the rights and responsibility as  
23 the capacity control member of the regulated  
24 sewer utility referred to as "Resort Waste

[WITNESS: Brogan]

1 Services, Inc."?

2 A That sounds correct also.

3 Q Now, at one point, Ms. Brown asked you about your  
4 testimony about the line, the 8-inch line, going  
5 straight into the Hotel. Can you clarify what  
6 you meant by the "8-inch line going straight into  
7 the Hotel", and whether that -- whether or not  
8 that means there is a exterior shut-off valve  
9 outside of the Hotel?

10 A Yes. I think I covered that earlier. But, you  
11 know, it goes straight to the exterior shut-off  
12 and to outside the building from that shut-off,  
13 then it goes the rest of the way into the Hotel.

14 Q And, with respect to the 8-inch main extension  
15 that serves the Hotel, do you have an opinion on  
16 the size of that main extension relative to the  
17 water load taken by the Hotel, the capacity of  
18 water needed to serve the Hotel?

19 A I'm almost sure the Hotel needs the whole 8-inch  
20 diameter. I mean, it's a large building, with a  
21 lot of sprinkler heads, and a lot of domestic  
22 use.

23 MR. GETZ: Madam Chair, that's all the  
24 questions I have.

[WITNESS: Brogan]

1 CHAIRWOMAN MARTIN: All right. Thank  
2 you. Any recross?

3 MS. BROWN: If I could?

4 CHAIRWOMAN MARTIN: Just a minute. Mr.  
5 Patnaude, did you have something?

6 *[Brief off-the-record comment by the*  
7 *Court Reporter.]*

8 CHAIRWOMAN MARTIN: Thank you.  
9 Attorney Brown.

10 **REXCROSS-EXAMINATION**

11 BY MS. BROWN:

12 Q Mr. Brogan, in the letter from Mr. Satter  
13 regarding the looping, and Mr. Satter being a  
14 spokesperson for the water company, is it your  
15 memory that Mr. Satter was heavily involved in  
16 the ownership and development of the Bretton  
17 Woods community, the Bretton Woods resort?

18 A I think so. There were a number of key players,  
19 all heavily involved, and it's hard to remember  
20 who had what positions. But, generally, yes.

21 Q So, Mr. Satter wore multiple hats during the time  
22 he was contemplating the looping, would that be  
23 fair to say?

24 MR. GETZ: Well, Madam Chair, if we

[WITNESS: Brogan]

1           could clarify, you know, there was reference to  
2           "resort", because I think that's also created  
3           some confusion, at least on my part in the past,  
4           when people are referring to "resort", do they  
5           mean to include the Hotel or not?

6                     MS. BROWN:  When I'm referring to the  
7           "resort", I'm referring to the Bretton Woods  
8           development, including the Hotel campus.

9                     CHAIRWOMAN MARTIN:  Does that  
10          clarification help, Attorney Getz?

11                    MR. GETZ:  It does.  But I think it  
12          would help for the record, it's my understanding  
13          at least, that Mr. Satter did not have an  
14          ownership interest in the Hotel.

15                    MS. BROWN:  I'd like Mr. Brogan to  
16          testify on his knowledge of the involvement of  
17          Mr. Satter, while Mr. Brogan was at the  
18          Commission, and how extensive Mr. Satter's  
19          involvement was with both the water utility and  
20          other developments in that Hotel/Resort area.

21                    CHAIRWOMAN MARTIN:  Mr. Brogan, do you  
22          have the question?

23                    WITNESS BROGAN:  I have the question.

24                    CHAIRWOMAN MARTIN:  Great.

[WITNESS: Brogan]

1 **BY THE WITNESS:**

2 A It was a long time ago. I think he was, you  
3 know, along with others, heavily involved. I  
4 don't remember details.

5 BY MS. BROWN:

6 Q I didn't hear the last part?

7 A I don't remember detail.

8 Q You don't remember that he created the sewer  
9 company?

10 A Well, I think we already mentioned that he was  
11 involved in both water and sewer. But you're  
12 asking about developable land, I think, --

13 Q Sure.

14 A -- that occurred.

15 Q Sure. So, are you aware that, in 1989, Mr.  
16 Satter had an ownership interest in the Mount  
17 Washington Hotel?

18 A That seems to ring a bell.

19 Q Okay.

20 A He was one of several key players reviving the  
21 Hotel back then.

22 Q And, so, getting back to my original question of,  
23 when you were talking about the looping project  
24 and who was behind that, was Mr. Satter, when he

[WITNESS: Brogan]

1 was representing the water company at the time,  
2 could his view of the looping also include his  
3 considerations of his other development  
4 interests, including as owner of the Hotel or  
5 former owner of the Hotel?

6 A His own could have. But I think there was a  
7 Staff concern also.

8 Q And that looping has not been proposed by  
9 Horizons in its pressure reduction project, are  
10 you aware of that?

11 A That particular looping has not been, correct.  
12 And, if I could, can I back up to the last  
13 question? Can't remember if I read this part.  
14 But Satter -- Mr. Satter had asked the Hotel for  
15 a contribution to do the looping, and the Hotel  
16 didn't reply. So, I don't think you can say that  
17 he was asking on behalf of the Hotel.

18 Q And what year was that, Mr. Brogan, again?

19 A 1996.

20 Q So, this that would have been -- '96, would you  
21 agree, would be a few years after he was  
22 developing the Hotel, in 1989?

23 A Yeah. I mean, the looping, my point on the  
24 looping was that it had been an issue over the

1 years, and I think that's why this document came  
2 up.

3 MS. BROWN: Okay. All right. And I  
4 think that's all for the issues. I appreciate  
5 the ability to recross on this new issue that  
6 came up on looping. Thank you.

7 CHAIRWOMAN MARTIN: You're welcome.  
8 Anybody else?

9 *[No verbal response.]*

10 CHAIRWOMAN MARTIN: Okay. Seeing no  
11 one.

12 Do we have any other witnesses or are  
13 we done with all witnesses, Attorney Getz?

14 MR. GETZ: That's all for Omni, Madam  
15 Chair.

16 CHAIRWOMAN MARTIN: All right. And,  
17 so, my understanding is we're going to take legal  
18 argument and closings together from the parties.  
19 But that the Commission may ask questions during  
20 the legal argument.

21 Is that correct? Attorney Tuomala, do  
22 I have that right?

23 MR. TUOMALA: I believe, back when I  
24 circulated the proposed schedule with the

1 parties, we discussed a closing combined with the  
2 legal argument as you had stated. But Staff had  
3 suggested that we might separate the two, so that  
4 you could ask questions of the legal argument  
5 before parties presented.

6 I would leave it to you, Madam  
7 Chairwoman, how you would like to proceed.

8 CHAIRWOMAN MARTIN: Okay. I think  
9 we'll just take both at the same time, and  
10 Commissioner Bailey and I can ask questions of  
11 each party as you go.

12 I do need to address the exhibits. Are  
13 there any objections to admission of all 33  
14 exhibits, with the one that was replaced, I  
15 believe was Exhibit 33 was replaced by agreement  
16 during the hearing?

17 MS. BROWN: The only exception is that  
18 Abenaki did not use Exhibit 3, because we found a  
19 error in it, and we offered the information via  
20 testimony instead.

21 So, that's the only exhibit that I'm  
22 aware of that doesn't need to come in.

23 CHAIRWOMAN MARTIN: Anything from any  
24 other party related to the exhibits?

1 MR. GETZ: No, Madam Chair.

2 CHAIRWOMAN MARTIN: Okay. Then, we  
3 will admit -- strike ID on Exhibits 1, 2, and 4  
4 through 33 and admit them as full exhibits. And  
5 we will not admit Exhibit 3 for the reasons just  
6 stated.

7 Okay. Mr. Mueller, would you like to  
8 go first with your legal argument and closing?

9 MR. MUELLER: Sure. Thank you, Madam  
10 Chair.

11 I'd like to refer to Exhibit 2 in my  
12 closing, Pages 3 and 4. As you can see on Page  
13 4, the total of what is on this exhibit, which is  
14 supposed to be the continuing property records,  
15 is "457,134". If you go back to Page 3, the  
16 first three entries on that exhibit are \$216,000,  
17 38,000, and 46,000, summing up to a total of  
18 about \$301,000.

19 So, the first three entries in this  
20 exhibit, ending in 1984, represent 66 percent of  
21 the dollars on this schedule. And there are no  
22 further entries on this exhibit until you get to  
23 1994, 1995, and 2000. After the 2000 entry,  
24 there are years there listing we'll say the

1 Nordic Center, Dartmouth Ridge, Mount Madison,  
2 Presidential Views, and Dartmouth Ridge, all of  
3 which are condominium associations, excluding the  
4 Nordic Center. They're all condo associations  
5 underneath the Bretton Woods Property Owners'  
6 umbrella.

7 And I can assure the Commission that  
8 all of these associations were built around that  
9 time. And just because there's no dollars  
10 associated with those associations doesn't mean  
11 that those pipes aren't owned by Abenaki.

12 And I call into my conclusion Abenaki's  
13 own testimony that they, just going back to my  
14 notes, that they certainly own all the pipes in  
15 the associations up to the curb stop. That was  
16 in Mr. Gallo's testimony back on September 28th.  
17 So, they own those pipes. And just because  
18 there's no dollar values associated with those  
19 years and those condominium associations doesn't  
20 mean that they don't own the pipes, which they  
21 have used, to say that they don't own the 1985  
22 Mount Washington Hotel and Bretton Arms pipes.

23 That's all I had in conclusion. Thank  
24 you.

1                   CHAIRWOMAN MARTIN: All right. Thank  
2                   you.

3                   Mr. Tuomala.

4                   MR. TUOMALA: Thank you, Madam  
5                   Chairwoman.

6                   I'm going to address the legal  
7                   arguments as directed by the secretarial letter.  
8                   There were two subject matters to be discussed,  
9                   which were the burden of proof and the  
10                  interpretation of the tariffs. And I only wanted  
11                  to submit some information on the record for  
12                  completeness.

13                  Regarding the burden of proof, I just  
14                  would like to direct the Commission's attention  
15                  to Order 23,744. That's the Wilton Telephone  
16                  Company and Hollis Telephone Company, from  
17                  July 26 of 2001, which had a lengthy discussion  
18                  regarding the burden of proof. And it had  
19                  mentioned, "In proceedings, such as this...result  
20                  of a complaint under 365:4", and speaking about  
21                  "the [initial] burden is on the complainant or  
22                  the Commission, through its Staff", and this is  
23                  on Page 22, "to establish the basis for the  
24                  complaint and an initial demonstration of

1 non-compliance or violation of an order, rule or  
2 statutory requirement", continuing on Page 23.  
3 It particularly says "Once this affirmative case  
4 has been made, the ultimate burden of persuasion  
5 on the subject matter of the complaint or  
6 investigation is on the public utility."

7 So, in Staff's investigation regarding  
8 the burden of proof, Staff feels that this is on  
9 point, and should be noted at least in the  
10 Commission's deliberations regarding the burden  
11 of proof.

12 As far as tariff interpretation, --

13 CHAIRWOMAN MARTIN: Mr. Tuomala, can  
14 you just say the order number again? I  
15 apologize.

16 MR. TUOMALA: Oh. I'm sorry, Madam  
17 Chairwoman. It's Order Number 23,744, Wilton  
18 Telephone Company and Hollis Telephone Company.

19 CHAIRWOMAN MARTIN: Thank you.

20 MR. TUOMALA: Regarding tariff  
21 interpretation, I just -- I would like to direct  
22 the Commission's attention to the public --  
23 excuse me -- to the Pennichuck Water Works  
24 Supreme Court decision from 1980, and I can give

1           you a citation in a minute. It has been well  
2           cited through many dockets. And it discusses the  
3           retroactive -- retroactive rates, and how tariffs  
4           apply to customers is not only a contract, but  
5           has -- tariffs have the force and effect of law.  
6           While that case was not discussing tariff  
7           implementation regarding the interpretation of  
8           service lines or main extensions, as we're  
9           discussing today, it did touch upon  
10          retroactivity, and the possible violation of the  
11          contracts clause of the United States  
12          Constitution and the New Hampshire State  
13          Constitution.

14                        So, I would argue that tariff  
15          interpretations cannot be retroactive. Meaning  
16          that, if there is an act in question, and in this  
17          case it would be 1985, I would argue, as Staff,  
18          that the tariff in place at that time controls,  
19          not the tariff that Abenaki has today. And I  
20          would draw that, again, from the conclusion from  
21          the Pennichuck Water Works case from 1980, which  
22          is 120 NH 562, and that's from September 10th of  
23          1980.

