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15
16
17
18
19
20
21
22
23
24

I N D E X

PAGE NO.

SUMMARY OF THE DOCKET BY CHAIRMAN GOLDNER	5
STATEMENT BY CHAIRMAN GOLDNER <i>(Re: Framework for the hearing)</i>	8
FOLLOW-ON STATEMENT BY MS. BROWN <i>(Re: Framework for the hearing)</i>	8
QUESTIONS BY CHAIRMAN GOLDNER <i>(Re: Whether witnesses will be called today)</i>	10, 11
RESPONSES BY:	
Mr. Young	10
Ms. Brown	11
INITIAL STATEMENTS BY:	
Mr. Young	12
Mr. Crouse	19
Ms. Spector-Morgan	20
Mr. Courtney	21
Mr. Lirette	21
Ms. Brown	21
QUESTIONS BY CHAIRMAN GOLDNER	17, 42, 46, 48, 61
RESPONSES BY:	
Mr. Young	19
Ms. Brown	42
Mr. Boisvert	44, 46, 47
Mr. Ware	48
Mr. Steinkrauss	61
PROCEDURAL QUESTION BY MR. YOUNG <i>(Re: Swearing in as witnesses)</i>	44

1		
2	I N D E X (continued)	
3		PAGE NO.
4	PROCEDURAL QUESTION BY MR. YOUNG	52
5	<i>(Re: Remaining process for the hearing)</i>	
6	FOLLOW-ON STATEMENTS BY:	
7	<i>(After initial statements)</i>	
8	Mr. Young	53
9	Mr. Crouse	56
10	Mr. Steinkrauss	59
11	QUESTIONS BY CMSR. SIMPSON	62
12	QUESTIONS BY CMSR. CHATTOPADHYAY	66
13	FOLLOW-UP QUESTIONS BY CHAIRMAN GOLDNER	73
14	RESPONSES BY:	
15	Mr. Laflamme	73
16	CLOSING STATEMENTS BY:	
17	Mr. Crouse	75
18	Mr. Brown	76
19	Mr. Young	79
20	* * *	
21	<i>Administrative notice taken of PUC Docket DW 11-026</i>	10
22	<i>Administrative notice taken of PUC Docket DW 23-101</i>	11
23	<i>Administrative notice taken of PUC Docket DW 23-096</i>	12
24		

P R O C E E D I N G

1
2 CHAIRMAN GOLDNER: Okay. Good
3 afternoon. I'm Chairman Goldner. I'm joined
4 today by Commissioner Simpson and Commissioner
5 Chattopadhyay.

6 On November 21st, 2023, the
7 Petitioners, who consist of the three separate
8 Pennichuck utility companies, PWW, PEU, and PAC,
9 filed a Petition titled a "Request for Changes in
10 Rates". The Office of the Consumer Advocate and
11 the Department of Energy have each filed a notice
12 of appearance in this matter. The Town of
13 Litchfield, the Town of Bedford, and the Town of
14 Londonderry filed Petitions to Intervene. On
15 January 29th, 2024, the Petitions to Intervene
16 were granted.

17 On December 15th, 2023, the Department
18 of Energy filed a Motion to Dismiss the Petition.
19 And, on December 21st, 2023, the Petitioners
20 filed an Objection to the Motion. No other
21 parties filed a response to the Motion to Dismiss
22 or associated pleadings.

23 This hearing was scheduled pursuant to
24 the Commission's January 10th, 2024, order

1 Commencing an Adjudicatory Proceeding, and
2 scheduling the hearing on the Motion to Dismiss.

3 We'll now take appearances, starting
4 with the Department of Energy, the moving party.

5 MR. YOUNG: Good afternoon,
6 Commissioners. Matthew Young, on behalf of the
7 Department of Energy. And with me today are
8 Jayson Laflamme, who is the Director of the Water
9 Division; as well as Suzanne Amidon, who is
10 co-counsel in this matter.

11 CHAIRMAN GOLDNER: Very good. The
12 Office of the Consumer Advocate?

13 MR. CROUSE: Good afternoon,
14 Commissioners. My name is Michael Crouse, flying
15 solo on behalf of the Office of the Consumer
16 Advocate, representing the residential customers
17 in this matter.

18 Thank you.

19 CHAIRMAN GOLDNER: Very good. The Town
20 of Litchfield?

21 MS. SPECTOR-MORGAN: Good afternoon.
22 I'm Laura Spector-Morgan, on behalf of the Town
23 of Litchfield. With me today is Kimberly
24 Kleiner, who is the Town Administrator.

1 CHAIRMAN GOLDNER: Very good. The Town
2 of Bedford?

3 MR. COURTNEY: Good afternoon.
4 Attorney Michael Courtney, I'm here with Attorney
5 Madeline Osbon, for the Town of Bedford.

6 Thank you.

7 CHAIRMAN GOLDNER: Thank you. And the
8 Town of Londonderry?

9 MR. LIRETTE: Good afternoon. Attorney
10 Ryan Lirette, and I'm here on behalf of the Town
11 of Londonderry.

12 CHAIRMAN GOLDNER: Thank you. And the
13 Petitioners, Pennichuck Utilities?

14 MS. BROWN: Good afternoon,
15 Commissioners. I'm Marcia Brown, from NH Brown
16 Law, representing the Pennichuck Water Works,
17 Pennichuck East Utility, and Pittsfield Aqueduct
18 Company. And with me today, to my immediate
19 right, is John Boisvert the Chief Executive
20 Officer of the Companies; to his right is Don
21 Ware, who is the Chief Operating Officer; to his
22 right is George Torres, the Chief Financial
23 Officer and Treasurer; behind me, from right to
24 left, is Jay Kerrigan, Manager of Regulatory

1 Affairs; Julia Gagnon, who is a Financial
2 Analyst; and also James Steinkrauss, from Rath,
3 Young & Pignatelli.

4 CHAIRMAN GOLDNER: Okay. Very good.

5 To address the approach for the hearing
6 today, the Department of Energy is the moving
7 party for the Motion to Dismiss, it's our
8 understanding and expectation that the DOE will
9 make its presentation first. Then, we'll turn to
10 the OCA and the Towns to present their positions.
11 Then, Pennichuck will have an opportunity to
12 present its position.

13 Are there any objections to the general
14 approach on how to begin?

15 MS. BROWN: I just have a
16 clarification, if I could?

17 To the extent there are new issues that
18 are raised in arguments, I would just expect that
19 OCA -- or, the Department may want to respond to
20 any new issues. I don't think I've raised any
21 new issues that they're not aware of. But I just
22 wanted to mention that. And, if, in their
23 rebuttal, they raise a new issue, I would like to
24 flag that and have an opportunity for a brief

1 response. Not that I want to continue, you know,
2 back and forth, but I just note that, if there
3 are new issues, that might be an appropriate way
4 to handle it.

5 CHAIRMAN GOLDNER: Thank you. That
6 sounds like a good idea, and better now than
7 later. So, if there are any issues that are
8 brought up, we'll give a chance at a second
9 round, if that's helpful.

10 Okay. No witness list or exhibit list
11 has been presented by the DOE or any other party.
12 The DOE did file notice on January 24th, 2024,
13 that it intended to reference pleadings contained
14 in Docket Number DW 11-026.

15 Are there any objections to the
16 Commission taking administrative notice of the
17 requested docket?

18 MS. BROWN: No objection from the
19 Company.

20 MR. CROUSE: No objection.

21 CHAIRMAN GOLDNER: Any objections from
22 the Towns?

23 MS. SPECTOR-MORGAN: No.

24 MR. COURTNEY: No.

1 CHAIRMAN GOLDNER: Okay. Seeing none.
2 The Commission will take administrative notice of
3 Docket DW 11-026.

4 *[Administrative notice taken of*
5 *Docket DW 11-026]*

6 CHAIRMAN GOLDNER: Okay. Now, I'll
7 turn to the Department of Energy, and just ask if
8 it's fair to say that the DOE does not intend to
9 call any witnesses today, and that you'll be
10 making legal arguments in today's proceeding?

11 MR. YOUNG: That is correct, Mr.
12 Chairman.

13 And I think I just wanted to raise, I
14 think, another preliminary issue of, we had
15 submitted that letter on January 24th, we also
16 likely will reference our position statement in
17 Docket DW 23-101.

18 So, I'm not sure if it would be
19 appropriate to also take administrative notice of
20 that docket as well?

21 I'll leave that in the Commission's
22 hands.

23 CHAIRMAN GOLDNER: Okay. Any
24 objections to taking administrative notice of

1 23-101?

2 MR. CROUSE: No objection.

3 CHAIRMAN GOLDNER: Okay. Seeing none.

4 We'll take administrative notice of 23-101.

5 *[Administrative notice taken of*

6 *Docket DW 23-101.]*

7 CHAIRMAN GOLDNER: And, Attorney Brown,
8 I'll ask you the same question, since there's no
9 witnesses today, our assumption is that you'll be
10 making legal arguments?

11 MS. BROWN: That is correct,
12 Commissioner.

13 And I forget if you mentioned that you
14 would be taking administrative notice of the
15 underlying Pennichuck East solo docket, which is
16 DW 23-096?

17 I just -- I may reference the motion,
18 the pending motion to withdraw that rate case.

19 CHAIRMAN GOLDNER: Okay. Any
20 objections to taking notice of 23-096?

21 MR. YOUNG: None from the Department.

22 MR. CROUSE: No objections.

23 MS. SPECTOR-MORGAN: No.

24 CHAIRMAN GOLDNER: Thank you. Seeing

1 none. We'll take administrative notice of
2 23-096.

