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STATE OF NEW HAMPSHIRE

PUBLIC UTILITIES COMMISSION

September 18, 2007 - 9:08 a.m.
Concord, New Hampshire

DAY X

RE: DW 04-048
CITY OF NASHUA, NEW HAMPSHIRE:
Petition for valuation pursuant to RSA 38:9.PRESENT: Chairman Thomas B. Getz, Presiding
Commissioner Graham J. Morrison
Commissioner Clifton C. BelowSandy Deno, Clerk (a.m. session)
Adele Leighton, Clerk (p.m. session)APPEARANCES: Reptg. the City of Nashua, NH:
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Justin C. Richardson, Esq. (Upton & Hatfield)
Linda ReganReptg. Pennichuck Water Works, Pennichuck
East Utilities & Pittsfield Aqueduct Co.:
Steven V. Camerino, Esq. (McLane, Graf...)
Sarah B. Knowlton, Esq. (McLane, Graf...)Reptg. Anheuser-Busch:
John T. Alexander, Esq. (Ransmeier & Spellman)
Daniel Mullen, Esq. (Ransmeier & Spellman)Reptg. the Town of Milford:
E. Maria Reinemann, Esq. (Brown Olson & Gould)Reptg. the Town of Merrimack:
Edmund Boutin, Esq.

COURT REPORTER: STEVEN E. PATNAUDE CCR

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

Reptg. Merrimack Valley Regional Water Dist.:
Stephen J. Judge (Wadleigh, Starr & Peters)

Barbara Pressley, pro se

John Gustin, pro se (For Claire McHugh)

Reptg. Residential Ratepayers:
Meredith Hatfield, Esq., Consumer Advocate
Kenneth E. Traum, Asst. Consumer Advocate
Stephen Eckberg

Reptg. PUC Staff:
Marcia A. B. Thunberg, Esq.

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[Witness: Pannetier]

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

2 CHAIRMAN GETZ: Okay. Good morning.

3 We'll resume the hearings in docket DW 04-048. My
4 recollection is that we would be beginning today with the
5 testimony of Ms. Pannetier, is that correct?

6 MS. KNOWLTON: That's correct.

7 CHAIRMAN GETZ: Is there anything that
8 we need to address before we hear from the first witness?

9 (No verbal response)

10 CHAIRMAN GETZ: Okay. Then, hearing
11 nothing, if we could proceed.

12 MS. KNOWLTON: The Company calls Eileen
13 Pannetier.

14 (Whereupon Eileen Pannetier was duly
15 sworn and cautioned by the Court
16 Reporter.)

17 EILEEN PANNETIER, SWORN

18 DIRECT EXAMINATION

19 BY MS. KNOWLTON:

20 Q. Good morning. Would you state your full name for the
21 record please.

22 A. Eileen Pannetier.

23 Q. By whom are you employed, Ms. Pannetier?

24 A. Comprehensive Environmental, Incorporated.

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[Witness: Pannetier]

1 Q. I'm going to show you two bound volumes. One is marked
2 "Volume 1A", dated January 12th, 2006, and the second
3 is "Volume 1B" by the same date. In Volume 1A there is
4 a tab marked "Pannetier" that has your testimony that's
5 been marked for identification as "Exhibit 3005" in
6 this case. Are you familiar with this testimony?

7 A. Yes.

8 Q. And, was that testimony and the exhibits that are
9 contained in Volume 1B, and have been marked for
10 identification as "3005A", "B", "C", "D" and "E"
11 prepared by you or under your control?

12 A. Yes.

13 Q. And, is this testimony true and correct to the best of
14 your knowledge?

15 A. Yes.

16 Q. And, if you were giving that testimony today, would
17 your answers be the same as the testimony that's
18 contained in this Exhibit 3005?

19 A. Yes.

20 MS. KNOWLTON: Thank you.

21 CHAIRMAN GETZ: Okay. Before we start
22 the cross-examination, let's get appearances on the record
23 please.

24 MR. UPTON: Good morning. I'm Rob

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[Witness: Pannetier]

1 Upton, from Upton & Hatfield, and with me is Justin
2 Richardson and Linda Regan. We represent the City of
3 Nashua.

4 CHAIRMAN GETZ: Good morning.

5 CMSR. MORRISON: Good morning.

6 CMSR. BELOW: Good morning.

7 MS. REINEMANN: Good morning. Maria
8 Reinemann for the Town of Milford.

9 CHAIRMAN GETZ: Good morning.

10 CMSR. MORRISON: Good morning.

11 CMSR. BELOW: Good morning.

12 MR. BOUTIN: Good morning. Ed Boutin,
13 for the Town of Merrimack.

14 CHAIRMAN GETZ: Good morning.

15 CMSR. MORRISON: Good morning.

16 CMSR. BELOW: Good morning.

17 MR. MULLEN: Good morning. Dan Mullen,
18 for Anheuser-Busch.

19 CHAIRMAN GETZ: Good morning.

20 MR. TRAUM: Good morning. Kenneth
21 Traum, representing the Office of Consumer Advocate.

22 CHAIRMAN GETZ: Good morning.

23 MS. PRESSLEY: Good morning. Barbara
24 Pressley, citizen intervenor.

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[Witness: Pannetier]

1 CHAIRMAN GETZ: Good morning.

2 CMSR. MORRISON: Good morning.

3 CMSR. BELOW: Good morning.

4 MS. THUNBERG: Good morning. Marcia
5 Thunberg, on behalf of Staff. And, with me today is Mark
6 Naylor, Jayson LaFlamme, Doug Brogan, and Jim Lenihan.
7 Thank you.

8 CHAIRMAN GETZ: Good morning.

9 CMSR. MORRISON: Good morning.

10 CMSR. BELOW: Good morning.

11 MS. KNOWLTON: Good morning. Sarah
12 Knowlton and Steve Camerino, from the McLane law firm,
13 here for the Pennichuck companies. And, with us today
14 from the companies is Donald Ware, to my left, and Bonalyn
15 Hartley.

16 CHAIRMAN GETZ: Good morning.

17 CMSR. MORRISON: Good morning.

18 CMSR. BELOW: Good morning.

19 CHAIRMAN GETZ: So, then, let's begin
20 with Ms. Reinemann, questions for the witness?

21 MS. REINEMANN: We have no questions.

22 CHAIRMAN GETZ: Mr. Boutin?

23 MR. BOUTIN: None.

24 CHAIRMAN GETZ: Mr. Mullen?

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[Witness: Pannetier]

1 MR. MULLEN: We have no questions.

2 CHAIRMAN GETZ: Mr. Traum?

3 MR. TRAUM: No thank you.

4 CHAIRMAN GETZ: And, Ms. Thunberg?

5 MS. THUNBERG: Staff has no question of
6 this witness. Thank you.

7 CHAIRMAN GETZ: And, well, let's see.

8 Ms. Pressley?

9 MS. PRESSLEY: No thank you.

10 CHAIRMAN GETZ: And, Mr. Upton? Mr.

11 Richardson?

12 MR. RICHARDSON: Thank you, Mr.

13 Chairman. Good morning.

14 CROSS-EXAMINATION

15 BY MR. RICHARDSON:

16 Q. Ms. Pannetier, you prepared a Watershed Management
17 Plan, and that was finalized around August 1998, is
18 that correct?

19 A. Correct.

20 Q. And, according to your -- I believe you started work on
21 this project, on this report that's in Exhibit 3005,
22 that series, around 1996, is that right?

23 A. I believe the contract was in late 2005.

24 Q. I'm sorry, I'm asking you about the Watershed

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[Witness: Pannetier]

1 Management Plan that's dated August 1998 that you just
2 referred to. You began work on that around 1996?

3 A. Yes. I'm sorry. I said "2005", I meant "1995".

4 Q. Okay. Now, you stated in response to a data request
5 that's in Exhibit 1071 that "CEI maintains no drafts of
6 its reports, and that PWW accepted CEI's initial report
7 without requesting any changes." Is that still your
8 testimony today.

9 A. Yes.

10 Q. Okay. And, you may recall during your deposition I
11 asked you about whether there were any drafts, and you
12 indicated that the draft became final because there
13 were no comments from either Mr. Ware or anyone -- or
14 the Aldermen or anyone else the document was
15 distributed to?

16 A. There, and you presented a document that was done in, I
17 believe, early 2006 [1997?], more than a year prior to
18 our final document, which apparently was a working
19 paper that had been given to Ms. Hersh of the City of
20 Nashua upon her request. What our normal procedure is
21 that I would, when someone requests that, Mr. Ware had
22 asked me to work with Ms. Hersh regarding some
23 regulations that the City was working on. And, as a
24 part of that, she really pushed for these working

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[Witness: Pannetier]

1 papers, which I called Mr. Ware and he agreed to give
2 them to her, even though he had not seen them yet. So,
3 I gave her a set of working papers, which were done
4 more than a year prior to the final document, and were
5 substantially different.

6 Q. So, my question to you then is, is that did you ever
7 get comments on any of these drafts?

8 A. I don't recall any comments, other than internal
9 comments.

10 Q. Why don't we look at your --

11 CHAIRMAN GETZ: Excuse me,
12 Mr. Richardson. When you say "these drafts" now, are you
13 -- it seems like there's some distinction growing between
14 what's a "draft" and what's a "working paper". When
15 you're referring to "these drafts", are you now talking
16 about what she's calling "working papers"?

17 MR. RICHARDSON: Well, I'm just trying
18 to explore with her the process and what roles different
19 versions of the Final Report -- what they might be and how
20 she might characterize those. I intend to walk through
21 some of those and explore some of those changes when we
22 get to them. But right now I'm just laying a foundation
23 for that.

24 CHAIRMAN GETZ: Okay. And, I'm just

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[Witness: Pannetier]

1 trying to understand what documents we're referring to.

2 But please proceed.

3 MR. RICHARDSON: Okay.

4 BY MR. RICHARDSON:

5 Q. Why don't we look at the question I asked you during
6 your deposition on Day 1. I believe that's on Page 60.
7 Could we bring it up. And, let's look at Lines 20 to
8 22, and the question above that. Now, you see that
9 question? "Now when was the final draft" -- "when was
10 the Draft Report presented relative to when the final
11 one became completed?" And, could you read your
12 response to that question.

13 A. Could I see the document? Is that in the -- Can you
14 identify where that is, so that I can see the whole
15 page?

16 Q. Certainly. It's on the screen there.

17 A. Can you show me in a hard copy?

18 Q. Ms. Pannetier, are you uncertain as to whether or not
19 you can answer this question?

20 A. I'd just like to see the hard copy.

21 Q. Okay.

22 A. If that's not a problem.

23 Q. Ms. Pannetier, do you not understand the question that
24 is on Page 60 there, between Lines 17 and 20?

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[Witness: Pannetier]

1 A. I guess not, because there was no Draft Report. There
2 were working papers. We have internal drafts, which we
3 call "working papers". As I already stated, I don't
4 recall getting comments. And, as far as I know, it was
5 only distributed to Ms. Hersh.

6 Q. Okay. Why don't we look at Exhibit 1109, on Page 1.
7 Do you recognize this document?

8 A. From the exhibits, yes.

9 Q. Okay. So, in fact, and this document is marked or
10 states on the bottom the date is "July 1997". Do you
11 recall sharing a document like this with the Nashua
12 Conservation Commission, for example?

13 A. I recall giving a set of working papers to Ms. Hersh.
14 I'm not sure what -- where else those were distributed.

15 Q. Okay.

16 CHAIRMAN GETZ: I'm concerned we're
17 talking past one another here. Are you looking for the
18 Draft Report? I took your initial -- earlier testimony to
19 say that you did a Draft Report, which you then called the
20 "Final Report". Is this that Draft Report that then
21 became the Final Report on the screen right now?

22 MR. RICHARDSON: Well, it's somewhat
23 confusing, because, in response to data requests, if we
24 look at Exhibit -- why don't we look at Exhibit 1071.

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[Witness: Pannetier]

1 CMSR. BELOW: Before we go on, I just
2 want to observe in the upper right this is marked as
3 "1109", and in the lower left it's marked as "1107". I
4 think in the filing it's listed as "1109".

5 MR. RICHARDSON: That's correct. And,
6 I, in preparing for this, I realized there were two
7 exhibit numbers. The one on the bottom is incorrect.

8 CMSR. BELOW: Okay.

9 BY MR. RICHARDSON:

10 Q. So, before we start, I'd like to go through and compare
11 what's contained in this document and what's contained
12 in the final version. But, before we do that, I want
13 to ask you some questions about phosphorous. And, I
14 believe you state in your report that phosphorous is an
15 important pollutant to look at, because it's "important
16 to the water quality of the system", and because "high
17 levels of this nutrient can lead to excess algae and
18 plant growth, which in turn can affect the systems'
19 compliance with drinking water regulations and can also
20 cause taste and odor problems." Do you agree with that
21 statement?

22 A. Well, phosphorous is the best indicator that we have at
23 present in fresh water systems. And, that's the
24 general science today, is that excess levels of

[Witness: Pannetier]

1 phosphorous, which is common in almost all fresh water
2 bodies, and more common where southern New Hampshire
3 and other developed parts of the U.S. tends to cause
4 algae blooms. But it's not that simple. There are
5 many, many factors at work.

6 Q. Ms. Pannetier, just to be clear, I'm going to ask you a
7 number of questions that I believe will have "yes" or
8 "no" answers. If you're able to answer "yes" or "no",
9 I'd like you to do that. If you feel you need to
10 explain that, you're welcome to do so. But, just to be
11 clear for the record, do you agree with that statement?

12 A. Could you make the statement again?

13 Q. Why don't we bring up Exhibit 3005A, Page 12. And,
14 Page 12 is the electronic version. It's also marked as
15 Page "155", and "1-2" in the document. On the right
16 side, you'll see a statement in the first full
17 paragraph. Can you below that up please? It says that
18 "Phosphorous is also important to the water quality of
19 the system." And, then, further down I believe it says
20 that "High levels of this nutrient can lead to excess
21 algae and plant growth, which in turn can affect the
22 systems' compliance with drinking water regulations and
23 can also cause taste and odor problems." Do you still
24 agree with that statement today?

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[Witness: Pannetier]

- 1 A. Yes. This seems to be the Final Report, however. You
2 showed the cover of the Draft Report, and switched to
3 the Final. There were a number of changes between the
4 working papers, if you want to call it a "draft", fine,
5 but the working papers, you're showing an exhibit from
6 July of '97. There's a number of differences. There's
7 five more figures, five more tables, approximately.
8 There's an Executive Summary. There's a two-column
9 format in the Final. There are a number of formatting
10 and other changes, editorial.
- 11 Q. That's what, as consultants, you're paid to do, is that
12 right? Is to make changes to your --
- 13 A. I'm not sure I understand the question.
- 14 Q. Okay. I'll move on. Now, phosphorous is considered a
15 limiting nutrient for plant life to grow, is that
16 right?
- 17 A. That's what's believed today, yes.
- 18 Q. And, as a result, most watershed programs are aimed at
19 reducing phosphorous levels as the most effective
20 method of preserving a watershed?
- 21 A. Correct.
- 22 Q. Okay.
- 23 A. In this type of watershed, yes.
- 24 Q. And, reducing phosphorous is critical, not only from a

[Witness: Pannetier]

1 water quality perspective, but it's also important for,
2 in this case, preserving the quantity of the water
3 available, isn't it?

4 A. Not necessarily.

5 Q. Well, why don't we look at Exhibit 3005A again. This
6 is the Final Report, on Page 34 of the electronic copy.
7 It's also marked "179" and "4-1". I believe it states,
8 it's the paragraph that begins "It is also critical to
9 reduce phosphorous". Can you find that? Okay. In the
10 second full paragraph, towards the end, there's a
11 sentence that begins "It is also critical". Can you
12 blow that paragraph up? And, there I believe you state
13 "It is also critical to reduce phosphorous because
14 excess amounts lead to eutrophication, the rapid
15 filling-in of water bodies with dead plant materials
16 and the associated loss of capacity (and other
17 problems)." Do you agree with that statement?

18 A. That's generally a true statement for all lakes and
19 ponds.

20 Q. And, in fact, in the case of the Pennichuck Ponds, this
21 is also a problem, isn't it?

22 A. At the time that we did this plan, we thought that it
23 was a key problem. But, subsequently, we mapped and
24 explored the bottom of each of the ponds. We probed

[Witness: Pannetier]

1 the depth, we took bathymetric measurements at the
2 bottom of the ponds, and found that it was not as
3 significant a problem as we had felt. However, it was
4 a significant problem in a lot of the retention basins
5 throughout the watershed, in that it was affecting
6 storage within the watershed in general, not so much in
7 the ponds, because, in the ponds, you couldn't get at
8 this inactive storage. So, yes, in general, it's a
9 huge problem in lakes and ponds. It turned out not to
10 be as much of a problem with the Pennichuck Ponds.

11 Q. You may recall during your deposition I asked you about
12 this. And, I asked you "How much do you think the
13 capacity of the Pennichuck Ponds has diminished, as
14 development has increased?" And, that's -- why don't
15 we go to Page 84 to 85 of Day 1 of the deposition. Do
16 you recall what your answer was to that question?
17 Without looking at the deposition, do you remember what
18 you might have answered to that question?

19 A. I'm sorry, what did you ask? What was the question
20 again?

21 Q. "How much do you think the capacity of the Pennichuck
22 Pond system has diminished as development has
23 increased?"

24 A. I doubt that I would have given a refined answer.

[Witness: Pannetier]

1 Q. In fact, why don't we look at Page 85, starting at Line
2 2, and going down to Line 9. No, I'm sorry. Why don't
3 we go -- You can see this on the whole page. So, is it
4 -- it's your position today then that it's difficult to
5 estimate what that loss in capacity might be?

6 A. Well, I think, based on this page, you're confusing
7 "yield" with "capacity". So, the terminology being
8 used is a little confusing. "Capacity" would be how
9 much water a given pond could hold; whereas the
10 watershed "yield" is a whole different animal.

11 Q. Okay. So, is it your understanding then that the
12 phosphorous problems could result in a loss in the
13 yield of the supply of Pennichuck Brook?

14 A. Well, I think that the term "loss of yield" is a really
15 complicated term. And, when we've used that
16 terminology, from the Metcalf & Eddy report, which was
17 something like 1906, they had made a "yield" estimate.
18 Yet, there are many different ways to calculate "yield"
19 of a water supply watershed. So, we don't know exactly
20 what they used, compared to what we would use today.
21 It appears that there's less yield today than there was
22 in 1906. But it's not just phosphorous. A lot of it
23 has to do with imperviousness, and, as a watershed gets
24 developed, you put in 101A, you pave over parking lots,

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[Witness: Pannetier]

1 you have all these things to interfere with recharge.
2 And, that's the yield of the aquifer. You interfere
3 with the soil and the capability of the watershed to
4 store water. So, there's a lot more to it than just
5 phosphorous.

6 Q. Well, let me ask it this way then. In at least two
7 occasions I'm aware of, you've stated publicly that the
8 yield of the Pennichuck Pond system, the aquifer,
9 however you'd like to refer to that, has declined by
10 75 percent, is that right?

11 A. I have said that, yes.

12 Q. Okay. Well, what -- And, for example, there was a --
13 in Exhibit 1108, there was a November 2002 application
14 to the EPA. And, why don't we bring up Pages 3 to 4,
15 just to make sure I understand what we're discussing.

16 CHAIRMAN GETZ: Can I ask, 75 percent
17 decline in yield relative to this 1906 report? Is that
18 what we're talking about?

19 THE WITNESS: Yes.

20 CHAIRMAN GETZ: Okay.

21 THE WITNESS: So, somewhere between 1900
22 and 2006, a lot of yield has been lost.

23 CHAIRMAN GETZ: I just wanted to
24 establish the reference point.

[Witness: Pannetier]

1 BY MR. RICHARDSON:

2 Q. And, you state on the top of Page 4 that this is
3 "largely due to imperviousness, which reaches
4 35 percent plus, I believe, in some of the watersheds."
5 Could you blow that up please.

6 A. Well, in portions of Nashua, it's up to 100 percent.
7 It can be 85 percent in an ultra urban area. And, the
8 more urban it is, a typical figure for 101A and the
9 commercial/retail area along Nashua and into Merrimack
10 corridor would be a typical of 85 percent. As you get
11 into Hollis, it's very, very low. And, fortunately,
12 Hollis is almost 50 percent of the watershed, and yet
13 their imperviousness level is extremely low. And, the
14 bulk of the aquifer is also in this upper portion of
15 the watershed. So, it's a very -- it's a complicated
16 question for me to say "yes", "no".

17 You also have a lot of water supply
18 withdrawals, if I may add, is that Pennichuck's
19 withdrawal, Merrimack has three wells in that aquifer
20 area. There are other wells in the area. And, those
21 also withdraw water, which affects yield. So, you have
22 water not making it to the aquifer, not, you know,
23 rushing out because of stormwater. And, you have more
24 people using the water.

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[Witness: Pannetier]

1 Q. Okay. So, let me just turn back again. I believe, in
2 a second report for the City of Nashua, there's a
3 document called "Alternative Stormwater Management
4 Methods". Why don't we look at Page 1105 -- excuse me,
5 Exhibit 1105, Page 10. And, I apologize. It appears I
6 have the wrong page number written down. Okay. Well,
7 it appears to be on Page 12, and it continues onto 13.
8 It is also blown up in the box. It says "Locally, the
9 estimated yield of Pennichuck Brook has declined by
10 over 75 percent in the last 100 years." So, it's now
11 two years later, it's not only 75 percent, it's over
12 75 percent. Do you agree with that number?

13 A. As I said, it's an estimate. But, as far as we can
14 tell, yes.

15 CHAIRMAN GETZ: I'm sorry, Mr.
16 Richardson. I'm having trouble reading the PDF here.
17 What is this document exactly?

18 MR. RICHARDSON: This is Exhibit 1105.
19 It's a stormwater manual. It's entitled "City of Nashua,
20 New Hampshire Alternative Stormwater Management Methods".

21 BY MR. RICHARDSON:

22 Q. And, Ms. Pannetier, this is a report that you prepared
23 for the City of Nashua, is that right?

24 A. It was prepared for a joint group of the City of

[Witness: Pannetier]

1 Nashua, Pennichuck Water Works, and the New Hampshire
2 DES.

3 Q. And who -- And, what year was that?

4 A. Pretty recent. I want to say it was --

5 Q. If we look at Page 2 of the document.

6 A. Maybe --

7 Q. It's on Page 2, I believe, if you want to look at the
8 screen.

9 A. 2003.

10 Q. Okay.

11 CHAIRMAN GETZ: Thank you,

12 Mr. Richardson.

13 BY MR. RICHARDSON:

14 Q. And, this was a project that you participated in,
15 right?

16 A. Yes.

17 Q. Okay. Now, what do you believe the safe yield is
18 today? Has it declined beyond 75 percent?

19 A. We have not done a safe yield study.

20 Q. Okay. But you obviously had an opinion that was
21 relative to about 75 percent in these two prior
22 documents. Is that still your opinion today?

23 A. Yes.

24 Q. Okay. Now, let me go back to, before I leave this, I

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[Witness: Pannetier]

1 want to go back to your Final Report. This is Exhibit
2 3005A, on Page 33. There's a paragraph that begins
3 with "In summary". So, in your Final Report, in 1998,
4 this seems to confirm the loss in capacity, and you
5 state that "Even more critical is the increasing
6 inability to store water in the watershed.
7 Urbanization will continue to reduce the available
8 water supply." Do you agree with that statement?

9 A. Yes. It's in the report.

10 Q. Okay.

11 A. Certainly, urbanization is a major factor throughout
12 southern New Hampshire, all through Massachusetts, and
13 down the East Coast. There is pavement, there is
14 industrial, commercial, retail. There is high-density
15 residential development. Nashua and parts of Merrimack
16 are quite urban.

17 Q. And, the impact of that, I believe, is particularly
18 important, because it's not just a loss in the total
19 water passing through the system, but it's actually a
20 loss in base flow. Would you agree with that, that
21 happens as the watershed becomes more urban?

22 A. Well, in this watershed, it's more complicated than
23 that. In general, as you pave over the watershed, you
24 can lose base flow, which is the discharge of

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[Witness: Pannetier]

1 groundwater into streams, because the pavement
2 basically blocks recharge from occurring. And, as you
3 get a loss of water level in the groundwater, it stops
4 -- it may stop discharging to streams during certain
5 seasons. Then, when we have very wet years, and
6 Mother's Day floods and so on, it may recover
7 completely. So, it's a more complicated question than
8 that. But, yes, it could affect base flow. However,
9 in this watershed, there's a huge wetland area that's
10 called the "Silver Lake Fault Zone", where there is, we
11 believe, discharge from a fault zone into a wetland
12 area, which makes it very hard to calculate base flow
13 versus surface flow and so on. It's a very wet area.
14 That's where all three of Merrimack's wells are.

15 Q. But this is a relatively small watershed, is that
16 right?

17 A. Not compared to the pond levels. If you look at pond
18 levels from some of the comparisons of water supplies,
19 this is actually something like the watershed is 85
20 times the size of the surface area of the ponds. And,
21 what that tells us is that stormwater is a much more
22 dominant factor than base flow. One of the lakes I
23 worked on, Lake Auburn, in Maine, there was -- their
24 watershed is 9,000 acres, compared to 18,000. And,

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[Witness: Pannetier]

1 yet, the lake itself is 2,200 acres. So, there's a
2 difference, it's only four times larger.

3 Q. Ms. Pannetier, I'm afraid you're going way beyond the
4 scope of my questions. And, it's going to take a long
5 time for us to walk through all this. If you feel you
6 need to add more or if you're unable to answer with a
7 simple "yes" or "no", feel free to indicate that. But
8 I'm trying to keep us focussed on a particular
9 direction. I want to go back to the comment about why
10 base flow is important. I believe, as urbanization
11 comes, you're adding things -- well, the base flow is
12 essentially a clean source of groundwater, isn't it?