24                        So, overall, Staff's position would be,

1 in matters of tariff interpretation, that you  
2 cannot retroactively change property ownership  
3 with a future tariff. It would have to be  
4 interpreted with the tariff instituted at that  
5 time.

6 And that's all that I have for the  
7 legal arguments regarding those two topics. And  
8 I would like to stop at this time.

9 Thank you, Madam Chairwoman.

10 CHAIRWOMAN MARTIN: Thank you.  
11 Commissioner Bailey, did you have any questions  
12 related to that?

13 MS. BROWN: Madam Chair?

14 CHAIRWOMAN MARTIN: Yes.

15 MS. BROWN: It was my understanding  
16 that we're going to combine them. And I  
17 understand that Attorney Tuomala has indicated  
18 that he's opined on burden of proof, opined on  
19 tariff interpretation. But it appears he's not  
20 going forward with his full closing. I've got  
21 all of mine wrapped up into one closing.

22 And, so, procedurally, I'm just, you  
23 know, having expected to go last for the burden  
24 of persuasion, you know, --

1                   CHAIRWOMAN MARTIN: That's a fair  
2 question. It was my understanding Attorney  
3 Tuomala to be done with his argument, both  
4 closing and legal.

5                   Is that correct, Attorney Tuomala, or  
6 are you planning to speak again?

7                   MR. TUOMALA: You're correct, Madam  
8 Chairwoman. Staff was only going to elicit some  
9 information regarding the two legal arguments  
10 that were required by the secretarial letter.

11                   As far as a firm closing position,  
12 Staff leaves it open to the Commission, based on  
13 the record. I have nothing further. I will not  
14 be making a closing statement after this.

15                   MS. BROWN: Thank you for that  
16 clarification.

17                   CHAIRWOMAN MARTIN: Commissioner  
18 Bailey.

19                   CMSR. BAILEY: Well, I think my  
20 question was probably one that Attorney Tuomala  
21 then is not planning to answer, and that is what  
22 Staff's interpretation of the 1985 tariff is?  
23 And you're leaving that to the parties to --

24                   MR. TUOMALA: Well, I think that

1           what -- Staff's position would be that, on the  
2           record, it appears that the pipe in question was  
3           laid in 1985. And there's only the first tariff  
4           that would cover that time period.

5                        So, we have a -- my understanding of  
6           the parties is that Omni views it as a main  
7           extension. So, if the Commission determines that  
8           "yes, it is a main extension based on the facts  
9           in the record", then you would read the tariff  
10          and see if it has -- it complies as a main  
11          extension and determine that ownership.

12                       If the Commission, in fact, feels that  
13          the facts on the record dictate that this is a  
14          service line extension -- excuse me -- a service  
15          line, then, again, you would just refer back to  
16          that original tariff, and I don't have the pages  
17          in front of me, excuse me. But, in the exhibit,  
18          I believe it's 20, that has all of Abenaki's  
19          prior tariffs, Staff's position would be that it  
20          would all have to be read through the first  
21          tariff, which was instituted in the '70s.

22                       CMSR. BAILEY: Okay. Thank you.

23                       CHAIRWOMAN MARTIN: Okay. I don't have  
24          any other questions for you. Thank you.

1 Attorney Getz.

2 MR. GETZ: Thank you, Madam Chair. I  
3 had set up what I was going to say by addressing  
4 first the legal issues about burden of proof,  
5 then moving into the legal issues about how to  
6 interpret the tariff, and then my summation or  
7 closing statement.

8 So, it takes me a lot longer to get to  
9 my conclusion about burden of proof than it took  
10 Mr. Tuomala, who I do agree with. But that's  
11 where I would begin, and I would be happy to take  
12 questions all along as you like.

13 CHAIRWOMAN MARTIN: Commissioner  
14 Bailey, if you have questions as the parties go  
15 through, please feel free to jump in.

16 MR. GETZ: So, beginning with burden of  
17 proof, Omni addressed burden of proof at Page 6  
18 of its July 14 Memorandum of Law, pointing to RSA  
19 Chapter 365 and Docket DE 01-023, the *Guillemette*  
20 case, as to why Abenaki should bear the burden of  
21 proving that it is not responsible for the repair  
22 of the water main.

23 The structure of RSA Chapter 365, as it  
24 applies to complaints and investigations,

1 Sections 1 through 7, reflects the Legislature's  
2 decision to treat complaint proceedings  
3 differently from other proceedings. While in  
4 other proceedings before the Commission, it may  
5 normally be the case that the party filing a  
6 petition bears the burden of going forward and  
7 the burden of persuasion, the Legislature created  
8 a special multi-step process for complaints,  
9 which recognizes specific roles for, and the very  
10 different standing of, the complainant, most  
11 likely a customer, the regulated utility, and the  
12 Commission. The process, moreover, supersedes  
13 the normal case.

14 Pursuant to RSA 365:1, any person  
15 making a complaint, again, most likely a  
16 customer, against a public utility, must put it  
17 in writing and file it with the Commission.

18 Pursuant to RSA 365:2, the Commission  
19 then forwards the complaint to the public  
20 utility, requiring that the matters complained of  
21 be satisfied or the charges be answered.

22 Pursuant to 365:4, if the charges are  
23 not satisfied, and there are reasonable grounds  
24 for the complaint, the Commission shall

1 investigate.

2 In its December 2019 Order of Notice,  
3 the Commission concluded that Omni had met its  
4 burden of demonstrating reasonable grounds for  
5 its complaint, i.e., that Abenaki is responsible  
6 for repair of the water main break. Accordingly,  
7 the statute requires the Commission to  
8 investigate, in such manner and by such means as  
9 it shall deem proper, by Abenaki has denied  
10 responsibility for the repair.

11 As you can see, the structure of RSA  
12 365 puts the initial burden on the complainant or  
13 customer to go forward and show that there are  
14 reasonable grounds for its complaint, which is a  
15 lighter standard than the preponderance of the  
16 evidence. And I believe this is consistent with  
17 the order cited by Mr. Tuomala in the Wilton  
18 Telephone case, in DT 00-294 and 295.

19 Once the customer or complainant has  
20 shown reasonable grounds, then the burden shifts  
21 in two ways. It becomes the Commission's duty to  
22 investigate, and the utility's burden to show  
23 cause by a preponderance of the evidence, why the  
24 charges have not been satisfied. In essence, the

1 charges, in this instance, that Abenaki is  
2 responsible for the repair, are presumed correct  
3 at this juncture, and the utility must disprove  
4 them, i.e., Abenaki must prove by a preponderance  
5 of the evidence that it is not responsible.

6 As for the conduct of this particular  
7 proceeding, the Commission decided to open an  
8 adjudicative proceeding, beginning with a  
9 prehearing conference, which was followed by two  
10 rounds of discovery from Staff. However, no  
11 further action was taken by Staff in the nature  
12 of an investigation. Staff filed a report that  
13 the parties did not reach a settlement, and a  
14 secretarial letter issued a schedule for memos of  
15 law prior to hearing argument, which was set for  
16 August 5.

17 Omni moved to conduct the August 5  
18 hearing as a prehearing commission [conference?],  
19 but the Commission instead issued a secretarial  
20 letter on July 31, clarifying that the Commission  
21 would hear argument on tariff interpretation and  
22 burden of proof at the August 5 hearing. That  
23 hearing was postponed due to the unavailability  
24 of members from Abenaki because of the hurricane

1 in Connecticut. And another secretarial letter  
2 was subsequently issued, adding to oral argument  
3 the scheduling of a hearing in the form of an  
4 evidentiary hearing, which we just completed.

5 This process has not been a typical one  
6 for an adjudicative proceeding, and the process  
7 has not been entirely aligned with the rules in  
8 the Commission's Part 204.

9 But, ultimately, the approach the  
10 Commission has taken is consistent with 204.05,  
11 which contemplates the commencement of an  
12 adjudicative proceeding premised on the  
13 Commission's determination that further action  
14 against the utility might be warranted, which is  
15 similar to the Commission's determination that  
16 there are reasonable ground for the customers  
17 complaint.

18 In either case, the burden logically  
19 shifts to the utility to prove to the Commission  
20 that it is not responsible for the repair of the  
21 water main connecting the Hotel, because, in this  
22 case, our position that, one, it has the  
23 statutory burden under 374:1 to provide safe and  
24 adequate service; and, secondly, the utility is

1 the party that is most likely to have the  
2 relevant information within its control.

3 And that completes my remarks with  
4 respect to burden of proof. I'm happy to take  
5 questions on that or I can move into the tariff  
6 interpretation.

7 CHAIRWOMAN MARTIN: I have no questions  
8 on that. Commissioner Bailey doesn't either.

9 You can go ahead with your next  
10 argument.

11 MR. GETZ: So, with respect to  
12 interpretation of the tariff, the question here  
13 is whether, from Omni's perspective, Abenaki is  
14 exempt from responsibility from -- for the repair  
15 as a matter of tariff interpretation.

16 As explained by Mr. Brogan, Omni  
17 believes that (a) Abenaki's responsibility  
18 extends up to the exterior shut-off valve ten  
19 feet from the Hotel; and (b) that the 8-inch main  
20 extension running from Mount Washington Place to  
21 the exterior shut-off valve is a main extension  
22 and part of Abenaki's distribution system.

23 Key to understanding the tariff is the  
24 term "curb stop", which does not appear to be a

1 technical term of art. And, based on what we've  
2 heard from the Abenaki witnesses, a curb stop can  
3 be somewhere other than at the curb or property  
4 line. Mr. Vaughan uses "curb stop" in this loose  
5 fashion, and the Commission's rules, at Puc  
6 606.04, recognize that curb stops may not  
7 necessarily be at the property line.

8 Abenaki nevertheless takes the position  
9 that, as a matter of tariff interpretation,  
10 apparently, that it is not responsible for any  
11 repairs on Omni's property. It's theory appears  
12 to have changed over time, however, as I  
13 understood it originally, Abenaki was taking the  
14 position that the changes made in the acquisition  
15 docket, 16-448, relieves it of responsibility,  
16 and it makes that -- and that's laid out in the  
17 prehearing conference in this proceeding.

18 More recently, though, through its July  
19 supplemental data response, it argues that the  
20 Commission's decision in DW 11-117 settled the  
21 issue, which Omni does not believe is the case,  
22 and is addressed in its Reply Memorandum of Law.

23 Regardless, Abenaki's position,  
24 whatever the source, is that its responsibility

1 stops at the property line, in other words, the  
2 curb. However, the tariff, even if the changes  
3 made in 11-117 and 16-448 could be retroactively  
4 applied to the interconnection of the Hotel to  
5 the Rosebrook water system, they cannot be  
6 properly read to preclude Abenaki responsibility  
7 beyond a customer's property line.

8 To understand this position, I think  
9 it's helpful to go through the four versions of  
10 the tariffs set out in Exhibit 20, in particular  
11 to trace the progression of the section  
12 concerning installation, ownership, and  
13 maintenance of the service pipe, which Omni would  
14 contend that this is a main extension, not a  
15 service pipe. But, even if it were a service  
16 pipe, the utility has responsibility up to the  
17 exterior shut-off valve, and the location of the  
18 exterior shut-off valve is a question of fact,  
19 which Mr. Brogan, again, has testified to, and  
20 that it is ten feet from the Hotel.

21 In the Exhibit 20, Page 5, which is the  
22 first tariff, Bretton Woods Water Company, Tariff  
23 NHPUC 1 was issued in 1974, and it was adopted by  
24 Rosebrook Water Company in 1980 as Supplement

1           Number 1.

2                       The original tariff concerned  
3           residential customers only, as pointed out in  
4           Order Number 11,423, that was issued in May of  
5           1974. Although not labeled as such at the time,  
6           the section of Installation, Ownership, and  
7           Maintenance concerned single-family homes and  
8           condos.

9                       For homes, it said "All service pipes,  
10          including the shut-off within the limits of the  
11          highway, shall be owned and maintained by the  
12          company." But, as we've heard, not all curb  
13          stops or shut-offs are within the limits of the  
14          highway, sometimes they're on the property of the  
15          customer.

16                      For condos, it said "All such lines  
17          shall be installed, owned and maintained by the  
18          company to the point of each service connection  
19          for each unit taking service."

20                      Thus, from the beginning, there was a  
21          distinction by customer type as to where the line  
22          of responsibility would be drawn.

23                      With respect to "Tariff Number 2", as I  
24          call it, which is at Page 36, Rosebrook Water

1           Company Tariff NHPUC 1 was issued in 1997. That  
2           order noted that Rosebrook served 222 residential  
3           customers, 6 commercial customers, and that it  
4           had a special contract with the Hotel. The  
5           version of the tariff included headings for  
6           "Single Family Homes" and "condos", and changed  
7           the language somewhat. For homes, it said that  
8           "pipes up to the curb stop would be owned and  
9           maintained by the company." But, for condos, it  
10          said that "pipes up to the exterior shut-off  
11          valve would be owned and maintained by the  
12          company."