3 *[Administrative notice taken of*
4 *Docket DW 23-096.]*

5 CHAIRMAN GOLDNER: And I'll note that
6 this is a new Commission record for
7 administrative notice in a hearing. I've never
8 had more than one before. So, congratulations to
9 all.

10 *[Laughter.]*

11 CHAIRMAN GOLDNER: Okay. So, we'll now
12 invite each party, starting with the DOE, to make
13 a statement of position regarding the Motion to
14 Dismiss. After which, the Commissioners may have
15 some questions of the attorneys.

16 And we'll start with the Department of
17 Energy.

18 MR. YOUNG: Thank you, Mr. Chairman.

19 So, as you mentioned, the Department
20 did submit its Motion on December 15th. And I
21 think that Motion raised four primary concerns.

22 The first being that, on November 23rd,
23 2011, the Commission did approve a settlement in
24 Docket DW 11-026, which created sort of the

1 current paradigm that I think we're operating in,
2 where these companies are -- would be three
3 separate legal entities, with different rates,
4 and that was approved in Order 25,292.

5 And I think the Department's main
6 concern here is that with -- would be with notice
7 to the parties of that Settlement Agreement. As
8 RSA 365:21 -- or :28, excuse me, does state "any
9 time after the making and entry thereof, the
10 Commission may, after notice and hearing, alter,
11 amend, suspend, annul, set aside or otherwise
12 modify an order made by it."

13 And, while there have been previous
14 changes to the components of that Settlement,
15 these were changes made to just that, components
16 of the rates, rather than necessarily how those
17 rates are calculated.

18 So, I think the notice to the parties
19 of that Settlement, and they're involvement in
20 this docket, if it were to move forward, would
21 probably be appropriate.

22 That Motion also did cite concerns the
23 Department does have with allowing the multiple
24 rate cases to simultaneously proceed forward.

1 And, in dockets, I guess one of which was
2 mentioned earlier, Docket DW 23-096, the Company
3 did file a Motion to Withdraw that rate case, and
4 that was for Pennichuck East Utility. There was
5 also another rate case for the Pittsfield
6 Aqueduct Company, and that was docketed as
7 23-097. The Company did file an Expiration of
8 Notice of Intent in that docket. So, the
9 Department does not feel the need to really
10 address these concerns here today.

11 The third concern raised in the Motion
12 is that there is currently no merged entity that
13 currently exists. And the Department's argument
14 is that the orderly and efficient process before
15 the Commission would suggest that that merged
16 entity be created to investigate issues such as
17 revenue requirement allocation, there are
18 concerns that were raised in the Department's
19 position statement in Docket DW 23-101, which
20 I'll refer to as the "Merger Docket", just for
21 ease. Concerns regarding PFAS remediation costs,
22 and those allocations that may arise. The
23 Department also has concerns with growth in
24 certain communities and related infrastructure.

1 And the Department feels that these issues should
2 be ironed out before any consolidated rate case
3 is considered. Essentially, the Merger Docket
4 would inform any future rate case.

5 And the Motion also addressed I guess
6 what I'll categorize as "certain timing and
7 procedural issues". Under RSA 374:33, there is
8 no statutory time limit for a merger or a
9 consideration thereof. While RSA 378:6, which
10 governs rate case, does contemplate a
11 twelve-month suspension of the effective date of
12 that rate. And, as we are already two months
13 into that rate case, I guess I would say the
14 clock is ticking on, if they were to
15 simultaneously go forward. That is a concern of
16 the Department.

17 And we -- the Department does
18 anticipate here today that the Company will
19 likely argue that these -- these dockets cannot
20 continue unless they continue together, which
21 does seem logical. However, it is the
22 Department's understanding that the City of
23 Nashua, who is the sole shareholder, would have
24 ultimate final approval of any merger. And, in

1 fact, and I am currently reading from the
2 Restated Articles of Incorporation filed with the
3 New Hampshire Secretary of State. In Article IX,
4 titled "Reserved Powers": "The actions of the
5 Board designated in this Article IX [VIII?] are
6 subject to the powers reserved to the Sole
7 Shareholder", who is the City of Nashua. "The
8 Reserved Powers referred in this article shall be
9 the following:", and that includes "any action to
10 authorize the Corporation or any of the
11 Subsidiaries to merge or consolidated with or
12 into, or acquire all or substantially all of the
13 assets of any corporation, partnership, limited
14 liability company, or any other business entity
15 or person."

16 So, from the Department's perspective,
17 if the Department's Motion to Dismiss is not
18 granted, and, collectively, we were to go through
19 the complicated process of consolidating rates,
20 while simultaneously conducting the Merger
21 docket, in Docket Number DW 23-101, there is
22 potentially a scenario where we could get to the
23 end of both those dockets, perhaps even after the
24 Commission has issued an order, only to have the

1 City of Nashua vote not to approve the merger.
2 And I do emphasize "merger", because, as I just
3 read, the Articles of Incorporation do not give
4 the City of Nashua, I guess it's obvious, the
5 power to set rates. However, by simultaneously
6 conducting these dockets together, the Commission
7 could, in a way, be ceding that power.

8 Ultimately, our concerns are with
9 efficiency, transparency, and making sure that
10 this is done in the most efficient way possible.
11 And, with the understanding of which path could
12 lead us -- which path is the right one to take.

13 And I think I will start -- I will
14 leave my remarks there for now. And I thank the
15 Commission for their time.

16 CHAIRMAN GOLDNER: Attorney Young,
17 before I turn to the OCA, I just would like to
18 understand the Department's position on the
19 sequencing.

20 So, can you help us with the approval
21 from the owner, the Merger Docket, the Rate Case
22 Docket, can you help us understand which you
23 think comes first, second, third, and how that
24 works?

1 MR. YOUNG: So, I can -- I will,
2 obviously, leave any confirmation to the Company
3 for that. But it's the Department's
4 understanding that the merger -- any merger order
5 would then have to be approved by the City of
6 Nashua.

7 CHAIRMAN GOLDNER: Okay. So, when we
8 get to Attorney Brown, at the end, you can maybe
9 help us understand that sequencing. Because it
10 seems that the merger -- the approval for the
11 merger is -- or, could be a prerequisite for the
12 rate case. And, so, we're trying to understand
13 how that works with the City of Nashua, and the
14 towns, and so forth. So, --

15 MS. BROWN: The Companies would be
16 happy to address that. That's why merger counsel
17 is here, because they have been reviewing those
18 documents. And, so, I'm going to put Jim --
19 Attorney Steinkrauss on notice that he will be
20 responding to that issue.

21 Thank you.

22 CHAIRMAN GOLDNER: Perfect. Thank you.

23 Okay. Let's move to the Office of the
24 Consumer Advocate.

1 MR. CROUSE: Thank you.

2 As noted by the record, the Office of
3 the Consumer Advocate did concur with the
4 Department's Motion to Dismiss, and we maintain
5 that position. One of our concerns is that
6 sequencing issue as well. Just to be
7 transparent, our understanding is that the
8 proposed consolidation of the three utilities
9 isn't final until there's approval by the
10 Commission, then the Pennichuck Corporation Board
11 of Directors, and the vote by the City of Nashua.

12 And, according to the testimony of Mr.
13 Boisvert, if I've pronounced your last name
14 correctly, in the Merger Docket, which is DW
15 23-101, the approval of consolidated rates
16 appears to be a precondition for the merger going
17 forward. And, given the fact that there's been a
18 Motion to Dismiss, and that PEU and PAC have
19 already withdrawn their rate cases to help focus
20 on these two issues, another concern that we
21 likely share with the Department and Pennichuck
22 is how to move forward. Because it seems like
23 the underlying concern and questions that involve
24 the Merger Docket will also involve this docket

1 for consolidated rates. But it does seem odd
2 that they're being pursued separately, as opposed
3 to together. And, so, I don't know whether any
4 of the parties have any opinion on merging those
5 two into one docket.

6 But, for the reasons explained in the
7 Department's Motion to -- excuse me -- to
8 Dismiss, there certainly seems to be a lot of
9 concerns on how that would actually function.
10 And, so, we're very interested in hearing how
11 this plays out, based off of the response from
12 Pennichuck, and any further comments from the
13 Department. Since, for the merger or the
14 consolidated rates themselves, the OCA is rather
15 neutral, just as long as we can agree upon the
16 proper way to explore whether or not these
17 benefits are actually plausible going forward.

18 Thank you.

19 CHAIRMAN GOLDNER: Okay. Thank you,
20 Attorney Crouse.

21 We'll turn now to the Town of
22 Litchfield?

23 MS. SPECTOR-MORGAN: The Town of
24 Litchfield takes no position on the Motion to

1 Dismiss.

2 CHAIRMAN GOLDNER: Okay. Thank you.

3 And the Town of Bedford?

4 MR. COURTNEY: The Town of Bedford
5 takes no position on the Motion.

6 CHAIRMAN GOLDNER: Thank you. And the
7 Town of Londonderry?

8 MR. LIRETTE: The Town of Londonderry
9 likewise takes no position on the Motion.

10 Thank you.

11 CHAIRMAN GOLDNER: Okay. Thank you.

12 Okay. We'll turn to the Petitioners, and
13 Attorney Brown.

14 MS. BROWN: Thank you, Commissioners,
15 for your time this afternoon to get us over this
16 hump.

17 Many of the positions the Department
18 has listed I'm going to address. There were a
19 couple that they didn't specifically address, and
20 I am going to address those, or list. Only
21 because, as the evolution of the filings are
22 indicating, the Company has been highly
23 responsive to, if it's a staffing concern, it's
24 removed the PAC and the PEU, or, you know, the

1 PEU is pending, but has removed those to address
2 staffing concerns.

3 And, if there's a concern about the
4 approvals, you know, the Company will be -- will
5 be modifying its filings to address that.