13 A. It can be.

14 Q. And, as urbanization occurs, that source of groundwater
15 gets reduced?

16 A. That's a good general statement.

17 Q. And, so, with urbanization, with the higher stormwater
18 discharges that you would expect to see, you're
19 bringing in the more polluted sources of water into the
20 system more quickly?

21 A. Correct.

22 Q. Okay.

23 A. And, all I was trying to say is, that this is a fairly
24 large watershed for the size of the ponds, which

[Witness: Pannetier]

1 indicates that stormwater is indeed a very important
2 factor.

3 Q. Okay. All right. Why don't we move on then. And, I'd
4 like to take a look at the July 1997 version of your
5 report. That's Exhibit 1109. Why don't we bring up
6 Page 26 of the electronic filing, and that's marked
7 Page "3-8". Okay. So, why don't we blow up the
8 section on phosphorous that's in the middle. You see
9 there's a row going across. And, I believe you state
10 that phosphorous levels in the Pennichuck system range
11 from -- why don't you read that for us.

12 A. "Phosphorous levels range from 0.02 to 0.21 milligrams
13 per liter in chain ponds. Desired levels are usually
14 around 0.02 milligrams per liter. High levels may lead
15 to eutrophication of the reservoirs. Modeling
16 indicated high values may occur at PB-2 and SB-1."

17 Q. Okay. And, then, Linda, can you bring up at the same
18 time Exhibit 3005A, on Page 30. Can you enlarge the
19 section on "phosphorous"? Now, here I believe it
20 states that "phosphorous levels" -- the "Desired levels
21 are usually around 0.02 to 0.03 milligrams per liter in
22 a stream system like this." Did phosphorous become
23 more desirable? Why the change?

24 A. Because the groundwater in this particular watershed,

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1 and we don't know why yet, is relatively high in
2 phosphorous.

3 Q. Okay. But you're talking about a "desired level", a
4 target that you want to see. And, you've essentially
5 increased that by 50 percent here, haven't you?

6 A. Based on what's realistic, if you look at a Sebago
7 Lake, it might be a 5 micrograms per liter, which is
8 extremely low. This is a river system. It's a series
9 of riverine ponds. And, probably even before man
10 arrived on the scene, it probably was substantially
11 more than what it would be in a pristine system,
12 because it's a river.

13 Q. But it was known before July of 1997 that it was a
14 river system. So, what changed between July of 1997
15 and August of 1998 that caused you to increase the
16 desired level of phosphorous by 50 percent?

17 A. We looked at what's realistic. There's no point in
18 saying that this pond should be the same as Sebago
19 Lake. And, that's exactly why we don't normally
20 release working papers is because there are going to be
21 changes.

22 Q. Okay.

23 A. It hasn't gone through all the QA/QC, quality
24 assurance/quality control procedures, that are routine

[Witness: Pannetier]

- 1 for our company.
- 2 Q. Now, I understand that, in some circles, the level of
- 3 0.04 milligrams per liter is considered a nuisance
- 4 level. Would you agree with that?
- 5 A. In the Northeast, the ranges, I believe, are everywhere
- 6 from 0.005 to 0.05. So, there's almost two orders of
- 7 magnitude, depending on the soils, geology, location,
- 8 urbanization, residence time. I know you want black
- 9 and white "yes" and "no" answers. But it's not a black
- 10 and white field.
- 11 Q. Well, why don't we take a look then at Exhibit 1112.
- 12 Let's look at the first page of the document. And, I
- 13 believe this is a presentation by Ms. Rebecca McEnroe,
- 14 with Pennichuck Water. Do you know her?
- 15 A. I do know her.
- 16 Q. And, she's an engineer with the Company?
- 17 A. She's not with CEI, no.
- 18 Q. I'm sorry. With Pennichuck?
- 19 A. I believe so.
- 20 Q. Okay.
- 21 A. I'm --
- 22 Q. You don't know?
- 23 A. I did not work on this presentation.
- 24 Q. Okay. Have you seen this presentation before?

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[Witness: Pannetier]

1 A. No.

2 Q. Okay. Well, why don't we turn to Page 14 of the
3 electronic copy, I believe it's marked as 17 in the
4 document as well. And, it appears that, in her
5 presentation, the Pennichuck engineer, Ms. Balke, is
6 stating that "Phosphorous concentration above
7 0.04 milligrams per liter is a nuisance amount".

8 A. I think you're confusing Rebecca Balke, who's an
9 engineer with CEI, with Rebecca McEnroe, who is an
10 engineer with Pennichuck.

11 Q. I apologize. And, this was Ms. McEnroe's presentation
12 with Pennichuck. So, my question then is, do you
13 disagree with Pennichuck's own engineer that a level of
14 "0.04 milligrams per liter is a nuisance amount"?

15 A. As I said, I have not seen this presentation. I did
16 not prepare this presentation. There are other
17 engineers involved. I would be the last one to stamp
18 this as mine.

19 CHAIRMAN GETZ: I think the question is
20 "do you agree with that general proposition?"

21 THE WITNESS: No.

22 BY MR. RICHARDSON:

23 Q. Well, in fact, phosphorous levels, according to your
24 report, are actually higher than this level in many

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[Witness: Pannetier]

1 instances, aren't they?

2 A. I don't believe so. Not "many instances".

3 Q. Okay. Well, let's look at Page 46 of Exhibit 3005A.

4 And, I believe this is -- models the phosphorous levels
5 in the ponds. Linda, could you just see if you can
6 blow up that whole table. Make it as close to the
7 table as you can. Okay. So, do you see the line at
8 the bottom there "In-pond Phosphorous milligrams per
9 liter", that's the second to the last line?

10 A. Yes.

11 Q. And, it appears that you've modeled in your report a
12 level of 0.073 milligrams per liter for Stump Pond, is
13 that right?

14 A. Yes. The Stump Pond watershed is Amherst and
15 Merrimack, and it's one of the most problematic
16 subwatershed, along with the Barfield subwatershed.
17 And, that's why we have a public education project
18 going on in the Stump Pond watershed.

19 Q. And, Bowers Pond, it appears is 0.039 milligrams per
20 liter. That's pretty close to what Pennichuck is
21 calling a "nuisance amount", isn't it?

22 A. It's a model number, yes. I don't think I have
23 disagreed that there's a phosphorous issue. So, I'm
24 not sure what you're trying to have me establish.

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1 Q. Well, then, I guess my question to you is, I'll put it
2 straightforwardly, is it fair to say then that, at the
3 time of your report, phosphorous levels were already
4 near what Pennichuck engineers were calling a "nuisance
5 amount"?

6 A. You can call it what you want. It is what it is.

7 Q. Okay. And, in fact, just to bring it back, the desired
8 level in your report was 0.02 to 0.03, wasn't it?

9 A. We'd definitely like to see it lower. And, I think the
10 point that you're missing is that this is an existing
11 situation that's been going on for many, many, many
12 years. And, there's a lot of existing development and
13 urbanization. And, it's got to be addressed to bring
14 those levels down.

15 Q. So, it's imperative that something be done to correct a
16 problem that already exists?

17 A. Yes. A lot of the watershed is developed and
18 redevelopment work is very important.

19 Q. And, it would also be important to not do things that
20 would cause further harm?

21 A. Well, I think, in this case, even if the rest of the
22 watershed continued to develop in the build-out, the
23 difference is not going to be hugely significant. But,
24 of course, it's always desirable to protect what's

[Witness: Pannetier]

1 left, which isn't much in a lot of the urbanized
2 watershed. But it's more important to address what's
3 already there. It's already a problem.

4 Q. But let's, if it's already a problem, and we can agree
5 that urbanization is a source of the phosphorous inputs
6 in this system, right?

7 A. Yes.

8 Q. Okay. If you're the owner of an urban watershed as a
9 water supplier, don't you want to continue to own as
10 much land as possible, in order to prevent the problem
11 from getting worse?

12 A. Well, if I had choices to make, as a watershed manager,
13 and, first, I don't know that Pennichuck is the owner
14 of the watershed, as a water company, they don't have
15 control over the entire watershed. Each community has
16 control. But, to go back to your question, if that
17 were my land, I would look at all the options that I
18 had, because watershed protection requires a whole tool
19 box of options; land acquisition, reserving existing
20 lands, those are tools. So, it would be buying a
21 street sweeper. That's a tool. So would be increased
22 catch basin cleaning. So would be retrofitting all the
23 detention basins in the watershed that are full, which
24 seems to be most of them. There are about 20 different

[Witness: Pannetier]

1 tools that we can use. So, it would depend on the
2 priority. I would want to prioritize it and look at
3 the cost of that. Could I gain money to buy a street
4 sweeper? That seems to be something that's working out
5 very well in the literature. So, it comes down to
6 cost-effectiveness.

7 Q. Let's look at Exhibit 3005B, Page 21 in the electronic,
8 and it should be marked "221" and "6-15". You see in
9 the enlarged text there it says that "Owning land for
10 the purpose of conservation of natural resources is
11 important to the protection of a water supply because
12 it prevents development that has the potential to
13 decrease water quality." Do you agree with that
14 statement?

15 A. In general, yes. That's a very true statement.

16 Q. So, in terms of cost-effectiveness, if you're the water
17 supplier, and you own this land, continuing to own it
18 doesn't necessarily cost you anything?

19 A. I couldn't really comment on that. I think, in this
20 watershed, probably the most important factor is the
21 controls that the Town of Hollis has on land
22 development. And, you know, it's not just Pennichuck
23 lands, but there are also protected lands that all the
24 communities have. So, I think, when we say "protected

[Witness: Pannetier]

1 lands", "undeveloped lands", sure, more is better.

2 Q. Uh-huh. And, let's look at Exhibit 1135. Why don't we
3 start on Page 1. I believe this is a letter you wrote
4 to Nelson Disco?

5 A. Yes.

6 MS. KNOWLTON: And, I actually want to
7 note an objection for the record. This was another one of
8 the late-filed exhibits by the City of Nashua. This
9 document, which apparently has been in existence since
10 September 15 of 2004, was never disclosed or indicated on
11 Nashua's prefiled exhibit list last December/January.
12 And, only recently Nashua thought to include this letter,
13 and the Company would note an objection to it being used
14 in this proceeding.

15 CHAIRMAN GETZ: Is this an objection on
16 the basis of relevance or just that --

17 MS. KNOWLTON: No.

18 CHAIRMAN GETZ: -- you're continuing
19 your argument that it's late?

20 MS. KNOWLTON: It pre-existed, and there
21 was no reason that I could tell that the City couldn't
22 have included this on its premarking of exhibits, which we
23 were all required to do, you know, by the Commission's
24 General Counsel. So, I don't know why all of a sudden

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1 this exhibit has surfaced, you know, right prior to the
2 recommencement of this case.

3 MR. RICHARDSON: Mr. Chairman, this
4 document was provided to me in, you know, approximately
5 November of 2006, right before the hearings. It was
6 inadvertently not provided or listed as an exhibit at that
7 time. It was exchanged and provided to all the parties on
8 the service list on August 10th of this year. So, the
9 parties have had it for over a month at this point. And,
10 I find it hard to see any prejudice, given that Pennichuck
11 provided this document to us. They have obviously seen it
12 before.

13 CHAIRMAN GETZ: And, the intent of the
14 use of the letter is?

15 MR. RICHARDSON: Well, I'd like to
16 discuss -- Ms. Pannetier just discussed the role of
17 controls on land use development and land ownership and
18 things she would look at. And, I want to refer to a
19 reference to that that's in this letter.

20 CHAIRMAN GETZ: I'll allow use of this
21 letter for purposes of cross-examining the witness.

22 BY MR. RICHARDSON:

23 Q. Okay. Let's look at Page 2 of that letter. And, I
24 believe you state, after the Paragraph Number 6, why

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1 don't you read that paragraph to me?

2 A. "As I know you are aware", this is to Nelson Disco, the
3 Planning Board Chair, "every development has an impact
4 on water quality and even with the best pre and
5 post-controls that we can design, the original forested
6 condition will never be equaled. I am enclosing an
7 article from the American Water Works Association's
8 OpFlow magazine on the value of forested buffer to
9 drinking water treatment costs, and an article from the
10 USDA on forested buffers."

11 Q. So, if you're a water supplier, and you don't own the
12 land, but you're relying on pre and post controls, you
13 still can't replicate the protection that is provided
14 by ownership?

15 A. Not true. I believe that there's some confusion here
16 on what a "buffer" is versus "land acquisition". It
17 seems to be confused in a number of the exhibits, where
18 a buffer is equated with owning the land. But there
19 are many shades of gray of buffers. There are
20 conservation easements, there are buffers that are put
21 in through regulation. There are -- Of course, you can
22 own a buffer. But I don't think anywhere in this, in
23 any of our reports did we ask, recommend, or even
24 suggest acquiring land for buffers. What we suggested

[Witness: Pannetier]

1 is using low-impact development techniques, such as
2 clustering, which is exactly what we were suggesting to
3 Mr. Disco, is that the development be clustered further
4 away. They would have the same number of houses, so
5 you're not taking the developer's land, you're not
6 taking any value from it, but you're gaining watershed
7 protection through a forested buffer.

8 Q. Uh-huh. And, that's because, if you don't own that
9 forested buffer, and someone develops within it, even
10 the best post -- pre and post controls that you can
11 design won't achieve the same level of protection, is
12 that right?

13 A. I disagree that you have to own it. You can own a
14 buffer and still have ATVs cross it, go down to the
15 water's edge and create a channel, which makes even a
16 500 foot buffer totally useless. It doesn't matter
17 whether you own it or whether you control it through
18 conservation easements or other more cost-effective
19 methods.

20 Q. But, if you don't have that control, it appears to me
21 that you're saying that there's nothing that the
22 engineers can do to replicate the level of protection
23 that you would see from leaving that land in its
24 natural state, is that right?

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1 A. If you're asking about the pre and post controls,
2 that's correct. It's very difficult to come completely
3 back. But there are areas, in areas such as the
4 Pennichuck watershed, where you have very sandy soils.
5 You can do fairly well, without taking the landowners'
6 rights away, just by clustering and other techniques,
7 which are what we had demonstrated in some of the
8 projects in the watershed.

9 Q. Now, I guess, why don't we move on for a little bit.
10 You discussed earlier essentially a buildout analysis.
11 And, I'd like to look at Page 100 of Exhibit 1109.

12 A. Justin, this is the working papers again?

13 Q. This is your original July 1997 report that I have.
14 And, it appears to me that you're saying there's, in
15 the second sentence, that latter paragraph, "There's a
16 significant difference in the pollutant load from
17 those", I believe you're contrasting different
18 scenarios, "from those scenarios with conservation and
19 those without." Did I read that or do I understand
20 that correctly?

21 A. Yes. However, there was an error found in this report,
22 which was corrected in the Final Report issued more
23 than a year later. And, that was that we had included
24 in this modeling all undeveloped municipal or

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1 Pennichuck-owned property.

2 Q. That's right. And, so, in fact, in this document right
3 here, you assumed that the Southwood lands that had not
4 been developed would remain in conservation?

5 A. As well as all the lands from other municipal parks,
6 even open space from clustered developments.

7 Q. Okay. Now, why don't we then look at Exhibit 1109,
8 Page 101. And, Linda, we have a high-resolution
9 version of this I'm going to pull up. It's Figure 6-2.
10 And, I believe these are the lands that, from your
11 July 1997 report, that you show as Pennichuck Water
12 Works land and town-owned conservation land. Is that
13 right?

14 A. Yes, that's what the figure says.

15 Q. Okay. And, so, as I understand here, maybe could you
16 blow up just this part of it right here (indicating).
17 Okay. So, it appears that, in this figure on Page 100,
18 or Section 6.4 of the July '97 copy of your report,
19 we've got Pennichuck Water Works lands, and that has,
20 one, two, three -- four stripes. And, I'm looking at
21 most of that land there, and that all has four stripes
22 in it, doesn't it? No, I'm sorry. They both do.

23 CMSR. MORRISON: They both do.

24 CHAIRMAN GETZ: Are these supposed to be

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1 different colors or something?

2 MR. RICHARDSON: It's possible they
3 were. I only have a black and white version of the
4 document. So, I'm afraid -- why don't I do this.

5 BY MR. RICHARDSON:

6 Q. Could we bring up Exhibit 1016A. You can leave this
7 one up -- or, actually, bring up 1016A. I don't know
8 if we'll be able to do them both at the same time.
9 Okay. I'll represent to you that this is from Mayor
10 Streeter's testimony. And, it's a -- if you read the
11 legend -- it's going to move around some here. Yes, I
12 want the full size. So, if you look at the box in
13 green, those are the Pennichuck land holdings in
14 1998 -- 1980 from the Sasaki report. And, if you could
15 take that down and look at the exhibit, does that
16 reflect your recollection of what the Sasaki report --
17 or, what the Southwood land holdings were?

18 A. I couldn't tell you. This was done by Rizzo
19 Associates.

20 Q. Uh-huh. But you've reviewed the Sasaki report before,
21 is that right?

22 A. Perhaps a very, very long time ago. But "review" is a
23 strong word. I'm aware of it.

24 Q. And, just a few moments ago, you told me that there was

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1 an error in your July 1997 report, because you had
2 included some of the Pennichuck lands as conservation
3 that were actually going to be developed. Are those
4 the properties that you were referring to?

5 A. I'm not sure what you're asking. As I said, I have not
6 had this map verified.

7 Q. Okay. All right. Well, that's fair enough. Why don't
8 we go back for a minute. And, we'll look at -- why
9 don't we bring up 1109, Page 100, the high-res version
10 again. Or, is it, I'm sorry, 101, Page 101. And, I
11 want to compare that to your Final Report, and that is
12 going to be in Exhibit 3005B. We have a color version.
13 It's Page 23 of her testimony. It's also marked
14 Page "222" in the document. It's also Figure 6-2. So,
15 does this latter figure appear to you to be the correct
16 version, where you've now taken out the
17 Pennichuck-owned conservation lands or the Southwood
18 lands out of the equation?

19 MS. KNOWLTON: I want to object on the
20 basis that Mr. Richardson has repeatedly referred to "the
21 Pennichuck lands". And, I think he needs to identify with
22 more precision. There are multiple companies that are
23 subsidiaries of Pennichuck Corporation. And, I think he
24 needs to identify, when he says "the Pennichuck land",

[Witness: Pannetier]

1 which subsidiary he is referring to as the owner of the
2 property in question.

3 CHAIRMAN GETZ: Do you have a response,
4 Mr. Richardson?

5 MR. RICHARDSON: Well, I believe "the
6 Pennichuck land" is the phrase Pennichuck has actually
7 taken from her report. So, I'm trying to explore what she
8 means by that. We can go back to that --

9 CHAIRMAN GETZ: Well, if she's using the
10 term "Pennichuck lands", then I think it's -- we can
11 continue with that. If, on redirect, there's some need to
12 try and define that further, then you can explore it on
13 redirect.

14 BY MR. RICHARDSON:

15 Q. Okay. So, this is your Final Report. This is the
16 lands that you analyzed in the buildout analysis, is
17 that right?

18 A. Yes, it just says "Figure 6-2. Protected Lands".

19 Q. Okay. And, can you go back to the previous report?
20 And, so, this is the same figure. And, I understand --
21 it appears to me that the primary difference between
22 the two figures is that the Pennichuck lands are
23 significantly smaller in this analysis, in your later
24 report, is that right?

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[Witness: Pannetier]

- 1 A. As I said, I don't know. I'm not familiar with which
2 properties you're referring to. That would require an
3 overlay and isn't something I could just pull out of my
4 pocket.
- 5 Q. Okay. All right. Let's look at -- All right. Can we
6 just blow up that one at first? No, no. What you had
7 before. Okay. All right. That's fine. So, you can
8 see here, are you familiar with what "Parcel M" is?
9 Have you heard of that term before?
- 10 A. Peripherally, yes.
- 11 Q. Okay.
- 12 A. It's a parcel on Pennichuck Pond, which is rather
13 remote.
- 14 Q. And, can you locate Round Pond on this upper section of
15 the map here?
- 16 A. Yes. It's that round pond.
- 17 Q. And, you have a fairly large block of land that's
18 located to the southwest of it?
- 19 A. Okay. Yes, it's near Pennichuck Pond.
- 20 Q. Right.
- 21 A. It's hard to see on this.
- 22 Q. And, in fact, that shaded area there is owned, in some
23 form or another, by one of the Pennichuck companies,
24 isn't it?

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[Witness: Pannetier]

- 1 A. I don't know.
- 2 Q. You don't know?
- 3 A. I know -- I believe that's where Nashua purchased some
4 land.
- 5 Q. Well, I understood you to say a few moments ago that
6 there was "an error in the report", in that there were
7 Pennichuck lands that were assumed to be in
8 conservation that could be developed. Isn't this one
9 of those properties?
- 10 A. I don't recall.
- 11 Q. Well, let's look --
- 12 A. We were only peripherally involved in any of the
13 Southwood issues.
- 14 Q. Let's look at the Exhibit 3005B figure. That same
15 area, if you please.
- 16 A. I think I've said also that I don't agree with land
17 acquisition. I've made that statement in my
18 deposition. I think, in this particular watershed, you
19 could use your money more effectively. So, --
- 20 Q. Right. But this isn't a land acquisition. This
21 appears to be a land sale, isn't it?
- 22 A. Well, you really need to -- I'm not the person that you
23 should be asking.
- 24 Q. Okay.

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[Witness: Pannetier]

1 A. I am no expert on --

2 Q. Okay. All right. Let's go to then Page 100 of Exhibit
3 1109, Section 6.4, and those latter two paragraphs.

4 And, you say "There's a significant difference in the
5 pollutant load from those lands" -- "from those with
6 conservation lands and those without." Is that right?

7 A. Well, again, this is the "working papers", "draft
8 report", whatever you want to call it. This is the
9 reason we don't keep drafts because there were -- it
10 was far from perfect, it was more than a year later
11 that we issued the Final Report. And, I repeat myself,
12 I hate to keep doing that, but we normally do not let
13 these reports out. This was done on faith that we were
14 working with stakeholders, looking forward to their
15 comments, which I don't believe we ever got. So, to go
16 back and then find errors in a report that should not
17 have been released just reminds me that we should have
18 never released this report.

19 Q. So, if you had given this report, and where it says in
20 this paragraph that "The buildout scenario with
21 conservation shows levels at 0.05 milligrams per liter,
22 without conservation, the levels jump to 0.06, nearly
23 twice as high as the current level and almost three
24 times as high as naturally occurring." And, then, you

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[Witness: Pannetier]

1 say "This implies that to keep the pollutant load low,
2 Pennichuck and the towns must conserve existing lands."
3 Is that what the report states?

4 A. And, I repeat, this is a working paper. There were
5 many QA/QC --

6 CHAIRMAN GETZ: Well, we've established
7 that, your view of what this constitutes. But what is
8 your answer to the question about whether you agree with
9 the statement as it exists in this document?

10 THE WITNESS: I don't know. We made
11 many changes between this and the Final Report. The Final
12 Report is completely different, with an Executive Summary,
13 it has different modeling results. No. This is a working
14 paper. I can't agree that this is true. Whatever the
15 Final Report says is what the answer is.

16 BY MR. RICHARDSON:

17 Q. But I thought you had identified a mistake before, is
18 that you had included too much land as conservation
19 land. And, we saw the lands that you were considering
20 just a moment ago. And, we saw the lands that were
21 taken out in the Final Report. Isn't that what the
22 change was?

23 A. I've gone through and I've looked at both reports in
24 extensive detail. And, there are so many changes that

[Witness: Pannetier]

1 I've lost track. There are text changes, there are
2 table changes, there are changes everywhere. If you go
3 through and try to track those -- there are new
4 sections, there are sections moved.

5 Q. All right. So, let's look at that, and then I also
6 want to look at what the Final Report says. And,
7 that's Exhibit 3005B, Page 21. It's also marked as
8 "221" of the hard copy, "6-15". And, this is, I'll
9 represent to you, the Final Report.

10 A. It seems to have a different format than the Final
11 Report.

12 Q. Hang on. We'll bring the two up, so you can look at
13 both of them at the same time. Yes, blow up that one.

14 A. If it says it in the Final Report, then I stand by that
15 statement.

16 CHAIRMAN GETZ: Mr. Richardson, we keep
17 seem to be covering the same ground over and over.

18 MR. RICHARDSON: Okay. Well, and I'm --
19 I'll try to move on here.

20 BY MR. RICHARDSON:

21 Q. So, in the July '97 one, it looks like that first
22 sentence is the same: "The buildout analysis in
23 Section 7", and then you've changed the section number,
24 "buildout analysis in Section 8". Those first few

[Witness: Pannetier]

1 sentences appear to be the same. But, in the '97
2 report, you say "There is a significant difference in
3 the to pollutant loads". And, in the August 1998
4 version, you say "there is not a significant difference
5 in pollutant load from those with conservation and
6 those without." And, you say "This is because only the
7 Pennichuck owned lands were maintained as conservation
8 land in the buildout analysis, and the quantity of land
9 is small in comparison to what can be built out." So,
10 aren't you, in effect, saying that there's very little
11 land that Pennichuck Water Works owns, and therefore
12 there's essentially no benefit to conservation?

13 A. My understanding is that 435 acres were built on.
14 That's 2 percent of an 18,000-acre watershed. Even if
15 it were paved over completely, wall-to-wall, it would
16 still be 2 percent of the watershed.

17 Q. And, doesn't it say right there that "owning land for
18 the purpose of conservation of natural resources is
19 important to protect the water supply"? And, isn't
20 that 2 percent immediately adjacent to the Pennichuck
21 Brook?