13                    The tariff did not address  
14                    installation, ownership and maintenance of  
15                    service pipes for commercial customers.

16                    Tariff Number 3 --

17                    CMSR. BAILEY: Mr. Getz?

18                    MR. GETZ: Yes.

19                    CMSR. BAILEY: Do you know anything  
20                    about the special contract between the Hotel and  
21                    the utility back in those days?

22                    MR. GETZ: I know there were a number  
23                    of special contracts. I know there are a number  
24                    of Commission orders addressing the contracts.

1           As I recall it, there may have been special  
2           contracts that were not filed initially with the  
3           Commission, but later they were, and then there  
4           was the expectation. And this is all in the  
5           early to mid '90s.

6                        CMSR. BAILEY: And, if there was a  
7           special contract in place, would the tariff  
8           apply?

9                        MR. GETZ: Not as to rates. The  
10          special contracts, as I understand them, are  
11          usually entered into to recognize a departure  
12          from the rate. And my understanding from some of  
13          these, what I've read, in some of these  
14          proceedings there was some testimony on behalf of  
15          Rosebrook of a concern that the Hotel or other  
16          customers could seek service elsewhere if the --  
17          could provide their own service, you know, and  
18          provide their own water, if the rates are too  
19          high.

20                       I don't know and can't recall what  
21          exactly else there was covered in the special  
22          contracts.

23                       CMSR. BAILEY: Okay. Seems like maybe  
24          we should look at them?

1           MR. GETZ: I would think it could be a  
2           good idea to look at them. I'm not sure that --  
3           yes, that would be a good idea.

4           CMSR. BAILEY: Okay. Thank you.

5           MR. GETZ: So, with respect to the  
6           third tariff, Page 46 of Exhibit 20, Rosebrook  
7           Water Company Tariff NHPUC 2 was issued in 2012,  
8           and approved in Docket DW 11-117. The new tariff  
9           added a section under "Installation, Ownership  
10          and Maintenance" for commercial customers. And,  
11          according to the Commission's order, clarified  
12          ownership and responsibility for single-family  
13          homes.

14          The notable change there was  
15          eliminating the reference to "curb stop", and  
16          instead referring to the "exterior shut-off  
17          valve". For all three types of customers, the  
18          tariff clarified that the Company was responsible  
19          "up to and including the exterior shut-off  
20          valve".

21          The tariff also added a set of  
22          definitions for the first time, which included  
23          "Exterior [*sic*] ('curb stop') - water shut off  
24          controlled by the Company". This is interesting.

1 Abenaki appears to read this definition to mean  
2 that the exterior shut-off can only be at the  
3 curb, meaning not on customer property. I read  
4 it differently. Pointing to "curb stop" as a  
5 colloquialism. A term used informally or  
6 casually, but not to be interpreted rigidly to  
7 mean that the exterior shut-off valve is and can  
8 only be at the curb. Whoever drafted the  
9 definition seemed to be adding his or her own air  
10 quotes to point out that "curb stop" should be  
11 understood informally.

12 And Mr. Vaughan's testimony in the  
13 acquisition docket is a perfect example of the  
14 informal use of "curb stop". There he used "curb  
15 stop" to mean the "exterior shut-off valve,  
16 wherever it might be located".

17 To, finally, Tariff Number 4, Page 64  
18 of Exhibit 20, Abenaki Water Company Tariff NHPUC  
19 1, issued in 2016, the tariff changes made by  
20 Abenaki in that case, which is referred to as  
21 "minor tariff amendments, including corresponding  
22 changes to all three types of customers under  
23 Installation, Ownership and Maintenance." Where  
24 all three provisions had previously said that the

1 Company was responsible "up to and including the  
2 exterior shut-off valve", tariff now says that  
3 the Company is responsible "from the main to the  
4 property line or common area, including the  
5 exterior shut-off valve".

6 It appears that Abenaki was trying to  
7 have no responsibility beyond the property line,  
8 but the new language, in my view, does not get  
9 them there, because there are cases where the  
10 exterior shut-off valve is beyond the property  
11 line, as Abenaki admits, and the language says it  
12 "includes the exterior shut-off valve".

13 Putting aside the issue of whether the  
14 language change can be applied retroactively,  
15 which Omni believes it can not, it is critical to  
16 understand what Abenaki is saying and why it is  
17 incorrect. In its two interpretations, Abenaki  
18 has pursued two variations on a theme, which both  
19 rely on interpreting "curb stop" or a "service  
20 pipe" to mean literally that the shut-off valve  
21 can only be at the curb or property line.

22 And the history of the tariff, and Mr.  
23 Vaughan's own words, demonstrate that the  
24 exterior shut-off valve is not necessarily at the

1 curb. And, in fact, for the Hotel, the exterior  
2 shut-off valve, as Mr. Brogan has testified, is  
3 ten feet from the Hotel. And, as the Chairwoman  
4 pointed out, "curb stop" and "exterior shut-off  
5 valve" appear to be used interchangeably and seem  
6 to mean the same thing. The problem is that,  
7 using "curb stop" in that way, tends to confuse  
8 the issue when it is taken literally to mean "at  
9 the curb or property line".

10 As I noted at the beginning, critical  
11 question is one of fact, in terms of "where the  
12 exterior shut-off valve is and where -- whether  
13 its controlled by the Company for the Hotel?"  
14 The evidence shows it's outside the Hotel, not in  
15 Base Road. Abenaki returns often to the idea of  
16 the typical utility demarcation, but "typical"  
17 does not mean "universal".

18 So, finally, under -- in Omni's view,  
19 under Abenaki's tariff, it is responsible for  
20 repair of the water main break that occurred last  
21 year, because it occurred between the main and  
22 the Hotel's exterior shut-off valve. And, in  
23 addition, because it is a main extension that the  
24 evidence shows is in the property records of the

1 Company.

2 CHAIRWOMAN MARTIN: Attorney Getz, I  
3 have a question.

4 MR. GETZ: Yes, ma'am.

5 CHAIRWOMAN MARTIN: In your original  
6 complaint, you attached a number of deeds to  
7 support the complaint, presumably to establish  
8 who is responsible for the pipe in question. Do  
9 you rely on any of those deeds for your argument  
10 or for your position?

11 MR. GETZ: No, Madam Chair. As I -- I  
12 addressed this issue in our Reply Memorandum of  
13 Law on July 28th. When viewing -- in putting  
14 together the complaint in July, it appeared on  
15 the face of those easement deeds that, from, in  
16 particular, the easement deed from GS Phoenix to  
17 Rosebrook, dated December 1996, along with the  
18 quitclaim deed from Institutional Investors, that  
19 appeared to grant Rosebrook all such rights and  
20 interests. And we disagreed with some certain  
21 characterizations made by Abenaki in its July 14  
22 Memo of Law.

23 But the further that we dug into the  
24 issue, recognizing that, you know, the complex

1 history of the transaction between the  
2 predecessors of Omni and Abenaki, we think that  
3 the only way to determine definitively what  
4 was -- what rights were transferred as part of  
5 those easements, you would need a complete title  
6 abstract to answer that question. And, you know,  
7 that was -- that's an effort, the timing of which  
8 and the cost of which Omni could not undertake.

9 So, to answer your question, we are not  
10 relying on the easements to establish -- the  
11 easements and deeds to establish Abenaki's  
12 responsibility. We're relying on the property  
13 records, the continuing property records in  
14 Exhibit 2, the As-Built Plans, in Docket 89-034,  
15 and Mr. Brogan's testimony as to the location of  
16 the exterior shut-off valve.

17 CHAIRWOMAN MARTIN: Okay. Thank you.

18 MR. GETZ: So, that completes what I  
19 was going to say about tariff interpretation.

20 I had a different view of how this was  
21 going to progress. So, I also have a summation  
22 or closing statement, if that's --

23 CHAIRWOMAN MARTIN: Yes. We'd welcome  
24 that now.

1           MR. GETZ: In Omni's view, the posture  
2           and the focus of this case goes to who is  
3           responsible for the repair of the break in the  
4           8-inch water main that occurred on Easter Sunday,  
5           the utility or the customer?

6           It is Omni's position that Abenaki is  
7           responsible for the repair on both of two  
8           separate grounds: One, because the tariff  
9           provides as much; and, two, because the water  
10          main is Rosebrook's property. And, in  
11          determining who is responsible for the repair, it  
12          is important to keep in mind the relative  
13          positions of Abenaki as a regulated public  
14          utility and Omni as a customer.

15          First and foremost, Abenaki has a  
16          statutory obligation pursuant to RSA 374. And,  
17          second, the difference between Abenaki, as the  
18          utility, and Omni, as a customer, plays out  
19          critically, in terms of the complaint procedures  
20          and burden of proof. I've already covered that.  
21          So, I won't go further into that.

22          The facts, as Omni understands them,  
23          are demonstrated by Mr. Brogan, who has provided  
24          expert testimony on the two critical issues

1 demonstrating Abenaki's responsibility. And,  
2 again, that goes to the location of the exterior  
3 shut-off valve, and the status of the 8-inch  
4 main, all the way from Mount Washington Place to  
5 the Hotel as a main extension.

6 At best, Abenaki has pointed out a  
7 couple of significant discrepancies, such as the  
8 8-inch line appears to be PVC, and not ductile  
9 iron. But it has failed, in our view, to  
10 provide by -- prove by a preponderance of the  
11 evidence that the section of the main from Base  
12 Road to the Hotel is not its property.

13 As for the tariff, again, we think that  
14 the reasonable interpretation under the tariff is  
15 that Abenaki is responsible up to the exterior  
16 shut-off valve. So, I won't go further into  
17 that.

18 And, again, we agree with Mr. Tuomala  
19 that the -- that the tariff cannot be applied  
20 prospectively, it can only -- or, it cannot be  
21 applied retroactively, it can only be applied  
22 prospectively.

23 For some additional context, I think  
24 it's helpful for this proceeding, it's important

1 to note that Omni only assumed ownership of the  
2 Mount Washington Hotel in 2015. They had no  
3 reason to believe that it was responsible for the  
4 maintenance and repair of the extensive network  
5 of Rosebrook water mains on its property, until  
6 such time as Abenaki refused to pay the bill from  
7 AB Excavating subsequent to the Easter Sunday  
8 water main break.

9 Abenaki tries to draw a distinction  
10 between their water mains on the west side of  
11 302, near the ski area, for which it acknowledges  
12 responsibility, and the water mains on the east  
13 side of 302, which it has taken for some reason  
14 to calling the "campus", for which it denies  
15 responsibility. But there's no valid  
16 distinction.

17 Mains on both sides of Route 302 appear  
18 in Rosebrook's property records, as seen in  
19 Exhibit 2, and they appear on Rosebrook Water  
20 Company's as-built plans that it filed to the  
21 Commission in Docket 89-034. And Abenaki is  
22 therefore responsible for all of those water  
23 mains.

24 Abenaki has also tried to make an issue

1 out about the Hotel and Rosebrook having had  
2 common ownership in the past. And that, as a  
3 result, it should somehow, I guess, excuse  
4 Abenaki from being responsible for the repair.

5 Based on a review of the Commission's  
6 orders, it's clear, however, that there has been  
7 no common ownership between the Hotel and  
8 Rosebrook since 2007. Prior to that time, it  
9 appears from the Commission's orders that  
10 Rosebrook and the Hotel were owned by MWH  
11 Preservation going back to 2000. Prior to that  
12 time, Rosebrook was owned by the Satter Companies  
13 beginning in 1988. And my understanding was that  
14 the Hotel was separately owned.

15 I first heard today, and I have not  
16 seen any documents to support this, but it  
17 appears that Ms. Brown was saying that, in 1989,  
18 Mr. Satter, while he was in an ownership position  
19 with respect to the Rosebrook Water Company,  
20 was -- had some ownership interest in the Hotel.  
21 But I just am not aware of that.

22 Ultimately, you know, there's no  
23 getting around the fact that Rosebrook has a  
24 convoluted history. And it is difficult, from

1 the Commission's records, in any event, to track  
2 the history of the relationship between the Hotel  
3 and Rosebrook over time.

4 But, for the Commission's present  
5 decision, the past relationships between the  
6 utility and the Hotel are just not relevant.  
7 What is relevant are the location of the exterior  
8 shut-off valve, and the fact that the  
9 Commission's records, in particular, the property  
10 records in Exhibit 2, provided by Abenaki in  
11 discovery, and the as-built plans in Exhibit 23,  
12 show that the water main, up to the exterior  
13 shut-off valve just outside the Hotel, is the  
14 property of Abenaki.