6 There was another issue that was raised
7 about the hypotheticalness of the merger wasn't
8 filed yet, now that's modified to a hypothetical
9 that the "merged entity doesn't exist". So, our
10 arguments, even though there's a little bit of
11 change in the issues, we're going to be including
12 a response to those issues, in addition to others
13 that we have understood as we've been continuing
14 the dialogue with the Department to try to
15 resolve this matter.

16 But one of the first things that I'd
17 like to address is the apparent misconception
18 that the Companies are proposing -- or, why the
19 Companies are proposing this consolidated rate
20 and merger. It is to provide rate relief to the
21 joint customers of PAC and PEU primarily, that's
22 Pennichuck East Utility and Pittsfield Aqueduct
23 Company. It is to prevent rate shock, in
24 particular, to Pennichuck East Utility. It is

1 also to address some of the needs that this
2 Commission has flagged in the past, of improved
3 funding opportunities, access to capital, and
4 reduced debt service costs for Pennichuck East
5 and Pittsfield Aqueduct Company, because they
6 would have better access to capital, lower cost
7 capital. That's what's driving this Merger and
8 Consolidated Rate Petitions.

9 I'm not going to throw any parties
10 under the bus for, you know, for not responding
11 when we were reaching out back in September,
12 because I understand people are busy, press of
13 other business, and we're now getting these
14 concerns or hearing these concerns.

15 But the Company looked at the most
16 recent example of a rate consolidation and
17 acquisition or transfer of franchise and assets
18 was the Pittsfield Aqueduct Company and
19 Pennichuck East. And that's been referenced in
20 the pleadings. It's the rate case for Pittsfield
21 Aqueduct Company, it was DW 08-052, realized it
22 was going to be a 311 percent rate increase. So,
23 the solution was transferring those companies.
24 It wasn't a merger, but it was transferring them

1 to a better rate model, and that was Pennichuck
2 East, and that docket was 09-051.

3 I'm hearing today a preference that
4 everything should be in one docket. The Company
5 is agnostic on how the Commission wants to manage
6 these dockets. But I'm just explaining, in the
7 past, they have been kept separate dockets, but
8 administratively tied to the hip, even though
9 they had separate docket numbers. So, however
10 the Commission wants to treat these, we think
11 that this model that has already started out,
12 it's already been noticed, that I don't think any
13 re-notice has to happen, because I think the
14 notices are sufficient in each of the dockets.
15 I don't think the Commission necessarily has to
16 "merge" the docket numbers. It's just going to
17 be a functional merging as we go through the
18 procedural schedule, I hope, that has an
19 efficient way of addressing both of these dockets
20 in a single, combined procedural schedule.

21 Now, I mentioned the DW 08-052 and
22 09-051 docket as the basis for the model for
23 this. Both of those dockets were consideration
24 of rates, and what was the best solution forward.

1 I would like to distinguish, and I understand the
2 original mindset of "Well, you deal with mergers
3 first, and you deal with a consolidated rate
4 later." This is not a typical merger of separate
5 investor-owned utilities. This is a collapsing
6 of affiliates, subsidiaries under the Pennichuck
7 umbrella. There's not going to be any change in
8 the shareholder, the City of Nashua is going to
9 stay as the same shareholder. There's not going
10 to be any change in the Pennichuck Corporation
11 Board of Directors. There will be no change in
12 the management and personnel. The people who
13 service all the customers in the customer service
14 interface will not change. The people that you
15 see at this table, and the table behind me, are
16 still going to be performing the functions that
17 they perform.

18 So, it's -- I'd like to get us out of
19 the mindset that this is a merger and
20 acquisition, you know, growth-by-acquisition
21 type. It's a solution to a rate shock/rate
22 mitigation problem, and access to capital
23 problem. And what is the solution? It requires
24 a technical merger on paper.

1 I would also like to mention that, if
2 we're not going to be consolidating rates,
3 there's no need for the merger. The merger is a
4 necessary paper exercise for rate relief. We
5 also see it as a natural progression that flows
6 from DW 11-026, which the Department has
7 referenced. That docket was all about providing
8 rate relief, synergies, and maintaining a safe
9 and clean water service to all customers. That
10 was, as was seen in the 2009 PAC and PEU case,
11 again, that was another example of the transfer
12 of assets necessary to achieve rate relief.

13 And I just want to emphasize, this is
14 not one of those, the cases of the isolated
15 investor-owned utility expanding a franchise
16 territory. In this regard, the rate case and the
17 merger filings are all about the customers; it's
18 not about the utilities.

19 Now, since DW 11-026, Pennichuck Water
20 Works, Pennichuck East Utility, Pittsfield
21 Aqueduct Company, all have evolved to have the
22 same unique revenue requirement formulas that
23 ensure that they have sufficient revenues to
24 cover expenses. The unique revenue requirement

1 mechanism has evolved, with the goal of
2 stabilizing rates and reducing rate shock. To
3 remind folks, there is no profit. That
4 profit-based model died with the approval of the
5 City of Nashua taking over the Pennichuck
6 Corporation in 2011.

7 I'd also like to mention, if the
8 Company's revenues exceed expenses, the excess
9 revenues are placed in reserve accounts. These
10 reserve accounts also buffer against when
11 expenses exceed revenues. And every three years,
12 that's why these companies are on three-year rate
13 cycles, these accounts are adjusted back to their
14 base approved levels so the customers never
15 overpay.

16 Pennichuck Water Works, Pittsfield
17 Aqueduct Company, Pennichuck East, do not pay the
18 City any funds beyond those necessary to pay for
19 the annual cost of debt that the City incurred in
20 2012 to purchase Pennichuck stock.

21 So, if there is no merger, the Company
22 will need to seek rates consistent with its
23 protections afforded by the New Hampshire and
24 United States Constitutions. However, if we

1 proceed on an individual basis, the rates for PEU
2 and PAC could be unaffordable. They could also
3 result in a host of consequences that are already
4 set forth in the Merger Petition testimony,
5 that's the Docket DW 23-101. I'm not going to
6 recite them here. But, for reference, they are
7 at the Petition -- Merger Petition, at Bates
8 Page 016 and 017.

9 So, with this Motion to Dismiss,
10 seeking to separate the merger and the rate case,
11 I cannot stress enough that, to separate them and
12 delay the consolidated rate case until after a
13 merged entity is created, it throws the baby out
14 with the bathwater. The whole point of bringing
15 the merger, the technical need of the merger, is
16 that we need to address rate stability and rate
17 shock. And the alternative that the Companies
18 are putting forward is a consolidation of the
19 rates among the affiliates.

20 Because rate relief is driving these
21 two dockets, if these companies were to go out on
22 their own revenue requirements, although those
23 revenue requirements would be based on costs, so
24 they may be just, but they highly likely will not

1 be reasonable, when you measure them against the
2 EPA Affordability Index.

3 And I also want to restress that, just
4 because the Companies on paper are separate, and
5 that's been addressed in the Motion to Dismiss,
6 and also in the position statement that the
7 Department filed in 23-101, there are no -- PAC
8 and PEU have no employees. They have affiliate
9 agreement or cost allocation agreement with
10 Pennichuck. Pennichuck is the one that holds all
11 the employees. There are not separate officers,
12 no separate trucks, no separate equipment. When
13 a Pennichuck Water Works employee interacts with
14 a customer on behalf of PAC -- Pennichuck East
15 and Pittsfield Aqueduct Company, it is seamless,
16 because the customer is not concerned that the
17 Pennichuck employee is wearing a particular PAC
18 or PEU hat. The proposed merger is not going to
19 affect any of the prosecution of the daily work
20 of these Pennichuck Water Works employees, on
21 behalf of Pennichuck Water, Pennichuck East, and
22 Pittsfield Aqueduct Company.

23 For this reason, the merger is highly
24 distinguishable from the many mergers and

1 acquisitions, growth-by-acquisition mergers that
2 come before this Commission. So, I'm sorry to
3 belabor the point, but I just, because this is so
4 unique, it calls for a path different than a
5 other merger, followed by a year later rate case
6 to flow through merger savings. This is not one
7 of these cases. Maybe it's the tail wagging the
8 dog with rate relief.

9 But I would like -- also just reiterate
10 that, in Paragraph 7 of the Petition, Pennichuck
11 consolidated its Core and Non-Core Systems
12 already. That was in Docket DR 97-058. That
13 order lays out the criteria that the Commission
14 has used to weigh whether consolidating rates is
15 in the public interest and results in just and
16 reasonable rates. I'd like to just quote from
17 one section, though. The Commissioners at the
18 time said: "We do not believe it would be in the
19 public interest to impose annual rates in the
20 range of 800 to 1,200", as would be the case
21 then, "when a reasonable alternative is
22 available."

23 And that the Company believes that, by
24 consolidating its rates, as presented in 23-088,

1 that that is a reasonable alternative that we
2 would like to move forward with.

3 I'd also like to reiterate that
4 Pennichuck East has already consolidated its
5 rates, and that case was back in 2006. And, if
6 you remember, that Pennichuck East is a
7 aggregation of numerous developer systems, and,
8 so, to consolidate all of those rates was a
9 significant change, and that docket was back in
10 05-072.

11 You also have at this table Company
12 staff and employees that have long experience in
13 rate consolidation. The people at the table
14 here, well, I will single out Don Ware in
15 particular, has lived through the Pennichuck
16 Water Works consolidation, the Pennichuck East
17 consolidation of rates, and he and the other
18 officers flag that, when they were looking at the
19 Pennichuck East rate case coming up, because it
20 was due to have its filing on the three-year
21 cycle, that it was time to raise this issue to
22 the Commissioners that consolidation was
23 necessary.