22 A. Parcel M is quite removed.

23 Q. Okay. Now, on Exhibit 1109, at Page 100, after you
24 state that "There is a significant difference in the

[Witness: Pannetier]

- 1 pollutant load", you state that "This implies, to keep
2 the pollutant load low, Pennichuck and the towns must
3 conserve existing lands." Do you see that statement?
- 4 A. I'm sorry, this is déjà vu. I thought we had covered
5 this already?
- 6 Q. Do you agree with that statement, that "Pennichuck and
7 the towns must conserve existing lands"?
- 8 A. If it's in the Final Report, then it's gone through all
9 its paces.
- 10 Q. Okay.
- 11 A. Of course, land conservation is good. There's, as I
12 said, you have a whole tool box of options. Some are
13 better than others, depending on the watershed. But
14 certainly land acquisition, land conservation is an
15 excellent tool. I've used it extensively in some
16 watersheds, particularly when you had failing cesspools
17 and so on along a shoreline. We did not use it
18 extensively in this watershed, because the issue here
19 is stormwater. So, it's very low on a scale of tools.
- 20 Q. Let's look at Exhibit 3005B. This is your Final
21 Report. On Page 22 of the electronic version, it's
22 marked Page "222". You're going to see a list, you see
23 a list at the top of the page, "Muddy Brook",
24 "Pennichuck Brook". And, at the bottom of that

[Witness: Pannetier]

1 paragraph, you state that "Note, however, there is an
2 expected negative impact on water quality from the
3 development of currently preserved lands." Now, aren't
4 those the currently preserved lands that are available
5 to be developed by Southwood?

6 A. What's the previous page say? I'm not sure what the
7 list of subwatersheds refers to. I believe it refers
8 to a number of things.

9 Q. Here you say "However, should Pennichuck have to
10 develop their land, the order in which they should sell
11 by subwatershed is:" And, then, you list those, and
12 that's on the next page. Okay. And, then, you see the
13 list. And, those are the Southwood lands, aren't they?
14 Aren't those the properties that were taken out from
15 your analysis in your original report?

16 A. I don't know that. I do know Muddy Brook is likely the
17 -- that may be Parcel M.

18 Q. And, so, you say, if Pennichuck develops those, don't I
19 read that correctly, "Note, however, that there is an
20 expected negative impact on water quality from this
21 development of currently preserved lands"?

22 A. Okay.

23 Q. Okay.

24 A. That's what it says. It's the Final Report, so --

[Witness: Pannetier]

1 Q. And, that was the analysis that was in your July 1997.
2 You were looking at those parcels, and determined that
3 the phosphorous levels were going up, didn't you?

4 A. Is that a question?

5 Q. I believe it was.

6 CHAIRMAN GETZ: Well, it was a statement
7 with a raised inflection at the end of the sentence. I
8 think we can call it a question. Do you agree with the
9 statement?

10 THE WITNESS: Could you repeat the
11 statement.

12 (Whereupon the reporter read back the
13 last question asked by Atty.
14 Richardson.)

15 BY THE WITNESS:

16 A. I don't know that. As I've stated previously, there
17 are many differences between those two reports. I
18 stand by the statement in the Final Report, whatever
19 those are.

20 BY MR. RICHARDSON:

21 Q. Let's look at Exhibit -- Page 24 of the electronic copy
22 of 3005B. Okay. Yes. Okay, now you list here
23 conservation lands that are in the City of Nashua.
24 And, at the bottom, you say "There is a significant

[Witness: Pannetier]

- 1 level of protection provided by both the Pennichuck
2 owned lands and the Town-owned lands." And, then, did
3 I read that correctly? And, then, why don't you read
4 the last two sentences for me.
- 5 A. "It is in the best interest of the water supply to keep
6 these lands undeveloped", which included town-owned
7 lands, even open lands from subdivisions.
- 8 Q. And Pennichuck lands? Doesn't it say "Pennichuck
9 lands" right at the top?
- 10 A. I would have to go back through that. But it says
11 right their "Pennichuck owned lands" --
- 12 Q. Okay.
- 13 A. -- and town-owned lands".
- 14 Q. That's right. And, then, the last sentence says "the
15 --
- 16 A. "The purchase of additional lands will also increase
17 the level of protection."
- 18 Q. Uh-huh. Now, I thought I had heard you say before that
19 you never recommend that Pennichuck or that other
20 people should buy land in this watershed?
- 21 A. We, in the Executive Summary, of the "Recommended
22 Actions", it is not one of the "recommended actions".
23 These are extensive reports. We've got hundreds of
24 pages. And, so, to find a sentence somewhere in there

[Witness: Pannetier]

1 is interesting, but we have an Executive Summary with
2 the major recommendations, and it was not one of the
3 major recommendations. It would be nice to move the
4 entire watershed up north, and then we wouldn't have a
5 lot of these problems. But it wasn't one of the major
6 recommendations.

7 CHAIRMAN GETZ: Mr. Richardson, we're
8 drawing close to the morning recess. How much more do you
9 have for this witness?

10 MR. RICHARDSON: I figure I'm about
11 halfway through. I'm at a stopping point right now,
12 though.

13 CHAIRMAN GETZ: So, you basically would
14 be intending to cross-examine to lunch time?

15 MR. RICHARDSON: I don't think it will
16 go that far. To be honest, I expect the remaining
17 sections of my cross-examination are going to be fairly
18 less technical or subjective.

19 CHAIRMAN GETZ: Well, I'm looking
20 towards the rest of the day. Is there -- What are the
21 prospects, from your view, of dealing with both
22 Mr. Guastella and Mr. Patch today?

23 MR. UPTON: I think, certainly, we'd
24 finish Mr. Guastella. We might not completely finish

[Witness: Pannetier]

1 Mr. Patch. But I just don't know the answer. A lot of it
2 depends on what my friend, Mr. Boutin, is going to do on
3 cross-examination of Mr. Guastella, and it depends on how
4 quickly the, you know, the process proceeds.

5 CHAIRMAN GETZ: Okay. Well, let's --
6 Mr. Camerino?

7 MR. CAMERINO: Just for scheduling
8 purposes, it's fairly important to us that we get
9 Mr. Guastella done today, because he's from out-of-town
10 and has an ill family member. But Mr. Patch is flexible.

11 MR. UPTON: Yes, we've tried to
12 accommodate.

13 MR. CAMERINO: He's available tomorrow,
14 because he's local, if we need to do him tomorrow, my
15 guess is there would be room, if that would be necessary.

16 MR. RICHARDSON: I'm looking at my
17 notes, and I believe I'm more than halfway through at this
18 point. So, that's --

19 CHAIRMAN GETZ: Okay. Well, let's take
20 the morning recess. We will resume at 11:00.

21 (Recess taken at 10:30 a.m. and the
22 hearing reconvened at 11:10 a.m.)

23 CHAIRMAN GETZ: We're back on the
24 record, and we'll resume with Mr. Richardson's examination

[Witness: Pannetier]

1 of Ms. Pannetier.

2 MR. RICHARDSON: Thank you, Mr.

3 Chairman.

4 BY MR. RICHARDSON:

5 Q. Ms. Pannetier, during the period from, I believe, 1995
6 to August 1998, when you were working on the Watershed
7 Management Plan, Pennichuck's Real Estate Development
8 Division, the Southwood Corporation, had a number of
9 ongoing projects, didn't it?

10 A. We were working on the Watershed Management Plan. So,
11 I was only peripherally aware of anything related to
12 that.

13 Q. Well, let me show you an example. On Exhibit 1127,
14 let's look at Page 1. That's upside down. You see
15 that that is Westwood Park. And, I believe the plan
16 lists the record owner as "The Southwood Corporation"?

17 A. Okay. That's what it looks like.

18 Q. And, that would -- it appears to be dated
19 "December 4th, 1997"?

20 A. Okay.

21 Q. Okay. So, now, are you familiar with that project at
22 all?

23 A. Not particularly. The only thing I reviewed on these
24 various developments was just to see whether the

[Witness: Pannetier]

1 critical buffer zone was maintained, which it was. But
2 I know some of them a little bit, but I'm not -- we
3 didn't review the plans or anything.

4 Q. Now, you said the "critical buffer was maintained"?

5 A. There was a 300 foot buffer around --

6 Q. Okay.

7 A. -- the ponds that was maintained.

8 Q. Let's look at Page 14 of Exhibit 1127, I believe. And,
9 do you see that this is, I believe, a notice of the
10 Nashua Zoning Board of Adjustment? And, why don't I
11 ask you to look at and read for me the Bullet Number 1
12 there. You see that, where it says "Westwood Park,
13 LLC"?

14 A. Okay.

15 Q. And, I believe Pennichuck's -- excuse me, Southwood or
16 Westwood is asking for a special exception to "work
17 within the 40-foot wetlands buffer of the Pennichuck
18 Brook to construct drainage outlet pipe". Now, are
19 drainage outlet pipes, are they consistent with
20 low-impact development approaches that you would
21 recommend?

22 A. Well, it's hard to say from this brief description what
23 that means. I'm not really familiar with this project.

24 Q. Well, let me pull up briefly Exhibit 1109 again,

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[Witness: Pannetier]

1 Page 130. And, I believe this was the recommendation
2 section of your July 1997 report. And, could you read
3 the first sentence under Paragraph G.

4 MS. KNOWLTON: Mr. Richardson, could you
5 just clarify. You said "July 1997". Is this the draft
6 report that you're referring to or is this the Final
7 Report?

8 MR. RICHARDSON: That is correct.

9 MS. KNOWLTON: This is the draft?

10 MR. RICHARDSON: That is correct.

11 MS. KNOWLTON: Okay.

12 BY THE WITNESS:

13 A. "G. Modify Watershed Stormwater Discharges: Protect
14 the Pennichuck water supply from existing and future
15 development through a goal of zero direct discharge (no
16 pipe discharges) to the ponds or their tributaries."

17 BY MR. RICHARDSON:

18 Q. Okay.

19 A. "This goal will take several years to accomplish and
20 will require Pennichuck to encourage the New Hampshire
21 Highway Department and the local Public Works
22 Department to implement no-discharge practices in
23 roadway construction and modification projects."

24 Q. So, it would appear then that, on this project,

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[Witness: Pannetier]

1 Westwood Park was seeking a special exception to have a
2 discharge pipe within 40 feet of the wetlands buffer?

3 A. I don't really know what wetlands buffer they mean.

4 Q. Okay.

5 A. Do they mean that they're putting the pipe in the
6 wetlands? Do they mean they're putting it directly
7 into the stream?

8 Q. Okay.

9 A. I really can't tell from that paragraph.

10 Q. Now, it appears that this project was in the time
11 period when you're working on your -- you're moving
12 towards your final version of your report?

13 A. It sounds like it, yes.

14 Q. Okay. Now, why don't we look at Page 8 of
15 Exhibit 1128. And, now, this appears to be a deed from
16 Southwood to Heron Cove at Bowers Pond, LLC. And, I
17 believe the date of the deed is going to be on the next
18 page -- no, excuse me. Well, if we look on the margin,
19 you can see it's dated "August 21st, 1998"?

20 A. Okay.

21 Q. All right. So, that would be -- this would be a
22 project that was actually moving forward at the very
23 time that you were finalizing your Final Report?

24 A. There were a lot of development projects in the

{DW 04-048} [Day X] (09-18-07)

[Witness: Pannetier]

1 watershed before and during our report. I didn't try
2 to keep track of them.

3 Q. Uh-huh. Now, did you try to tell the Company that your
4 Final Report stated that "Note, however, there is an
5 expected negative impact on water quality from this
6 development of currently preserved lands"? Did you
7 ever raise that issue as these developments were
8 ongoing?

9 A. No.

10 Q. Okay. And, I believe your reports also stated that
11 "It's in the best interest of the water supply to keep
12 these lands undeveloped." You didn't state that to
13 them either?

14 A. There were a lot of developments going on in the
15 watershed, as I said. That really wasn't in our scope,
16 to review all the developments. So, we would have had
17 no reason to comment on those. Certainly, there were a
18 lot of things going on in the watershed, expanding and
19 so on.

20 Q. Let's look at Page 13. I'll try to move more quickly
21 through this one. We have another Bowers Pond, LLC
22 project, it looks like Southwood is conveying. On Page
23 13, two lots, and could you read me the date that's on
24 the top of that?

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[Witness: Pannetier]

1 A. It looks like "October '97".

2 Q. Okay. And, on Page 15, I believe there's another
3 Bowers Pond project. And, it's got a date on the
4 margin, and I believe it's "June 26, 1997"?

5 A. Yes, that's what it looks like.

6 Q. And, it's apparently 11 tracts of land on this parcel,
7 in the first large paragraph there?

8 A. Yes, it looks like the third paragraph says "11".

9 Q. Okay. And, then, why don't we jump ahead. It appears
10 on Page 17 of Exhibit 1128, there's another project.
11 And, again, this appears to be a deed from Southwood to
12 Bowers Pond, LLC. Would you agree with that?

13 A. That's what it looks like. "December 10th, 1996".

14 Q. Okay. And, this one is 14 lots?

15 A. If you were to look at our scope of work, I think you'd
16 see there were probably hundreds of developments
17 ongoing. And, I'm not sure what --

18 Q. Well --

19 A. -- what we would have said about it.

20 Q. Well, I'm not going to walk you through all of them. I
21 mean, my questions would be more or less the same. But
22 I do want to turn your attention --

23 MS. KNOWLTON: And, I just want to note
24 an objection for the record, that the witness has

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[Witness: Pannetier]

1 testified that she's not familiar with the particular
2 developments. And, I'm not sure what the purpose of this
3 line questioning is. If it's just to go through and have
4 her read that, you know, a warranty deed says, includes a
5 particular sentence in it, I mean, she's testified that
6 she's unfamiliar with particular projects. So, I don't
7 think the witness has knowledge here.

8 CHAIRMAN GETZ: Mr. Richardson?

9 MR. RICHARDSON: I agree. I'm trying to
10 move on. I've got, essentially, one last line of
11 questioning along this. And, it will be a little
12 different.

13 BY MR. RICHARDSON:

14 Q. Why don't we take a look at Page 24 of Exhibit 1128.
15 Now, this is, obviously, a much smaller project. Could
16 we blow up the first two paragraphs. This appears to
17 be one tract of land. And, it looks like it's being
18 deeded from Bowers Pond, LLC that we just saw. And,
19 who is it being deeded to? Do you see "Mr. Maurice
20 Arel" and "Joyce Arel" listed there?

21 A. That's what it says.

22 Q. Uh-huh. And, I believe, if you look on the left-hand
23 margin, this is dated December 23rd, 1998. Does that
24 appear correct?

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[Witness: Pannetier]

1 A. I've never seen this before, and but that's what it
2 says?

3 MS. KNOWLTON: And, I'm going to assert
4 the same objection -- excuse me. I'm going to assert the
5 same objection that I just made. That the witness has
6 already indicated that she's not familiar with these
7 particular documents. And, I don't know what the purpose
8 is of going through them with somebody who has no
9 knowledge of those.

10 MR. RICHARDSON: I'm laying a foundation
11 that, during the same period that, and I believe we've
12 gone through this so far, that she was preparing her
13 reports and making her recommendations, the Company was
14 engaged in ongoing development, which I think is an issue
15 that we're presenting in this case.

16 CHAIRMAN GETZ: I think she has already
17 agreed to that.

18 MR. RICHARDSON: Okay.

19 CHAIRMAN GETZ: So, how much more do we
20 need to do on it?

21 MR. RICHARDSON: Well, this is -- this
22 is basically to show that, not only that, but the
23 Company's CEO was receiving one of the parcels.

24 CHAIRMAN GETZ: And, does the document

[Witness: Pannetier]

1 speak for itself?

2 MR. RICHARDSON: Yes, it does. But I
3 have a couple of questions along the impact of this
4 document in particular.

5 MS. KNOWLTON: I'm going to continue to
6 object. I mean, Mr. Richardson says that he's trying to
7 lay a foundation here, but I don't see how he can lay a
8 foundation when the witness has no knowledge. I mean,
9 what's the -- There's no basis for any further questions.
10 And, I think he's welcomed to brief this issue, if he
11 wants to rely, you know, on documents and argue something
12 in his legal brief. But I don't see how he's established
13 any foundation with this witness.

14 MR. RICHARDSON: I think that it's an
15 issue for the case, and, in particular, where the Company
16 CEO is receiving some of the land, it raises a question as
17 to whether or not the Company is actually, I mean,
18 obviously, we're going to argue in our brief that the
19 Company is disregarding the changes or making the changes
20 between the two draft reports, in order to promote its own
21 real estate development activities.

22 CHAIRMAN GETZ: Well, you can argue
23 that, of course, in whatever you choose to argue in your
24 brief. But I'm not seeing the connection to anything more

[Witness: Pannetier]

1 that this witness can add to this issue.

2 MR. RICHARDSON: And, this document, in
3 particular, is important because of the timing. The
4 officials that are in charge of Pennichuck Corporation are
5 in charge of directing their consultants to prepare
6 watershed management plans, at the same time they are
7 making decisions about buying houses out in the watershed.

8 CHAIRMAN GETZ: And, that's your
9 argument. But what are we getting from this witness on
10 these topics?

11 MR. RICHARDSON: I want to -- I want ot
12 ask her a couple of the details related to this
13 transaction.

14 CHAIRMAN GETZ: She says she doesn't
15 know anything about these transactions.

16 MR. RICHARDSON: Okay.

17 CHAIRMAN GETZ: I believe that she's
18 said that a number of times. If there's something about
19 her expertise that she can bring to the issue of the
20 context of these deeds, then let's pursue it. But I think
21 she's already testified several times that there are many
22 transactions, and she's not aware of the specifics.

23 MR. RICHARDSON: Okay.

24 CHAIRMAN GETZ: Ms. Pannetier, do you

[Witness: Pannetier]

1 have any specific knowledge about this transaction with
2 Mr. Arel?

3 THE WITNESS: No.

4 BY MR. RICHARDSON:

5 Q. Now, Ms. Pannetier, isn't it true or is it your
6 testimony today that the fact that Pennichuck's
7 development through its Real Estate Development
8 Division, Southwood, had no impact on the differences
9 between your first report in July of 1997 and the Final
10 in 1998?

11 A. Could you say that again.

12 Q. Is it your position that the fact that the Company was
13 going through a number of real estate transactions, in
14 which it's selling real estate, including selling real
15 estate to its own CEO, that had no influence on the
16 Company's comments or on the changes between your two
17 reports?

18 MS. KNOWLTON: I'm going to state a
19 further objection to that question and ask that
20 Mr. Richardson clarify, when he refers to the "Company"
21 that he refers to which Pennichuck company he's talking
22 about. We have a regulated utility, which is the subject
23 of this condemnation, Pennichuck Water Works. And, we've
24 also had questions about the Southwood Corporation.

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[Witness: Pannetier]

1 MR. RICHARDSON: And, my question goes
2 to her client.

3 BY THE WITNESS:

4 A. No. I really have to say that suggesting that our
5 company changed the report in relation to an unrelated
6 company's real estate dealings I think really goes over
7 the edge, because we have -- our credibility is pretty
8 much all we have. We've been hired by DES to do a
9 State Water Plan for the state, we're doing their
10 Stormwater Manual. If we were to do things like that,
11 as source water protection experts in this state, we
12 would be washed up. We don't operate that way.

13 BY MR. RICHARDSON:

14 Q. Okay. Well, let me show you Exhibit 1121 then. Can we
15 bring that up please? And, isn't it -- are you aware
16 of the fact that the Company's CEO Moe Arel, who we
17 just saw was buying land from the Real Estate
18 Development Division, was fined for making material
19 false statements in connection with the development of
20 "land within the Company's watershed"? Were you aware
21 of that?

22 A. Only what I read in the papers. And, I don't read
23 those that often.

24 Q. Well, if the Company is involved in failing to or

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[Witness: Pannetier]

1 disclosing false or misleading statements to its own
2 investors, concerning watershed development activities,
3 isn't it not a giant stretch to say that you'd do the
4 same thing in a technical report about what lands you
5 should preserve?

6 A. That is a giant stretch.

7 Q. They didn't put any pressure on you to do that?

8 A. No. We worked for Don Ware, for Bernie Rousseau, for
9 Steve Densberger, Chris County, all excellent people
10 with the Water Works company. I have only even -- I
11 would not be able to pick out Mr. Arel from a crowd,
12 nor has he instructed me or pressured me, nor would it
13 do any good to pressure me.

14 Q. Okay. You mentioned "Bernie Rousseau". Why don't we
15 take a look at Exhibit 1128, Page 3. This appears to
16 be a deed from Southwood to Mr. Rousseau, doesn't it?

17 A. Again, I don't know anything about real estate dealings
18 of any of the people you've mentioned, nor would they
19 know where I bought my house and how much for.

20 Q. But Mr. Rousseau and Mr. Ware, they both have a boss
21 above them. And, isn't that boss Mr. Arel? At the
22 time these plans were being prepared?

23 A. That was not who signed our contract. That was not who
24 directed us.

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[Witness: Pannetier]

1 Q. But you're aware that Mr. Ware and Mr. Rousseau worked
2 for Pennichuck Corporation, and the CEO of Pennichuck
3 Corporation was Moe Arel, wasn't it?

4 A. You know, there are more companies than I can keep
5 track of. We worked for Pennichuck Water Works, the
6 Water Works people. And, we did watershed planning, we
7 did vulnerability assessments. We did a variety of
8 engineering-related services. I don't -- There are a
9 number of clients whose corporate structures and
10 subsidiaries I don't understand, don't need to
11 understand, and have nothing to do with.

12 MR. RICHARDSON: Thank you.

13 CHAIRMAN GETZ: All right. There are no
14 questions for Ms. Pannetier from the Bench. Redirect?

15 MS. KNOWLTON: I have a few questions on
16 redirect.

17 REDIRECT EXAMINATION

18 BY MS. KNOWLTON:

19 Q. Ms. Pannetier, has the City of Nashua hired your
20 company to do any work?

21 A. Yes. We've worked for them periodically.

22 Q. And, are you currently working for the City of Nashua?

23 A. Yes.

24 Q. And, can you describe that project please?

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[Witness: Pannetier]

1 MR. RICHARDSON: Mr. Chairman, isn't
2 this outside the scope of cross-examination?

3 CHAIRMAN GETZ: I think you've raised
4 issues regarding her credibility as a witness, and I think
5 this is a legitimate follow-up.

6 BY THE WITNESS:

7 A. Yes. Among other cities, towns, New Hampshire DES.

8 BY MS. KNOWLTON:

9 Q. Can you describe the project that you're working on for
10 the City of Nashua?

11 A. Well, as we discussed before, we worked on some of the
12 street specifications projects in the watershed with
13 Nashua. More recently, we've been a subcontractor to
14 VHB, Vanesse Hagan Breslin, on the Broad Street
15 Parkway. And, even more recently, one of our engineers
16 landed a contract on review of some transportation
17 issues in the City.

18 Q. Ms. Pannetier, there was a lot of questions about land
19 acquisition as a method for protecting the watershed.
20 In your professional opinion, what is the most
21 cost-effective method in protecting the watershed?
22 And, when I refer to "the watershed", I mean the
23 "Pennichuck watershed".

24 A. Yes, there are a lot of tools that are more

[Witness: Pannetier]

1 cost-effective than land acquisition. In this
2 particular watershed, because it's got such a large
3 watershed area compared to only 200 acres of ponds, the
4 water flows through quite quickly. So, things like
5 street sweepers, street sweeping has surprisingly very
6 good effectiveness. Retrofitting the detention basins,
7 particularly in Nashua and some in Merrimack, many of
8 them are very old and built before today's standards,
9 and even today's standards are not quite as good as
10 they could be. So, just retrofitting them with four
11 bays, cleaning them out, would be a huge improvement.
12 And, regulations, you know, the Nashua regulations are
13 good, we did work on them. Don Ware and I both worked
14 on Nashua's regulations, and they were ahead of their
15 time. I think there's a few things I would add to
16 those now and spread them throughout the watershed.
17 That's a much more cost-effective tool. Along with
18 public education, which is something that we're working
19 on. There's a whole host of things that have much more
20 effectiveness for less money.

21 Q. Why are -- excuse me. Why are street sweepers
22 effective in protecting the watershed?

23 A. Well, it would be private parking lots. There's many,
24 many commercial parking lots up and down 101A and

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[Witness: Pannetier]

1 throughout the watershed. And, that's really the
2 largest source of phosphorous, is a lot of people don't
3 really sweep them. So, one of the things we have
4 talked to Pennichuck about is maybe buying a street
5 sweeper and actually using that. It would have the
6 largest removal rate of pretty much any technique. So,
7 it would be very cost-effective.

8 Can I just add to that? That it's, you
9 know, the watershed is largely developed, particularly
10 in the lower watershed. Merrimack and Nashua are each
11 something like 30 percent of the total phosphorous
12 budget. Hollis is a mere 5 percent, and Amherst
13 another 11 percent. So, that's all from existing
14 development. So, the most effective measures really
15 need to be focussed on dealing with existing pollution
16 sources, not land acquisition, which is really a future
17 pollution source, which is important for Hollis, for
18 example.

19 MS. KNOWLTON: I have no further
20 questions for the witness.

21 CHAIRMAN GETZ: Thank you. Then, that
22 completes the examination of this witness. Thank you.
23 You're excused.

24 THE WITNESS: Thank you.

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[Witness: Guastella]

1 CHAIRMAN GETZ: Is Mr. Guastella ready?

2 MS. HARTLEY: Yes, he is. He will be
3 here momentarily.

4 MR. CAMERINO: Almost ready.

5 (Short pause.)

6 (Whereupon John F. Guastella was duly
7 sworn and cautioned by the Court
8 Reporter.)