15 I'd like now to turn to addressing some  
16 of the testimony that was provided by the Abenaki  
17 witnesses at the prior hearing. And I'll begin  
18 with Ms. Oleson.

19 As I understand it, Ms. Oleson  
20 performed work for Rosebrook from 2007 to 2018,  
21 during which time she was an employee of BW  
22 Services, which had a management and service  
23 agreement with Rosebrook. At that time, the  
24 ownership of Rosebrook and the Hotel were

1 unrelated.

2           There seemed to be some confusion in  
3 her testimony about who she actually worked for  
4 or who signed her check, but it would not have  
5 been the Hotel. As I understood her testimony,  
6 her employer would have been BW Club or BW  
7 Service Company, which had a management services  
8 agreement with Rosebrook. So, she performed --  
9 so, she indirectly did work for Rosebrook, and  
10 some of the work that she did for Rosebrook would  
11 have been with respect to the Hotel, as a  
12 customer.

13           Now, I think there was also another  
14 separate management services agreement where,  
15 based on her expertise as an operator, where she  
16 may have, you know, checked the, you know, for  
17 environmental reasons, checked some of the water  
18 at the restaurants owned by the Hotel. But,  
19 again, she was not a Hotel employee.

20           Among other things, Ms. Oleson said  
21 that the curb stops are usually at the property  
22 line, and that it made sense to call the valves  
23 at Base Road "curb stops", because they were at  
24 the edge of the property. But she also

1           acknowledged that it was not always the case for  
2           Rosebrook that curb stops were at the property  
3           line.

4                        In addition, she stated that her  
5           position required her to check pump houses, read  
6           meters, exercise curb stops, and flush hydrants.  
7           With respect to the last item, she said that she  
8           flushed hydrants all over the property, including  
9           Hotel grounds.

10                      The question, I guess, for the  
11           Commission is "what, if anything, to make of Ms.  
12           Oleson's testimony?"

13                      From Omni's perspective, her testimony  
14           does not add anything to the Commission's  
15           investigation, insofar as it does not address the  
16           question of fact concerning the exterior of --  
17           the location of the exterior shut-off valve ten  
18           feet from the Hotel. Her testimony only affirms  
19           the general proposition that curb stops are  
20           "usually at the property line".

21                      Then, next I will turn on to Mr.  
22           Vaughan's testimony. The major focus of which  
23           appeared to be Exhibit 13, concerning the manner  
24           in which Abenaki calculated the purchase price

1 for Rosebrook, which, according to the Settlement  
2 Agreement in 16-448, was set at the net book  
3 value of the assets, plus a 10 percent premium.

4 Putting aside the question of why the  
5 previous owners shouldn't have gotten a premium  
6 above book, the important point for this  
7 proceeding is that the purpose of the document  
8 prepared by Mr. St. Cyr was to calculate the net  
9 book value of the Rosebrook assets to establish  
10 the purchase price. How Mr. St. Cyr calculated  
11 the purchase price does not prove what Abenaki  
12 owns or does not own.

13 While Mr. Vaughan agrees that the  
14 property records in Exhibit 2, which Abenaki  
15 supplied in discovery, is somewhat consistent  
16 with how property records are usually kept. He  
17 tries to disown them, saying that he thought  
18 somebody associated with the Hotel could have  
19 created them around 2013. As has already been  
20 pointed out, the relationship between the Hotel  
21 and Rosebrook after 2007 was utility and  
22 customer. So, it would make no sense that the  
23 property records would have been created by Omni.

24 Obviously, Abenaki found the property

1 records somewhere that it provided in discovery.  
2 Based on Mr. Vaughan's reference to "2013", it  
3 may be the case that these records are the ones  
4 that were provided by Rosebrook in Docket 12-306,  
5 which Staff may be in a position to confirm. In  
6 that case, Mr. Naylor filed a report on December  
7 23, 2013, saying that Rosebrook had submitted  
8 revised CPRs. And, again, this is another issue  
9 that Omni has addressed in its Reply Memorandum  
10 of Law on July 28th.

11 With respect to Mr. Gallo's testimony,  
12 he addressed several issues. The first of which  
13 involves a theory about the 8-inch water main to  
14 the Hotel having been built for \$1,800, which Mr.  
15 St. Cyr later corrected. And Mr. St. Cyr pointed  
16 out there was a -- some misunderstanding that  
17 confused a line built in '95 with the -- another  
18 line built and an investment made in '95 with the  
19 8-inch water main to the Hotel from '85.

20 Mr. Gallo also posed a theory about  
21 Abenaki being responsible for some properties not  
22 coming in through CIAC or purchased assets, but  
23 coming in through easements. To support this  
24 theory, he relied on Exhibit 11, which contains

1 articles of agreement for various homeowners  
2 associations. Such articles, however, do not  
3 grant easements or convey property to Rosebrook.  
4 They only relate to the powers of the  
5 association.

6 He also talks about the Hotel not  
7 having common areas, management service  
8 agreements, and the Hotel expansion, none of  
9 which are relevant to the issues to be decided by  
10 the Commission as part of its investigation.

11 Mr. Gallo did, however, say that he  
12 believed that the curb stops from Omni were  
13 located on Base Road. In support of this  
14 position, he says, among other things, that  
15 Abenaki does not maintain the valves near the  
16 Hotel, and that, if Abenaki -- or, that if Omni,  
17 excuse me, were successful in convincing the  
18 Commission that there were exterior shut-off  
19 valves on Omni's property, it would need to  
20 trespass on private property to get access for  
21 maintenance and repair.

22 With respect to the former argument  
23 about "not maintaining the valves", it forms a  
24 perfect tautology. In essence, "Abenaki is not

1 maintaining the valves, so it must not have any  
2 responsibility for maintaining them."

3 Not maintaining the valves proves  
4 nothing. To the contrary, it's Omni's position  
5 that Abenaki should be maintaining and should  
6 have been maintaining those valves all along.

7 As to the latter argument about  
8 "trespass", Section 18 of the Abenaki tariff  
9 plainly states that it "has the right of access  
10 as a condition of service to enter the premises  
11 of a customer to maintain and repair utility  
12 property."

13 Finally, it's understandable why  
14 Abenaki would want to have exterior shut-off  
15 valves at the property line. And Omni does not  
16 dispute that, in a perfect world, such might be  
17 the case, but that's not our world or this case.  
18 It is unfortunate that there appear to be no  
19 records explaining why Rosebrook did what it did  
20 over 30 years ago, when the 8-inch water main was  
21 built to connect the Hotel to the water system.  
22 But, certainly, the burden does not rest on Omni,  
23 as the customer, to produce such records or to  
24 prove what occurred over three decades ago. That

1           burden rests with the utility.

2                       The records that are available,  
3           however, show that Rosebrook determined to  
4           interconnect the Hotel to the water system, and  
5           that a main extension was built from the 16-inch  
6           line near Mount Washington Place, all along Base  
7           Road, crossing Base Road, and then up to the --  
8           and entering the property of the Hotel, and then  
9           to the exterior of the Hotel.

10                      In addition, based on the testimony of  
11           Mr. Brogan, the evidence indicates that  
12           Rosebrook, again, is responsible for the 8-inch  
13           water main on Omni's property, because that valve  
14           outside the Hotel is an exterior shut-off valve.  
15           As Mr. Brogan explained, in Exhibits 25 and 26,  
16           including his photographs of various customer  
17           accounts on Omni property, every one of those  
18           customer accounts has its own internal plumbing  
19           and shut-off capability. And there just is no  
20           reason why it would make sense that the customer  
21           would have inserted, on its own accord, these  
22           additional exterior shut-off valves.

23                      Lastly, Abenaki stepped into the shoes  
24           of Rosebrook's previous owners. The shoes may be

1           uncomfortable, and there may be gaps in the  
2           records that its predecessors have put together  
3           over time, but that's the state of play. They  
4           are now the records of Abenaki.

5                     The gaps in the record, and the fact  
6           that the continuing property records, in Exhibit  
7           2, do not have costs associated with them, do not  
8           absolve Abenaki of responsibility. And they  
9           cannot now just say to the Commission "Here,  
10          Exhibit 32, these are new continuing property  
11          records. Don't look at those records that were  
12          provided", apparently, "to the Commission in the  
13          2012 proceeding", and that then which it provided  
14          in discovery.

15                    So, that completes my summation of why  
16          Abenaki is responsible for the repair. Thank  
17          you, Madam Chair.

18                    CHAIRWOMAN MARTIN: Thank you for that.

19                    Commissioner Bailey, I just want to  
20          clarify on the "special contract" question you  
21          had. Did you intend to have a record request or  
22          the record left open related to that or just deal  
23          with it internally?

24                    CMSR. BAILEY: I would like to see the

1 special contracts. And it's possible that the  
2 Commission has those in its records. But it may  
3 be better for Abenaki to produce them, if they  
4 have them. But they may not have them in their  
5 records either.

6 CHAIRWOMAN MARTIN: Well, we could  
7 leave the record open for the parties to file  
8 copies of special contracts, any special  
9 contracts that they have. That way any party  
10 could file it.

11 CMSR. BAILEY: Maybe we can ask  
12 Attorney Tuomala to see if he can find them in  
13 the docket files that we have.

14 MR. GETZ: I can give references to at  
15 least two that I have docket numbers for, and are  
16 right at my fingertips, if you would like?

17 CMSR. BAILEY: That would be great.

18 MS. BROWN: Yes. And I've got them  
19 also in my Memo of Law, on Pages 2 and 3, with  
20 the special contract dockets.

21 CMSR. BAILEY: Okay.

22 CHAIRWOMAN MARTIN: Okay. Attorney  
23 Getz, why don't you give us those two, and then  
24 we can compare that with Attorney Brown's Memo of

1 Law.

2 MR. GETZ: The two I have right here  
3 are Docket DR 98-026, that was a 1998 special  
4 contract, and the -- it looks to be there was a  
5 major decision in 1996, that ended up in a tariff  
6 change, that appears to be a combined proceeding  
7 that included a special contract, I guess, in  
8 Docket -- well, Docket 95-304 and 96-069. And  
9 I'm quite certain there were dockets before that.  
10 But Attorney Brown may have more on that.

11 CHAIRWOMAN MARTIN: Attorney Tuomala.

12 MR. TUOMALA: Thank you, Madam Chair.  
13 I would just ask Attorney Getz, could you repeat  
14 the last two dockets? It got jumbled for me.

15 MR. GETZ: So, there was the combined  
16 proceedings 95-304 and 96-069. And there is also  
17 94-155, which was a one-year special contract.

18 CMSR. BAILEY: Does anybody have any  
19 idea when the Hotel began buying service out of  
20 the tariff?

21 Does anybody have an idea when the  
22 Hotel began buying service out of the tariff,  
23 when the last special contract ended?

24 MS. BROWN: I still didn't hear the

1 last part of your question. I apologize.

2 CHAIRWOMAN MARTIN: I think she asked,  
3 does anybody have any idea when they started  
4 buying service out of the tariff or were under  
5 the tariff that applied to them? What year that  
6 was?

7 MR. GETZ: The best I can tell is I see  
8 the order in the '98 case for a special contract.  
9 So, and that the earliest would be in '99 or 2000  
10 would be my surmise.

11 MS. BROWN: I can -- I know that there  
12 was an extension for five years, in DW 99-128, in  
13 Order 23,379, dated January 6, 2000. The  
14 Commission approved the special contract for a  
15 five-year period. So, that would have brought us  
16 to 2005.

17 But, if I can ask, who do you want  
18 responsible for pulling the actual special  
19 contracts?

20 CHAIRWOMAN MARTIN: Well, I think my  
21 thought was just to leave an opportunity for the  
22 parties to be able to file anything that they  
23 discover after, that the record could stay open  
24 for that.

1 MS. BROWN: Okay.

2 CHAIRWOMAN MARTIN: It sounds like we  
3 have a pretty comprehensive list at this point.  
4 I guess it still makes sense to have the ability  
5 to file anything related to that, and I would say  
6 by a week from today. So, any party can do that  
7 on their own.

8 MS. BROWN: Thank you.

9 CHAIRWOMAN MARTIN: Okay. And,  
10 Attorney Brown, your argument.

11 MS. BROWN: Yes. And I -- Okay.

12 CHAIRWOMAN MARTIN: Mr. Patnaude.

13 *[Court reporter interruption.]*

14 MS. BROWN: Okay. Thank you. Thank  
15 you, Commissioners, for your time in this  
16 complaint docket.

17 With respect to the burden of proof, I  
18 did touch upon that in my opening. And I've read  
19 the *Guillemette* case, I've read the *Wilton* case,  
20 and do not disagree with Attorney Tuomala and  
21 Attorney Getz's characterization that the  
22 complainant has the burden of persuasion to go  
23 forward first, and, obviously, in this case, the  
24 Commission has agreed that Omni met its burden.