24 There was an issue raised by the

1 Department regarding subsidies, and I'd like to
2 address that next. Some of the concerns on the
3 subsidies would be due to potential growth. Some
4 of the systems may experience growth. But a big
5 impact is caused by capital improvements, because
6 we have a changing atmosphere of environmental
7 regulation causing intense capital improvements.
8 But, either way, even though this is a valid
9 concern of subsidies, the answer is not to throw
10 the consolidated rate case out. The answer lies
11 in rate design, which the Companies and the
12 Commission have used in the past.

13 The Companies have filed financial and
14 rate schedules, as well as a cost of service
15 study, I believe that's at Tab 10 in the rate
16 case, on how to vet the revenue requirement, and
17 how that revenue requirement should be spread
18 among the Companies -- or, I'm sorry, among the
19 customer classes.

20 One important point to note is the
21 Companies get their revenue requirement. So, to
22 some extent, they can be agnostic to how that
23 revenue requirement is spread among the customer
24 classes. Really what's driving the rate design

1 is by the Commission, it's by the Department,
2 it's by Office of Consumer Advocate, it's by
3 stakeholders. They are the drivers of what rate
4 design should look like.

5 So, while one of the concerns that DOE
6 had raised is that "Well, the proposed rate
7 design might look different at the end of the
8 vetting process." The Company is okay with that.
9 We need to have a vetting of the rate design to
10 assure that people are satisfied with it. That
11 happened in the Pennichuck Water Works rate case,
12 which was DW 19-084, where there was a phased-in
13 rate design change for public fire protection.

14 So, rate design works. The solution
15 should not be "throw out the consolidation of a
16 rate case until a merger is decided", in order to
17 deal with the subsidy issue. The subsidy issue
18 needs to be dealt with with rate design in a rate
19 case, in order to inform the merger.

20 I would also like to touch upon the
21 environmental regulations that are changing.
22 It's Pennichuck's understanding that every system
23 at some point will experience a capital need.
24 And there is no question that the cost of service

1 varies because of those needs, not only between
2 each utility, but within each utility, within
3 each individual water system, and, within each
4 rate group, there are further uses that --
5 different uses among the individual customers.

6 So, subsidies happen at all of those
7 levels. It's a matter of which group is more
8 similar and can be grouped together, and that's
9 how rate design resolves what subsidies are
10 allowed, what subsidies are too much. And, if
11 the subsidy is too great, you form another rate
12 group.

13 But, if I take at face value the
14 Department's concern about subsidies, then it
15 could lead to at least 64 individual utilities
16 with their own revenue requirements and own
17 rates. That's not sustainable. Not in the
18 climate of environmental regulation that's going
19 forward.

20 I would also like to note that, if the
21 results of the merger was a consolidated company
22 with rates that were unique to each water system,
23 that rate structure itself would not be
24 sustainable at the Company level. I'd remind the

1 Commissioners that, in the testimony of John
2 Boisvert and Don Ware, the decision to merge must
3 be mated with an approved set of rates.

4 If the merger was approved without
5 understanding the impact of rates, the City of
6 Nashua, which is the sole shareholder of
7 Pennichuck Corporation, and the Pennichuck Board
8 of Directors, would not have all the information
9 that they need to approve the merger.

10 So, while we understand the
11 Department's concern, that, at the end of
12 spending time on the merger, spending time on the
13 consolidation, could it be that the City of
14 Nashua and the Board of Directors do not approve
15 this? Well, their first question out of the gate
16 is "What's the rate impact?" So, it -- in
17 Pennichuck's mind, it is impossible to get to a
18 point for finding of a public interest -- make a
19 public interest finding in the merger part of
20 this, of these Petitions, without answering the
21 question of the rate impact.

22 I mentioned that a number of us in the
23 room were around for the City of Nashua's
24 acquisition of Pennichuck Corporation. And I

1 raise that, because, in DOE's Motion, and in its
2 position statements filed in the merger case, it
3 implies that the three utilities would remain
4 after the purchase. That they never can be
5 consolidated. And I don't mean to misquote, but
6 I will just -- operating on that interpretation
7 of their concern, I would respectfully aver that
8 that argument does not stand on solid ground,
9 because it inserts words into the Settlement
10 Agreement and the order, and inserts meaning into
11 the Settlement Agreement and order that are not
12 expressly in there.

13 Unless there is actual evidence or a
14 term in that DW 11-026 Settlement Agreement or
15 the order that expressly prohibits future
16 consideration of consolidation, the Pennichuck
17 Companies do not think that there is a
18 prohibition. It's not there. If it's not there
19 expressly, it's not there.

20 I would also draw the Commissioners'
21 attention to, even though the Settlement
22 Agreement approved in DW 11-026 kept them
23 separate, there was specific language in the
24 Settlement Agreement that the terms of the

1 Agreement were unique to the matter, and were not
2 to be considered precedent. And that I am
3 quoting from the Settlement Agreement, at
4 Article III, E(4)(b), and that's at Pages 18
5 and 19.

6 The Settlement Agreement also stated,
7 and this is, you know, the Settlement Agreement
8 terms were approved by the order, so it's also
9 the order, that the three subsidies --
10 subsidiaries, rather, would file rate cases
11 shortly after the merger. But that those rate
12 cases would be filed consistent with the
13 Commission's rules and practices. The rules and
14 practices of the Commission do not prohibit
15 consolidation.

16 I'd also note that none of the
17 subsequent rate filings for Pennichuck Water,
18 Pennichuck East, and Pittsfield Aqueduct, to
19 modify the ratemaking structure, which included
20 adoption of the Qualified Capital -- QCPAC, I'm
21 sorry for forgetting the -- Qualified Capital --

22 MR. BOISVERT: Project Adjustment
23 Charge.

24 MS. BROWN: -- Adjustment Charge,

1 sorry. And, then, there was also a modification
2 for the 0.1 Debt Service Revenue Requirement, the
3 1.0 Debt Service Revenue Requirement, and these
4 were in lieu of the depreciation expense and
5 return on the investment. And, then, finally,
6 there was the Material Operating Expense Factor.

7 Those modifications happened all after
8 DW 11-026. They weren't prohibited by 11-026.
9 So, I just don't -- the Companies do not
10 interpret 11-026 as maintaining that all three
11 companies have to stay separated.

12 Now, we get there may be a notice
13 requirement -- or, a notice concern, rather, by
14 the Department. And, indeed, the Company, in
15 going forward with the merger and going forward
16 with the consolidated rate case, reached out to
17 all of those municipalities under its service
18 territory, officials, representatives of towns,
19 legislators all in those communities, and we can
20 happily provide that documentation. So, in
21 Pennichuck's mind, those stakeholders have
22 already been noticed.

23 Now, there was another issue raised
24 about the timeliness, that a rate case has to be

1 prosecuted within twelve months, and the merger
2 doesn't necessarily have to happen within the
3 twelve months. And, then, there was a mention
4 today that we're already two months into the rate
5 case process.

6 But I would also point out that DOE and
7 OCA already, by rules, have the ability to start
8 discovery prior to there being a procedural
9 schedule. So, we're not seeing, just because two
10 months have elapsed in getting started on this
11 rate case, primarily because there's a Motion to
12 Dismiss pending, that we can't get to the rate
13 case and get it moving.

14 Now, there was the argument that -- or,
15 concern raised by the Department, that the City
16 has not taken a position, that the Board of
17 Directors have not taken a position. And, as I
18 previously mentioned, the first question is
19 "What's the rate impact of the merger?" And,
20 again, we cannot have a full merger discussion,
21 without knowing what the rate impact is going to
22 be.

23 I'd also like to remind the Commission
24 and the parties in this room that the City of

1 Nashua is in a tough situation to pick a
2 position. And I would liken this to Office of
3 Consumer Advocate representing multiple
4 ratepayers. How do you pick a favored rate
5 class? The City of Nashua, through Pennichuck
6 Corporation, has a fiduciary duty to the
7 customers of Pennichuck Water Works, Pittsfield
8 Aqueduct Company, Pennichuck East Utility. Until
9 it knows the rate impact of all of those
10 customers, how can it take a position?

11 So, that's why, again, we see a problem
12 with the approach of "let's get a consolidated"
13 -- or, "a merged entity first." Because we need
14 to know the answer, for the City, for the Board
15 of Directors, "what's the rate impact?"

16 And I've already mentioned, you know,
17 the intervenors, and that there may be a
18 difference in the outcome. The Company welcomes
19 having its rate design proposal vetted.

20 I will end my remarks right now with
21 referring to the Pennichuck East Motion to
22 Withdraw, because in there the Company set forth
23 the timeliness of needing a response. Because,
24 right now, it has all of its eggs in the basket

1 of a consolidated rate case. It feels that the
2 Companies can make it, if rates are effective
3 January 1, 2025. If there's a delay in the rate
4 approval, if the merger is not going forward,
5 they need to know, so that they can act quickly
6 to give Pennichuck East Utility rate relief.
7 We're withdrawing the Pennichuck East rate case
8 right now out of consideration of staffing needs,
9 and also because of the staleness of the 2022
10 test year, now that the 2023 books are being
11 audited right now. They can see a preview that
12 the 2023 books would be a much better test year
13 than the 2022.

14 But we would ask that, if at all
15 possible, that the Commission make its decision
16 on whether it's going to grant the Motion to
17 Dismiss or go forward -- or deny the Motion to
18 Dismiss and allow the consideration of the
19 consolidated rate case, that we know before the
20 end of February, so that it can act and file its
21 appropriate notices of intent in early March.