9 JOHN F. GUASTELLA, SWORN

10 DIRECT EXAMINATION

11 BY MR. CAMERINO:

12 Q. Mr. Guastella, would you state your name and employer
13 for the record.

14 A. I'm John F. Guastella, Guastella Associates.

15 Q. Thank you. You filed testimony in this case in
16 narrative form, as well as accompanying exhibits?

17 A. Yes, I did.

18 Q. Okay. And, one of those documents was testimony dated
19 January 12th, 2006, which I'll represent to you is
20 Exhibit 3010 in this case?

21 A. Yes.

22 Q. And, that January 26 testimony had both confidential
23 and public exhibits to it, is that correct?

24 A. Yes.

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[Witness: Guastella]

1 Q. All right. And, for identification, those were marked
2 as "Exhibit 3010", "3010A", and "3010X". And, just so
3 that, Mr. Guastella, so that you have the confidential
4 version of that, I'm going to hand you Exhibit 3010X.

5 A. Thank you.

6 Q. And, all of those documents were prepared by you or
7 under your direction?

8 A. Yes.

9 Q. And, then, you subsequently prepared testimony dated
10 May 22, 2006?

11 A. Yes.

12 Q. And, that has been marked for identification as
13 "Exhibit 3016". And, that testimony had attached to it
14 a number of exhibits as well?

15 A. Yes.

16 Q. And, that those we have marked as "Exhibits 3016A",
17 "3016B", and "3016X", which is the confidential
18 document. And, I want to hand you a copy of the
19 confidential information.

20 A. Thank you.

21 Q. And, finally, you filed limited update testimony on
22 November 14th, 2006, did you not?

23 A. Yes.

24 Q. And, that has been marked as "Exhibit 3020" for

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[Witness: Guastella]

1 identification in this case. And, all of that material
2 was prepared by you or under your direction?

3 A. Yes.

4 Q. And, it's true and accurate to the best of your
5 knowledge and belief?

6 A. Yes.

7 Q. And, if those questions were asked to you, subject to
8 the updating that you did, you would provide the same
9 testimony today?

10 A. Yes, I would.

11 MR. CAMERINO: Thank you. That's all I
12 have. I do want to note, I had a brief conversation with
13 Attorney Upton about the confidential aspects of
14 Mr. Guastella's testimony, and I've also spoken with
15 Mr. Guastella. He will endeavor, so that we don't have to
16 switch transcripts or chase people out of the room, to
17 point the Commission to specific numbers on those
18 confidential exhibits, rather than using them. We'll see
19 how that goes. It's possible that it may be necessary for
20 him to actually discuss the numbers. Thank you.

21 CHAIRMAN GETZ: Okay. Ms. Reinemann?

22 MS. REINEMANN: We have no questions.

23 Thank you.

24 CHAIRMAN GETZ: Mr. Boutin?

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[Witness: Guastella]

1 MR. BOUTIN: Yes, I do. Good morning,
2 Mr. Guastella.

3 THE WITNESS: Good morning.

4 MR. BOUTIN: I'm Ed Boutin, and I
5 represent the Town of Merrimack. The questions I'm going
6 to ask you are pretty much to give some assistance to the
7 Commission relating to things that either I don't
8 understand or that have arisen in testimony that I think
9 might need some clarification.

10 CROSS-EXAMINATION

11 BY MR. BOUTIN:

12 Q. So, I'd like to start with Exhibit 3020, and direct
13 your attention to Page 2 of that exhibit, and "what is
14 the purpose of this supplemental testimony?" Now, when
15 I examined this exhibit, I noted that you made and
16 referred to a series of adjustments. What I didn't
17 understand from looking at those is exactly what it was
18 that caused you to make the adjustments and how you
19 came to quantify the amount of the adjustments you
20 made. Now, in answering that question, I'll direct
21 your attention to Exhibit GES-4, where I think you have
22 made some adjustments in the third column, "Pennichuck
23 adjustments". Could you flip that --

24 A. Yes, I have it.

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[Witness: Guastella]

1 Q. And, I don't expect you to go through them one by one,
2 maybe Mr. Upton wants you to, but I do want to
3 understand your theory in making these adjustments and
4 explain for the Commission how you went about it?

5 A. Yes. Actually, the adjustments in the column entitled
6 "Pennichuck adjustments" were provided to me by
7 Pennichuck, by Mr. Ware. My purpose in preparing this,
8 these schedules, was to take Mr. Sansoucy's
9 projections, and that's why, in the upper left-hand
10 corner, the title of GES Exhibit 4, to which I added,
11 adjusted and corrected. To take these projections and
12 reflect the adjustments to the expenses that Mr.
13 Sansoucy had made, to reflect those adjustments that
14 were provided to me by Pennichuck Water, through Mr.
15 Ware, to see what the impact would be on these
16 schedules.

17 I had previously prepared a similar
18 schedule to adjust and correct Mr. Sansoucy's
19 calculations, because we had found certain errors to
20 Mr. Sansoucy's calculations. So, this was simply to
21 take the Pennichuck adjustments to the operating
22 expenses that Mr. Sansoucy had used to reflect
23 adjustments to those expenses.

24 So, if we look at the Line 27, "Total

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[Witness: Guastella]

1 O&M costs", the Company proposed adjustments were
2 3,245,000, and Mr. Sansoucy's amounts were 8,550,000.
3 So, we made an adjustment to Mr. Sansoucy's projection
4 for 2007 to reflect \$11,795, instead of his \$8,550,000.

5 Q. Well, what I think I want to understand is, these
6 adjustments were provided or information was provided
7 to you. Did you evaluate the information and satisfy
8 yourself that it was accurate and relevant to make
9 those adjustments?

10 A. I did not do the detailed analysis that Mr. Ware had
11 made. I accepted Mr. Ware's adjustments.

12 Q. And, in terms of making those adjustments, did you --
13 did you apply the similar methodology when analyzing
14 the various purchase prices?

15 A. Yes.

16 MR. UPTON: I object. "Did he, when
17 analyzing the purchase prices?" What do you mean by that?

18 MR. BOUTIN: Well, as I understood his
19 exhibits, he did a calculation based on a \$248 million
20 purchase price and another one on 198 million --

21 MR. UPTON: I withdraw the objection. I
22 understand now.

23 BY THE WITNESS:

24 A. Yes. These calculations were made first using Mr.

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[Witness: Guastella]

1 Sansoucy's purchase price, which, from what we could
2 determine, was approximately \$145 million. We also
3 made -- We performed Mr. Sansoucy's methodology using
4 the purchase price as valued by the Company's
5 consultant of 248.4 million. And, then, we also
6 selected a midpoint, and performed Mr. Sansoucy's
7 methodology to the midpoint number, which I believe was
8 approximately 196,000 -- or, 196 million.

9 Q. And, as I understand it, those are adjustments, those
10 are Exhibits JFG-4, 5 and 6 to your report?

11 A. Yes.

12 Q. Now, at some point in this proceeding, there was an
13 Exhibit GES-10 that Mr. Sansoucy used. Are you
14 familiar with that exhibit?

15 A. I'm not familiar with the number. I would have to have
16 it described for me.

17 Q. Well, I'm not sure I can, but maybe I don't need to.
18 Veolia's witnesses, when they testified, as I
19 understood it, testified that the base fee would be
20 \$2,296,000. Their actual -- or, they had previously
21 submitted, or Sansoucy did, testimony that the base fee
22 would be \$2,150,000, a difference of about \$150,000, as
23 I understood it.

24 MR. UPTON: I object. He's misstating

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[Witness: Guastella]

1 it. The Veolia base fee is 5 million.

2 MR. CAMERINO: That's the number that's
3 up there. I think he's right. The number is up there.

4 MR. BOUTIN: Then, he is right. And, I
5 don't know where my numbers came from, so I'm going to
6 withdraw that question. It's perhaps a typo when
7 preparing this, but I don't think I want to confuse
8 anybody by pursuing it. Well, actually, I do. I see the
9 error now. It is a typographical error.

10 BY MR. BOUTIN:

11 Q. \$5,296,000, about 150,000 greater than what I
12 understood that the assumed base fee was. Do you
13 remember those numbers?

14 A. Yes. Actually, if we refer to the same schedule that
15 we had been looking at before, if we go to JFG-4
16 Revised, which is Page 14, which is "GES Exhibit 4 -
17 Adjusted and Corrected". Mr. Sansoucy submitted a
18 later version of his analysis. And, the column which I
19 entitled "Sansoucy amounts" have changed. The taxes
20 are now, it's my understanding, Mr. Sansoucy is using a
21 \$1,497,000. The Line 3, "oversight" amount, is now
22 \$715,000. Line 5, the "insurance", is \$216,000.
23 Customer service is now \$200,000.

24 MR. UPTON: I think -- Is he reading

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[Witness: Guastella]

1 from an exhibit?

2 MR. BOUTIN: He's reading from what
3 exhibit that's up there now.

4 MR. CAMERINO: My understanding is he's
5 reading the figures that Mr. Sansoucy submitted with his
6 November testimony.

7 MR. UPTON: Well, it's not on this
8 exhibit, is it?

9 MS. KNOWLTON: I think we have the wrong
10 exhibit up. I think he's referring to 1071.

11 MR. BOUTIN: Let's see if we can get the
12 right one up. I had my back to it when he was reading.

13 THE WITNESS: I'm referring to Mr.
14 Sansoucy's revised submission.

15 BY MR. BOUTIN:

16 Q. Is that the revision of GES-10 that we referred to
17 earlier?

18 A. I have something marked "Exhibit 1017".

19 Q. Let's call that up and see what it is.

20 A. It's the 11/14/2006 revision.

21 MR. BOUTIN: Pages aren't number in that
22 exhibit, and that's part of the problem.

23 MR. CAMERINO: If the witness or
24 somebody gives us a page reference, we can pull it up.

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[Witness: Guastella]

1 MR. BOUTIN: May I approach the witness?

2 CHAIRMAN GETZ: Let's go off the record

3 and try to --

4 (Off the record.)

5 CHAIRMAN GETZ: Okay. We're back on the

6 record.

7 BY MR. BOUTIN:

8 Q. The witness is referring to Page 8 of 29 of the

9 exhibits. And, it's entitled "GES-4 Revised

10 November 14th 2006". Part of Exhibit 1017.

11 A. Yes. So, when I prepared my November 14th

12 Exhibit 3020, I did not have these revisions.

13 Subsequently, I received these revisions. So, I was

14 just referring to the same line items on my Exhibit

15 JFG-4 Revised, Page 14, and inserting the changes that

16 Mr. Sansoucy had made to his previous figures. So, if

17 we look at Mr. Sansoucy's exhibit, we see that the Line

18 2 is now "1,497,000". It had previously been

19 "1,400,000". So, he has made adjustments to some of

20 his estimates for operating expenses. One of those

21 adjustments is, from my understanding, he's showing on

22 his exhibit "5,150,000" for the "Veolia - Operations"

23 line. It's my understanding that that figure now is

24 "5,296,000".

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[Witness: Guastella]

- 1 Q. Does that affect any of the exhibits that you submitted
2 in your limited supplemental testimony?
- 3 A. It would, if I reran my figures. The bottom line of my
4 figures now shows that, for the Sansoucy amounts,
5 referring now back to my exhibit, instead of
6 "8,550,000", Mr. Sansoucy's revised amount, it's my
7 understanding, is "10,214,000". It's also my
8 understanding that adjustments were made. This would
9 affect Pennichuck's adjustments as well. So, instead
10 of Pennichuck's adjustments being 3,245,000, in the
11 column entitled "Pennichuck adjustments", that total
12 would now be "2,230,000". The net effect of that would
13 be, for 2007, my adjusted figure, when I say "my
14 adjusted", I mean Pennichuck Water Works adjustment to
15 Mr. Sansoucy's figures, would produce a total O&M cost
16 on Line 27 of "12,444,000", instead of what I show as
17 "11,795,000".
- 18 Q. And, just so we're keeping up on the board here, I want
19 to go back to Exhibit 3020. And, it's the first table,
20 which is I think the sixth page in. Now, as I
21 understand it, the numbers that you have changed are in
22 the bottom line, "Total O&M Costs", OM&M costs, is that
23 right?
- 24 A. On my exhibit.

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[Witness: Guastella]

- 1 Q. That's right. So, I want you just to take the Columns
2 2, 3 and 4, and just recite for the Commission what the
3 revised numbers are, given those revised Veolia
4 numbers?
- 5 A. Okay. And, there's also revised Pennichuck numbers.
6 So, instead of "3,245,000", that number would be
7 "2,230,000". And, instead of "8,550,000", which is Mr.
8 Sansoucy's amounts, that original amount, the revised
9 amount would be "10,214,000". And, instead of
10 "11,795,000", the revised amount will be "12,444,000".
- 11 Q. Now, I assume that, if you reconsidered the other
12 figures for subsequent years, that would also have an
13 effect, is that correct?
- 14 A. Yes. The numbers would flow through to all of the
15 years.
- 16 Q. All right. I won't ask you to calculate them. Getting
17 back to some clarification. We had testimony, both in
18 terms of prefiled and then in Mr. Sansoucy's testimony,
19 about the rate impact on PEU, PAC, and PWSC, three of
20 the subsidiaries, if Nashua were able to take
21 Pennichuck. And, one of the aspects of rate impact is
22 "how does one determine the effect?" And, Mr. Sansoucy
23 says that your methodology is simply to allocate
24 existing costs to those subsidiaries. Can you comment

[Witness: Guastella]

1 on that?

2 A. Yes. That's not at all what my analysis was. You

3 know, I've performed many cost allocation studies for

4 water utilities. And, there are essentially two kinds.

5 One is what's known as a "customer class allocation

6 study", where you take the Company's total revenue

7 requirement and you allocate the costs among the

8 various customer classes, such as residential,

9 commercial, industrial, fire protection, and so on.

10 The other type of allocation study would be if you have

11 multiple systems and you're performing an allocation of

12 costs that are common to multiple systems. That's not

13 at all what was done in my study. And, I believe Mr.

14 Sansoucy mischaracterized my study as being a "cost

15 allocation study". We did not merely allocate total

16 costs among PEU and PAC. We actually performed a very

17 detailed analysis and study, which included interviews

18 with various Company people, including the heads of

19 each of their departments, and officers of the Company.

20 We analyzed every department to determine what staffing

21 levels would be needed if Pennichuck Water Works itself

22 were acquired by Nashua, and all that would be left

23 would be PEU, PAC, and PWSC, the service company. And,

24 we eliminated a large number of employees. I believe

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[Witness: Guastella]

1 we went from -- I believe we went down to about 30
2 employees, from an original number of about 46 -- 76
3 employees. We also reviewed each of the employees
4 during the course of this analysis as to how much time
5 was spent for regular time, overtime, what the various
6 pay rates would be for the employees remaining. We
7 also reallocated duties of the employees to make sure
8 that there would be (1) no duplication, or, when we
9 made adjustments for employees, and we were left with,
10 for example, three and a half employees, whether we
11 could use one employee and change the duties, so that
12 the employees would share duties. For example, we
13 eliminated the president of the Company's position
14 entirely. We eliminated other officers' positions
15 entirely. And, we spread those duties to remaining
16 officers that would left, if the PEU and PAC operation,
17 as well as the PWSC operation, remained. We undertook
18 an effort or I undertook an effort to direct the
19 Company to contact all of the 17 vendors of major
20 supplies to determine whether the purchasing of
21 material, supplies, chemicals, would change if their
22 purchasers were of a lower volume. So, they obtained
23 specific estimates from their vendors, so that we could
24 establish what would be the remaining costs, if they

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1 were no longer purchasing on a larger scale basis,
2 would they lose the economies of scale? We had them
3 call the insurance companies that provide insurance to
4 determine what the insurance levels would be. So, we
5 undertook a very detailed examination of costs. And,
6 rather than just allocate costs, and, for example, the
7 Company had, on a companywide basis, including
8 Pennichuck Water Works, had O&M expenses of something
9 in the magnitude of \$19.9 million. We reduced that
10 total 19.9 million down to approximately 8.8 million.
11 That's not a cost allocation study. We made a very
12 detailed effort to examine what would be remaining
13 under -- if the operation of Pennichuck Water Works was
14 taken. We analyzed all of the utility plant in service
15 of each of the individual companies. And, we
16 determined what additional equipment would have to be
17 purchased by PEU, PAC, and PWSC, in order to continue
18 its operations, which equipment is now with PWW. So,
19 we went through a long list of assets that had to be
20 acquired. And, we eliminated a number of assets. We
21 eliminated vehicles. So, we performed much more than
22 just a cost allocation study. We actually performed a
23 very detailed study to determine what would be left.
24 Q. Was it your goal to --

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[Witness: Guastella]

1 MR. UPTON: Mr. Chairman, I didn't
2 object during his answer, but all of that is in his direct
3 testimony. It's cumulative. And, it's not
4 cross-examination. And, if he's going to keep doing this,
5 I am going to object.

6 CHAIRMAN GETZ: Well, this is always the
7 challenge we have in dealing with so-called "friendly
8 cross". But how much more along this line, Mr. Boutin?

9 MR. UPTON: I don't have very much
10 longer.

11 MR. BOUTIN: You know, your Honor, what
12 the problem is here is that these companies have to come
13 out of this viable. And, the Town of Merrimack is
14 concerned about their being the only game in town for the
15 purchase of orphaned systems. So, I think these questions
16 matter to Merrimack. They may not matter in the grander
17 scheme of things, I don't know. But they matter to us.

18 MR. UPTON: I would just point out that
19 Merrimack is a PWW satellite, and not a PEU and PAC
20 satellite. So, if it matters, I'm curious how?

21 MR. BOUTIN: Well, as I said, there's
22 orphaned systems that we're concerned about that we don't
23 know where they are, necessarily, but orphaned systems are
24 a problem that the Staff has pointed out. And, I think

[Witness: Guastella]

1 it's a legitimate one. So, I can move on?

2 CHAIRMAN GETZ: Okay. I took it that
3 that's what you were about to do. So, let's do that.

4 MR. BOUTIN: Exactly. So, I'm actually
5 going to skip a line of questioning, your Honor.

6 BY MR. BOUTIN:

7 Q. And, go to, really, the last question I have, is you
8 appear to, in your analysis, rely on revenue
9 anticipation notes, which I understand to be short-term
10 obligations that are replaced by longer term ones.
11 And, I think you addressed it to an extent. But what I
12 really want to know is whether or not you have looked
13 at whether that is a permissible and appropriate use of
14 financing resources for the purchase of these systems?

15 A. Yes, I have. And, the way I've done that was really
16 consulted with attorneys here in New Hampshire. It's
17 been my experience around the country that interest
18 only bond anticipation or revenue anticipation notes is
19 commonly used. I've used that in negotiating sales of
20 utilities with municipalities. I've negotiated sale of
21 utilities to municipalities that indeed financed the
22 acquisition of an investor-owned utility in precisely
23 that way. I've worked with a company called PFM,
24 Public Financial Management, that's one of the largest

[Witness: Guastella]

1 investment banking firms in the country. And, I
2 prepared a model using, very similar to this model,
3 using revenue or bond anticipation notes for the first
4 three years, and then going to long-term financing.
5 PFM reviewed that, and they actually developed what an
6 interest rate would be and what the long-term financing
7 would be under that arrangement, and were actually
8 prepared to go forward with, if that municipality
9 acquired the system, obtaining that type of financing
10 for your system. So, in my world, that was routine. I
11 never thought that would be an issue at all. I
12 reviewed my analysis with the Company's attorneys.
13 They didn't have a problem with it. And, then,
14 actually, on deposition, that issue was raised. And, I
15 have since spoken to attorneys again, and the attorneys
16 are perfectly comfortable that there's nothing in New
17 Hampshire law that would prevent that type of
18 financing.

19 Q. That was the purpose of my question, to ask whether,
20 since your deposition, that you've learned anything
21 that wasn't in your deposition?

22 A. Yes.

23 Q. Apparently you haven't?

24 A. Yes.

[Witness: Guastella]

1 MR. BOUTIN: Thank you. Nothing else.

2 CHAIRMAN GETZ: Okay. Mr. Mullen?

3 MR. MULLEN: We have no questions.

4 CHAIRMAN GETZ: And, Ms. Pressley?

5 MS. PRESSLEY: Thank you. No questions.

6 CHAIRMAN GETZ: Mr. Judge?

7 MR. JUDGE: No questions.

8 CHAIRMAN GETZ: Well, I was also going
9 to give you the opportunity to make your appearance for
10 the record.

11 MR. JUDGE: I came in late from another
12 hearing. Sorry, your Honor. But I appear for the
13 Merrimack Valley Regional Water District.

14 CHAIRMAN GETZ: Okay. Thank you. And,
15 the Consumer Advocate is not present at the moment. So,
16 then, we would turn to Ms. Thunberg?

17 MS. THUNBERG: Yes. Staff has about
18 ten, fifteen minutes worth of questions that haven't
19 already been asked by Attorney Boutin. Good morning.

20 THE WITNESS: Good morning.

21 BY MS. THUNBERG:

22 Q. Mr. Guastella, I had a question about the estimates of
23 future rate increases related to PAC and PEU that you
24 provided in your testimony. Do you recall that

[Witness: Guastella]

1 testimony?

2 A. Yes, I do.

3 Q. And, with respect to those estimates, do you --
4 actually, let me back up a bit. You also estimated
5 that you wouldn't expect the closing, should the
6 acquisition be approved, to occur until 2008, is that
7 correct?

8 A. Yes, that was the assumption.

9 Q. To the extent PAC and PEU, and you're aware of -- I'm
10 using acronyms, but you're aware of the companies?

11 A. I'm aware of those, yes.

12 Q. To the extent they come in to this Commission
13 requesting rate relief, how is that going to impact
14 your analysis or impact the estimates that you
15 provided? And, that time period of when they come in
16 for a rate increase would be up through 2008.

17 A. When we prepared our analysis of what the rate
18 increases would be, and maybe the best way to do this
19 is to look at the exhibits themselves, so I could
20 demonstrate.

21 Q. If you're going to refer to an exhibit, do you have
22 exhibit numbers or page numbers at your ready?

23 A. That's what I'm hoping to find.

24 Q. If it will be helpful, I'd like to give you the

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1 official copy of the marked exhibits.

2 A. Thank you.

3 Q. Are you, in particular, looking for your --

4 A. I'm looking for my May 22nd analysis.

5 Q. And, your May 22nd analysis I believe is Exhibit 3016.

6 CMSR. BELOW: I think you're looking for
7 3016A.

8 MS. THUNBERG: Okay. I'm going to hand
9 Mr. Guastella the official exhibits of 3016, 3016A, 3016B,
10 and the confidential version, knowing that there's been a
11 prior agreement not to refer to specific numbers.

12 BY MS. THUNBERG:

13 Q. Are you ready for a response?

14 A. Yes, I am.

15 Q. Okay. Thank you.

16 A. I'm looking at Exhibit 3016A, and it's Bates stamped
17 Page "19", which I believe are not marked
18 "confidential". This portion of my study was not
19 marked "confidential". I just want to be sure of that
20 before I proceed with numbers. It was supplemental
21 response to Nashua 3-11. Yes.

22 MR. CAMERINO: Just for the witness's
23 benefit. The exhibits that have an "X" are the ones that
24 are confidential. Anything else there is no

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[Witness: Guastella]

1 confidentiality issue.

2 THE WITNESS: Thank you.

3 MR. UPTON: And, can I be reminded of
4 the question now?

5 MS. THUNBERG: The question was wanting
6 to know what impact a rate increase would have as to PAC
7 and PEU from the time he had made the estimate of the rate
8 impact, estimates of 64,000 and 66,000 in his testimony,
9 through to 2008. And, Mr. Guastella, I believe, had said
10 it was best answered by pointing out different schedules.
11 Is that fair?

12 THE WITNESS: Yes. Yes.

13 BY THE WITNESS:

14 A. And, if we look at this schedule that's now on the
15 screen, the first step we did was to analyze 2005 per
16 book numbers and determine what the revenue requirement
17 would be adjusting 2005, but before Pennichuck Water
18 Works would be acquired by Nashua. And, if you look
19 down at the bottom of that column, that second column,
20 you see a percentage of "22.39 percent". What that
21 represents is we, on the basis of our analysis, we
22 found that PEU would require a rate increase whether or
23 not it was acquired by Nashua. The second column then
24 shows the rate increase that would be needed with the

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[Witness: Guastella]

1 loss of PWW, if PEU, PAC, and PWSC had to stand on its
2 own.

3 So, if I understood the thrust of your
4 question, without the acquisition, just proceed as you
5 would normally proceed, as a matter of fact, it's my
6 understanding that PEU did have a rate increase
7 recently. I don't -- I think it was very close to what
8 I had estimated their rate increase would be based on
9 this quick analysis. So that, in addition to that rate
10 increase, if there were an acquisition, there would be
11 a need for an additional 64 percent increase
12 approximately, if PWW were acquired by Nashua. And, if
13 we turn the page, we did the same analysis for
14 Pittsfield Aqueduct Company, PAC, based on our
15 estimates, they would have -- would need -- our
16 estimates of evaluating 2005 actual results, they would
17 need an increase of approximately 32 percent,
18 32.52 percent. But, if they did not have PWW, because
19 it was acquired, and they were now independent of PWW,
20 they would need an additional increase of I believe
21 that's 65.89 percent.

22 BY MS. THUNBERG:

23 Q. Thank you. And, I just want to fairly summarize this.
24 The answer to my question was "yes", and you accounted

[Witness: Guastella]

1 for expected future rate increases on these schedules
2 that you just pointed out on the record?

3 A. That's correct.

4 Q. Okay. Thank you. The next issue I just wanted to
5 explore with you is, when you were coming up with
6 operating costs for the City of Nashua, did you rely in
7 part on the Veolia and Beck contracts?