1           And so, now, we are at the stage of battle of the  
2           facts, which preponderance of the evidence  
3           standard applies.

4                       And, with respect to the tariff  
5           interpretation, that is in the context of my  
6           closing argument, which I will now turn to.

7                       And it was interesting to hear Attorney  
8           Getz's characterization of the viewpoint of Omni  
9           that, you know, being new buyers, I think he said  
10          in 2015, that they had no idea that they owned  
11          the water line. And then, a year later, we've  
12          got Abenaki Water Company coming in, and having a  
13          history of running water utilities, and being  
14          also surprised at Omni's surprise that it thinks  
15          that -- that Omni thinks that Abenaki owns its  
16          water line.

17                      But that question of fact, of what was  
18          the practice before the parties, fueled why we  
19          hunted down Nancy Oleson, to see if we could get  
20          a employee's perspective, who was in the mix at  
21          the time, on how the operations happened as a  
22          matter of fact. And you -- and, in particular,  
23          prior to Abenaki's involvement, and you heard  
24          testimony from her on that.

1           Now, Omni has put forth a number of  
2 arguments relating to this 8-inch line, and how  
3 the 8-inch line on the resort campus or Hotel  
4 campus belongs to Rosebrook Water Company. And  
5 I'd like to address each one of those arguments.

6           But I'd also like to first put some  
7 structure around these arguments, because Abenaki  
8 is a regulated utility. And, in exchange for the  
9 opportunity to earn in a monopoly franchise, it  
10 is subject to rate regulation. And rate  
11 regulation addresses two constitutional  
12 considerations, which is customers subject to  
13 this monopoly can only be charged just and  
14 reasonable rates. But that the revenues from  
15 these just and reasonable rates must compensate  
16 the regulated utility's use of its private  
17 property for public benefit. If a utility's  
18 private property is put to public use without  
19 compensation, we all know that that raises a  
20 takings issue. The way that just compensation is  
21 meted out to a regulated utility is through a  
22 formula determining the revenue requirement for  
23 those just and reasonable rates to be based on.  
24 And in that formula is part of -- or, part of

1           that formula is rate base, which is plant. And  
2           to that plant, a rate of return is applied. And  
3           then, the revenue requirement has the operating  
4           expenses, depreciation expense, taxes.

5                        So, therefore, when Omni argues that a  
6           certain asset is owned by the water company, that  
7           it's on its books, that has a specific  
8           connotation. And, so, that's how we started  
9           looking at "is it on the books?"

10                      And, so, that is why, in direct  
11           examination, we painstakingly walked through what  
12           is on the books and records of the Company. Mr.  
13           Vaughan went through tediously what was in the  
14           purchase price, what Abenaki bought. Was it in  
15           CIAC? And then, Mr. Gallo also elaborated on  
16           "did any assets come in", which would otherwise  
17           be through the operations expense of the revenue  
18           requirement, "did they come in through operation  
19           of the tariff and the common areas that Abenaki  
20           is responsible to maintain?"

21                      Now, Omni started this proceeding  
22           arguing in its complaint, and I understand that  
23           Mr. Getz -- or, Attorney Getz just clarified  
24           this, Omni was arguing that the ownership

1 obligation arose through these easements  
2 evidencing Abenaki's obligations. Missing in  
3 that argument was that Abenaki owned the Hotel  
4 line pursuant to the deeds and easements.

5 And part of the -- and I realize I'm  
6 repeating a argument that I have just lately  
7 heard that Attorney Getz is withdrawing, but I  
8 think it's still important to continue with my  
9 assumption that he is basing Omni's support on  
10 these deeds, because they are in the record that  
11 we just admitted.

12 That Exhibit 16, Page 85, was the list  
13 of the purchased assets to Rosebrook. None of  
14 those deeds established that Abenaki owned the  
15 water line. And I've explained this in the Memo  
16 of Law, at Pages 11 and 12. But, just to  
17 summarize, with respect to the purchased asset,  
18 Deed Number 3, which is the two-page document in  
19 Exhibit 24, although it's a one-page document in  
20 Omni's complaint, it is dated "1996", which is  
21 after the 1985 date that the Hotel line was  
22 supposed to have been constructed. And that deed  
23 was for a 1987 Declaration of Covenants, again,  
24 this is after the 1985 line construction date

1           that's put forth.

2                         Furthermore, the covenants, the 1987  
3           covenants were for 58 residential condominiums at  
4           Mount Washington Place. The declarations talked  
5           about the future developments that may occur.  
6           And, obviously, with these deeds being after  
7           1985, they did not involve the Hotel campus.  
8           And, indeed, there was no mention of the Hotel  
9           line and infrastructure when these deeds were  
10          created, which we think is an important point.

11                         So, for those reasons, we do not see  
12          Exhibit 3 supporting Omni's argument.

13                         And, if we move down to -- oh, I'm  
14          sorry. Let me continue on with Exhibit 16, and  
15          Page 87, it talks about how the Satter Companies,  
16          and again, this is Bob Satter, gave an easement  
17          to the utility for Mount Washington Place. And  
18          that was the extent of the easement. Again,  
19          Mount Washington Place is a condominium  
20          development.

21                         It is telling also that, in this  
22          easement, there was -- other than Mount  
23          Washington Place, that was it. There was no  
24          other conveyance.

1           Now, with respect to the deeds that are  
2           at Number 5 and 6, those were conveyed by Bretton  
3           Woods Land Company and CNL Income Bretton Woods,  
4           LLC, and neither of those entities owned the  
5           Hotel parcels, as can be seen from the tax cards  
6           in Exhibit 12, and Exhibit 12, specifically at  
7           Pages 5 and 19.

8           During cross-examination, I tried to  
9           bring out that, with Mr. Brogan, that the deeds,  
10          Number 1 and 2, covered protective well radius.  
11          We'll have to just rely on my direct examination  
12          of Mr. Gallo, because he did explain, in his  
13          testimony, that the protective well radiuses are  
14          for the Omni property on the west of 302. So,  
15          with that, Deeds Number 5 and 6 do not apply to  
16          the Hotel line and cannot then be replied upon as  
17          justification as to ownership by Abenaki of the  
18          8-inch line on the Hotel property.

19          Then, with respect to Deed Number 4,  
20          that was, you know, this is the lawyer speaking,  
21          having read it, it appears to be a corrected deed  
22          of Number 1.

23          So, thank you for your patience while I  
24          dispensed with how the deeds in Omni's complaint

1 do not support that Abenaki owns the Hotel line.

2 And, to recap on the evidence that came  
3 in on that the Hotel line did not come in through  
4 the purchased assets, we walked the Commission  
5 through Exhibit 13, which was the purchase price  
6 calculation, compared it to the list of mains on  
7 Exhibit 2. Both of these documents contain --  
8 or, both of the assets -- or, the assets that are  
9 listed on both of these documents are categorized  
10 by the Uniform System of Accounts, which is  
11 required under the Commission's rules.

12 Now, Exhibit 2, as Omni notes in its  
13 memo, was created in 2013. Today, it argues it  
14 makes no sense that the Hotel was involved in the  
15 creation of the CPRs, because I think Attorney  
16 Getz referenced 2007, that the Hotel after that  
17 was -- or, the relationship was a utility and  
18 customer relationship. On that point, I would  
19 just direct the Commission to Exhibit 7, which  
20 had all of the management agreements between the  
21 water company and the Hotel. And the water  
22 company did not have employees at the time that  
23 the CPRs were created. So, it needed to rely on  
24 the employment -- or, management agreements. So,

1 the Hotel, depending on which hat the employee  
2 was wearing, was somewhat involved.

3 Now, I'd also like to remind the  
4 Commission that, in the Exhibit 13 with the  
5 purchased assets, many of the entries in  
6 Exhibit 2 did not make it into that document,  
7 because there were no dollar amounts associated  
8 with them. They did not get into plant, which  
9 was used for the purchase, and, as Mr. Vaughan  
10 testified, was also used for the revenue  
11 requirement in its rate case, DW 17-165.

12 Also that came out through direct  
13 examination of Mr. Vaughan was that there were no  
14 dollar entries in Exhibit 2 that were missed from  
15 Exhibit 13. Everything that had a dollar amount  
16 in it came in to the purchase price.

17 Abenaki also introduced Exhibit 32,  
18 which is its CPRs. Exhibit 32, Pages 2 and 3, we  
19 walked through in direct testimony, that the  
20 accounts for transmission and distribution mains,  
21 which, according to the Chart of Accounts, is  
22 Account 331, all matched the dollar amounts from  
23 Exhibit 2, matched the purchase price notations  
24 for Exhibit 13. They all flowed through to the

1 CPRs.

2 Now, this is important to establish  
3 that ownership didn't come in through this --  
4 through the plant records. Because Exhibit 2,  
5 13, and 32 clearly link what came into the  
6 purchase price, we do not believe -- or, we  
7 believe that a preponderance of this evidence  
8 establishes that Abenaki does not own the 8-inch  
9 line.

10 Now, not to just rely on "did it come  
11 in through the plant records?", Abenaki also  
12 looked at the CIAC. And, as Mr. St. Cyr and  
13 Vaughan testified, and if you were to look at  
14 Exhibit 32, and the CIAC entries on Pages 8 and  
15 9, they all reflect the plant that was shown on  
16 Exhibit 2 with dollar amounts and Exhibit 13.  
17 There is no additional plant listed. So, the  
18 8-inch line could not have come in through a  
19 CIAC.

20 CMSR. BAILEY: Ms. Brown?

21 MS. BROWN: Uh-huh.

22 CMSR. BAILEY: Aren't there other  
23 entries in Exhibit 2 that don't have costs  
24 associated with them that Abenaki doesn't

1 disagree it owns?

2 MS. BROWN: Correct. And I'm going to  
3 get to that next segue. Thank you.

4 CMSR. BAILEY: Okay.

5 MS. BROWN: The third way that the  
6 assets can come in, into the revenue requirement,  
7 as Mr. Vaughan and Gallo testified, was through  
8 the common areas, because the expense of  
9 operating these lines is going to come in as an  
10 expense item in the revenue requirement. And the  
11 common areas in the -- and the tariff treats  
12 common areas as areas where Abenaki has  
13 responsibility for the water lines, and that is a  
14 distinguishing fact. And that was one of the  
15 points, in cross-examination of Mr. Brogan, that  
16 we tried to bring out, is that there -- Mr.  
17 Brogan's argument was implying that there were  
18 mains on and services on the west side of 302  
19 that Abenaki did not dispute and does not dispute  
20 ownership of. And, so, why shouldn't the lines  
21 on the east side also be part of the -- that are  
22 on Omni property, why shouldn't they also be  
23 owned by Abenaki? And the distinguishing fact  
24 there is there are common areas.

1           And I'm trying to find the exhibit, if  
2           I can have a moment.

3           And I'll refer the Commission to  
4           Exhibit 18, and it was Page 5. The reason why  
5           Abenaki owns the infrastructure relating to the  
6           Rosebrook townhomes that may have curb stops that  
7           aren't at the property line is because that has  
8           common areas. I will have to double check to see  
9           if it's listed in Exhibit 11, which is where all  
10          of the -- or, many of the common area articles of  
11          agreement, *etcetera*, that Mr. Gallo had put  
12          together.

13                   CHAIRWOMAN MARTIN: Attorney Brown?

14                   MS. BROWN: Uh-huh.

15                   CHAIRWOMAN MARTIN: I just want to make  
16          sure I'm understanding you correctly on this.

17                   Are you saying that anything on the  
18          west side of 302, that's in Omni property, is  
19          actually owned by Abenaki is because it's on  
20          common -- it's in a common area?

21                   MS. BROWN: Not all of them. I mean,  
22          Fabyan's is one that doesn't have a subdivision  
23          associated with it.

24                   CHAIRWOMAN MARTIN: Okay.

1 MS. BROWN: But it is a line, that up  
2 to the curb stop, the Company is responsible for  
3 that.

4 But these other instances Crawford  
5 Ridge, Presidential Views, Rosebrook Townhomes,  
6 Forest Cottages, and this unnamed one above  
7 Crawford Ridge, these are all developments that,  
8 when Bob gallon meticulously went through in  
9 Exhibit 11, on Page 2, you've got all these  
10 homeowners associations. And the reason why this  
11 common area is important is because it brings it  
12 into, by virtue of the tariff, the revenue  
13 requirement, and, therefore, ownership. And  
14 that's why, since the Hotel doesn't have any of  
15 these common areas, so it's not -- okay, so, it  
16 didn't get brought in by the purchased assets.  
17 It's not coming in through CIAC, because we don't  
18 have any record of it. Okay, what other avenue  
19 can it come in at? Well, it comes in as a common  
20 area. But there's no common area on the Hotel.  
21 They never subdivided it.