22 So, I appreciate the Commission's
23 attention to our concerns and our response to the
24 concerns of the Department. The Companies have

1 been trying to evolve to meet their -- the
2 Department's needs. And we would respectfully
3 ask that the Commission not grant the Motion to
4 Dismiss, and direct the Companies and the
5 stakeholders to come up with a procedural
6 schedule for both the merger and the consolidated
7 rate case.

8 Thank you.

9 CHAIRMAN GOLDNER: And I'll give the
10 other parties a chance to go around the table one
11 more time. But I just want to make sure,
12 Attorney Brown, I understand. So -- and then
13 we'll go to Commissioner questions.

14 So, you're proposing -- the Pennichuck
15 Companies are proposing a consolidated rate for
16 all three Companies' customers, correct?

17 MS. BROWN: A single tariff, not a
18 single rate group. But I just want to make sure
19 that we're all --

20 CHAIRMAN GOLDNER: Of course. Yes.

21 MS. BROWN: It would be a single
22 tariff, with multiple rate groups within that,
23 and the cost of service study proposals have
24 flowed through the tariff sheets that are in that

1 consolidated rate case.

2 CHAIRMAN GOLDNER: And I have seen the
3 filings from the Company. There's a good
4 understanding, as the Company has always had, of
5 the costs that are being incurred and the
6 financials of the Company. Why not take those
7 financials, go to the City of Nashua, the Board
8 of Directors, with an estimate of what the rates
9 would be and what the changes would be?

10 We've got an "egg and chicken" problem
11 here, because --

12 MS. BROWN: Uh-huh.

13 CHAIRMAN GOLDNER: -- for obvious
14 reasons. But why not just go to the Board of
15 Directors, the Town of Nashua, and make an
16 estimate for their review, and then come to the
17 Commission for final approval?

18 *[Atty. Brown, Mr. Ware, and Mr.*
19 *Boisvert conferring.]*

20 MS. BROWN: If I can have the officers
21 discuss their meetings with the Town, the tone of
22 those meetings, I think we've already shared them
23 with the Department of Energy and Office of
24 Consumer Advocate, but they're in a better

1 position to answer that.

2 CHAIRMAN GOLDNER: Thank you.

3 MR. YOUNG: So, Mr. Chairman? Mr.
4 Chairman, if I may?

5 CHAIRMAN GOLDNER: Yes.

6 MR. YOUNG: Will, I guess, the
7 witnesses be sworn in at this point?

8 CHAIRMAN GOLDNER: I think it's -- at
9 this point, the Commission would be interested in
10 hearing from the Company, but not for facts, just
11 for information at the moment. If it looks like
12 it would be more helpful to swear in the
13 witnesses, we can certainly talk through that.

14 So, at this point, I think we'd just
15 like to hear from the Company in terms of this
16 sort of general question, without putting them on
17 the stand at this point.

18 MR. BOISVERT: Thank you for this
19 opportunity. John Boisvert, I'm Chief Executive
20 Officer.

21 Back in the -- back in the fall, we did
22 reach out, Larry Goodhue, our former CEO, myself,
23 and others within the Company reached out to the
24 intervenors that are here today, as well as, you

1 know, DOE Staff, and the OCA. But we did
2 specifically have meetings with the City of
3 Nashua officials. Some of those were on the
4 Board of Aldermen, some of those were members of
5 the Special Water Committee, and as well as the
6 Mayor's staff.

7 We explained and went through the
8 numbers, as you see and that are proposed. Now,
9 I can't -- we can't say, you know, for Nashua,
10 what their motivations would be, to step to the
11 table and say "we like this" or "we don't". But
12 we did convey what you've seen in the testimony
13 and what we've submitted, as far as the proposed
14 structure that we have in there. They
15 understood, they see the need. We were able to
16 discuss things like, you know, the viability of
17 Pennichuck East Utility with them, and the
18 implications should Pennichuck East Utility, for
19 lack of a better term, go underwater with high
20 rates, and then the potential for other
21 acquisitions or eminent domain, or however you
22 want to look at it, by taking a lot more
23 customers out, it only gets worse.

24 So, we were -- we were able to explain

1 that process and our concerns. And all I can say
2 right now is that there was a nod, they
3 understood. There wasn't any "This is crazy. It
4 will never happen." But they understood the
5 numbers, and they understood that the risk that
6 they have as shareholder were facing, should
7 other things happen, if rates become too high in
8 these smaller utilities.

9 CHAIRMAN GOLDNER: What's puzzling is
10 that, from a Nashua perspective or from a Board
11 of Director perspective, the cost is the cost.
12 You've already calculated how much it cost to run
13 your utilities. And, so, what difference does it
14 make if you have three buckets or one bucket?

15 MR. BOISVERT: It's -- I think of it,
16 as Attorney Brown had said, it depends really on
17 how you apply those buckets to the various
18 classes of customers.

19 CHAIRMAN GOLDNER: But why does that
20 matter to the Board and to the City of Nashua? I
21 mean, in the end, that you can make estimates,
22 the Commission can review it, we'll sort through
23 it all in the end. But why would they push back
24 on you?

1 MR. BOISVERT: Well, I don't think that
2 they would push back necessarily, you know, I
3 agree with the buckets. But what I would see is,
4 is that, as the shareholder of the Company, they
5 would want to make sure that the various
6 customers that are protected, so to speak, you
7 know, from a single-family residence to a
8 business. So, it's all about the rate -- the
9 rate structure in this, is I think the way we
10 view this as happening. And what really comes
11 out of it, out of this analysis, this process is
12 "What is that rate structure that they're looking
13 at, and is that fair and equitable across the
14 customer classes?"

15 CHAIRMAN GOLDNER: Well, I think I
16 would argue, sir, that that's the Commission's
17 job, and not the City of Nashua's job.

18 MR. BOISVERT: Well, I agree with you.
19 But, you know, --

20 CHAIRMAN GOLDNER: We can have a
21 discussion later. But -- and that's what we
22 have, right, it's "chicken and egg"? Like,
23 Nashua wants final authority, the Commission
24 insists on final authority. So, that's where

1 we're stuck.

2 MR. BOISVERT: Yes.

3 CHAIRMAN GOLDNER: So, I'm just trying
4 to understand how you would propose that we
5 proceed, given that the Commission is unlikely
6 to -- unlikely to give up its authority?

7 MR. BOISVERT: I think Don Ware may
8 have a couple ideas, in his experience with this,
9 that may help.

10 CHAIRMAN GOLDNER: Thank you.
11 Mr. Ware.

12 MR. WARE: Good afternoon. As Attorney
13 Brown mentioned, we were following the normal
14 process of rate prosecution in the early part of
15 2023, looking at, you know, the preparation of
16 the PEU rate case. When the final rates were
17 developed, based on the structure that was in
18 place, the rates were over what would be
19 considered "affordable" by EPA. So, we said, you
20 know, "What are our options?"

21 And this, again, is not the first time
22 we have seen and experienced this. Back in 1995
23 and 1996, Pennichuck Water Works consisted of
24 what was called the "Core System", and then there

1 were, I think at the time, eight or nine
2 different independent little water companies that
3 were part of Pennichuck Water Works, but they had
4 their own rates. And, because of the size, and
5 the lack of usage in particular, their rates were
6 getting very expensive.

7 We are a 85 percent fixed cost
8 business. And, you know, when you look at the
9 Nashua system, as a for instance, the average
10 General Metered customer uses around 210 hundred
11 cubic foot per customer. In PEU, it's less than
12 90 [sic] cubic feet per customer, and that makes
13 for rates going up. Even though, there's -- when
14 you look at the relative debt, the relative
15 operating expenses, they're all on a par. The
16 lack of any big industrial/commercial user starts
17 to cause rates to become disparate. So, the
18 concern was "How do we correct it?"

19 You're right. At the end of the day,
20 you know, we have a revenue requirement. Why
21 would Nashua care whether -- how those were
22 collected? They don't, but what they want to
23 make sure is, is that the Company can collect it.
24 And the fact that the Pennichuck East bucket was

1 getting so big, based on the number of customers,
2 and the potential that, you know, communities who
3 are served by us might say "It's time for us to
4 consider taking over these systems."

5 Now, the number of customers who were
6 supporting that overall revenue requirement, in
7 particular, the payment to the City, changes, and
8 it starts to push back and change where the rates
9 are coming in.

10 So, again, at the end of the day, they
11 look to us, as the Company, or, you know, that's
12 why we went to meet with them and say "Look,
13 we're looking at this." And we have concerns
14 that, if we go in the continued model, three
15 individual rate -- three individual utilities
16 with individual rates, due to the unique nature
17 of these, that we're going to get one group, or
18 possibly two, where rates aren't affordable, and
19 we're going to start to have attrition from that
20 customer groups. People drilling wells,
21 communities taking their systems back from the
22 Company, leaving less customers to deal with that
23 85 percent fixed cost basis.

24 And the apparent solution was the same

1 one that was brought forward in 1995, 2007 in
2 PEU, which is to have one rate group, where you
3 have one, you know, or two rates based on the
4 cost of service. But, again, when you start
5 talking "cost of service", what we don't want to
6 do is dissolve and have, again, flow back, say
7 "Well, we've got an improvement in this system
8 over here for PFOA, one over in this system for
9 arsenic, one up in this system for, you know,
10 manganese", whatever the case might be.

11 And, so, you know, structurally, having
12 a single rate class or a couple of rate classes
13 that reflects underlying cost of service keeps
14 rates at an appropriate level that would, our
15 opinion, would keep the potential of PEU, in
16 particular, no longer being viable. So, as a
17 shareholder, that's important to me, for two
18 reasons. I want to make sure they're viable,
19 because, if they're not, there are fixed costs,
20 such as the City getting payment for its
21 investment in the Company, that now have to be
22 picked up by the remaining parties. And,
23 secondarily, you know, there is, again, a lot, as
24 in all these things, you know, if you're an

1 Eversource customer, you have the same electric
2 rate throughout the state. It costs a lot more
3 money to get water to Berlin -- I mean, "water",
4 electricity to Berlin than it does to Nashua.