8 A. When I prepared my own analysis, which is -- the
9 revised version is Exhibit 3016, and this is
10 confidential, I did not rely on Veolia's estimates. I
11 analyzed Pennichuck Water Works' operations and
12 projected those through 2015. I then assumed that
13 Nashua, if it acquired Pennichuck Water Works, would
14 operate just as efficiently and effectively as
15 Pennichuck Water Works. The only changes I made were
16 Nashua would not incur certain costs that Pennichuck
17 Water Works would incur, such as depreciation,
18 regulatory expenses, they would not have income taxes.
19 So, I made those adjustments that converting an
20 investor-owned operation to a municipal operation, the
21 municipality would not incur the same costs as the
22 investor-owned. I did not use Veolia at all in my
23 projections here. And, the projections on this
24 schedule show that under, and this analysis was made,

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[Witness: Guastella]

1 of course, using the estimate of value prepared by
2 PWW's consultant of 248.4 million. And, it basically
3 projected PWW's revenue requirement out to 2015, if it
4 continued as an investor-owned utility. And, then,
5 given that same revenue stream, with some minor
6 adjustments that had to be made, because there were
7 certain revenues that Nashua would not incur, but they
8 were minor, I then determined whether or not Nashua,
9 with the same revenue stream, and my projection of
10 municipal expenses, would be able to acquire the system
11 at the 248.4, and I determined that it could because
12 the difference, as shown on Schedule A, is
13 insignificant.

14 MR. UPTON: Mr. Chairman, he's gone way
15 beyond the scope of the question. He's just regurgitating
16 his direct testimony at this point.

17 CHAIRMAN GETZ: Ms. Thunberg?

18 MS. THUNBERG: I think it was responsive
19 to the question. And, he's stopped at this point. And,
20 I'm not entertaining any other questions on that
21 particular point.

22 CHAIRMAN GETZ: Well, then proceed.

23 BY MS. THUNBERG:

24 Q. Mr. Guastella, if there were unknown labor unit costs

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[Witness: Guastella]

1 in the Veolia contract, that would not have impacted
2 your analysis, is that correct?

3 A. That's correct.

4 Q. To the extent that George Sansoucy would have included
5 unit costs that may or may not have been unknown in the
6 Veolia contract, to the extent that he included them,
7 and I'm revisiting an exhibit that we just pulled up
8 under questioning from the Town of Merrimack, that you
9 had looked at George Sansoucy's revised Veolia costs.
10 And, would you presume that, if George Sansoucy had
11 included the undisclosed labor unit costs in those
12 numbers, that you would have at least incorporated them
13 in your responsive analysis to his exhibit?

14 MR. UPTON: I object to the form of the
15 question.

16 MS. THUNBERG: Okay.

17 MR. UPTON: Number one, I don't
18 understand it. Maybe she can reformulate it.

19 MS. THUNBERG: I can.

20 MR. UPTON: Right now it asks the Sun,
21 the Moon, and the stars. And, I just don't understand how
22 we can get a good answer out of this.

23 MS. THUNBERG: I will admit that was a
24 complex question. I will simplify it.

[Witness: Guastella]

1 BY MS. THUNBERG:

2 Q. Mr. Guastella, earlier this morning you were commenting
3 on changes or updates of Veolia's operations cost that
4 George Sansoucy had provided, is that correct?

5 A. Yes.

6 Q. Are you aware of whether those Veolia operations
7 updates that George Sansoucy had proposed included any
8 previously undisclosed labor unit costs?

9 A. I don't know the basis for Mr. Sansoucy's changes to
10 his own numbers.

11 Q. Okay. Thank you. Now, I believe you already testified
12 that your analysis does not include costs associated
13 with Nashua being a regulated utility should they
14 acquire this company, is that correct?

15 A. Yes.

16 Q. And, hypothetically, the City of Nashua were to agree
17 to remain partially or wholly regulated by this
18 Commission, how would that affect your analysis, if
19 any?

20 A. Nashua's costs would probably increase because of to
21 the extent of whatever regulatory costs they would
22 incur, as opposed to not being regulated at all. So, I
23 think the result would be that Nashua's costs would go
24 up a bit, but I don't know how much that would be,

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1 because I'm not, in all honesty, familiar with, if you
2 will, partial regulation. I would assume it would add
3 costs to Nashua.

4 MS. THUNBERG: Thank you. That's all
5 the questions that Staff has. Appreciate your time.

6 CHAIRMAN GETZ: Okay. Thank you. Mr.
7 Upton.

8 MR. UPTON: I can get started. I've got
9 quite a bit, if you want to take the break. I'm not going
10 to get through my first topic by the normal break time.

11 CHAIRMAN GETZ: Well, I'd like to try to
12 go to quarter of one, --

13 MR. UPTON: Okay.

14 CHAIRMAN GETZ: -- because I have a
15 conference call I have to be on during lunchtime.

16 MR. UPTON: All right.

17 BY MR. UPTON:

18 Q. Mr. Guastella, we met at your deposition last summer.

19 A. Good afternoon.

20 Q. Welcome back to New Hampshire.

21 A. Thank you.

22 Q. Do you have a copy of Exhibit 3016, the confidential
23 portion? That's your JFG-1 Revised. Do you have a
24 copy of it with you?

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1 A. Yes, I do.

2 MR. UPTON: I want to make sure that the
3 Commission all has a copy of that.

4 BY MR. UPTON:

5 Q. And, I'm going to ask you a series of questions that
6 call for a "yes" or "no" answer. I'd appreciate it if
7 you would first answer "yes" or "no". If you want to
8 explain it, I'm happy to let you explain it. But I'm
9 asking for a specific purpose, and I want to make sure
10 I get the answer. If you could accommodate me. If you
11 tell me you can't answer the question "yes" or "no",
12 we'll deal with it at that point. Is that okay?

13 A. That's fine.

14 Q. Now, the purpose of your -- of your January and May
15 testimony, at least in part, was to show that Nashua
16 had the ability to pay 248.4 million and not raise
17 rates. Isn't that so?

18 A. No. Actually, that was not the purpose.

19 Q. That's exactly what that JFG-1 does, isn't it? It
20 shows that Nashua --

21 A. No, I was not -- I was not concerned about whether or
22 not Nashua would raise rates.

23 Q. Why would you -- Why would you do it using Mr. Reilly's
24 analysis, if you were not concerned about showing that

[Witness: Guastella]

1 Nashua would be able to not raise rates?

2 A. When you say "using Mr. Reilly's analysis", I used the
3 valuation --

4 Q. Mr. Reilly's value, yes. I'm sorry.

5 A. Yes.

6 Q. I'm sorry.

7 A. The reason I did that, I was asked by the Company to
8 determine, with Pennichuck Water Works' rates, what
9 would the results be under a municipal operation, if it
10 acquired Pennichuck Water Works and the value was
11 established at the 248.4 million.

12 Q. And, what your analysis showed was that at a price of
13 248.4, Nashua's rates would be insignificantly lower
14 than Pennichuck's over the same period, isn't that
15 right?

16 A. Essentially, they would be -- that's correct. The
17 acquisition could be made at that price, and the rates
18 remaining at Pennichuck Water Works rates.

19 Q. Now, would you agree that, if Nashua's revenue
20 requirements were less than what you projected in your
21 JFG-1 exhibits, that Nashua's rates would be lower than
22 PWW's?

23 A. I don't know whether they would lower their rates or
24 not.

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- 1 Q. Well, in your analysis, if you had a lower revenue
2 requirement for Nashua, it would have a lower rate
3 requirement, wouldn't it, than PWW's?
- 4 A. Yes. That doesn't necessarily mean, however, that
5 Nashua would lower the rates. I don't know what Nashua
6 would do. They may just keep the surplus.
- 7 Q. I'm talking about the analysis. The analysis, if you
8 kept the same analysis, Nashua's requirements for rates
9 would be less than PWW's over that same period?
- 10 A. That's correct.
- 11 Q. And, the more Nashua's revenue requirement was less
12 than PWW's, the greater that rate differential would
13 be, isn't it?
- 14 A. That's correct.
- 15 Q. And, if you used the City's value, in this case, of
16 85 million, which is 163 million less than the Reilly
17 value of 248.4, wouldn't you agree that that would
18 create a pretty significant differential?
- 19 A. I haven't done the numbers, but I imagine that would be
20 a significant differential.
- 21 Q. And, that's if you changed absolutely nothing else?
- 22 A. That's correct.
- 23 Q. Now, if the City's operating expenses that you
24 projected on Schedule C, would you look at Schedule C?

[Witness: Guastella]

1 It's the JFG-1 Revised. Do you have that?

2 A. I do.

3 Q. If the City's operating expenses that you show
4 projected on Schedule C were less than what you show,
5 would you -- would that also increase the rate
6 differential between the City and PWW?

7 A. Yes.

8 Q. And, I recall from your depo, and again you stated it
9 this morning, that, in calculating these expenses, what
10 you did was you used the same O&M projected for PWW,
11 but you excluded items that a municipal operation would
12 not incur?

13 A. That's correct.

14 Q. So, what you assumed here was the same level of
15 operating costs as PWW?

16 A. For those categories.

17 Q. Less those municipal categories?

18 A. That's correct.

19 Q. And, that would have to include, I assume, the same
20 level of employee costs?

21 A. That's correct. All costs.

22 Q. And administrative costs?

23 A. That's correct. I made some adjustments to
24 administrative costs, however. There were some other

[Witness: Guastella]

1 adjustments that were made that I eliminated.

2 Q. Well, you knew when you did this that Veolia had
3 submitted a proposal to operate the system for Nashua,
4 didn't you?

5 A. Yes, I did.

6 Q. Were you ever given a copy of it?

7 A. I was.

8 Q. But you still assumed that they would have the same
9 level of operating costs as PWW?

10 A. That's correct.

11 Q. And, you didn't change that when you revised your JFG-1
12 for your May testimony, did you?

13 A. This schedule that we're looking at now, that's
14 correct.

15 Q. Yes. And, by that time, Nashua had --

16 MR. CAMERINO: Excuse me, just for
17 clarification. There was a question about what
18 Mr. Guastella knew when he did "this exhibit", and we need
19 a date on that, because I --

20 MR. UPTON: I'm referring to the JFG-1
21 Revised.

22 MR. CAMERINO: And, the question
23 relating to what Mr. Guastella knew about the Veolia
24 proposal relates to the revised, not to the original?

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1 MR. UPTON: I'll make sure.

2 MR. CAMERINO: I just want to --

3 MR. UPTON: Okay. I can see why you're
4 saying that. I'm sorry.

5 MR. CAMERINO: Thank you.

6 BY MR. UPTON:

7 Q. When you did your original JFG-1, you had the Veolia
8 proposal, correct?

9 A. Yes.

10 Q. And, you didn't rely on it?

11 A. I didn't analyze it, no.

12 Q. You didn't analyze it.

13 A. I reviewed it, but I did not analyze it.

14 Q. And, when you did your JFG-1 Revised, in May, by that
15 time you had, I assume, a copy of the Veolia contract?

16 A. It was the same copy I had been given originally.

17 Q. You were never given a copy of the proposed contract
18 that Nashua and Veolia filed in this case?

19 A. I don't recall. I looked at the -- I looked at a
20 proposal by Veolia. I don't know if I ever saw the
21 actual contract.

22 Q. All right. Well, let me ask you this. You've assumed
23 the same number of employees and employee costs. Do
24 you know if Veolia intends to have the same number of

[Witness: Guastella]

1 employees as PWW in its operation?

2 A. I do not.

3 Q. Do you know if it intends to provide the same level of
4 benefits at the same cost as PWW?

5 A. No.

6 Q. I assume you do know that Veolia is one of, if not the
7 largest contract operator companies in the world?

8 A. I don't know their status in the world.

9 Q. All right. Would you agree that in this country it's
10 one of the largest contract operator --

11 A. I don't know their status in the country either. There
12 are a number of companies who are in the business or
13 who are getting the business. So, I just couldn't tell
14 you.

15 Q. Is it a large contract operator company?

16 A. It seems to be, based on the material it submitted.

17 Q. All right. Thank you. I should have asked it that way
18 right from the beginning. Wouldn't you agree that,
19 with the size of Veolia, that it has economies of scale
20 available to it that are unavailable to PWW, both in
21 procurement and operations?

22 A. I can agree to that, based on my experience. My
23 experience has been, I have never seen a utility the
24 size of PWW, and there are not all that many that are

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1 considered "true water utilities", as opposed to real
2 estate developer related utilities. I have never seen
3 investor-owned utilities of this size seeking outside
4 operating contractors to perform their services,
5 because they seem to be able to perform their services
6 better and more efficiently themselves. And, in fact,
7 the investor-owned companies are actually starting to
8 do contract operations for municipals. So, it's been
9 my experience that I've never seen, and I've seen them
10 all, I have never seen large utilities seeking
11 operations from -- by going to outside contractors, on
12 the assumption that an outside contractor would be able
13 to operate more efficiently than they can operate their
14 system themselves.

15 Q. But my question was directed at the City going to an
16 outside contractor. And, if it went to an outside
17 contractor the size of Veolia, don't you think it could
18 get economies of scale in areas like procurement and
19 operations that would give it -- that would make its
20 cost of operations less than Pennichuck's?

21 A. No. My assumption was that the City of Nashua could
22 not, through outside contracts, be more efficient than
23 Pennichuck Water Works. So, I gave them the exact same
24 efficiencies as Pennichuck Water Works is now

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[Witness: Guastella]

1 experiencing.

2 Q. But you didn't review the contract?

3 A. Well, I reviewed the contract, but I did not analyze
4 the contract. And, when I reviewed the contract, there
5 were costs that were add-ons that I could not measure.
6 So, my assignment was to see what the impact would be
7 on Pennichuck Water Works' rates, and to estimate
8 operations for a municipal. And, the best way for me
9 to do that was to assume the municipal could obtain the
10 same operating efficiencies as Pennichuck Water Works.

11 Q. I thought you just told me that you didn't review the
12 contract?

13 A. I'm sorry. Maybe I should have said the "draft
14 contract" or a "proposed contract". There was
15 something that was provided to me, and I don't know
16 whether it was the formal contract or a draft contract
17 that was given. But I saw provisions of Veolia's
18 proposal to the City. I don't know whether that ever
19 became the contract.

20 Q. You have no idea what Veolia has proposed to operate
21 the system for for the City of Nashua, do you?

22 A. Well, I do. I reviewed, I didn't analyze the numbers,
23 so I couldn't give you the specifics. But I analyzed
24 all of the types of costs that would be included at

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1 some base fees, and then there were costs that would be
2 included that were add-ons to those base fees. I just
3 didn't analyze whether the base fees were reasonable.
4 And, there was no way of telling what the add-ons would
5 be, because there were percentages applied to different
6 tasks, such as capital projects and special other
7 projects.

8 Q. You didn't look at --

9 A. Or other costs that were going to be involved.

10 Q. You didn't look at the final expression of the
11 relationship between the parties, and you just simply
12 assumed that they weren't going to be able to do it any
13 cheaper than Pennichuck was, didn't you?

14 MR. BOUTIN: And, I'm going to object in
15 that the characterization, because I'd like everybody to
16 be clear on it, there is no final expression of the
17 parties, as I understand the previous testimony.

18 CHAIRMAN GETZ: Mr. Boutin, you're
19 objecting on behalf of Mr. Guastella?

20 MR. BOUTIN: No, I'm simply objecting --
21 I'm objecting because I simply want to understand, when I
22 hear a reference to a "final expression of the parties",
23 and I've heard days of testimony that "there is no final
24 expression", what the question really is, on behalf of my

[Witness: Guastella]

1 client.

2 CHAIRMAN GETZ: Mr. Upton.

3 MR. BOUTIN: And, if I'm out of order,
4 you can say so.

5 MR. UPTON: The final expression is the
6 draft contract between Veolia and the City of Nashua. I
7 mean, there's been a lot of testimony about why it's a
8 draft, as opposed to a final contract.

9 MR. BOUTIN: Okay.

10 MR. UPTON: But it is the final
11 expression.

12 MR. CAMERINO: Maybe I can just cut
13 through this, because, frankly, I have no idea what
14 Mr. Guastella reviewed, but he may be unaware, and I hope
15 it's okay to point out that there is no signed document,
16 and that may simply be confusion. And, maybe Attorney
17 Upton could clarify that and we could move on.

18 CHAIRMAN GETZ: Well, there has been a
19 lot of discussion about the nature of the agreement and
20 the status of it that Mr. Guastella was not here for. So,
21 maybe we could establish that.

22 BY MR. UPTON:

23 Q. Did you review a draft of a contract between Veolia and
24 the City?

[Witness: Guastella]

1 A. My recollection is that I reviewed Veolia's cost
2 proposals.

3 Q. All right. Thank you.

4 A. I don't know what -- in what form that was in, frankly.

5 Q. All right. And, if there was a draft contract between
6 the parties that represented the final expression of
7 their relationship that was filed in this case, you
8 didn't look at it?

9 A. I don't know whether the documents I looked at
10 reflected that or not.

11 Q. What you did was you concluded that Pennichuck's costs
12 of operation were about as good as it was going to get,
13 and you gave the City the benefit of the doubt on some
14 municipal items. Isn't that what happened?

15 A. Well, I think that's a rather short statement of an
16 analysis that I made that converted Pennichuck Water
17 Works, as an investor-owned utility, into a municipal
18 operation, with the assumption that the municipal
19 operation would be able to operate the system as
20 efficiently as -- and effectively as Pennichuck Water
21 Works. And, I have no idea whether or not it can with
22 outside contractors.

23 Q. Now, you referred to some of the exclusions that you
24 made, I think it was in response to Ms. Thunberg, that

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[Witness: Guastella]

- 1 you excluded things like depreciation and regulatory
2 fees?
- 3 A. Yes.
- 4 Q. There are lots of other synergies that a city has,
5 wouldn't you agree?
- 6 A. If you could be more specific?
- 7 Q. Well, do they pay income taxes?
- 8 A. Well, I excluded those as well.
- 9 Q. Do they pay the New Hampshire Business Profits Tax?
- 10 A. I didn't -- no.
- 11 Q. Do they pay the New Hampshire State Utility Tax?
- 12 A. No.
- 13 Q. Is all of that reflected in your Schedule C?
- 14 A. Yes.
- 15 Q. You do, however, interestingly enough, in Schedule C,
16 show the payment of payroll tax. Is it your
17 understanding that the City will have employees who
18 operate the system for whom a payroll tax will have to
19 be paid?
- 20 A. My assumption was that the same level of employees and
21 payroll taxes related to those employees would have to
22 be paid.
- 23 Q. If all the people who are going to operate the system
24 will be Veolia employees, rather than City employees

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[Witness: Guastella]

1 would you agree that that's an item that should be
2 eliminated?

3 A. I can't pull apart one line item of expense when I
4 didn't analyze all of Veolia. Because, in order for me
5 to give you a "yes" or "no" answer, and still keep my
6 study being valid, I would have to analyze all of the
7 costs of the Veolia contract. And, it just wouldn't be
8 an appropriate analysis for me to make here sitting
9 down. I mean, if I'm going to say "adjust my
10 operations under my theoretical municipal operation", I
11 would want to look at all of the costs. And, I've
12 already been given information from the Company that
13 there are costs that are greater than what Mr. Sansoucy
14 projected using Veolia. So, it's really not one item
15 that I would change my analysis for. I would want to
16 change my analysis for all items.

17 Q. Okay. We'll get to those later on. Now, back to some
18 of the synergies the City has, unlike PWW, the City has
19 no expense related to reporting for Sarbanes-Oxley,
20 does it?

21 A. I'm sorry?

22 Q. The City has no expense related to the reporting
23 requirements of the Sarbanes-Oxley law, does it?

24 A. I'm not familiar with that.

[Witness: Guastella]

1 Q. Okay. It has no expenses related to having a board of
2 directors, does it?

3 A. That's correct. And, I made adjustments for salaries
4 for that.

5 Q. Okay. And, that's all in Schedule C? You made
6 adjustments in Schedule C?

7 A. Yes.

8 Q. And, the same is true with having a CEO or CFO?

9 A. I made adjustments for that as well.

10 Q. Having shareholders, requirement for paying dividends,
11 that sort of thing?

12 A. I made adjustments for those expenses.

13 CHAIRMAN GETZ: And, Mr. Richardson --
14 or, Mr. Upton, I'm sorry, I had another issue of
15 definition of terms. You're using "synergies" to mean
16 "cost advantages" generally?

17 MR. UPTON: Yes. "Cost advantages".
18 I'm sorry.

19 CHAIRMAN GETZ: Okay.

20 MR. UPTON: If I use that and it's
21 imprecise, that's what I'm trying to say.

22 CHAIRMAN GETZ: Okay.

23 MR. UPTON: I'm sorry.

24 BY MR. UPTON:

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[Witness: Guastella]

- 1 Q. Now, another significant difference between the City
2 and Pennichuck is cost of equity, wouldn't you agree?
- 3 A. No, the City doesn't have a cost of equity.
- 4 Q. Right. But the PWW does, doesn't it?
- 5 A. The PWW has a cost of capital and the City has a cost
6 of capital, and I took that into consideration.
- 7 Q. But the City doesn't have to raise equity, does it?
- 8 A. It doesn't matter in my analysis.
- 9 Q. Okay.
- 10 A. I included costs for capital that the City would incur
11 and I included costs for capital that Pennichuck Water
12 Works would incur.
- 13 Q. Let's talk about cost of capital. For the City, you
14 used a cost of capital of 4.6 percent?
- 15 A. That's correct.
- 16 Q. Is that correct? And, my memory from your deposition,
17 but correct me if I'm wrong, is you took that
18 4.6 percent from Mr. Reilly?
- 19 A. Yes, that's correct.
- 20 Q. Did you and Mr. Reilly confer from time to time?
- 21 A. No, except to ask him what cost of capital he was
22 using. And, I'm not even sure I got that through
23 Mr. Reilly. Mr. Reilly and I did not -- I did not
24 discuss his report or calculations, he did not discuss

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[Witness: Guastella]

1 mine.

2 Q. You did use the same set of company projections,
3 though, for your work, didn't you?

4 A. Yes, but I did not collaborate with Mr. Reilly.

5 Q. All right. And, that's Exhibit 1075 confidential? I
6 can show it to you, but will you accept my word? You
7 probably shouldn't.

8 A. If those are what's known as the "Moody's Projection",
9 --

10 Q. The Moody's Projection.

11 A. -- I used the Moody's Projection.

12 Q. All right. Now, in your original JFG-1, for PWW, you
13 used a cost of capital of 7.84 percent, correct?

14 A. Yes.

15 Q. Where did you get that figure?

16 A. We had made an estimate of that figure. And, then,
17 when we looked at the Company's projections of cost of
18 capital through the Moody's, we made an adjustment for
19 that. That's one of the revisions we had made to --

20 Q. Did somebody from the Company point that out to you or
21 is that something you picked up yourselves?

22 A. Something we picked up ourselves.

23 Q. All right. And, so, on JFG-1 Revised, that gets
24 reduced to 6.97 percent?

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[Witness: Guastella]

- 1 A. I believe that's the right number.
- 2 Q. Now, even at the reduced level, the difference between
3 the Company and the City is over 200 basis points,
4 isn't it?
- 5 A. Well, it's an overall bigger difference in terms of
6 cost of capital.
- 7 Q. It's 200 basis points difference in the cost of
8 capital, isn't it?
- 9 A. That's only one component of the cost of capital. The
10 investor-owned utility also has the equity portion.
11 So, the difference between paying debt service by a
12 municipality under a revenue bond and the
13 investor-owned utility requiring net operating income
14 that covers a combination of both debt and equity,
15 grossed up for taxes, they're just two different
16 situations. So, I did not analyze the specific
17 difference in an interest rate by itself.
- 18 Q. All I want to know is, is there a 2 percent or 200
19 basis point difference between 6.97 percent as the cost
20 of capital for PWW and 4.64 percent for the City?
- 21 A. There's that difference in the interest rate. That's
22 not the difference as you've just questioned me, as to
23 the cost of capital for PWW. PWW's cost of capital is
24 not based on just its interest expense.

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[Witness: Guastella]

1 Q. But the City's is, isn't it?

2 A. That's correct. Plus debt service, plus principal
3 payments.

4 MR. UPTON: Okay. I'm at a breaking
5 point. And, we're close to the quarter of. If you want
6 to break now, that's fine with me.

7 CHAIRMAN GETZ: I will resist any
8 comment on the characterization about "a breaking point".
9 Let's take the lunch recess. And, we'll be back at
10 quarter of two.

11 (Lunch recess taken at 12:45 p.m. and
12 the hearing reconvened at 1:56 p.m.)

13 (Brief off-the-record discussion ensued
14 regarding the schedule.)

15 CHAIRMAN GETZ: Let's get on the record.

16 And, Mr. Upton.

17 MR. UPTON: Thank you, Mr. Chairman.

18 BY MR. UPTON:

19 Q. Mr. Guastella, I think I might have been talking by you
20 just before lunch, when we were talking about "cost of
21 capital", and you -- when I was talking about "cost of
22 capital", I was referring to what was in your
23 testimony. And, you rightly pointed out that a part of
24 the cost of capital is the cost of equity for a

[Witness: Guastella]

1 regulated utility, is that right?

2 A. Yes.

3 Q. You'd have to take that into -- whatever their cost of
4 equity was into calculating their cost of capital?

5 A. Yes.

6 Q. And, so, if the cost of capital that you used, or maybe
7 it was the cost of debt, the 6.97 percent, was, if that
8 was 6.97 percent, when you include the impact of the
9 cost of equity, what would the total cost of capital
10 be?

11 A. I believe the 6.9 percent was a weighted cost,
12 including both interest and equity.

13 Q. Okay. So, that the 200 basis points between the --
14 there are 200 basis points between the Pennichuck's
15 cost of capital and the City's cost of capital?

16 A. That's right.

17 Q. Okay. Now, we were talking about the various synergies
18 that are available to municipalities. And, do you
19 think those synergies are why, as Mr. Reilly has
20 pointed out here, 85 percent of all water systems in
21 the country are municipally owned?