22 Lots of other areas within Bretton  
23 Woods Resort have been subdivided. And you have  
24 clear, you know, documents, articles of

1 agreement, declarations that set forth the power  
2 of the homeowners association to carve out common  
3 areas, and that dovetails right into the tariff  
4 provisions that allow Abenaki ownership within  
5 the common areas.

6 Does that answer the question?

7 CMSR. BAILEY: Can I have a follow-up?

8 MS. BROWN: Yes.

9 CMSR. BAILEY: So, you're saying that  
10 these are in the revenue requirement, because you  
11 maintain them, and there are expenses associated  
12 with maintaining them. But there's no capital  
13 investment in the revenue requirement on which  
14 you earn a rate of return?

15 MS. BROWN: Correct. Correct. Which  
16 is one of the problems that the Company objects  
17 to, is if it's going to now be responsible for  
18 this, how is it going to cover itself? I mean,  
19 it doesn't earn a return. It doesn't get a  
20 depreciation experience.

21 CMSR. BAILEY: But it doesn't on all  
22 those other ones either. And, if you started  
23 maintaining the mains or the lines from the curb  
24 stop to the Hotel, then you would have expenses

1 associated with that, and that would then be in  
2 rate base, right? I'm mean, not "rate base",  
3 sorry. In the revenue requirement? Just like  
4 they are in --

5 MS. BROWN: That's right. Correct.

6 CMSR. BAILEY: So, I don't get the  
7 distinction?

8 MS. BROWN: That is why we needed to go  
9 down to our fact witness of Nancy Oleson and ask  
10 "what did you do?" Because, if there's no facts,  
11 and we don't have any facts in the record, I  
12 mean, she said she, you know, while she was  
13 working there, they didn't venture on to the  
14 properties. So, there would not be any expenses  
15 for that line that would have gone into the  
16 revenue requirement and be in the rate case.

17 CMSR. BAILEY: Okay. I'm going to have  
18 to double check the transcript. Because I  
19 thought I asked her directly if, when she was an  
20 employee, they considered that part of the water  
21 utility, and she said "yes".

22 MS. BROWN: The 8-inch Hotel line?

23 CMSR. BAILEY: Yes.

24 MS. BROWN: I am pretty sure I

1 clarified that cross-examination by Attorney  
2 Getz, when he said "was from Mount Washington  
3 Place up to the Hotel Rosebrook's?" And she said  
4 "yes", without the caveat "up to the curb stop".  
5 And, so, on recross -- on redirect, I brought  
6 that point out. And it's in the tariff -- the  
7 transcript that she corrected herself. And that  
8 she -- that Rosebrook owned up to the curb stop,  
9 and that's where her responsibilities for the  
10 water utility ended.

11 Now, she did have other, you know,  
12 testimony about going onto the property, but that  
13 was under some of the other service agreements,  
14 and then the sensitivity about the hydrants.  
15 Which, you know, the Company has, since the  
16 prehearing conference, explained why it's been on  
17 the property for the hydrants, because of the  
18 high pressure.

19 So, I think I've covered that the Hotel  
20 line didn't come in or isn't coming in through  
21 the common areas either.

22 And I would also like to note to that  
23 Exhibit 1, which you saw, is a compilation of  
24 water bills that Abenaki charges Mount Washington

1 Hotel and Resort. There is one recipient of  
2 these bills for all of the Omni accounts. Which  
3 further distinguishes, when you're talking about  
4 common properties, you know, Crawford Ridge, the  
5 Forest Cottages of the world, those properties,  
6 the common areas, are owned by multiple people.  
7 You don't have that factually, you do not have  
8 that situation on the Hotel campus. It's owned  
9 by one, one entity. It's never been subdivided.

10 So, as I said at the outset, there are  
11 limited ways that the asset can come in to the  
12 regulated utility's obligation; through the  
13 revenue requirement, through the tariff. The  
14 evidence before you does not establish that the  
15 Hotel line came in on Abenaki's books. And we  
16 had a rate case on its revenue requirement  
17 already, and the Commission has initially  
18 approved that revenue requirement.

19 The evidence of the plant in rate base,  
20 the revenue requirement, the operations and  
21 maintenance expense, as a function of the tariff  
22 of the common area provisions, those bring lines  
23 into Abenaki's obligations. It is important to  
24 distinguish that, if the Commission were to make

1 Abenaki responsible for this line, Abenaki never  
2 conducted any due diligence on this in the '16  
3 acquisition docket. It has not seen these  
4 assets. Even its maps do not have accurate  
5 notations of infrastructure on the Hotel grounds.  
6 It would run afoul of the takings clause, if the  
7 Commission had Abenaki take this line, because  
8 there's no money in the revenue requirement to  
9 compensate Abenaki for this line.

10 It was brought up in earlier closings  
11 about there being private property. As you heard  
12 testimony from the Company, that, if it had to  
13 take responsibility for this line, it's going on  
14 private property. And that's a problem. And  
15 it's further distinguishing the common areas on  
16 the other lands, other parcels, where Abenaki has  
17 agreed that it owns the infrastructure. There's  
18 a means of getting on the property, through the  
19 articles of agreement, through the homeowners  
20 association, through the common areas denotation  
21 in the tariff. We don't have any of that in  
22 place for the Hotel parcels.

23 So, we would have to overcome a hurdle  
24 of "how is the Company going to get in on this

1 private property?" And I raise that, because  
2 when Abenaki first brought this in 2016, it is so  
3 ingrained in the management of the water  
4 utilities, you don't go on private property.  
5 And, because this Hotel presents itself as  
6 private property, it was reasonable for Abenaki  
7 to conclude that it did not own the Hotel line.  
8 And, furthermore, with Nancy Oleson's history of  
9 maintenance and the overlap of Mr. Vaughan and  
10 Ms. Oleson in, you know, how to manage the  
11 system, it never came up that they would own --  
12 that Abenaki would own the water system [sic].  
13 It just wasn't part of their maintenance  
14 schedule, with the exception of the hydrants.

15 CHAIRWOMAN MARTIN: Attorney Brown,  
16 what is your response to the argument we heard  
17 earlier that it's a condition of service that  
18 access be provided?

19 MS. BROWN: Then, I would go to the  
20 maps, and the argument on tariff interpretation.  
21 Because the only way to get there is to deem  
22 those inside valves as curb stops, and it's  
23 striking to note that the only maps that denote  
24 the curb stops are the ones that Doug Brogan

1 admitted to today, in cross-examination, that he  
2 filled in. And how did he know the location of  
3 those valves? He testified that he consulted the  
4 Hotel. He didn't consult the water company. On  
5 the water company lines, you don't see the  
6 multiple valves that Omni is now calling a "curb  
7 stop".

8 So, that, you know, backs into your  
9 question of, you know, "is this a service line?"  
10 Well, you know, you have to determine the fact of  
11 what is a curb stop, before you can consider the  
12 service line argument of "don't you have, as  
13 condition of service, access to a service line?"

14 CHAIRWOMAN MARTIN: Thank you.

15 MS. BROWN: Yes. Now, I want to touch  
16 upon --

17 CMSR. BAILEY: Ms. Brown, why do you  
18 think there was blue paint on those valves?

19 MS. BROWN: I don't have an answer for  
20 that, and neither did Omni.

21 CMSR. BAILEY: Well, Omni thought they  
22 didn't put the paint there.

23 MS. BROWN: And Abenaki will say that  
24 they didn't put the paint there. Could have been

1 a contractor, because they've been doing an awful  
2 lot of work over the decades in the lines up  
3 there. But it doesn't make sense that the  
4 Company would have done it, because, if I go back  
5 to the testimony of Nancy Oleson, they didn't go  
6 onto those, you know, didn't manage those.

7 CMSR. BAILEY: But there's blue paint  
8 in other locations where they do own, in the  
9 common areas.

10 MS. BROWN: In the common areas, off of  
11 the Hotel property?

12 CMSR. BAILEY: Yes. On those --

13 MS. BROWN: Okay. I didn't --

14 CMSR. BAILEY: On those valves. I  
15 think we saw that, but I could be wrong.

16 MS. BROWN: Okay. Because I'm not  
17 aware of that point of testimony, and I would  
18 have to defer to the witnesses on that point of  
19 fact. So, I don't know if you want them to --

20 CMSR. BAILEY: No. We can just defer  
21 to the record.

22 MS. BROWN: Okay.

23 Now, with respect to the curb stops, it  
24 is pretty clear, on Abenaki's side, what a curb

1 stop is, and where, over the years, it's supposed  
2 to have been laid. I know Omni has a different  
3 perspective, and calls them all muddy, and tries  
4 to equate the interior valves as exterior  
5 shut-off valves.

6 But I would like to make note that, as  
7 Mr. Gallo testified, the size of these valves is  
8 not determinative of whether they are a curb  
9 stop. It is location and function. And, I would  
10 refer to the Commission's rules, which we put  
11 into the record, Puc 602.06, you know, the  
12 "customer service pipe" is defined as the  
13 "section of service pipe from the customer's  
14 property line or curb stop to the customer's  
15 place of consumption." And you also have Puc  
16 606.04, "curb stops shall be placed at the  
17 customer's property line except in unusual  
18 situations such as service to an apartment or to  
19 a condominium." And, indeed, you see those  
20 exceptions, those unusual circumstances, in  
21 Rosebrook's tariff, pertaining to condominiums.

22 There is no carve-out for the  
23 businesses or Hotel property. The carve-out for  
24 unusual situations concerns only the condominiums

1 and multi-family residences. The Hotel is not an  
2 apartment, the Hotel is not a condominium, and,  
3 again, it has no common areas.

4 In the Memorandum of Law, I also put in  
5 or cited the Department of Environmental  
6 Services' public policy that curb stops are a  
7 valve "between the water distribution system and  
8 the service customer's premises which controls  
9 the flow of water to the premises."

10 Also, in Env-DW 504.07, which is  
11 another DES rule, pertaining to service lines.  
12 Unless the water -- "unless the water system has  
13 adopted formal rules to the contrary: The water  
14 system shall be responsible for the service line  
15 from the water main to the curb stop." The  
16 second part of this rule is "the service customer  
17 shall be responsible for the service line from  
18 the curb stop to the customer's premises." And,  
19 lastly, "the water system owner shall be  
20 responsible for any required meters." So,  
21 that's -- the meter is the exception to the rule.

22 Also, it was brought up that these  
23 rules, and I don't have the DES rule effective  
24 date in front of me, it was brought up that the

1           600 rules post dated some of the infrastructure  
2           changes. Well, they didn't post date all of the  
3           infrastructure changes. But what does preside  
4           this is the Chart of Accounts. And the Chart of  
5           Accounts, Account 333, "a complete service begins  
6           with the connection on the main and extends to  
7           but does not include the connection with the  
8           customer's meter. The utility service line  
9           extends from the main to the property line or the  
10          curb stop (curb stop cock)."

11                   And, so, it is in the context of these  
12          accounting requirements and definitions, like  
13          this Chart of Accounts 333, that Abenaki was  
14          absolutely reasonable in concluding that it did  
15          not own any of the lines that were not in its  
16          plant records and did not comply with these  
17          definitions.

18                   I know Attorney Getz had questioned why  
19          Nancy Oleson was brought in, arguing that who  
20          controls what is not relevant. But it is  
21          relevant, because the exterior shut-off/curb stop  
22          is defined also as "the water shut-off controlled  
23          by the company". And, so, that is why Nancy  
24          Oleson was critical, so that we could get facts

1           into the record as to "what did the Company do  
2           before Abenaki bought the Company with respect to  
3           curb stops?" And you heard that very clearly,  
4           from her testimony and in redirect, that the curb  
5           stops were defined as "at the property line".  
6           There were exceptions for the condominium  
7           associations and common areas. But she was very  
8           clear, with respect to the Hotel, that curb stop  
9           was at Base Road. And that comports with the  
10          Company's records. And, again, I, you know,  
11          bring up that, you know, the valves that were  
12          added to maps were the ones that Mr. Brogan had  
13          added.

14                         Sorry, my silence is because I'm  
15          weeding out what I've already said.

16                         I'd like to next move on to the tariff  
17          interpretation. Because Omni argues that the  
18          curb stops are new as of 2016 -- or, the  
19          definition of "curb stop" was new as of 2016. I  
20          put in evidence through the Memo of Law, and also  
21          as Exhibit 5, that the definition of the "curb  
22          stop" actually happened in 2011, well before Omni  
23          bought the property and well before Abenaki  
24          bought the property.