5 But, when you look at the public good,
6 which is safe drinking water, and you can -- and
7 you hear this from the DES, many small systems
8 are becoming nonviable, they're totally dependent
9 upon grants, because they can't afford, with
10 their small customer base, especially without an
11 industrial/commercial base, to remain viable.

12 CHAIRMAN GOLDNER: Thank you, Mr. Ware.

13 I'll turn to the other parties, excuse
14 me, Attorney Brown, now, to just circle the
15 wagons one more time, before we continue with
16 Commissioner questions.

17 Attorney Young, would you like to
18 respond?

19 MR. YOUNG: So, I think my first
20 question will just be on process for the rest of
21 this hearing. Would this be considered
22 "rebuttal", and then there will be time for
23 closing?

24 CHAIRMAN GOLDNER: That's an excellent

1 question, Attorney Young. I think we have an
2 unusual docket today, because we have no
3 scheduled witnesses. So, we'll -- I'll provide
4 the opportunity at the end for a closing.

5 But I just thought, before we get to
6 the actual Commissioner questions, after the
7 initial probe, then we'll come back and give
8 everyone an opportunity to close up. But I just
9 thought I'd give you an opportunity to respond
10 now, if you like?

11 MR. YOUNG: Thank you. Very much
12 appreciated.

13 And I think I would just request maybe
14 a short break before closing, whether that's
15 before or after Commissioner questions, I'll
16 obviously defer to the Commission.

17 And, then, I think something else I
18 just wanted to note maybe for the record is that
19 a lot of what we just heard I think ventured into
20 facts, and maybe new testimony, that was not
21 sworn -- sworn to. So, I just wanted to, I
22 guess, point that for the record.

23 So, I guess, first, the Department
24 would like to address that, you know, at this

1 point, we don't take a position on sort of the
2 "why" we're here, on whether that's, you know,
3 significant rate relief, you know, that's not
4 really our primary argument.

5 And I don't know that, to this point,
6 that we've heard a clarification on the
7 sequencing of events of Nashua's approval. In
8 fact, I think, it, from what we've heard so far,
9 it supports that Nashua -- that the City of
10 Nashua would have approval over the merger, and
11 then, subsequently, obviously, the rate design,
12 if that were to go forward itself.

13 I think that this docket, and maybe why
14 we're here today, may have been characterized as
15 a "hump", or some "paper exercise", the
16 Department thinks there is significant
17 investigation and work that will be done on this
18 docket. And we do understand that there are
19 similar people involved in all the -- or, maybe
20 the same people involved in all the cases, which
21 may help facilitate it. But I don't think that
22 discounts the amount of work that will be -- that
23 will go into it.

24 We do appreciate the argument, as I

1 think I stated in my opening, that, you know, it
2 would be a logical question, I think, for Nashua
3 to ask, once the Merger -- if the Merger Docket
4 is brought to them, they would ask about rate
5 design. And they might ask themselves "Do we
6 like this rate design?" And I think I would ask
7 the Commissioners to think about "What if that
8 answer is "no"?"

9 At that point, we have gone through all
10 of these -- both of these dockets, and we are
11 back at square one.

12 I guess I'll address, too, it was -- I
13 think it was raised that, in our Motion, we
14 interpreted the Settlement to "prohibit
15 consolidation". I don't think that was our
16 argument in the Motion. I think our argument was
17 that the parties to that Settlement -- it was
18 more of a notice argument, that the parties to
19 that Settlement should be properly noticed that
20 this is happening, and that Settlement Agreement
21 will essentially be thrown out with the
22 "bathwater", to use a word that was used earlier.

23 And I guess I'll leave rebuttal with
24 this, on this note, is that we are aware that

1 there have been conversations with the City of
2 Nashua. But I think we're talking about tones of
3 conversations. And I don't know that that's
4 enough to deny the Motion and to allow this
5 consolidated rate case to go forward with the
6 merger.

7 CHAIRMAN GOLDNER: Thank you, Attorney
8 Young. Attorney Crouse, any comments?

9 MR. CROUSE: Yes. I think I just have
10 three comments beyond my initial remark. That I
11 would agree with the Commission's
12 characterization that this is a "rather unique"
13 hearing today.

14 First, I'm operating under the
15 presumption that the sequencing I presented is
16 correct. I don't think Attorney Steinkrauss had
17 the opportunity to clarify. So, if there are any
18 misconceptions, I would invite him to speak up,
19 not to put him on the spot, but putting you on
20 the spot.

21 But it does raise concerns that I would
22 echo from the Department. Is it the City of
23 Nashua that gets the final say or is it the
24 Commission? And, if the City of Nashua doesn't

1 like how this plays out until the very end, a
2 significant amount of resources have been
3 expended to be back at square one.

4 But that leads into my second concern
5 raised by Attorney Brown, about how the
6 Department and the OCA have the statutory power
7 to conduct discovery, when -- and correct me if
8 I'm putting words into your mouth, Attorney
9 Brown, but it would seem to suggest that we
10 would -- or, should be conducting discovery when
11 there's a pending Motion to Dismiss taking place.
12 That's seemingly adding more expenditures and
13 resources that might otherwise not be necessary,
14 if this is dismissed. If not, then, certainly,
15 we're ahead of the game. But I think it's a bit
16 premature to be considering discovery at this
17 stage.

18 And, then, with regards to the tone and
19 the comments made by the executives, it is
20 interesting, since it's not on the record and
21 they're not subject to cross, but the one
22 takeaway I'm hearing is that the City of Nashua
23 has not expressed a great deal of confidence. I
24 mean, the opposite is also true, they haven't

1 expressed a great deal of disconfidence.

2 But it's concerning that they're
3 reserving the right to veto, without necessarily
4 taking a position. And, with respect to where
5 ratepayers are concerned, that right to veto is
6 probably the opportune point for ratepayers to
7 speak up in the Town of Nashua that express
8 concerns about I think the term being thrown
9 around is "subsidizing" their neighbors. And
10 that would be a great deal of help to the Office
11 of Consumer Advocate, knowing that their voice is
12 being heard. And we encourage the involvement of
13 any intervenors or parties that might be
14 interested in how this plays out.

15 I think that addresses all the
16 preliminary and rebuttal points that I would make
17 at this stage. Thank you.

18 CHAIRMAN GOLDNER: Thank you. Would
19 the Towns care to comment?

20 *[Multiple Town representatives*
21 *indicating in the negative.]*

22 CHAIRMAN GOLDNER: Okay. Seeing none,
23 I'll come back around to the Company, and we --
24 for any final comments, before we move to

1 Commissioner questions.

2 So, Attorney Steinkrauss was going to
3 comment, I think.

4 MR. STEINKRAUSS: Thank you, Chairman,
5 and Commissioners. Good afternoon. I'd like to
6 just address the sequencing.

7 You know, I think it is a bit of a
8 mischaracterization to say that "the Commission
9 is ceding its authority to the City of Nashua."
10 The Article IX does reserve the right to the City
11 of Nashua to approve a merger transaction for the
12 subsidiaries of the parent corporation.

13 The orderly flow laid out in both, of
14 the rate hearing, but more so in the testimony
15 prefiled with the Merger Docket, says that we
16 will proceed on the rate case, proceed on the
17 merger, ultimately, with an order by the
18 Commission, which decides whether or not the
19 merger is just and reasonable and fair, but also
20 on the rates themselves, whether they would be
21 just and reasonable. And, then, a vote would go
22 to the shareholders -- excuse me -- the Board to
23 vote on the merger, and then to the City of
24 Nashua to vote on the merger.

1 We believe that it needs to be together
2 to inform that final decision. But, ultimately,
3 it's the Commission that will make a decision on
4 both the merger and the rate design.

5 And just remind the Commission, in
6 11-026, in that docket, the Settlement includes
7 simultaneously a modified rate methodology, along
8 with the consolidation authorizing the
9 acquisition of the three subsidiaries and the
10 parent corp. by the City of Nashua in Order
11 25,292.

12 So, I'd just say that, I think, while
13 the sequence is correct, I think, ultimately, the
14 Commission does have the final say on both the
15 merger and the rate design, certainly, subject to
16 a final vote and approval.

17 So, yes, I understand the concern of
18 potential wasted resources. But there is
19 testimony filed, prefiled testimony, in both the
20 rate case and in the sister docket, 23-101,
21 explaining the outreach undertaken by both, by
22 the Company officers in advance of all of its
23 filings.

24 So, I'm happy to answer any questions.

1 CHAIRMAN GOLDNER: Yes. I don't think
2 anyone is confused about the City of Nashua's, as
3 the owner, their authority to approve the merger.
4 I don't think there's any confusion about that.

5 It's just a question of "What do they
6 need to approve the merger?" And, then, we get
7 into the "chicken and egg" argument. They want
8 the approval of the Commission's rates and
9 tariffs before they review it. And I think what
10 you're hearing today is the Commission is
11 suggesting, at least I'm suggesting, the other
12 way around. Where a proposed tariff would go in
13 front of the City of Nashua, subject to
14 Commission approval.

15 Can you maybe address that sequencing?

16 MR. STEINKRAUSS: Yes. Yes, I
17 understand your point. I think what --
18 ultimately, it's -- the Board would make -- the
19 Commission, excuse me, would make an order
20 potentially contingent on the City's approval. I
21 don't see it as they're approving rates, they're
22 approving the merger, which we think the rates
23 need to inform their decision on the merger. So,
24 I don't think the Commission is ceding its

1 authority in any way.