22 A. No. I don't think it's because of that. I think part
23 of it is just naturally how water utilities develop. I
24 think the other part is most sales of investor-owned

[Witness: Guastella]

1 utilities are typically not to other investors. There
2 are exceptions, and the exceptions are -- essentially
3 disqualify them for comparison, because they're
4 probably, in one way or another, troubled
5 investor-owned utilities that are being acquired by
6 larger investor-owned utilities. I think the
7 acquisition of investor-owned utilities by a municipal,
8 either through negotiation or condemnation, is just a
9 function of, one, the municipality can move to
10 condemnation, and the other is the municipality is not
11 regulated with respect to rates. So, it has an ability
12 to not be limited by rate regulation, which limits
13 earnings to original cost investment.

14 Q. Okay. Now, under your financing plan for Nashua, on
15 Schedule D to JFG-1 Revised, which is Exhibit 3016, and
16 I believe it's X, would you look at that. You use, in
17 Schedule D, what are called "revenue anticipation
18 bonds" or "revenue anticipation notes"?

19 A. Yes, I do, but if you give me a minute?

20 Q. I sure will.

21 A. I have it. Yes, I do.

22 Q. And, that's for the first three years of your analysis?

23 A. Correct.

24 Q. And, I think I remember from your deposition that the

[Witness: Guastella]

1 reason you do this is to reduce costs in those years to
2 allow you to build up a surplus that you can use for
3 rate stabilization in subsequent years?

4 A. Yes.

5 Q. And, these are interest-only notes?

6 A. Yes.

7 Q. And, using these notes doesn't mean that the principal
8 that is not being paid won't have to be paid at some
9 point in the future, does it?

10 A. Correct.

11 Q. What you're doing is deferring the payment of principal
12 into the future?

13 A. Well, it's just a mechanism of refinancing. And, it is
14 deferring the principal payments to the fourth year.

15 Q. Okay. And, if it's a 30-year -- if it's a 30-year
16 financing plan, and you have three years of revenue
17 anticipation notes, if you don't pay interest in those
18 first three years, you're going to have to pay interest
19 in year 31, 32, and 33, aren't you? I mean, I'm sorry,
20 principal in 31, 32, and 33?

21 A. Well, actually, in my model, we used revenue
22 anticipation or bond anticipation notes for the first
23 three years interest-only. And, then, on long-term
24 financing, we only used a 20-year term to determine the

[Witness: Guastella]

1 long-term financing.

2 Q. And, if you hadn't used revenue anticipation notes, you
3 would have had only 17 years, isn't that true, of
4 long-term financing?

5 A. No, I would have -- I would have then calculated a
6 20-year term or a 30-year term.

7 Q. You're right. But don't you also, by deferring the
8 payment of principal, defer interest rate risk for the
9 first three years?

10 A. Well, it could be beneficial or not.

11 Q. Sure.

12 A. Depends on what happens after three years. But,
13 certainly, a mechanism of -- I base that on the
14 assumption that you want the municipality to undertake
15 the most advantageous financing, so that I could
16 undertake the most advantageous revenue requirement and
17 rates for the customers. So, I think the benefit of
18 keeping the rates lower than they would otherwise be
19 offsets the risk of a small variation in interest rates
20 that a municipal would have to pay.

21 Q. But, if rates go up during that three-year period, the
22 municipality is going to have to pay that higher rate,
23 isn't it?

24 A. And, if they go down, they will pay a lower rate.

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[Witness: Guastella]

- 1 Q. Isn't this just like an adjustable rate mortgage?
- 2 A. I don't -- I don't really look at it as an adjustable
3 rate mortgage.
- 4 Q. All right. Well, in addition to the interest paid on
5 these notes during the three years, the City is going
6 to have to pay additional interest on the deferred
7 principal until it's paid, isn't it?
- 8 A. It's not going to pay additional interest, it's going
9 to pay interest on, in this case, if we're using
10 248.4 million, it's going to pay interest on
11 248.4 million for 20 years.
- 12 Q. Are there costs associated with the issuance of the
13 revenue anticipation notes or bonds?
- 14 A. Yes.
- 15 Q. And, will there be additional costs associated with the
16 issuance of permanent financing?
- 17 A. Yes. Those are negligible, though, in terms of the
18 overall picture.
- 19 Q. Isn't what you've done is create a financing model that
20 understates the true cost in the early years, so that
21 current ratepayers don't pay the actual cost of
22 service, and future ratepayers have to make it up at
23 the other end?
- 24 A. Actually, the opposite is true with municipal

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[Witness: Guastella]

1 financings. And, we have to look at municipal
2 financings in relation to investor-owned. Municipal
3 financings recover the cost of the facilities through
4 principal payments and the cost of capital through
5 interest payments, lumped into something called "debt
6 service". So, your debt service, for a municipal
7 operation, is paying for the principal or the total
8 cost of the assets, and then the cost of capital is
9 being paid through the interest payments. Where an
10 investor-owned utility, the interest is being paid
11 through the allowance or return on investment, but the
12 capital cost is being paid through depreciation spread
13 over the life of the assets.

14 In the investor-owned scenario, present
15 and future customers are treated more fairly than under
16 the municipal, because the using up of the assets is
17 the basis for how the customers today and tomorrow pay
18 for the assets. So, there's a connection between the
19 cost of providing service to today's and future
20 customers under an investor-owned operation, where
21 depreciation or the loss in value of the assets is
22 being spread over the life of the assets, so customers
23 only pay their proportionate share.

24 With municipal utilities, the financing

[Witness: Guastella]

1 is done in 20 or 30 years, which is shorter than the
2 life of the assets, so you have the customers in the
3 early years subsidizing future customers. So that
4 there's a benefit to the investor-owned rate setting
5 methodology that's not available to the municipals.

6 Q. Well, if I look at your Schedule D, is there -- are the
7 ratepayers paying for the property in the years 2008,
8 2009 or 2010?

9 A. Well, the ratepayers don't pay for property.
10 Ratepayers pay for water service.

11 Q. I thought you just said they pay for the property?

12 A. Well, I don't mean to be argumentative, but when a
13 customer buys water, they get what they pay for, water.

14 Q. And, included in that, included in that, and what
15 they're paying for, is the cost of the assets, because
16 that goes into what the cost of the service is going to
17 be, isn't it?

18 A. It's the cost being incurred by the utility. So, if
19 the municipal utility is incurring interest-only costs,
20 as well as operating costs, the customers are paying
21 for water. When you go to long-term financing, the
22 customers are paying for water and the costs being
23 recovered by the utility are the costs for both.

24 Q. Well, under Schedule D, they're not paying any

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[Witness: Guastella]

1 principal in year 2008, 2009 or 2010, are they?

2 A. That's correct.

3 Q. And, they only start paying for principal in 2011 and
4 the subsequent years. If they were paying for interest
5 -- I mean, for principal in 2008, it would cost more,
6 wouldn't it?

7 A. No, because the rates are being set on a levelized
8 basis. We have to be clear with terminology, because
9 the customers are not paying for the principal, nor are
10 they paying for the interest. What the customers are
11 paying for is water and the cost of providing water
12 service. If the utility can effect a more advantageous
13 rate structure by financing or by how they recover
14 depreciation or by how they treat long-term financing,
15 and pass those benefits of a more levelized operation
16 over the life of the assets, the customers are
17 benefitting from that. And, that's what the model
18 does.

19 Q. And, it tries to have lower costs in the first three
20 years without the payment of any principal?

21 A. Not only tries to do that, that's what the model does.

22 Q. Okay. Now, does your analysis assume the use of
23 government obligation bonds or revenue bonds for the
24 permanent financing?

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[Witness: Guastella]

1 A. I didn't make any assumption. I just assumed whatever
2 long-term financing was available, that's what would be
3 used. I didn't have to select a particular type of
4 financing.

5 Q. And, you're aware that government obligation bonds rely
6 on the tax base for the payment?

7 A. They don't necessarily have to. I believe they can pay
8 off general obligation bonds with revenues that come
9 from the utility's operations.

10 Q. Aren't those more typically called "revenue bonds",
11 where you look to the revenue facility to support the
12 payment?

13 A. Well, you certainly would have revenue bonds as one of
14 the long-term debts, but it didn't make any difference
15 in my analysis. If you issue revenue bonds, then the
16 revenue is going to cover the debt service that the
17 municipality incurred. If they went to some other form
18 of financing, I would have to assume, because
19 municipalities that own utilities directly can issue
20 general obligation bonds where it's available, and the
21 revenues from the utility are going to cover the debt
22 service for the financing. So, it didn't matter to me
23 whether there was or were not available any particular
24 form of financing. What was necessary for the analysis

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[Witness: Guastella]

1 is what is the cost of financing that.

2 Q. Do you know how RSA 38 requires a municipality to
3 finance the acquisition of utility property?

4 A. It's my understanding that IRS 38 [RSA 38?], from
5 discussions with the attorneys, permits interest-only
6 anticipation notes, as well as then long-term
7 financings.

8 Q. Do you know whether it requires the use of government
9 obligation or revenue bonds?

10 A. I don't think it discusses government obligation bonds.
11 I think we're just dealing with revenue bonds.

12 Q. Okay.

13 A. But that's a question for the attorneys.

14 Q. Do you know if the 4.6 percent rate that you used is
15 available for both government obligation and revenue
16 bonds?

17 A. I didn't -- I didn't explore that.

18 Q. Well, doesn't a revenue bond, if it just relies upon
19 the facility for the revenues and for the repayment,
20 carry more risk than a government obligation bond,
21 which is supported by the tax base of the community?

22 A. I don't think for a utility it does. Utility's
23 operations are relatively easy to project. The
24 customers are there and are going to pay for rates.

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[Witness: Guastella]

1 And, I think it's a secure investment in terms of
2 revenues. It's not -- customers' use of water doesn't
3 fluctuate enough to make it any more risky, and there
4 is a coverage included in the projections that I made
5 in any event.

6 Q. So, you wouldn't expect a higher interest rate for a
7 revenue bond, as opposed to a government obligation
8 bond?

9 A. No, I did not make an analysis of whether or not the
10 government bond -- general obligation bonds or revenue
11 bonds would attach a different cost rate.

12 Q. Okay. Mr. Guastella, in his November 2006 testimony,
13 Mr. Reilly increased his valuation from 248.4 to
14 273.4 million, right? Is that your understanding?

15 A. I don't recall. When was this? When did he do this?

16 Q. In the November 2006 testimony. You submitted update
17 testimony and Mr. Reilly also did. And, didn't he
18 increase its value from 248 to 273?

19 A. And, did I then, I believe, adjusted the schedule to
20 reflect the 273?

21 Q. I don't think you did. That's what I want to ask you
22 about.

23 A. I don't think I did either. That's why I'm hesitating.

24 Q. Okay.

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[Witness: Guastella]

- 1 A. I don't think I reacted to his adjusted --
- 2 Q. You didn't perform the same revenue requirements
- 3 analysis with the 273, did you?
- 4 A. Not that I recall.
- 5 Q. Okay. Were you asked to?
- 6 A. If asked to, I would have.
- 7 Q. That's what I thought, too. So, your JFG-1 Revised, at
- 8 248.4, shows that Nashua needs slightly less revenue
- 9 than PWW, right?
- 10 A. I'm sorry, say that again.
- 11 Q. Your JFG-1 Revised exhibit shows that Nashua, at a
- 12 value of 248.4 million, would need slightly less
- 13 revenue than PWW? Insignificantly less?
- 14 A. Insignificantly less, yes.
- 15 Q. Right. Now, if you performed the same analysis for
- 16 273.4 million, the revenue requirements for Nashua
- 17 would increase significantly, wouldn't they?
- 18 A. I don't know how significantly. I mean, they would
- 19 increase, but I don't think -- I don't think it would
- 20 change my opinion that the rates should be a
- 21 consideration as to selecting value. I think the value
- 22 should be selected on its own merits, based on what the
- 23 appropriate valuation is to establish market value.
- 24 And, even though, at 230 -- or, 248.4, there's no

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[Witness: Guastella]

- 1 difference, even if there's some slight difference in
2 rates, that doesn't change what the value would be, and
3 it's still doable. I don't think it would be that
4 significant where -- it certainly has no impact on what
5 the valuation is. I mean, the valuation has to be
6 decided independently of either.
- 7 Q. Yes. I'm talking about Nashua's revenue requirements.
8 If it was slightly less, at 248, all things being
9 equal, at 273, it's going to be more, isn't it?
- 10 A. Yes, but slightly more.
- 11 Q. Okay.
- 12 A. We're not looking at some significant difference that
13 would -- should make any impact on a decision.
- 14 Q. All right. I want you to go back to JFG-1 Revised, and
15 in this case Schedule B. And, again, for the record,
16 that's Exhibit 3016X, confidential.
- 17 A. I have it.
- 18 Q. Now, in Schedule B, you show a calculation for year end
19 rate base for PWW, right?
- 20 A. Yes.
- 21 Q. And, as I understand it from your deposition, that
22 calculation includes utility plant in service, less
23 accumulated depreciation and CIAC, correct,
24 contributions in aid of construction?

[Witness: Guastella]

- 1 A. Three of the components. There are other components in
2 the rate base calculation. But, yes, there's --
- 3 Q. Well, but in terms how you arrived at this calculation,
4 that's what you used, right?
- 5 A. I used utility plant in service, accumulated
6 depreciation, contributions in aid of construction, the
7 amortization of contributions in aid of construction,
8 and I believe working capital as well. So, there were
9 more than just those three components that you
10 mentioned.
- 11 Q. I asked you, starting at Line 14: "Look at the second
12 to the last line, "year end rate base". Answer: Yes.
13 The rate base is a calculation that includes utility
14 plant in service, less accumulated depreciation, less
15 contributions in aid of construction." Is that what
16 you said?
- 17 A. It includes that. It's not exclusively of what's in
18 the rate base calculation.
- 19 Q. All right. Well, let's go on. Well, starting in 2009
20 and going to 2015, there's actually a decline in rate
21 base, isn't there?
- 22 A. Yes.
- 23 Q. And, I said "why does that happen?" You answered again
24 "Because the increases in plant in service are more

[Witness: Guastella]

1 than offset by the accumulated depreciation and the
2 adjustments for contributions", and that should be, I
3 suppose, "in aid of construction", right?

4 A. Right.

5 Q. You didn't say anything about any of those other
6 factors, did you?

7 A. I'm only answering your questions in deposition. So,
8 if you say "it includes three items" that it did
9 include, the answer is "yes." If you didn't mention
10 the other items, I didn't offer the other items.

11 Q. I asked you "why does that happen?" I couldn't give
12 you a more open answer -- open question, could I?

13 A. Well, you didn't ask me "why do I include also
14 amortization of CIAC and working capital?"

15 Q. I asked you "why does rate base decline in your
16 analysis?" And, you said "because the increases in
17 plant and service are more than offset by the
18 accumulated depreciation and the adjustments for
19 contribution in aid of construction." Right?

20 A. Yes.

21 Q. Now, in both your May and your November 2006 testimony,
22 you seek to rework the Sansoucy exhibits, the GES-4, 5,
23 6, 7, and whatever, right?

24 A. Correct.

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[Witness: Guastella]

1 Q. And, those are exhibits, and I may bring them up and I
2 may not, but, for the record, those are Exhibits 3016B
3 and 3020, at Pages 6 through 46. Now, as I understand
4 your response to some questions by both Mr. Boutin and
5 Ms. Thunberg this morning, in both cases, Mr. Ware
6 provided you with cost differentials in the operation
7 of the system under City ownership, is that correct?

8 A. Yes.

9 Q. And, you used what he provided you to increase
10 Mr. Sansoucy's projected cost of operation in those
11 exhibits?

12 A. Correct.

13 Q. And, it's Mr. Ware's estimates that form the basis for
14 your reworking of his exhibits?

15 A. That's correct.

16 Q. And, I think you answered Mr. Boutin that you "didn't
17 analyze Mr. Ware's cost to see if they were correct"?

18 A. That's correct.

19 Q. You just accepted them and put them into your analysis?

20 A. That's right.

21 Q. And, so, is it fair to say that your analysis is really
22 only as good as Mr. Ware's figures?

23 A. Well, the starting point is accepting Mr. Ware's
24 figures. So, the analysis is -- goes beyond that. I

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[Witness: Guastella]

- 1 corrected and adjusted errors that --
- 2 Q. Other things. And, I'll get to those other things.
- 3 But, to the extent that you rely on his figures, it's
- 4 only as good as his figures?
- 5 A. The adjustment portion, --
- 6 Q. Yes.
- 7 A. -- that's correct.
- 8 Q. Right.
- 9 A. If the adjustment and total operation and maintenance
- 10 expense changes, then my analysis would change.
- 11 Q. Yes. And, if his --
- 12 A. And, I notice that Mr. Sansoucy's changed as well, so
- 13 -- since then.
- 14 Q. And, if his figures are wrong, do you agree that your
- 15 corrected GES exhibits are also wrong?
- 16 A. The exhibits should be corrected for changes to those
- 17 adjustments, I would agree.
- 18 Q. Would you put up Exhibit 3019, at Page 7. I'm showing
- 19 you an exhibit from -- can you see it okay? I want to
- 20 make sure you can. An exhibit from Mr. Ware's update
- 21 testimony, in which he shows the operating expenses
- 22 that have needed adjustments. Are these the figures
- 23 that he gave you?
- 24 A. These look like the original figures to me.

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[Witness: Guastella]

- 1 Q. So, he shows Veolia proposed -- proposal January 2006,
2 there's a column for that. And, then, adjustments
3 based on PWW experience. There's additional
4 adjustments. Are those the additional adjustments that
5 you made in your November 2006 testimony?
- 6 A. Yes. If you look at the "3,245,000" in the "adjusted
7 basis" column, and you look at my "Pennichuck
8 adjustments" column, you see the same --
- 9 Q. Yes.
- 10 A. 3,245,000.
- 11 Q. Yes. Right. Now, if Mr. Ware -- would you highlight
12 "property taxes", actually blow it up. If you look at
13 the property taxes, what Mr. Sansoucy originally had
14 was a million four (1.4 million), correct?
- 15 A. Correct.
- 16 Q. And, he subsequently adjusted that I think to 1.497,
17 isn't that what you --
- 18 A. Yes, that's correct.
- 19 Q. Okay. But what Mr. Ware told you is that it should be
20 adjusted by another 401,000?
- 21 A. Not another 401 off of Mr. Sansoucy's --
- 22 Q. Another 401 off the 1.4.
- 23 A. That was his original. That comprised part of the
24 \$3,245,000 adjustment.

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[Witness: Guastella]

- 1 Q. Right. But what you did was you increased what Mr.
2 Sansoucy had for property taxes from 1.4 to 1.8,
3 correct?
- 4 A. I made that adjustment. I took that adjustment and
5 applied it.
- 6 Q. Okay.
- 7 A. I didn't make the adjustment. I took the adjustment
8 and applied it, as one of many adjustments.
- 9 Q. And, if Mr. Ware was wrong that the property taxes
10 should be increased by 400,000, then, again, your
11 corrected analysis is off?
- 12 A. For that one. I would also correct it for any
13 adjustments that either Mr. Ware or Mr. Sansoucy made
14 to others, and there were. There were a number of
15 adjustments, which I pointed out.
- 16 Q. And, the same would be true -- And, the same thing
17 would be true of vehicle repair. If vehicle repair was
18 covered by Veolia under its annual fee, then that
19 shouldn't be an add-on, should it?
- 20 A. I didn't make a judgment as to what was or was not
21 covered by the Veolia fee. I would accept -- I have
22 accepted the adjustments made by Mr. Ware. And, if he
23 adjusts those, his estimates, I would make the
24 adjustments for those estimates. And, similarly, if

[Witness: Guastella]

1 Mr. Sansoucy adjusts, which he did, his estimates, his
2 original estimate was 8,550,000, his most current
3 estimate is 10,214,000, which seems to tell me that Mr.
4 Ware was probably closer to accurate than Mr. Sansoucy.
5 But I would make all adjustments.

6 Q. But you relied on Mr. Ware's adjustments of some
7 3 million increases in your November testimony?

8 A. Yes.

9 Q. And, if he's wrong, you're wrong?

10 A. If the numbers need to be adjusted, they need to be
11 adjusted, and I would make that adjustment. And, if
12 Mr. Sansoucy's numbers need to be adjusted, I would
13 make those adjustments, which, in fact, I have. And,
14 it doesn't change the results of my analyses.

15 Q. You've also criticized Mr. Sansoucy, in particular, his
16 Exhibit GES-7, for having incorrect percentages. Do
17 you remember that criticism?

18 A. I pointed out that error, yes.

19 Q. Would you put that up on the screen. It's Exhibit
20 1007C, Page 20.

21 (Court reporter asking the Witness to
22 repeat his last answer.)

23 THE WITNESS: I believe I said "I made
24 those corrections."

[Witness: Guastella]

1 MR. CAMERINO: Excuse me, Mr. Guastella.

2 You've got to be quite close to the microphone.

3 BY MR. UPTON:

4 Q. Now, what Mr. Sansoucy does is he takes the total
5 operating revenue required from PWW of 26,153,000, and
6 he subtracts that from 18,600,000 to get the rate
7 increase that's required, correct?

8 A. Yes, that's my understanding of what --

9 Q. And, whether you agree with the numbers or not, I just
10 want to -- I'm asking primarily about the math,
11 Mr. Guastella, okay? And, there's nothing wrong with
12 that calculation, is there?

13 A. Well, let me go through it again. Because, when we
14 went through Mr. -- is this Mr. Sansoucy's first
15 schedules, original schedules?

16 Q. It's what you referred to in your testimony.

17 A. Well, in my testimony, when I referred to percentages,
18 we looked at the percentages to find out what the
19 percentage increase was.

20 Q. And, what you criticized was that it wasn't
21 141 percent, correct? It was actually 41 percent?

22 A. Yes.

23 Q. All right. And, what Mr. Sansoucy did or what his
24 computer did for him was to divide, to get the rate

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[Witness: Guastella]

1 increase, was to divide the total operating revenue
2 required for PWW by the existing revenue. That's a way
3 of doing it, isn't it?

4 A. A way of doing what? Coming up --

5 Q. Getting a rate increase.

6 A. Well, it's not a way of coming up with what he says as
7 a percentage increase.

8 Q. What he got was a factor, wasn't it?

9 A. He calls it a "percentage increase". So, I took him at
10 his word.

11 Q. Okay. So, can I file this under the heading of
12 "nit-picking"?

13 A. Well, I don't think so. Because, when you look at Mr.
14 Sansoucy's figures on his original schedules, by the
15 time you get through all of the percentages that are
16 wrong, and you get to the end, he was up to like a
17 6,000 and change percentage increase of Pennichuck
18 Water Works over Nashua. I mean, it's a distortion
19 that's hard to understand. It makes it look like
20 there's this wild difference that's going to happen,
21 and it just paints the wrong picture.

22 Q. And, what that is is the computer doing a factor,
23 rather than a percentage increase, isn't it?

24 A. I'm not criticizing Mr. Sansoucy for plugging in a

[Witness: Guastella]

1 wrong cell. But the impact of doing that is simply
2 correct it, and I would assume he would not be offended
3 by using the correct number so it paints the correct
4 picture, and doesn't distort the impact of what his
5 schedules are intended to show.

6 Q. Now, --

7 A. I would appreciate being correct if I made a mistake.
8 Just correct it and live with it.

9 Q. I would say, in this -- in this case, you would be
10 unique in that regard. And, that's a compliment, sir.

11 A. That's not a question, I'm assuming, but --

12 Q. You've testified that "if PWW is acquired by Nashua,
13 PEU and PAC will require rate increases in excess of 60
14 percent", right?

15 A. Yes.

16 Q. And, you described for Mr. Boutin the analysis that you
17 went through. And, I'm not going to ask you to repeat
18 that. But that was the analysis that you performed
19 this morning and described for Mr. Boutin?

20 A. That was the analysis I performed, and then described,
21 in sum, to Mr. Boutin, yes.

22 Q. Okay. Now, one thing you didn't do, though, was you
23 didn't test any of your conclusions by looking at the
24 operations of similarly sized water companies, did you?

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[Witness: Guastella]

- 1 A. I don't do impossible tasks. There are no similarly
2 sized water systems. I know just about every water
3 utility that's of any size, and there's none like
4 Pennichuck Water Works, that serve 100 -- between PEU,
5 PAC, and PWSC, there's 100 separate systems. There's
6 nothing like that out there in any part of the country.
- 7 Q. Did you test to see if your conclusions about the level
8 of compensation for officers and administrative and
9 general expense were supported by other companies in a
10 new configuration?
- 11 A. In order to do those comparisons, you have to have
12 comparable utilities. And, there are no comparable
13 utilities. I mean, the closest thing I know of are
14 American -- Aqua Utilities in Florida that has 80
15 systems. But that's not comparable, because they're
16 spread more. And, certainly, their costs and salary
17 levels are greater than what I'm looking at for the
18 remaining PEU, PAC and PWSC. And, I might point out,
19 in my analysis I eliminated the entire officer's salary
20 for the president of the company and another officer.
21 So, I've made adjustments, significant adjustments for
22 officers' salaries and personnel staff in order to do
23 the analysis.
- 24 Q. Did you look at how PAC was operated before it was

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[Witness: Guastella]

1 acquired by Pennichuck?

2 A. No, of course not.

3 Q. Wouldn't that have given you some idea of how it could
4 operate as a stand-alone?

5 A. Not at all. I wouldn't even know how to go about that
6 kind of a task.

7 Q. Did you consider getting bids from contract operators
8 to test your conclusions about how much it would cost
9 to operate those systems?

10 A. I mean, respectfully, hardly worth the effort. There's
11 -- I don't know of any investor-owned utility that
12 would be run more efficiently or effectively by outside
13 sourcing its operations. You're not going to find
14 people who are as qualified, who are as under control.
15 And, I've never seen it happen, of all the utilities
16 that I'm aware of, which is thousands of them around
17 the country, you just don't see that happening.