1           And Exhibit 20 contains the tariffs and  
2           the excerpts, I would just like to point out,  
3           from 1974, with respect to the curb stops and  
4           ownership obligation. In 1974, the rule was  
5           "from the limits of the highway to the premises  
6           served, the service pipe in accordance with the  
7           Company's specifications, shall be installed and  
8           owned and maintained by the customer." So, it  
9           talks about "from the limits of the highway to  
10          the premises served", and this is in 1974. This  
11          is well before the Hotel abandoned its surface  
12          water supply and connected, presumably in 1985,  
13          to the water system.

14                 And, if you look at Exhibit 23, there  
15                 are valves that appear to be at the intersection  
16                 of the two forks that come out of -- off of Base  
17                 Road to feed Bretton Arms and the Hotel. There  
18                 are no other curb stops that are noted on that  
19                 map. There are no valves that are noted on the  
20                 Horizons map. I'm looking for Exhibit 14, so I  
21                 can point to Page 45.

22                 So, in 1985, when this line was going  
23                 through, it was compliant with the tariff,  
24                 because the tariff required the curb stops to be

1 from the limits of the highway. Well, you know,  
2 doesn't matter whether they're in the  
3 right-of-way for New Hampshire DOT Route 302 or  
4 not. They are at least consistent with the rules  
5 at the time of the tariff in 1974.

6 Now, moving on to the tariff revision  
7 in 1996, "from the curb stop to the premises  
8 served, the service pipe shall be installed,  
9 owned and maintained by the customer. Pipes up  
10 to the curb stop shall be owned and maintained by  
11 the company." So, it's still in 1996, this is  
12 well before the 2001 red addition that went  
13 behind the Hotel to connect the Nordic Center.  
14 And, so, what I'm getting at is the retroactivity  
15 argument that Attorney Getz is making for Omni.

16 From the getgo, there was a requirement  
17 that the ownership -- or, the ownership  
18 obligations in the tariff were very clear prior  
19 to their -- the developments that happened on the  
20 Hotel grounds.

21 Now that, if I move on to the 2011/2012  
22 tariff additions, on Original Page 2, and I'm  
23 reading from Exhibit 20, and it's in Page 46,  
24 "From the exterior shut-off valve to the premises

1 served, the service pipe shall be installed,  
2 owned and maintained by the customer. All  
3 service pipes up to and including the premises'  
4 exterior shut-off valves shall be owned and  
5 maintained by the Company." And mind you, this  
6 was when the rules -- the Commission rules about  
7 curb stops being at the property line were in  
8 effect, and also the new "Definitions" section  
9 was added in 2011.

10 Now, rounding out the 2016 tariff  
11 changes, again, reading from Original Page 2,  
12 "all service pipes from the main to the property  
13 line or common area including the premises'  
14 exterior shut-off valve shall be owned and  
15 maintained by the Company." The "property line  
16 and common areas" were added to the language, but  
17 the same concept over the years applied.

18 So, these tariff provisions by a  
19 preponderance of the evidence do not support  
20 Omni's argument. On the contrary, they support  
21 Abenaki's interpretation that those curb stops,  
22 that were originally placed probably in 1985,  
23 compliant with the tariff, are where its  
24 obligations end.

1                   Now, I know that there was a lot of  
2                   time spent by Mr. Brogan on the accuracy of  
3                   footage. We consider that to be a red herring,  
4                   because it's not a material fact to the decision  
5                   in this case. Resolution of the footage does not  
6                   change the fact that the purchase price was  
7                   determined -- does not change the fact that the  
8                   purchase price was not determined based on  
9                   footage. CIAC was not based on footage. On the  
10                  contrary, both of those elements of Abenaki's  
11                  ownership of the Rosebrook came in on dollar  
12                  values.

13                  The lack of articles of agreement,  
14                  easement deeds, and subdivision records for the  
15                  Hotel parcel similarly are not impacted by the  
16                  accuracy of the footage. And those are the three  
17                  buckets of ownership avenues that I had gone  
18                  through earlier; purchase price, plant records,  
19                  CIAC, and did it come in as common areas through  
20                  these various agreements through the common area  
21                  sections of the tariff.

22                  Also impacting the accuracy of these  
23                  footage calculations, and you heard testimony  
24                  from Nancy Oleson, which was that there was a

1           need to get accurate records, because she was  
2           finding that the as-builts contained errors. And  
3           you heard that same testimony from Mr. Brogan  
4           that some of the as-builts contained errors and  
5           were sometimes incomplete.

6                        In those cases, I would argue that it  
7           is the tariff, the administrative rules, Chart of  
8           Accounts, these other documents fill the gap of  
9           who owns what. And Abenaki was reasonable when  
10          it relied on these documents when it purchased  
11          the Rosebrook system.

12                      Now, another reason for Ms. Oleson's  
13          testimony was because Omni had raised in its  
14          complaint the issue of past practice and course  
15          of dealing. It was arguing that past practice  
16          and course of dealing demonstrate that Abenaki  
17          owned the line in question. So, we investigated  
18          this.

19                      It is important to note that Abenaki --  
20          or, Omni did not put forth any evidence of past  
21          practice and course of dealing to support its  
22          argument. The only evidence we have is through  
23          Ms. Oleson, through Mr. Gallo, through Mr.  
24          Vaughan, and they all interpreted past practice

1 with respect to the curb stop in the same manner.

2 I would also note that none of the  
3 tariffs in Exhibit 20 contain provisions treating  
4 the Hotel campus as an exception. There is an  
5 exception for the curb stop at property line,  
6 administrative rule. There's an exception for  
7 condominiums. There's an exception for single  
8 family homes and location of curb stops. But  
9 noticeably absent is any grandfathering for the  
10 Hotel.

11 Now, I'd also like to raise that there  
12 have been past service agreements. Those were in  
13 Exhibit 6. Where Rosebrook employees have been  
14 on the Hotel campus daily and weekly. And, given  
15 that both Ms. Oleson and Abenaki used the curb  
16 stop at Base Road as the limits of their  
17 obligations, the evidence supports that, although  
18 Rosebrook was on the Hotel campus for contracts,  
19 it was not there to establish an ownership and  
20 maintenance of an 8-inch line.

21 And I just want to make sure that I've  
22 been clear, that Exhibit 18, which shows valves,  
23 was, as Mr. Brogan testified today, those valves  
24 were put in by him, in consultation with the

1 Hotel.

2 With respect to the maps at Exhibit 17,  
3 Mr. Brogan similarly testified that he had  
4 made -- put in those valves, after consultation  
5 with the Hotel.

6 With respect to the lines that are on  
7 Exhibit 23, Mr. Brogan testified he did not know  
8 who made them and for what purpose,  
9 notwithstanding he had testified that the map had  
10 been introduced, supposedly, to evidence the  
11 extend of Rosebrook's water lines. But we don't  
12 have that hearsay in the evidence for -- or, in  
13 the record for Abenaki to, pursuant to 541-A,  
14 have its ability to vet and cross-examine the  
15 accuracy of that information. So, I think we'd  
16 request that the Commission give it the weight it  
17 deserves.

18 With respect to the size of the meters,  
19 I know this was -- or, size of the lines  
20 dictating whether they are transmission lines or  
21 not, I want to touch upon this, because this was  
22 an issue early on in discovery. But we heard  
23 from both Mr. Gallo, back on September 28th, and  
24 Mr. Brogan today, that the size of the lines is

1 determined by the needs and per the AWWA  
2 standards. So, at least the parties have  
3 agreement that the sizing of pipes is per those  
4 standards.

5 And it doesn't -- and Abenaki's  
6 position would be, just because there's an 8-inch  
7 line feeding the Hotel, and as we heard, the  
8 8-inch line goes into the basement area of the  
9 Hotel, doesn't mean that it's a transmission  
10 main. It certainly can be a service line, as we  
11 heard sometimes Mr. Brogan referring to that.

12 I'd like to next move on to the  
13 expansion that's happening at the Hotel property  
14 currently. You heard testimony, through direct  
15 examination of Mr. Gallo and Mr. Vaughan, and  
16 Exhibit 33, that New England Service Company has  
17 been up on the Hotel property to locate valves  
18 and work valves. You also heard testimony from  
19 Mr. Brogan that there were lines that were  
20 installed. We don't know who installed them.  
21 Abenaki knows that it did not install these, what  
22 we believe are 6-inch domestic and -- I'm sorry,  
23 4-inch domestic and 6-inch fire protection lines.  
24 We believe that the Hotel has been in charge of

1           constructing those.

2                       Whether they are in tandem or not, it  
3           is important to note who is installing these,  
4           these lines. Because just like the red line that  
5           was shown on Mr. Brogan's map, Exhibit 17, that  
6           was something that was -- that's not in Abenaki's  
7           books, Abenaki -- or, there's no record of  
8           Rosebrook constructing that line. There is ample  
9           present evidence of the Hotel doing what it wants  
10          to on its own property, and constructing lines,  
11          without regard to Abenaki's need to verify the  
12          installations, inspect the installations.  
13          Whether it's under the main extension or  
14          Paragraph 21 of its tariff, or whether it's under  
15          the service line portion of its -- of its tariff.

16                      As you heard Mr. Vaughan describe this,  
17          Abenaki is not in control of the placement of  
18          these valves, yet Omni is. And a company needs  
19          to be in control of where its obligation ends.  
20          And Mr. Vaughan put it as Mr. -- that Omni is  
21          essentially pushing the goal post of Abenaki's  
22          obligations further into the property, without  
23          Abenaki's say or input. And that's just not  
24          right. That's not normal.

1           In any other situation, with a  
2           contractor, and I tried to explore this  
3           hypothetical with Mr. Brogan, if you had a  
4           developer come in and tap into a, presumably,  
5           company-owned line, they couldn't do that,  
6           without input and direction from the company.  
7           Yet, that is repeatedly what the Hotel owners  
8           have been doing over the years.

9           So, we hope the Commission can see the  
10          difficulty of a customer who continues to build  
11          on their property, without subdividing it, and  
12          willingly argues that valves on the interior of  
13          property are now curb stops. A water company has  
14          to have control over the setting of these curb  
15          stops and the location of them.

16          This also touches upon the hypocrisy of  
17          Omni's argument. Because, if it's saying that  
18          this infrastructure is part of Abenaki's, why  
19          isn't it including Abenaki in the discussion.

20          We heard some testimony about fire  
21          protection and whether the -- with Mr. Gallo,  
22          fire protection needs, and the Horizons report  
23          showing that there may be negative pressure. The  
24          Company has to be involved in the use a customer

1 is taking off of this system, so that it can  
2 protect the safe and adequate service that it  
3 needs to provide to the remaining customers.  
4 And, if someone is building too big, the Company  
5 needs to know that.

6 I would also like to point out that  
7 there was testimony from Mr. Brogan that the  
8 2000 -- when I cross-examined him on the 2001  
9 curb stops that are shown on his map that he  
10 completed, Exhibit 17 and 18 -- nope, 17, sorry,  
11 that they do not -- the location of those curb  
12 stops do not comply with Abenaki's tariff  
13 provision. They are well inland. They are not  
14 anywhere near a property line. And, even with  
15 this new built 66-unit building, those now curb  
16 stops aren't anywhere near any property line.

17 Now, I'd like to touch upon the special  
18 contracts, because replete in the Memos of Law is  
19 that the relationship between the Company -- the  
20 regulated utility and its customer is controlled  
21 through the tariff and special contracts. That's  
22 right out of the RSAs, RSA 378. And there are no  
23 more special contracts, as we've, you know,  
24 touched upon today. So, this leaves only the

1 tariff and the relevant Commission rules as the  
2 conduit of the utility/customer relationship.

3 And Omni, at this point, cannot, other  
4 than its argument that retroactive application of  
5 the tariff, it cannot point to any provision of  
6 the tariff that allows Omni to be treated  
7 differently. And I've already gone through how,  
8 since 1974, there has been in place an  
9 expectation of -- or, that the obligations  
10 between the Company and the customer are at the  
11 curb stop, which is near the limits of the  
12 highway.

13 I would also like to remind the  
14 Commission about its rulings on grandfathering  
15 and treating customers differently outside of a  
16 tariff. And this was in my -- or, in the Memo of  
17 Law as well. The Pennichuck East Utility case,  
18 which is Docket DW 18-090, which came out in  
19 January of 2019, and then the Pennichuck Water  
20 Works docket, DW 18-076, and that order came out  
21 December 17, 2018. The Commission specifically  
22 approved special exceptions in that case for  
23 small diameter fire protection customers, who  
24 were subject -- so that they could be subject to

1 grandfathering terms. It specifically did not --  
2 or, it chastised one of the Pennichuck companies  
3 for treating the customers differently and not  
4 having this grandfathered provision in place.