2 I understand that concern. But I think
3 we've had other merger documents -- not "merger
4 documents", but other dockets where we've filed
5 petitions to this -- to the Commission, pending
6 the City's approval. Typically, that approval is
7 reached before a final order. But I don't see
8 how that's different in this case, where we could
9 have the parties run through the merger, run
10 through the rate, have an understanding of what
11 the final rate design is going to be, the final
12 impacts to the customers. So, then, an informed
13 decision could be made by the City on the merger
14 and rates, for its various groups of rate
15 customers, which it has a fiduciary duty.

16 So, again, I understand that. But I
17 think the Commission has the power to issue an
18 order contingent on the City's final authority,
19 not the other way around.

20 CHAIRMAN GOLDNER: Thank you, Attorney
21 Steinkrauss.

22 We'll move to Commissioner questions
23 now, beginning with Commissioner Simpson.

24 CMSR. SIMPSON: Thank you.

1 So, with respect to proposed rates, if
2 the Company's proposed rates are good enough for
3 this Commission and the parties in the room, why
4 are they not good enough for the City of Nashua?

5 MS. BROWN: I'm sorry, who are you
6 directing the question to?

7 CMSR. SIMPSON: To the Company.

8 MS. BROWN: Oh, oh, oh. Well, I
9 wouldn't -- well, what I was going to remark is
10 that the Commission has an area of expertise of
11 rate design, not the City.

12 CMSR. SIMPSON: Uh-huh.

13 MS. BROWN: And, so, I would find it
14 highly unlikely for a municipality to overrule a
15 "public interest" finding.

16 But I would also like to just add onto
17 Attorney Steinkrauss's statements about "There
18 are other approvals that have to, perhaps from
19 the Commission, that have to be ultimately
20 approved by the Board of Directors or the City of
21 Nashua." And this is -- this is no different. I
22 mean, we have settlements that are presented to
23 you all, reserving the right of the parties to
24 say "Oh, no, if you change anything, we can

1 withdraw that settlement." Yet, the parties have
2 already gone through a lot of effort to get to
3 that settlement.

4 So, I would say it's highly unlikely.
5 As you've heard, and it's -- you know, the
6 testimony, if it is testimony today, is similar
7 to what was already put in the prefiled testimony
8 of the Company that the Commission has already
9 taken administrative notice of, that there was
10 outreach to the City, that the Board of Directors
11 has been contacted. And you've heard from Don
12 Ware today that the PAC -- the PEU rate case
13 standalone was brought to the Board of Directors,
14 and they're like "No, there has got to be a
15 better way." And, so, that's what fueled the
16 proposal to do a consolidated rate and offer
17 better rate relief for those customers.

18 If that answers your direct question?

19 CMSR. SIMPSON: And it's responsive to
20 it, but it doesn't -- it doesn't really help me.
21 I don't see how we can be put in a position, with
22 proposed rates that the Company has made a good
23 faith effort of developing, and that those are
24 sufficient to meet the PUC rules for adjusting

1 rate schedules, but they're not sufficient for
2 the Board of the Company to make a decision as to
3 whether or not to pursue a merger or not?

4 And you've offered some enlightening
5 information as to the motivation to pursue this
6 merger. That's persuasive. But, if we go
7 through this process, and come to a place where
8 everyone in this room agrees, and the City
9 ultimately decides not to pursue the merger, I
10 would ask you, who would pay for those costs?
11 Who would pay for the DOE's costs? Who would pay
12 for the Consumer Advocate's costs?

13 MS. BROWN: Well, the Consumer Advocate
14 costs and the DOE costs are paid through
15 apportionment or allocations from here. Are you
16 asking that there would be costs directly to the
17 Company?

18 CMSR. SIMPSON: Yes.

19 MS. BROWN: I would have to get back to
20 you on that.

21 But, as far as the -- what does the
22 Board of Director -- what do the Board of
23 Directors and the City of Nashua need beyond the
24 tariffs? I mean, there's -- there's no objection

1 to the filing from either of those bodies. But
2 what you're asking for is for them to weigh in
3 ahead of time, which is not normal, and that's
4 how we presented the case, was like a normal, you
5 know, financing, have the City or, you know, the
6 Board of Directors approve it after-the-fact.

7 So, for now, being asked to supply
8 that, the Company can take that back to the Board
9 and the City, and see what best position they can
10 offer.

11 CMSR. SIMPSON: Okay. That's all I
12 have. Thanks.

13 CHAIRMAN GOLDNER: Commissioner
14 Chattopadhyay.

15 CMSR. CHATTOPADHYAY: So, what I heard
16 is, if, let's say, the Commission approves the
17 merger, and also approves, and I'm going to call
18 it "consolidated rates", but that's subject to
19 whether Nashua approves it or not, there is
20 always a possibility Nashua might say "We don't
21 like it." And, in that case, the question that I
22 have in mind is, can rates be consolidated
23 without a merger?

24 And that is a question for all parties

1 that, you know, dive into these matters.

2 MS. BROWN: I would say "no", because
3 the revenue requirements need to be shared.

4 And I just -- let me confer with
5 counsel, co-counsel.

6 *[Atty. Brown and Atty. Steinkrauss*
7 *conferring.]*

8 MS. BROWN: I have a response, that you
9 can't consolidate rates, you also can't flow
10 through the benefits. So, there's two sides of
11 the ledger there. If you have standalones, and
12 you're trying to consolidate, and have it, you
13 know, the same rate, you also have -- they're not
14 going to meet coverages.

15 I've got a list of other things
16 coming.

17 CMSR. CHATTOPADHYAY: So, let me
18 explain why I'm asking that question.

19 My understanding would be, you need to
20 align the rates with the costs. And it's a
21 matter of rate design, there's a matter of what
22 is a reasonable and just rate design.

23 Clearly, if you are -- not "clearly",
24 but it would seem to me that, if you don't have

1 consolidation, that is, if you don't have a
2 merger, but you have the same rates for the three
3 companies, then there is a distinct possibility
4 that those rates are not just and reasonable for
5 at least one, or maybe even two, or all of them.
6 So, all of the companies. So, that -- that's why
7 I'm asking that question.

8 So, really, you cannot have
9 consolidated rates, and we say we have, you know,
10 we are approving the merger, and then Nashua
11 looks at it and says that "it's, you know,
12 subject to our approval, we don't approve it."
13 So, then, we go back to square one. So, you have
14 different rates. That's, I'm thinking aloud,
15 that's something I'm worried about.

16 At some point, I forget who mentioned
17 it, but there was some discussion about
18 previously, in 1995, there were small companies
19 that were, you know, merged. Did you have a
20 similar experience then? What was the process?

21 MS. BROWN: And, for clarification,
22 when you're saying "similar experience", you're
23 talking about a merger?

24 CMSR. CHATTOPADHYAY: I'm asking

1 whether you have to -- whether they had to file
2 for merger, as well as consolidated rates?

3 MS. BROWN: I would go back to when the
4 Companies were purchasing things from Hudson, in
5 that Consumers/Southern New Hampshire Water
6 Company, you'd have to go back to that scenario,
7 that fact pattern, that docket -- or, those
8 dockets, rather, to get a similar asset transfers
9 and rate consolidation and customer classes being
10 created.

11 CMSR. CHATTOPADHYAY: But, really, my
12 question is, was there a sequencing there?
13 Whether there was first a merger, and then the
14 rate design issue was taken up? So -- and was it
15 done together or not?

16 MR. YOUNG: So, I think, Mr.
17 Chairman -- or, Mr. Commissioner, I think, from
18 my understanding, that was -- they were systems,
19 not separate legal companies that were merged.
20 So, I think that's a distinction. And I think
21 their capital structure was different. In that,
22 I mean, this is -- they're owned by the City of
23 Nashua now.

24 So, I don't think that was an issue

1 back then. If that helps?

2 CMSR. CHATTOPADHYAY: So, they may have
3 requested a merger, but that they never followed
4 up with a rate case at the same time?

5 MR. YOUNG: I believe that they had a
6 unified tariff at the point.

7 CMSR. CHATTOPADHYAY: Oh, they had the
8 same tariff. Okay.

9 What is the Company's position on sort
10 of waiving the twelve-month requirement and, you
11 know, letting the two different requests go at
12 the same time, so that this issue of timing
13 doesn't come up?

14 MS. BROWN: Right now, the financials
15 are predicated on a January 1st, 2025
16 consolidation and benefits. Because PAC and PEU
17 have higher cost debt right now, and there would
18 be maneuverings to lower that debt, so that the
19 cost -- expenses that those -- that PAC and PEU
20 would be incurring would be less.

21 Can you -- I am sorry to ask, could you
22 restate the question?

23 CMSR. CHATTOPADHYAY: Yes. So, my
24 question was, there's a requirement that the

1 rates have to be determined in twelve months. My
2 question was, because you have this unusual
3 situation, what is the Company's position on
4 waiving the twelve-month requirement, and given
5 the issue that DOE had raised?

6 MS. BROWN: Right. The Company -- the
7 Company would be willing to look at that, but
8 there are financial concerns that would need to
9 be addressed in any extension. Now, I would
10 envision that, if there's, you know, the need to
11 have things go into effect on January 1, but, if
12 there's a rate case that extends it, maybe
13 there's a reconciliation mechanism. And I think
14 we can get over that hump, extend the rate case
15 time beyond the one year.

16 And -- I'm sorry. And just toll it as,
17 because we've got this, you know, Motion to
18 Dismiss issue going on, start it later, because
19 you're locked in with the statute at twelve
20 months, but you can delay it by delaying the
21 tolling of that twelve months.