18 Q. Well, this isn't a normal operation of a utility. This
19 is a utility that, as you say, has had, you know, the
20 major source of its property and employees taken away
21 from it. Wouldn't it be -- Wouldn't you want to know
22 whether somebody else, with economies of scale, could
23 come in and operate that system at a lower cost? And,
24 wouldn't a prudent owner consider doing just that?

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[Witness: Guastella]

1 A. Absolutely not. Because the analysis that I did was to
2 create the most efficient operation with PWW gone. We
3 analyzed all of the employees that would stay, all the
4 employees that should leave. We adjusted all of the
5 costs. We went through every single operation that the
6 remaining operation would have, down to individual
7 assets that would be needed, new assets. If an outside
8 -- If a request for proposal were submitted for bidding
9 from outside contractors, they could not come up with a
10 more accurate estimate than what we came up with. And,
11 because there would have to be profit margins added to
12 their contract, I can't imagine, in all my experience,
13 that they would come even close to being as efficient
14 or as less costly.

15 Q. But you didn't test them?

16 A. I don't head down fruitless roads.

17 Q. If PEU had it's own employees and equipment, it
18 wouldn't be affected by what happens to PWW, would it?

19 A. I just demonstrated that PEU is going to be affected by
20 what happens to PWW. That's what my whole study does.
21 Unless I'm not understanding your question.

22 Q. I understand that. What I'm asking you is, if it had
23 its own individual employees and its own equipment, and
24 operated as a stand-alone company, it wouldn't be

[Witness: Guastella]

1 affected by what happens to PWW, would it?

2 A. And, its rates would be 65 percent higher than they are
3 now, which is the analysis that I just performed.

4 Q. So, is what you're saying that the 65 percent is the
5 level of subsidy that PWW provides to that company?

6 A. It's not a subsidy, it's a economy of scale. It's not
7 at all a subsidy.

8 Q. Sixty-five percent economy of scale?

9 A. There's the analysis. The analysis shows what the rate
10 -- what the revenue requirement is with PWW. When PWW
11 is sharing costs, equipment, and spreading costs and
12 purchasing at economies of scale, when you separate
13 that and you start to set up individual systems, the
14 cost becomes greater. It's almost textbook that the
15 larger the utility you have, the more economies of
16 scale you have and the lower the costs are going to be
17 for the same level of service. That's not -- That's
18 not a subsidy, that's smart utility operations and it's
19 smart regulation to encourage larger systems to take
20 advantage of the economies of scale.

21 Q. I'm sorry, 3016A, Page 8 of the electronic exhibit.
22 It's Bates stamp 19. Would you blow that up. This is
23 PEU, your analysis for PEU, showing a 64 percent rate
24 increase.

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[Witness: Guastella]

1 A. I have it.

2 Q. And, my understanding is that you said that, in 2005,
3 with PWW, PEU would need a 22.39 percent rate increase?

4 A. That was my estimate of the revenue requirement, based
5 on an analysis of 2005 book data.

6 Q. And, without PWW, it would need a 64.14 percent rate
7 increase?

8 A. No. In addition to the 22.39, there would be a
9 64.14 percent increase.

10 Q. So, isn't that delta between 64.14 and 22.39, isn't
11 that a level of subsidy that PWW provides to PEU?

12 A. No, it's not a subsidization. When multiple systems
13 are sharing in the benefit of economies of scale, it's
14 not subsidization, it's an advantage for the customers.
15 Regulatory agencies have acquisition incentives, so
16 that large companies acquire small companies to take
17 advantage of these economies of scale.

18 Q. Okay.

19 A. We have a situation here you're going to reverse the
20 economies of scale to the detriment of the remaining
21 customers.

22 MR. UPTON: If I could just have a
23 minute?

24 (Short pause.)

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[Witness: Guastella]

1 BY MR. UPTON:

2 Q. Do you agree, Mr. Guastella, that under the structure
3 created by Pennichuck, in which PWW has all the
4 employees and equipment, that PEU and PAC only
5 contribute incrementally to the total operating costs
6 under the allocation agreement?

7 A. No.

8 Q. Well, let me ask you this. Do they ever pay the actual
9 cost of their service under that allocation agreement?

10 A. Yes, they're paying their actual cost, based on an
11 allocation.

12 Q. But the allocation doesn't allocate actual cost, does
13 it? I mean, do they pay -- all right, let me ask the
14 example. If they pay for a service, like billing, that
15 costs \$100, and their actual cost is closer to \$50,
16 there is \$50, say, for the example, under the
17 allocation agreement, they would probably pay something
18 less than that, wouldn't they?

19 A. I have to admit I really don't understand your example.
20 If PEU or PAC is sharing in a total cost, and that
21 total cost is lower because you have economies of scale
22 because it's larger and could be spread to more
23 utilities, and therefore more customers, that's a
24 benefit to the customers and a reduced cost.

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[Witness: Guastella]

1 Q. I understand that concept. What I'm asking you about,
2 though, is what they pay towards that cost is not the
3 actual cost to them, is it? They pay an incremental
4 cost that is determined by the allocation agreement --
5 that's not an incremental cost, that's a proportional
6 share of the total cost -- which is a proportional
7 share, as opposed to the actual cost, right?

8 A. As opposed to what the cost would be if they were on
9 their own and didn't have the advantage of paying a
10 proportion of the cost, instead of some higher cost.
11 That's what economies of scale does.

12 Q. Now, if all these systems were in one corporation, you
13 wouldn't have this issue of harm, would you?

14 A. I'm sorry, I didn't -- I wouldn't have what?

15 Q. If all of these systems were in one corporation, you
16 wouldn't have this issue of harm, would you?

17 A. You'd have the same situation if you were able to
18 acquire a piece of one company. I mean, it's
19 essentially being treated for cost purposes,
20 essentially, you're dealing with one entity sharing the
21 costs. So, whether or not you had had different
22 corporate names or one corporate name doesn't make a
23 difference.

24 CHAIRMAN GETZ: I'm trying to understand

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[Witness: Guastella]

1 the question, Mr. Upton. Are you positing that, if
2 instead of there being PEU -- these three corporations,
3 and they are purchasing it all under one, so that the
4 City's petition would include all three?

5 MR. UPTON: It could. And, the
6 Commission could order that systems outside, outside of
7 Nashua be acquired to make it in the public interest under
8 RSA 38.

9 BY MR. UPTON:

10 Q. But the question that I have, sir, is under that kind
11 of a structure of Pennichuck, each system would have
12 its own cost and its rates would be set by that cost,
13 isn't that true?

14 A. No.

15 Q. All right.

16 A. Absolutely not.

17 Q. Okay.

18 A. Each system would have its own costs. It would be one
19 corporate entity that would be sharing the costs. So,
20 you'd probably have the exact same thing.

21 Q. Okay. Now, in your testimony, you discussed
22 establishing a fund to mitigate the harm to PEU and
23 PAC, do you recall that?

24 A. I don't recall the specific testimony. I don't

[Witness: Guastella]

1 remember understanding what kind of fund you were
2 referring to, if I recall the deposition.

3 Q. Well, let me see if I can find it for you. It might
4 take me a minute, but see if I can find it. I'm
5 looking for your --

6 CMSR. BELOW: It's the May 22nd
7 testimony.

8 MR. UPTON: Right.

9 CMSR. BELOW: Original Page 2 and 3, or
10 Bates stamp --

11 MR. UPTON: Let me see if I can get the
12 exhibit number and I'll put it up.

13 CMSR. BELOW: 3016.

14 MR. UPTON: Is that --

15 CMSR. BELOW: Next page.

16 MR. UPTON: Next page, okay. Thank you.
17 I don't know where I'd be without you.

18 CMSR. BELOW: Bottom of the page.

19 MR. UPTON: Go to the next page. There
20 it is. It's at the top. Would you highlight the top for
21 him, so he can see it.

22 BY MR. UPTON:

23 Q. You determined that the shortfall of revenue was
24 3.4 million, not considering other economies of scale.

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[Witness: Guastella]

- 1 It's more than double the required return and their
2 combined rate base.
- 3 A. I recall this now, yes.
- 4 Q. Okay. Now, in suggesting this, and I'll call it a
5 "mitigation fund", okay to use that term?
- 6 A. Okay.
- 7 Q. All right. Or, do you want me to just refer to it as
8 "this fund"?
- 9 A. It's your question. Whichever one you like.
- 10 Q. Well, I don't want to get in a fight with you about
11 "mitigation". Are you okay if I use "mitigation"?
- 12 A. No, that's okay.
- 13 Q. Because that's how I've been thinking about it. Okay.
14 Now, your calculation of the revenue shortfall for this
15 fund, as it points out, is 3.4 million, correct?
- 16 A. Yes.
- 17 Q. And, what you did in determining what an appropriate
18 mitigation fund would be is you capitalized it using a
19 capitalization rate of 6.5 to 8.5 percent?
- 20 A. Yes.
- 21 Q. And, that got you to 40 or 50 million?
- 22 A. That's correct.
- 23 Q. And, as you point out, these are companies that have a
24 combined rate base of about 18 million?

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[Witness: Guastella]

- 1 A. Correct.
- 2 Q. Now, when you talk about "40 to 50 million", aren't you
3 suggesting that the harm to these companies is greater
4 than their value?
- 5 A. No, I wasn't. I wasn't doing a value study here. I
6 was trying to answer a question as to whether or not,
7 instead of rate increases, some fund could be
8 established, and I don't know how that would possibly
9 work, but some fund would be established where, instead
10 of a 65 percent rate increase and a 64 percent rate
11 increase, those costs would be covered by the earning
12 capacity of that fund. It had nothing to do with
13 valuing the utilities.
- 14 Q. Forty to fifty million exceeds the rate base
15 considerably, doesn't it?
- 16 A. Yes, it does.
- 17 Q. Now, there's no question that all three of these
18 companies are serving the public using the employees
19 and the assets of Pennichuck Water Works, correct?
- 20 A. Well, they're using their own assets as well. I mean,
21 there's a combination here. There are assets that are
22 in PEU, there are assets in PAC.
- 23 Q. Well, they don't have any equipment, they're using --
24 I'm sorry, the equipment and employees of PWW?

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[Witness: Guastella]

- 1 A. Yes, and there's allocations.
- 2 Q. And, you argue that the three can't effectively be
3 divided without causing harm to PEU and PAC?
- 4 A. Yes.
- 5 Q. Now, wouldn't a prudent owner of PEU and PAC, in order
6 to mitigate this harm to its customers, consider
7 selling the assets?
- 8 A. It's difficult to envision what that consideration
9 would entail. Because, one, there needs to be someone
10 who would be willing to buy this kind of a fragmented
11 system. Two, if I were advising them, I would advise
12 them not to sell it for anything but market value.
13 And, then, to analyze what that would be, wouldn't take
14 away the loss of economies of scale, because they're
15 now small entities, as opposed to being one larger
16 entity. So, they have lost the economies of scale.
17 The need for rate relief is significant. I can't
18 imagine any other investor-owned buyer even looking at
19 it because of what would happen.
- 20 Q. Right.
- 21 A. And, I suppose municipals could consider it, but they
22 would be paying market value and they would be back in
23 the same boat, I think.
- 24 Q. Well, if Nashua acquired the assets of PWW, then the

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[Witness: Guastella]

1 harm could be mitigated by selling the assets of PEU
2 and PAC to the City, couldn't they, if the Company was
3 prepared to do that?

4 A. If Nashua acquired PWW --

5 Q. If Nashua was permitted by this -- If Nashua was
6 permitted to buy this, buy the assets of PWW, and was
7 operating the assets of PWW, don't you think it would
8 be prudent for Pennichuck to consider selling PEU and
9 PAC to Nashua?

10 A. I don't know if it would be prudent or not. Because
11 it's one thing to be prudent, in terms of selling --
12 apparently, they can't sell it to -- they can't even
13 sell PWW to Nashua and agree on what the price is,
14 which I'm assuming is why we're in this room, because
15 they would want to sell it at market value, and there
16 is not a willing buyer and a willing seller in this, in
17 the arrangement.

18 Q. Well, what --

19 A. If they were going to acquire all of the systems, you
20 kind of run into other considerations that I haven't
21 given full thought to. One of them is, will the
22 operations look the same? Will it be as efficient?
23 All the questions that have been raised. Will the
24 local presence of the existing PWW and all of the

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[Witness: Guastella]

1 employees yield to oversight by people who are not as
2 familiar or who is as in tune locally? You would then
3 get, if they are going to be paying market value, the
4 rates essentially would not change, but municipals lose
5 advantages -- I mean, the customers lose advantages
6 under a municipal operation, in terms of
7 intergenerational equity. The existing customers would
8 then, because a municipal is financing bonds at 20 and
9 30 years, less than the life of the property, are
10 essentially recovering from existing customers --

11 Q. I understand all of what you're saying.

12 A. Well, you're asking for the considerations.

13 Q. All right.

14 A. I can't give you just a quick answer, "should they do
15 that?" I think, in terms of an overall picture, I
16 would lean to not.

17 Q. Okay. Quite honestly, I was trying to think much more
18 -- in a much more restricted way. Wouldn't such a
19 sale, as opposed to a 60 percent rate increase, be
20 better for customers?

21 A. Well, you're asking me an opinion that I have to give,
22 what's better for the customers is not to sell it to
23 Nashua. Because, at the market value, there's not
24 going to be enough of a change in rates to make a

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[Witness: Guastella]

1 difference, but there's going to be the fallout
2 problems. So, if they can't agree on market value, the
3 rates are not going to change. It's going to become a
4 matter of service and the impact on the remaining
5 customers. So, it's --

6 Q. I mean -- Are you done?

7 A. I mean, I could -- you know, those are the arguments
8 being presented during this process, it seems to me.

9 Q. Okay. You know that Staff has testified, because it
10 didn't have an opportunity to conduct discovery on your
11 analysis about this harm, that it was unable to render
12 an opinion on them. Do you know that?

13 A. Frankly, I was not aware of that, no.

14 Q. All right. Well, if I represent that to you, --

15 A. I believe you.

16 Q. -- will you accept it?

17 A. Uh-huh.

18 Q. Okay. And, you know, of course, that Nashua disagrees
19 with what you've done? Mr. Sansoucy was pretty clear
20 about that, wasn't he?

21 A. I suppose Mr. Sansoucy disagrees. I mean, there are
22 many things that Mr. Sansoucy said about my analysis
23 that were completely erroneous, but --

24 Q. In your opinion?

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[Witness: Guastella]

1 A. No, they're actually erroneous.

2 Q. Okay.

3 A. Beyond my opinion, and anybody's opinion, once we
4 explore it.

5 Q. All right. Now, couldn't this issue of the harm to PEU
6 and PAC also be resolved with a condition of approval
7 by the Commission that Nashua mitigate the harm, if
8 any, by creating a mitigation fund, the amount of which
9 would be determined in a docket proceeding before the
10 Commission?

11 MR. CAMERINO: Excuse me. Could we just
12 have that question read back.

13 (Whereupon the Court Reporter read back
14 the last question asked by Atty. Upton.)

15 MR. CAMERINO: In order to maybe avoid
16 an objection, I am assuming he's not asking about the
17 Commission's authority to do something like that, but
18 whether -- beyond whether it could legally be done, if
19 that's a workable mechanism?

20 CHAIRMAN GETZ: I assume that's a fair
21 amendment to --

22 MR. UPTON: Yes. I just asked the
23 question of a witness. He's not a lawyer. I didn't -- I
24 just asked him if that was a way, in his judgment, that

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[Witness: Guastella]

1 the issue of the harm could be dealt with?

2 CHAIRMAN GETZ: And, you're not calling
3 for a legal opinion?

4 MR. UPTON: Not calling for a legal
5 opinion.

6 BY THE WITNESS:

7 A. Let me start by answering your question this way. I
8 think what should be done is in the best -- what should
9 be done should be geared to the best interest of the
10 customers. If the segregation of this PWW system to
11 the other systems are going to lose economies of scale,
12 costs are going to be increased. The customer always
13 pays. So, if it's Nashua, and if I'm looking at the
14 interest of the customers, not only of the PEU or PAC
15 systems, but also Nashua's customers, if this happened,
16 the only way Nashua would come up with a fund, as far
17 as I'm concerned, is ultimately through its customers.
18 So, now what you've created is, you've broken up the
19 economies of scale, you've created higher costs for two
20 systems remaining, didn't change the costs for the PWW
21 customers if market value is paid by Nashua, and now
22 you're going to increase the costs, and then, on top of
23 that, add a layer to Nashua's customers of having to
24 subsidize or support the operations of PEU and PAC.

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[Witness: Guastella]

1 So, if I go back to the 16 years or 25 years ago when I
2 was a regulator, I wouldn't do that in a heart beat.

3 BY MR. UPTON:

4 Q. Aren't they already subsidizing those systems?

5 A. No, you -- with all due respect, you don't seem to know
6 the difference between "enjoying the benefits of
7 economies of scale" and "subsidization". If there was
8 subsidizing going on, this regulatory agency would put
9 a stop to it. What's happening is this regulatory
10 agency is doing allocations to give the benefit of
11 economies of scale appropriately to the various
12 customers of each of the different utility systems.

13 Q. And, isn't that just calling a rose -- a rose by
14 another name?

15 A. No, that's just saying the truth. The customers now
16 enjoy the benefits of economies of scale. And, the
17 regulatory agency makes sure that each customer of each
18 system gets a fair share of the benefits of those
19 economies. What would happen without that is you
20 create higher costs, and then you have to spread those
21 higher costs either to PEU or PAC customers, or Nashua
22 has to pay higher costs under your hypothetical
23 solution to pay for the costs that PEU and PAC
24 customers wouldn't have to pay for. So, ultimately,

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[Witness: Guastella]

1 your solution is the customers suffer because of it.

2 As a regulator, I'd never let that happen.

3 MR. UPTON: Thank you.

4 CMSR. BELOW: Yes. Thank you.

5 BY CMSR. BELOW:

6 Q. You made several statements about the "market value" of
7 PWW. Did you do your analysis using the market value
8 as determined by PWW's valuation experts?

9 A. I did a number of analyses. One of the analyses I did
10 was to just take Mr. Sansoucy's model, make what I
11 think are some corrections to it that had to be made,
12 and simply replicated that to determine what the rate
13 impact was. The adjustment I made, however, was Mr.
14 Sansoucy's operating expenses were understated,
15 according to the adjustments proposed by Mr. Ware.
16 Subsequently, we find that Mr. Sansoucy's original
17 estimate of operating expenses, O&M expenses, instead
18 of being 8,550,000, he now is saying are 10,214,000.
19 I'm not passing judgment that everybody's estimates
20 would change, apparently his changed. He had
21 understated his estimates. Now, they're higher. But
22 what I did was, because I did the analysis based on a
23 valuation of 248, I then took Mr. Sansoucy's numbers,
24 his methodology, which I don't agree with, but his

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[Witness: Guastella]

1 methodology, and I applied his level of purchase price
2 of 145 million, which I think is what his level is, a
3 midpoint of 196 million, I believe, and then the
4 258.4 million. So, if you look at my analysis, in
5 terms of converting an investor-owned operation into a
6 municipal, the way I would look at it, which turns out
7 to be more efficient than what the numbers seem to be
8 developing, in terms of the cost to operate using
9 Veolia, and you take a look at my analyzing Mr.
10 Sansoucy's, but making those adjustments, I come to the
11 same conclusion that the rate impact is not really the
12 consideration for determining whether or not what the
13 -- what the value is. And, that was not my purpose. I
14 didn't do a rate analysis to determine value, because
15 rate analyses don't determine value; appraisals
16 determine value.

17 The problem we run into, however, is
18 there's a severely detrimental impact on the remaining
19 customers. So, even though the acquisition can come --
20 could take place at pretty much any of those
21 valuations, and it wouldn't impact the rates in terms
22 of what Nashua's customers would have to be paying, and
23 have a dramatic impact on the remaining systems.

24 Q. My question was more to the point of, do you have an

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1 independent opinion of the market value of PWW?

2 A. Following USPAP, the Uniform Standards of Professional
3 Appraisal Practice, I'm really not ethically permitted
4 to give a estimate, to do a review appraisal and give
5 an opinion as to anybody else's appraisal. I can tell
6 you my opinion on market value based on my own
7 experience, without referring to either the Company's
8 appraiser or Nashua's appraiser. I do appraisals,
9 quite a few appraisals. I've done 40 or 50 of them. I
10 use all three methods. I look at all three methods
11 every time, which are the comparable sales -- when
12 you're doing appraisals, when there's not a willing --

13 Q. You've answered my question.

14 A. -- comparable sales, capitalized income, and cost
15 approach.

16 Q. You've answered my question.

17 A. Okay.

18 Q. You haven't done an appraisal in this case?

19 A. I have not done an appraisal in this case, that's
20 correct.

21 CMSR. BELOW: Okay.

22 CHAIRMAN GETZ: Okay. Redirect,

23 Mr. Camerino?

24 MR. CAMERINO: Thank you.

[Witness: Guastella]

1 REDIRECT EXAMINATION

2 BY MR. CAMERINO:

3 Q. Mr. Guastella, at the beginning of your
4 cross-examination, Mr. Upton was asking you about an
5 analysis you did. And, I believe he was asking you
6 about what is referred to as "Attachment JFG-1
7 Revised", it's a confidential document, which has been
8 marked as -- make sure I have the right number -- I
9 think the original was 3010X and the revised was 3016X.
10 Have you got those in front of you? These are the ones
11 that --

12 A. Yes, I do.

13 Q. -- starts with Schedule A and then Schedule B, Schedule
14 C?

15 A. Yes.

16 Q. Okay. And, he was asking you about not having
17 reflected any of what he referred to as the "synergies"
18 or "efficiencies" of a Veolia operation. Do you
19 remember that?

20 A. Yes.

21 Q. Can you just explain what the purpose of this was?
22 And, then, I'm going to take you through the two other
23 sets of analyses you did, that you presented to this
24 Commission. One being the impact on PEU, PAC and PWSC.

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1 A. Okay.

2 Q. And, the other being starting with Mr. Sansoucy's
3 revenue requirement. And, just ask you whether what
4 Mr. -- first of all, on this one, whether what
5 Mr. Upton was asking you about, regarding potential
6 efficiencies, was that part of the purpose of this
7 analysis?

8 A. Yes. The overall purpose of the analysis was just to
9 measure what the impact would be at a specific
10 valuation, with the assumption that the rates that
11 Pennichuck Water Works would need would be the same
12 rates or revenue requirement at least that Nashua would
13 -- that would be available to Nashua, to see whether or
14 not what the fallout would be when you change an
15 investor-owned to a municipal operation, and you build
16 in synergies or cost savings that a municipal operation
17 might have in some areas.

18 Q. Let me ask you, and maybe I'll start it this way. This
19 exhibit, JFG-1, did you make any assumption that Nashua
20 would be more efficient than Pennichuck could be
21 operating the utility?

22 A. I made the assumption that Nashua would be as efficient
23 as Pennichuck Water Works in doing this. And, as I,
24 for example, if we take a look at Schedule C, and I

[Witness: Guastella]

1 won't say the number, because I don't think I'm allowed
2 to, but if we take a look at Schedule C, which is my
3 analysis for projected operations under municipal
4 ownership, I start out with O&M expenses of a number.
5 When I look at Mr. Sansoucy's revised number for O&M
6 expenses, it's approximately \$2 million greater than my
7 number.

8 Q. So, just to be clear, the number you're referring to,
9 for anyone who's looking at this exhibit, would be the
10 third number down under the first column?

11 A. Yes, next to the line "O&M expense".

12 Q. And, you're saying that, if we were to take
13 Mr. Sansoucy's number for the same year, it would be
14 \$2 million more than the figure here?

15 A. Not quite. Maybe -- Mr. Sansoucy's number, and I think
16 I can say this one, because I think it's on the record,
17 Mr. Sansoucy's new number, without Mr. Ware's
18 adjustments to it, is 10,214,000.

19 Q. So, what you're saying --

20 A. For O&M expense. My number is less than that, as you
21 can see here. So, it's not quite 2 million. It's
22 maybe more like a difference of -- well, it's a
23 different difference, without someone being able to do
24 the arithmetic.

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1 Q. And, I don't want to get into the numbers. My question
2 is simply, what you have here, in this JFG-1, is
3 assuming that Nashua will be no more or less efficient
4 than Pennichuck is currently. Is that a fair
5 statement?

6 A. That's correct.

7 Q. With one exception, which would be you removed the cost
8 that Nashua would not -- that you know Nashua would not
9 incur at all?

10 A. That's correct.

11 Q. And, this then shows the rate impact of a purchase -- a
12 new purchase price?

13 A. Essentially, it does. That there would be no
14 difference in revenue requirement, that's correct.

15 Q. Is there a place where you did reflect the efficiencies
16 that Nashua assumed in their model? Where you used the
17 -- started with the Nashua figures?

18 A. Yes, and that's -- those are the analyses I did of Mr.
19 Sansoucy's, where I replicated his study, with the
20 exception that I made, the adjustments that Mr. Ware
21 had provided.

22 Q. And, in addition to those adjustments, you also
23 corrected for certain errors of Mr. Sansoucy?

24 A. Yes, I did.

[Witness: Guastella]

1 Q. Are there further adjustments, if you were to take Mr.
2 Sansoucy's November figures, would you have to make
3 further adjustments?

4 MR. UPTON: I object. That's rebuttal,
5 and we shouldn't be allowed to do that. I wasn't allowed
6 -- I'm not allowed to do it. I don't see how he can do
7 it.