5 The Commission also chastised Lakes  
6 Region for treating Robert Mykytiuk, I'm not --  
7 I'm butchering the name, and that was in Docket  
8 DW 16-834. Again, it was a situation where the  
9 customer was treated differently. There was no  
10 provision in either a special contract or the  
11 tariff with that different treatment. And the  
12 Commission did not allow that differing  
13 treatment. And the differing treatment is what  
14 Omni is arguing for right now.

15 Those cases of Pennichuck East,  
16 Pennichuck Water, and Complaint of Robert  
17 Mykytiuk are essentially what the Filed Rate  
18 Doctrine is. And the Filed Rate Doctrine states  
19 that the relationship is deemed -- is governed by  
20 the filed -- the tariff on file. And there have  
21 been tariffs on file since 1974 governing the  
22 provision of water to the Hotel.

23 And these cases also undermine Omni's  
24 argument that the valves be on the Base Road,

1 curb stops are also valves, or that the present  
2 tariff does not control.

3 I'd like to touch upon where we go from  
4 here. Because you have a Hotel that does not  
5 want to operate and maintain the infrastructure,  
6 yet it wants control over the development and  
7 location of mains, as can be seen in the recent  
8 development. This reason makes sense. And, in  
9 the past, the Hotel owners have addressed this  
10 need be entering into service contracts with the  
11 water utility for drinking water and wastewater  
12 supply, sampling and maintenance. You can see  
13 those examples in Exhibit 6. In the past, the  
14 Hotel has availed itself of special contracts,  
15 which I've listed in Pages 2 and 3 of Abenaki's  
16 memos of law. These are tools.

17 But I would also like to visit that  
18 this docket -- the evidence in this docket is not  
19 sufficient to deal with the problem of the line  
20 isn't in its rate base, it's not in its revenue  
21 requirement as expenses. If it is forced to take  
22 over this line, we have a takings, because we do  
23 not have sufficient compensation. We also don't  
24 have a blessing by the Commission on prudent,

1 used and useful, the public benefit.

2 I brought out through cross-examination  
3 of Mr. Brogan that the red line goes to Nordic  
4 Center. It's not a public building. The Nordic  
5 Center is still part of the Resort, Hotel/Resort  
6 complex. And, in order for that line to be  
7 subsidized by the remaining customers in rates,  
8 there needs to be a blessing that that is  
9 prudent, used and useful for the remaining  
10 customers, and the provision of service to even  
11 the Hotel, and that has not happened.

12 So, with those hurdles, I don't see  
13 how, in this docket, we can resolve or have this  
14 line be Abenaki's, without there being a second  
15 docket to make Abenaki whole.

16 So, I will just conclude that there's  
17 been a lot of testimony. Abenaki has gone  
18 through, in this closing, highlighted the maps  
19 that show its longstanding interpretation of what  
20 it owns, what it doesn't own, where the curb  
21 stops it owns and where the curb stops it doesn't  
22 own are. And then, you have the testimony and  
23 maps showing curb stops that have been, you know,  
24 marked in in blue, after consultation with the

1 Hotel. And I would think, I would submit that,  
2 after the weight of the evidence considered, and  
3 the various tariffs over the years that predate  
4 the connection of the Hotel to the water system,  
5 that the preponderance of the evidence shows that  
6 Abenaki does not own this 8-inch line. And I  
7 would respectfully ask the Commission to dismiss  
8 the complaint.

9 And, with that, I won't touch upon the  
10 expense of, you know, both parties at this.  
11 That's not recovered in revenue requirement. But  
12 conclude with that closing.

13 Thank you.

14 CHAIRWOMAN MARTIN: All right. Thank  
15 you.

16 MR. GETZ: Madam Chair?

17 CHAIRWOMAN MARTIN: Yes.

18 MR. GETZ: May I have an opportunity to  
19 respond to a couple of things? I promise it will  
20 be brief.

21 MS. BROWN: And are we -- you know, you  
22 just agreed.

23 CHAIRWOMAN MARTIN: It's an equal  
24 opportunity. I need to give the other parties

1 the same opportunity. So, --

2 MS. BROWN: Can I just argue that  
3 haven't we said our piece? Otherwise, we're  
4 going to be here all evening.

5 We had our opportunity, and we agreed  
6 to these presentations.

7 CHAIRWOMAN MARTIN: Do any other  
8 parties have a request to respond as well?

9 *(Atty. Tuomala indicating in the*  
10 *negative.)*

11 MR. MUELLER: I do not.

12 CHAIRWOMAN MARTIN: Okay. I'll give  
13 you each five more minutes.

14 MR. GETZ: Thank you, Madam Chair. I  
15 won't need five minutes.

16 First, I would like to just address two  
17 tariff-related issues. First of all, the 8-inch  
18 main is not the service pipe. It's a main  
19 extension, as is shown in Exhibit 2, in the  
20 continuing property records. In 1974, the tariff  
21 at that point did not have any provisions for  
22 commercial customers. And again, that the tariff  
23 that's been -- provisions that have been referred  
24 to are to service pipes. This is a main

1 extension.

2 With respect to, even if it were a  
3 service pipe, all along there are references in  
4 the context of other types of customers of  
5 "including up to the shut-off valve". As a  
6 matter of fact, the shut-off valve is ten feet  
7 from the Hotel.

8 With respect to the many references to  
9 "common area", if I look at the current version  
10 of the tariff, under "Service Pipes", 1(b)(2), it  
11 says "Condominiums and Other Multi-Family  
12 Residences: All service pipes from the main to  
13 the property line or common area including the  
14 exterior shut-off valve shall be owned and  
15 maintained by the Company." It does not say "All  
16 service pipes from the main to the property line  
17 and continuing within the common area shall be  
18 owned and maintained by the Company."

19 So, this whole argument about the  
20 common areas being different for condos, and the  
21 fact that the Hotel doesn't have "common areas",  
22 it just doesn't hold up.

23 There was a reference to the hypocrisy  
24 of Omni's position, and I think it was in respect

1 to the expansion efforts at the Hotel. What  
2 doesn't get mentioned is that the Hotel's  
3 contractor contacted and received a meter from  
4 Abenaki. And then, Mr. DeBottis, back in  
5 January, reached out to Mr. Gallo and asked to  
6 have a meeting to discuss all of the issues among  
7 the companies, dealing with the rate case and the  
8 complaint and the Step II expansion. And he was  
9 rebuffed and told by Mr. Gallo "We will have to  
10 deal with this. We can meet sometime when all of  
11 these matters are resolved."

12 So, I think it's, you know, outrageous  
13 to try and put that back on the company, besides  
14 the fact that all the stuff to do with the  
15 expansion is irrelevant, and I think Mr. Brogan  
16 made that clear.

17 Finally, with respect to Docket 12-306,  
18 and I would add then, in addition to all of what  
19 you requested about the special contracts, that  
20 the CPRs that were provided -- appear to have  
21 been provided in that case, and I don't have  
22 access to them, can't get them online, but, you  
23 know, perhaps Staff can find out, and put in the  
24 record whatever Mr. Naylor was referring to in

1 his letter from December 23, 2013.

2 And then, lastly, a very minor thing,  
3 with respect to being able to say something  
4 additional about the special contracts, if we  
5 could have until Monday, the following Monday of  
6 next week, I guess, which would be November 1st,  
7 that would be appreciated.

8 That's all I have.

9 MS. BROWN: Can I ask why you're asking  
10 for the extra time?

11 MR. GETZ: Because I've got a whole  
12 bunch of other things going on next week, and was  
13 hoping I'd have some time to go through the  
14 contracts. Not to -- you know, just to see what  
15 they say, and if it has any impact.

16 I'm assuming your proposal included  
17 being able to comment on whatever is in those  
18 contracts. I just don't know what is there.

19 CHAIRWOMAN MARTIN: I will defer to  
20 Commissioner Bailey on that. But my  
21 understanding was just filing the related special  
22 contracts themselves.

23 MR. GETZ: Oh. Okay.

24 CHAIRWOMAN MARTIN: And what is useful

1 to you?

2 CMSR. BAILEY: I could go either way.  
3 If the parties want to make -- it may give the  
4 parties more incentive to find the special  
5 contracts if they can comment on them, I don't  
6 know. Of course, I can -- we can look at the  
7 contracts ourselves without comment.

8 CHAIRWOMAN MARTIN: Okay. With that,  
9 we will give you until that following Monday, and  
10 the opportunity to file the contract with related  
11 comment.

12 MR. GETZ: Thank you, Madam Chair.

13 CHAIRWOMAN MARTIN: And Attorney Brown.

14 MS. BROWN: Can I have the date of that  
15 deadline now? Does anyone have their calendar  
16 open?

17 MR. GETZ: I think it would be,  
18 actually, November 2nd. Monday, November 2nd.

19 MS. BROWN: Thank you.

20 CHAIRWOMAN MARTIN: That's right.  
21 That's what I have, too.

22 Okay. Attorney Brown, you now have  
23 five minutes as well.

24 MS. BROWN: Thank you. And I need to

1 apologize to you, Chairwoman Martin, when I just,  
2 you know, exacerbation. It's not -- it was not  
3 directed at the Commission. It was rather  
4 directed at the relationship with Omni and  
5 Abenaki, in that Omni repeatedly wants to have  
6 the last word. And we had -- and, so, my  
7 frustration was, yet again, we have another "oh,  
8 I want to put in new argument", but he also put  
9 in new evidence.

10 And, so, now he's got, and which I am  
11 going to object to, because now that he's adding  
12 in evidence about a meeting with Mr. DeBottis.  
13 He could have put this evidence in before we  
14 closed the record. And, so, now it's putting me  
15 in a position of needing to call Mr. Gallo. And,  
16 so, I would ask that his new information about  
17 outreach from Omni about this new, you know, the  
18 new construction, the 66-unit, be struck. I  
19 think that's the simplest way to deal with this.  
20 Because, otherwise, I've got, you know, instead  
21 of passing my notes from my witness, I've got my  
22 witness here chomping at the bit to correct the  
23 record on what Mr. Getz has added. I think it's  
24 simpler just to strike that.

1 With respect --

2 CHAIRWOMAN MARTIN: Let me just  
3 respond -- let me respond to that.

4 MS. BROWN: Sure.

5 CHAIRWOMAN MARTIN: And then move on  
6 and go issue by issue.

7 But, with respect to the argument you  
8 just made, to the extent it's not contained in  
9 the evidentiary record, the Commission will not  
10 consider it. I don't have the entire record in  
11 front of me at the moment. So, to your point, if  
12 it is not -- if what he referred to is not in the  
13 evidence, we will not consider that.

14 MS. BROWN: Okay. I believe it is in  
15 his Memo of Law, which those documents weren't --  
16 I think they were attachments, I don't think they  
17 would come in as a exhibit.

18 So, all right. Thank you. Thank you  
19 for that ruling.

20 With respect to the other points, I --

21 MR. GETZ: Madam Chair, if I may? Is  
22 it the Commission's position that memos of law  
23 are not going to be considered as part of the  
24 record? That only documents admitted as exhibits

1 are within the purview of the Commission's  
2 investigation?

3 CHAIRWOMAN MARTIN: I believe or my  
4 understanding of what Attorney Brown was arguing  
5 was that it's not contained in the evidentiary  
6 record. And, if it's not contained in the  
7 evidentiary record, we will not consider it to be  
8 evidence. That is different from what you're  
9 arguing, I believe, which is that it's in the  
10 record of filings.

11 MR. GETZ: Thank you.

12 MS. BROWN: And just to conclude, with  
13 respect to the arguments that Attorney Getz just  
14 remade with respect to the common areas, there's  
15 nothing new. So, I don't feel the need to  
16 reiterate what I've already argued, because I  
17 think our position is firmly rooted in the record  
18 evidence.

19 Thank you very much.

20 CHAIRWOMAN MARTIN: Okay. And one last  
21 time for the other two parties, do you have any  
22 further argument to make?

23 MR. MUELLER: No. Thank you.

24 CHAIRWOMAN MARTIN: Okay.

1                   MR. TUOMALA:   And I have nothing, Madam  
2                   Chairwoman.   Thank you.

3                   CHAIRWOMAN MARTIN:   All right.  
4                   Excellent.

5                   So, with that, we will close the  
6                   record, with the exception of the filings related  
7                   to the special contracts.   We will reserve  
8                   Exhibits 34 through 37 for those, to the extent  
9                   the parties take advantage of that opportunity to  
10                  file.

11                  ***(Exhibits 34 through 37 reserved)***

12                  CHAIRWOMAN MARTIN:   We will take the  
13                  matter under advisement, and we will issue an  
14                  order.

15                  Thank you, everyone, for all of your  
16                  time.   And the hearing is adjourned.

17                  ***(Whereupon the hearing was adjourned***  
18                  ***at 4:32 p.m.)***

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