22 CMSR. CHATTOPADHYAY: This is
23 complicated enough that, I mean, I really want
24 you to not think of the Motion to Dismiss, and

1 just consider this question. I'm going to DOE
2 now. The same question that I asked, if the
3 waiver was there, would that help?

4 MR. YOUNG: So, I think I want to just
5 clarify sort of, I guess, what we're discussing.
6 So, it's a statutory suspension. But, since it
7 is a statutory suspension, it's my understanding
8 that the way, you know, this "waiver" would work,
9 is that the Company just agrees that they
10 wouldn't put the rates into effect. So, it's not
11 really a waiver that's granted, in my
12 understanding. It's just the Company agrees not
13 to put them into effect.

14 I think we would have to discuss
15 internally, kind of, I guess, how that would
16 work.

17 CMSR. CHATTOPADHYAY: Okay. And I
18 don't need to tell you that I'm not a lawyer.
19 So, I may put it in a way that itself is an
20 issue, because -- but I think you get the gist of
21 what I was trying to get at.

22 *[Atty. Young indicating in the*
23 *affirmative.]*

24 CMSR. CHATTOPADHYAY: So, I'll leave it

1 at that. Thank you. That's all I have.

2 CHAIRMAN GOLDNER: So, just a quick
3 follow-up, and then we'll take a break, as
4 requested by the Department.

5 So, a question perhaps directed at
6 Mr. Laflamme, understanding that Mr. Laflamme is
7 not on the record. But it seems like, and I want
8 to just access your many years of experience,
9 Mr. Laflamme, if we were to move forward with
10 this rate case, it seems like we would have to
11 have two different trees. There would be a
12 unified tariff tree, and then, in case Nashua
13 didn't approve the merger, we would also have to
14 have what the rates would be if there were three
15 separate entities.

16 Do you have any experience with this?
17 Can you comment on that suggestion?

18 I would just like to get your thoughts
19 on that potential option.

20 MR. LAFLAMME: That wasn't -- that
21 wasn't an option that was put forth by the
22 Company. The filing that they put forth was for
23 a merged entity.

24 Having said that, they -- in the

1 filing, they did provide separate schedules for
2 each individual entity, for PWW, for PEU, and for
3 PAC. I would tell you that the way that we are
4 approaching, and we have -- we have reviewed
5 these filings, the way that we would approach it
6 would be that we would not only keep track of any
7 adjustments for the proposed merged rate, but
8 also we are keeping track of adjustments relative
9 to the individual entities themselves.

10 That's just the way that we're
11 approaching it. However, that wasn't what was
12 requested by the Company.

13 CHAIRMAN GOLDNER: So, if the Company
14 were to request, hypothetically, that the
15 Department, the OCA, all the parties, come back
16 with both a singular tariff and three different
17 tariffs, that would be manageable from the point
18 of view of the Department?

19 MR. LAFLAMME: Yes.

20 CHAIRMAN GOLDNER: Thank you.

21 Okay. Let's take a -- let's take a
22 fifteen-minute break to allow the parties an
23 opportunity to confer. We'll return at 2:45 with
24 any potential Commissioner questions, and then

1 close. Thank you. Off the record.

2 (Recess taken at 2:28 p.m., and the
3 hearing reconvened at 2:50 p.m.)

4 CHAIRMAN GOLDNER: Okay. Let's move to
5 the closing today. And let's begin with the
6 Office of the Consumer Advocate, then the Towns
7 will go, then Pennichuck, and then the Department
8 of Energy, as the moving party.

9 Attorney Crouse.

10 MR. CROUSE: Thank you.

11 In closing, the OCA will repeat the
12 first verse as it said in its opening statement,
13 that we echo the concerns of the Department in
14 this proceeding. And we won't belabor the points
15 that we raised on rebuttal.

16 One of the concerns that we have, and I
17 think all the parties agree, is that what happens
18 to PEU, whether this is approved or not approved,
19 and how does the City of Nashua respond, and the
20 sequencing issue, because I don't think an
21 insolvent PEU is good for anyone. But we may run
22 into a situation where there are presumably
23 conflicts of law and disagreement amongst the
24 parties.

1 And, so, I certainly don't envy the
2 Commission's position of having to make this
3 determination. But we would stand by the
4 statements we have made today.

5 Thank you.

6 CHAIRMAN GOLDNER: Thank you, Attorney
7 Crouse.

8 We'll turn to the Town of Bedford for
9 any closing comments?

10 MR. COURTNEY: No comment.

11 CHAIRMAN GOLDNER: Thank you. And the
12 Town of Litchfield?

13 MS. SPECTOR-MORGAN: No thank you.

14 CHAIRMAN GOLDNER: Thank you. And the
15 Town of Londonderry?

16 MR. LIRETTE: Nothing to add. Thank
17 you.

18 CHAIRMAN GOLDNER: Okay. Thank you.

19 And, then, now we'll move to
20 Pennichuck.

21 MS. BROWN: Thank you, Commissioners.
22 And thank you for the break, so that we could
23 talk among ourselves, too.

24 And one point I would just like to

1 follow up with the questions that were asked from
2 the Bench, to the Department, about its analysis.
3 And I guess we at least have agreement on what is
4 needed for the analysis for the consolidated rate
5 case, and that is the consolidated schedules, and
6 then the individual schedules that were also
7 filed for Pennichuck Water Works, Pennichuck
8 East, Pittsfield Aqueduct Company, so that all of
9 the parties and stakeholders that participate can
10 at least look at what would happen under
11 independent rates, what would happen with the
12 merger, merged rates.

13 As to the legal hurdles that I'm
14 hearing from the Department that prevent it from
15 going forward, I guess I would have to
16 respectfully disagree. I don't see that the lack
17 of a merged entity has ever prevented a review of
18 rates. The Commission has authority to fashion
19 dockets to address the unique issues. And, sure
20 enough, Pennichuck Water Works and its affiliates
21 have presented a number of unique issues to this
22 Commission. We have always seemed to have been
23 able to get through them with a well-crafted
24 procedural schedule.

1 One of the legal hurdles is, you know,
2 with this lack of a merged entity, we need an
3 investigation to see whether a merged entity
4 would be in the public interest. So, I
5 respectfully ask that the Commission not approve
6 the Motion to Dismiss for that reason.

7 There's been a lot of discussion on
8 this veto ability, and whether this final say by
9 the City actually constitutes a delegation of the
10 Commission's authority. We've never seen it that
11 way. There are plenty of other examples where
12 the parties, or here the City, has to approve
13 what the Commission has approved. But I would
14 also step back and say that the approval is just
15 the transaction. It's not rates. That rate
16 design is squarely in the Commission's area of
17 expertise, not the City's.

18 Sorry, just review my notes for just a
19 second, to make sure I stated everything.

20 And, again, I'm not going to reiterate
21 the objection arguments that have modified into
22 the reply arguments here, because, at each step,
23 the Company has been trying to be responsive to
24 the concerns it is hearing. We think that we can

1 get through this with a properly crafted
2 procedural schedule, and would ask that the --

3 Oh, sorry, I did blow over one issue.
4 The Commissioners asked whether the Company would
5 be amenable to an extension? Certainly. A
6 procedural schedule that allows for additional
7 time to review beyond the twelve-month expiration
8 of the tariffs, the Company would be willing to
9 consider that, absolutely.

10 So, we respectfully request that the
11 Commission direct the parties to come up with a
12 procedural schedule, and that it deny the Motion
13 to Dismiss, and have the parties go forward with
14 the investigations of the merger and the rate
15 cases.

16 Thank you.

17 CHAIRMAN GOLDNER: Thank you. And,
18 finally, the Department of Energy.

19 MR. YOUNG: Thank you, Mr. Chairman.

20 First, I think the Department would
21 like to thank the Company for its willingness to
22 discuss our concerns, as well as thank all the
23 parties here today for their willingness to
24 attend today's hearing.

1 And I guess to start my closing, I just
2 wanted to state that we are discussing here today
3 the Motion to Dismiss the consolidated rate case
4 in DW 23-088. There's been a lot of discussion
5 of many other dockets here today. So, I thought
6 it would be helpful to start with that.

7 And I think, as I stated earlier, the
8 Department hasn't taken a position on sort of the
9 "why" we're here. The Department is here, the
10 Department has a primary role of making sure the
11 Commission has a complete record and all the
12 facts necessary to make its decision. And I
13 think, as discussed and confirmed here today,
14 there is a reality that, if this Motion is not
15 granted, we could end up going down a path where
16 the Commission issues an order, approves the
17 rates in this docket, after a significant
18 investigation, but, then, the City does not
19 approve any merger of these entities.

20 While there's no I guess I'd call it a
21 "legal transfer of ratemaking authority", I think
22 it's fair to say that could be categorized as a
23 *de facto* transfer of that authority.

24 I think that the indications from the

1 City of Nashua, who I don't believe is here
2 today, I think all these have been, you know,
3 sort of secondhand relaying of information, are
4 positive. But I think it would be important for
5 the Commission to consider that the devil is
6 always in the details, and things can change.

7 So, the Department would ask that the
8 Commission grant their Motion to Dismiss this
9 rate case today.

10 And thank you, again, for your time.

11 CHAIRMAN GOLDNER: Okay. We'll take
12 these issues under advisement.

13 Is there anything else that we need to
14 cover today?

15 *[No verbal response.]*

16 CHAIRMAN GOLDNER: Okay. I'll thank
17 everybody for your time. And we are adjourned.

18 ***(Whereupon the Hearing on the Motion to***
19 ***Dismiss was adjourned at 2:57 p.m.)***

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