8 MR. CAMERINO: May I explain? Mr. Upton
9 was saying that Mr. Sansoucy -- that Mr. Guastella did not
10 reflect the efficiencies that Nashua is projecting through
11 their operation. And, what I'm asking Mr. Guastella is,
12 is there an exhibit where he did that? And, given that he
13 did it once, did he then adjust it when Mr. -- when Nashua
14 put forward the same model with additional dollars in it?
15 In other words, is the exhibit that is now in the record,
16 does it reflect all of costs that Nashua put in in
17 November?

18 MR. UPTON: So, what he's asking him is,
19 did he make any adjustments after the November update
20 testimony to Sansoucy's model?

21 CHAIRMAN GETZ: Well, I'm thinking,
22 didn't we already cover this with Mr. Boutin? Didn't he
23 already address this issue? But I'm assuming,
24 Mr. Camerino, that your -- basically, that's your question

[Witness: Guastella]

1 is, "if there were differences, would there be a change,
2 if he were to update it?" And, that's really as far as
3 you're going with this?

4 MR. CAMERINO: Yes.

5 CHAIRMAN GETZ: I think it's reasonable
6 redirect. And, I assume the answer, Mr. Guastella, is,
7 "if there were changes, and if you were to update it, then
8 your analysis would be different"?

9 THE WITNESS: That's correct.

10 BY MR. CAMERINO:

11 Q. Now, Mr. Guastella, Mr. Upton showed you an Exhibit
12 GES-7, and if you could get that out. Just tell me
13 when you have that in front of you. It's -- one
14 version of it, I think the most recent version is
15 attached to Exhibit 1017.

16 A. Excuse me for asking, but is this Mr. Sansoucy's latest
17 revision?

18 Q. Yes. Exhibit 1017 is the November version of Mr.
19 Sansoucy's model.

20 A. Okay.

21 Q. Just let me know when you've got that in front of you.
22 In the document I have, it's Exhibit 1017, Page 22 of
23 Page 9.

24 A. I have it.

[Witness: Guastella]

- 1 Q. You have it. Okay. And, Mr. Upton asked you about the
2 calculation of the rate increase that would be
3 required. Do you recall that?
- 4 A. Yes.
- 5 Q. And, the way that rate increase was determined was by
6 I'll call it a "comparison" of Mr. Sansoucy's projected
7 revenue requirement for PWW versus Nashua, correct?
8 And, I'm not sure I've steered you to the right page,
9 but I know I have the right exhibit. There was a
10 comparison of the --
- 11 A. I think what it was was a comparison of Lines 1 and 2,
12 where --
- 13 Q. Yes.
- 14 A. -- Pennichuck's revenue requirement, in relation to
15 existing revenues, that determined a percentage
16 increase.
- 17 Q. Okay. And, my question to you is, he asked you about
18 whether there was anything wrong with that calculation,
19 and he was referring, I believe, to the interest -- to
20 the percentage amount. My question to you is, did Mr.
21 Sansoucy correctly calculate, the number he's using
22 there, is that number a correct reflection of, in fact,
23 the revenue requirement for Pennichuck? Those numbers,
24 I take it, come from another schedule?

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1 A. Yes. Those numbers come from Schedule GES-2, Page 1 of
2 29.

3 Q. And, on GES-2, he's calculated the revenue
4 requirement -- he calculates the net operating income
5 for Pennichuck, on Line 29, and then he uses that
6 eventually to get down to a tax-adjusted revenue
7 requirement. Do you see that?

8 MR. UPTON: I object. I only asked
9 about the math. I didn't go into anything behind the
10 figures. This is just -- It's an attempt to get into his
11 direct testimony. It's improper redirect.

12 CHAIRMAN GETZ: Mr. Camerino, response?

13 MR. CAMERINO: He asked about the two
14 revenue requirement numbers and whether there was anything
15 wrong with that calculation. And, I understand that he
16 wants to limit it to the percentage difference. But, if
17 there are problems with the underlying numbers, I think
18 the witness can point that out.

19 MR. UPTON: I even said "I know you may
20 have problems with the figures", I just asked about the
21 math.

22 CHAIRMAN GETZ: Yes, I think the cross
23 was just limited to whether -- was limited to the, as he
24 puts it, "the math". And, I don't think redirect into the

[Witness: Guastella]

1 propriety of the underlying numbers is within the scope of
2 redirect here.

3 MR. CAMERINO: I guess I don't
4 understand, if a party makes a filing as the last filing
5 in the case, and it has errors in it, when the Company
6 gets a chance to point those out? It's not clear to me
7 how that work then. If the last one that filed just gets
8 to leave mistakes in their filing, I think there has to be
9 an opportunity to go into that.

10 CHAIRMAN GETZ: This was Mr. Sansoucy's
11 supplemental testimony that you had the opportunity to
12 cross him on?

13 MR. CAMERINO: No, this -- well, this is
14 -- I think I'm entitled to have my witness, who's familiar
15 with these numbers, provide the correction, if Mr. Upton
16 went into that schedule.

17 MR. UPTON: I didn't, number one, I
18 didn't go into the schedule, I just did the math. But,
19 number two, Mr. Sansoucy was here, testified at great
20 length. He asked him a huge number of questions about his
21 GES exhibits, and he didn't go into this.

22 CHAIRMAN GETZ: Yes, I think the
23 opportunity for all parties here and to how to fairly
24 address the last round of testimony was through

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1 cross-examination of that witness. And, I think what this
2 would amount to would be another round of direct
3 testimony, which we are not allowing.

4 MR. CAMERINO: All right. I think I
5 just need one minute to confer with my colleague. Just
6 for the scheduling purposes, I'm just about done here.

7 CHAIRMAN GETZ: Okay.

8 (Short pause.)

9 BY MR. CAMERINO:

10 Q. Okay. And, I guess I just want to -- I had asked you
11 to identify sort of three buckets of analyses that you
12 did, and I cut you off at the second bucket. The first
13 analysis you said was simply taking Pennichuck's costs,
14 deducting out those items that Nashua would not incur
15 if it operated the utility, and putting in the
16 Company's valuation. The second analysis, which you
17 referred to, was taking Nashua's model, correcting for
18 errors, adding in Mr. Ware's numbers, and then putting
19 in different values. The third analysis you did
20 related to PEU and PAC. Could you just very briefly
21 explain how that differs from the first two analyses?

22 A. Yes. The --

23 MR. UPTON: I'm going to object again.

24 That isn't what my cross-examination of him was about and

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1 his analysis of the relationship between PWW and the City
2 of Nashua. He's just now trying to get him to go through
3 the harm to PEU --

4 MR. CAMERINO: No.

5 MR. UPTON: -- and PAC testimony all
6 over again.

7 MR. CAMERINO: Mr. Chairman, and maybe
8 this is completely unnecessary, in which case I'll
9 withdraw the question. My sense was that Mr. Upton's
10 questioning created confusion about "why weren't the
11 assumed Veolia efficiencies in the first model", which was
12 not an effort to model those. And, I simply wanted the
13 witness to clarify what the purpose of each analysis was,
14 not to discuss the results. But so that, when the
15 Commission is looking at those three different sets of
16 analyses, it's clear as to what it was demonstrating. If
17 the Commission feels that it has those three clear in
18 mind, I don't need to ask the witness the question.

19 (Chairman and Commissioners conferring.)

20 CHAIRMAN GETZ: Well, I think it's fair
21 within the ambit of redirect here, based on the door
22 having been opened by Mr. Upton with the elements. But,
23 if there is a shorthand version of it, I'm prepared to
24 hear it. I don't want to, you know, really have to turn

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1 this into opportunity for a closing statement by the
2 witness.

3 MR. CAMERINO: No, and that's my
4 concern. And, I don't -- the shorthand version would be
5 for me to explain it to him, and have him say "yes". But
6 I feel like that's taking a little bit too much liberty.

7 MR. UPTON: I asked about Veolia only in
8 the context of the comparison between PWW's costs and
9 Nashua's costs that he showed on his analysis. I asked
10 nothing about Veolia in connection with PEU and PAC. And,
11 now he's going to launch into the PEU and PAC analysis,
12 under the guise that it somehow arises because I raised
13 this issue of the Veolia efficiencies. It has nothing to
14 do with PEU and PAC.

15 MR. CAMERINO: I think --

16 MR. UPTON: And, I don't understand how
17 he can -- I don't understand how he can, you know, how
18 that's proper redirect. It really bothers me.

19 MR. CAMERINO: In the interest of
20 efficiency, I think I'll just withdraw the question and
21 conclude my cross-examine -- my redirect examination.

22 CHAIRMAN GETZ: Thank you. Then, that
23 completes the examination of Mr. Guastella. You're
24 excused. Thank you.

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1 THE WITNESS: Thank you.

2 CHAIRMAN GETZ: And, let's take a 15
3 minute recess, and then we'll hear from Mr. Patch. Thank
4 you.

5 (Recess taken at 3:17 p.m. and the
6 hearing resumed at 3:41 p.m.)

7 CHAIRMAN GETZ: Okay. We're back on the
8 record. And, we have our next witness, Ms. Knowlton?

9 MS. KNOWLTON: The Company calls Douglas
10 Patch.

11 (Whereupon Douglas L. Patch was duly
12 sworn and cautioned by the Court
13 Reporter.)

14 DOUGLAS L. PATCH, SWORN

15 DIRECT EXAMINATION

16 BY MS. KNOWLTON:

17 Q. Please state your full name for the record.

18 A. Douglas Lee Patch.

19 Q. And, by whom are you employed?

20 A. Orr & Reno, Professional Association.

21 Q. Mr. Patch, I'm going to show you some testimony that
22 was marked as "Exhibit 3002" in this case. And, it's
23 in Volume 1A, dated January 12, 2006. Does this volume
24 contain your testimony?

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1 A. Yes.

2 Q. And, was this testimony prepared by you or under your
3 direction?

4 A. Yes.

5 Q. And, were there exhibits that were also filed with that
6 testimony?

7 A. Yes, there were.

8 Q. Okay. And, I'll represent to you that those exhibits
9 are contained in Volume 1B, which is also dated
10 January 12, 2006. And, that volume has been numbered
11 "3002A", for purposes of this case. Are these the
12 exhibits that you filed in that volume?

13 A. Yes, they are.

14 Q. Do you have any corrections to your testimony?

15 A. I have two corrections, actually. On Page 21 of my
16 testimony, Line 1, at the very end of the line it
17 should be "water", not "waters". I think I was
18 thinking of a Simon and Garfunkel song, but --

19 Q. I would just note for the record that this is Bates
20 numbered Page "56" in the volume, Volume 1A.

21 A. And, then, on Page 26 of my testimony, on Lines 11 and
22 16, the citation, the volume for the Waste Control case
23 should be "114", not "144".

24 Q. For the record, this is Bates numbered Page "61". Do

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1 you have any other corrections to make to your
2 testimony?

3 A. No, I do not.

4 Q. Is this testimony -- Was this testimony -- excuse me,
5 strike that question. If you were to give this
6 testimony today, would you adopt this in full, with the
7 corrections that you've noted?

8 A. Yes, I would.

9 Q. And, is it true and correct to the best of your
10 knowledge, with those corrections?

11 A. Yes, it is.

12 MS. KNOWLTON: Thank you. The witness
13 is available for cross-examination.

14 CHAIRMAN GETZ: Thank you.

15 Ms. Reinemann?

16 MS. REINEMANN: No questions.

17 CHAIRMAN GETZ: And, Mr. Alexander?

18 MR. ALEXANDER: No questions.

19 CHAIRMAN GETZ: Ms. Hatfield?

20 MS. HATFIELD: No questions.

21 CHAIRMAN GETZ: And, Ms. Thunberg -- do
22 you have any questions?

23 MS. PRESSLEY: I have a question.

24 CHAIRMAN GETZ: Then, we'll go to Ms.

[Witness: Patch]

1 Thunberg.

2 MS. THUNBERG: I'm sorry. Did you say
3 you were going to Ms. Pressley first?

4 CHAIRMAN GETZ: Well, I think Ms.
5 Pressley said she "doesn't have any".

6 MS. PRESSLEY: No, I do have a question.

7 CHAIRMAN GETZ: Oh, you do have some.
8 Okay. Well, the actual order would be Ms. Thunberg next.
9 Do you have questions?

10 MS. THUNBERG: Yes, I do.

11 CHAIRMAN GETZ: Okay. Let's go to you.

12 MS. THUNBERG: Good afternoon, Attorney
13 Patch.

14 THE WITNESS: Good afternoon.

15 CROSS-EXAMINATION

16 BY MS. THUNBERG:

17 Q. I have three foundation questions to ask you, before I
18 dive in for some opinion. And, I think I will all in
19 all take maybe ten minutes of your time. But, during
20 the time with the Commission, did you preside over
21 utility mergers and acquisitions where conditions were
22 imposed upon the transaction by the Commission?

23 A. Yes, I did.

24 Q. And, did you preside over utility mergers or

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1 acquisitions where Staff or the parties requested
2 conditions be imposed and then the Commission approved
3 those conditions?

4 A. Yes.

5 Q. Okay. And, turning to your testimony, which has been
6 marked as "Exhibit 3002", I can give you the citation
7 to the page if it becomes necessary, but I will ask in
8 general, were you critical in your testimony as to that
9 savings that would be realized or should they be
10 realized by the City of Nashua, that there was no
11 certainty that they would be passed onto customers, is
12 that accurate?

13 A. I would say that's accurate.

14 Q. And, with respect to that criticism, do you have an
15 opinion as to whether there are any conditions that can
16 be placed on a transaction to assure that savings are
17 passed onto customers?

18 A. I guess, theoretically at least, there could be some
19 conditions. I don't know if you want to ask me about
20 specific conditions or not. But, I mean,
21 theoretically, I guess there are some that could be.
22 Although, I think that the more conditions the
23 Commission has to impose on a -- in a situation like
24 this, I think the more difficult it becomes, and maybe

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1 the more an indication it is that it isn't the right
2 thing to do to begin with.

3 Q. Yes, I would like to have you opine as to this
4 particular transaction. And, whether you have any
5 opinion as to any conditions that would satisfy your
6 criticism as to the certainty of savings being passed
7 on? And, if you have an opinion, what would it be?

8 A. Well, I guess, for the most part, it would be
9 essentially trying to duplicate what I think public
10 utility regulation does. As I testified or as I put
11 into my prefiled testimony, I think there are a number
12 of good things about the regulation of public utilities
13 that would be missing, in the event that the Commission
14 were to approve a taking by the City of Nashua. And,
15 so, I think the principles of public utility regulation
16 that are embodied in prior decisions of the Commission,
17 in the statutes that the Commission operates under, in
18 the rules that the Commission operates with, and that
19 apply to the utilities, there are a number of things
20 contained in those that I think, you know, would
21 essentially, you know, cure that particular problem.
22 But I guess I don't have one condition in mind that I
23 think would do that.

24 Q. So, you're directing us to the fact that -- or, strike

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1 that question. So, is it fair to say that continued
2 regulation of Nashua would address the concern of the
3 certainty of savings being passed onto customers?

4 A. Well, I guess I'm not saying "continued regulation of
5 Nashua", I don't think the Commission has the authority
6 to regulate Nashua, in the event that it approves the
7 taking. So, I don't think that's a realistic option.

8 Q. Okay. Let me move onto another subject. I believe, in
9 your testimony, you were critical about "quality of
10 service may suffer", and, in particular, to customers
11 outside of Nashua. Do you recall that in your
12 testimony?

13 A. I believe so. It might be helpful if you could point
14 me to the specific point in the testimony.

15 Q. If I could have Exhibit 3002 pulled up, Page 11, Line
16 18. And, Line 18 refers to "quality of service would
17 suffer". Do you see that?

18 A. I do.

19 Q. And, getting back to conditions, with respect to this
20 particular issue, do any conditions come to mind that
21 could be applied in this case to address that concern
22 of yours?

23 A. I think the testimony here was with regard to
24 Pittsfield Aqueduct and PEU ratepayers, in specific.

[Witness: Patch]

1 And, I think that what I had indicated in the first
2 sentence of the answer there, at the bottom of Page 11,
3 was essentially that either rates would rise faster or
4 the quality of their service would suffer, because
5 there would not be as large a base of customers over
6 which to spread the costs of purchasing assets and
7 running the system. I guess I don't have a particular
8 condition in mind that I think would satisfy that,
9 especially given the circumstances here. I guess I
10 can't think of one particular condition that would take
11 care of that.

12 Q. Okay. And, I stand corrected. You are right, I was
13 mischaracterizing that, quality of service would
14 suffer. I'll move on to Page 19, and Line 20, and your
15 reference to customers "outside of Nashua". And, I
16 believe this paragraph discusses a "forum for
17 complaints". Is that accurate?

18 A. That's "Line 20", you said, on Page 19, is that
19 correct?

20 Q. Yes.

21 A. And, that's where I had said that "If Nashua were to
22 take over the system, there would be no forum for
23 complaints for Nashua customers." Is that correct?

24 Q. That's the section I'm directing your attention to.

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1 A. Yes.

2 Q. And, with that criticism that "there was no forum",
3 again, I ask the question, can you think of any
4 conditions that could be placed on this transaction by
5 the Commission to address this concern?

6 A. Well, I guess one comes to mind, and I think of the
7 Manchester Water Works case that the Commission decided
8 back in 2003. And, in that case, I believe it was
9 Order Number 24,138, where the Commission had made
10 reference to the fact that there was a forum for
11 customer complaints that gave it some comfort that,
12 even though it was approving the authority of
13 Manchester Water Works to operate outside of its
14 borders and granting an exemption, that at least there
15 was that particular forum for the redress of
16 complaints, and I'm looking at Page 14 of that order.
17 Although, it's interesting that the Commission, in that
18 order, went on to note that -- it said "Ultimately, if
19 a serious and persistent problem arose with respect to
20 their treatment of customers outside of Manchester, the
21 Commission would have authority to revoke the
22 exemption." And, I think that's a key difference from
23 that particular case and here, because the Commission
24 really, if it approves the taking by the City of

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1 Nashua, would not have the authority to be able to
2 revoke that taking at some point, if it felt that
3 customers were not being treated fairly or their
4 complaints were not being adequately addressed by the
5 forum that was set up.

6 So, I guess, to answer your question, I
7 have a hard time coming up with something that I think
8 duplicates the kind of customer complaint mechanism
9 that is available to a customer of a public utility.

10 Q. I'd like to talk a little bit about the enforcement
11 that you just mentioned with Manchester Water Works and
12 distinguishing here. In general, if this Commission
13 were to approve the present transaction, with
14 conditions, do you have an opinion, and if Nashua were
15 to fail to satisfy those conditions, do you have an
16 opinion as to how far back in time the Commission --
17 or, actually, I should phrase that in two questions.
18 Would the Commission have authority to enforce those
19 conditions, in the event of noncompliance?

20 A. I honestly don't see that authority being there for the
21 Commission. If the Commission has approved the taking,
22 and Nashua is not subject to the Commission's
23 jurisdiction, then I don't know where their enforcement
24 authority would come from.

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1 Q. Okay. So, if the Commission had a -- had issued an
2 order with conditions, and the conditions were not
3 complied with, say, in six months time or five years
4 time, is it fair to say that you don't think the
5 Commission would have authority under either time
6 frame?

7 A. I think it pretty unlikely. I guess you could paint a
8 scenario where there was some portion of the system,
9 assuming that the system outside of Nashua was, I mean,
10 it's a number of steps down the road, but the system
11 outside of Nashua was taken over by the Water District,
12 and I guess there could be some circumstances under
13 which the Commission might retain jurisdiction of some
14 portions of that. But it just seems like it's, you
15 know, it's a number of steps down the road. And, I
16 guess, you know, the bottom line to me is that I just
17 don't see where the Commission would retain
18 jurisdiction.

19 I guess Nashua might suggest that it
20 would be willing to agree that the Commission does have
21 jurisdiction. I think one of the conditions, if I
22 understand correctly, that Nashua has said that they
23 would agree to, is that the Commission would retain
24 jurisdiction. It wouldn't charge customers outside of

[Witness: Patch]

1 Nashua higher rates, but it would agree that the
2 Commission should retain jurisdiction over that portion
3 of the system. But I don't think the Commission can do
4 that, because I think it's beyond the authority that
5 the Commission has. Under 362:4, it doesn't have
6 authority over customers under those circumstances.
7 So, I think the Commission needs to think very
8 carefully about conditions that are recommended,
9 whether it has authority over them. And, as I think
10 your question suggests, whether, in fact, it retains
11 the authority to enforce any conditions that are --
12 that are suggested by Nashua and could potentially be
13 part of an order.

14 MS. THUNBERG: Thank you. Thank you for
15 your time.

16 CHAIRMAN GETZ: Ms. Pressley.

17 MS. PRESSLEY: Thank you very much.

18 BY MS. PRESSLEY:

19 Q. Mr. Patch, as most of us know, in the early 1980s,
20 almost all of the watershed lands that had been
21 protecting our water supply in Nashua was allowed to
22 separate itself. And, in so doing so, it did not come
23 under the jurisdiction of the PUC, nor under any
24 government entity, but it was exclusively within the

[Witness: Patch]

1 corporate culture. It wasn't until many of us who
2 lived there, and even involved in the Legislature, as
3 you have been in the past, we did not like what was
4 happening, but it was not until the SEC investigations
5 were revealed in 2004 that we really understood the
6 magnitude of the conflict and the interconnections.
7 And, it was only then that we really learned that
8 Stabile and Arel had this close relationship, and all
9 of the development was done without notification to the
10 shareholders.

11 So, what I would like to know, did you
12 have any idea of what was going on with that land when
13 you served in all the different interesting capacities
14 that you have?

15 A. No. I mean, the only time I really would have known, I
16 guess is, because that's when I was serving here as the
17 Chairman of the Public Utilities Commission, and I was
18 not aware of that.

19 Q. Did you have any idea on the opening up of Exit 8 that
20 that was -- that was sponsored by Senator Ben Stabile,
21 that that would open up the watershed land? Did you in
22 any way have any idea of what that was for?

23 A. I don't recall having any idea about that. I don't
24 think I did, but I may have at the time, but I think it

[Witness: Patch]

1 unlikely.

2 MS. PRESSLEY: Thank you very much.

3 Thank you.

4 CHAIRMAN GETZ: Mr. Upton? Mr.

5 Richardson?

6 MR. RICHARDSON: Good afternoon.

7 THE WITNESS: Good afternoon.

8 BY MR. RICHARDSON:

9 Q. Mr. Patch, you state that the purpose of your testimony
10 is to provide your direct experience dealing with
11 Pennichuck Water Works and to give your opinion on the
12 City of Nashua's proposed eminent domain taking. Is
13 that a fair characterization?

14 A. Yes. I'm looking at Page 3 of my testimony. I think
15 it's the fourth question. Looks like that's what I
16 said.

17 Q. So, is it fair to describe your testimony then as
18 basically your opinion?

19 A. Yes.

20 Q. Okay. And, in that regard, you described as background
21 your experience as a PUC Commissioner, I believe, also
22 visiting PUC facilities -- excuse me, PWW facilities as
23 a Commissioner. That you spoke with Staff that were
24 more intimately involved with PWW, and, then, that's

[Witness: Patch]

1 both PWW Staff and Commission Staff. Is that a fair
2 characterization?

3 A. I think you may have left one or two things out. I
4 think what you said is correct, but I think I said in
5 the testimony that "I presided over a number of
6 adjudicative and public hearings involving PWW and was
7 a member of the Commission that issued a number of
8 orders concerning PWW." But I don't dispute what you
9 said, I just think it was a little larger than that.

10 Q. Okay. Now, so that's -- is that the extent of your
11 experience with PWW?

12 A. I mean, the only other experience I guess would be
13 since I left the Commission, where I've had some
14 experience with PWW.

15 Q. In fact, you've represented them as an attorney?

16 A. I did in one particular situation, yes.

17 Q. And, is that the only case you've ever been involved
18 with representing them as legal counsel?

19 A. I believe so. That was the Manchester Water Works case
20 that I referred to before.

21 Q. Now, --

22 A. And, just to state for the record, the reason I was
23 involved was that I believe that the McLane law firm
24 had a conflict of interest and could not represent

[Witness: Patch]

1 them.

2 Q. Okay. Now, as a lawyer for Pennichuck, you have
3 certain ethical duties and responsibilities to the
4 client, don't you?

5 A. Yes.

6 Q. And, one of those is basically a duty of loyalty?

7 A. I don't know that the Code of Professional
8 Responsibility refers specifically to "duty of
9 loyalty". It might. But, certainly, --

10 Q. But it --

11 A. -- I mean, I consider loyalty to a client to be part of
12 my responsibility as a lawyer, I guess.

13 Q. Exactly. And, I didn't mean that in a legal or
14 technical sense. I mean, that's how I think lawyers
15 feel towards many of their clients, whether or not the
16 rules state that much.

17 A. Right.

18 Q. And, the other would be confidentiality of information.

19 A. (Witness nodding affirmatively).

20 Q. Now, would you agree that's another duty a lawyer has
21 to a client?

22 A. Yes. Obviously, it depends on the information and
23 whether the client's waived it. But there is certainly
24 a duty of confidentiality with regard to certain

[Witness: Patch]

1 information.

2 Q. Now, I'll confess I didn't know at the time I was first
3 reading your testimony that you had served as
4 Pennichuck's lawyer. And, is that -- I mean, are we to
5 gather that from a part of your testimony? I just -- I
6 wasn't clear why it wasn't more explicitly stated?

7 A. I don't think it's anywhere in my testimony, to answer
8 your question.

9 Q. Okay.

10 A. And, in terms of why it wasn't more explicitly stated,
11 I don't know. I just -- I didn't think that it was an
12 important issue.

13 Q. Okay. You state -- You described what I believe your
14 opinion would be, you state your opinion with respect
15 to what would happen if Nashua were allowed to
16 establish its own water system by acquiring Pennichuck
17 Water Works under RSA 38. And, I understand there's
18 three categories of impacts that you discuss. One is
19 impact on, and I'm looking at Page 8, Line 16, of 3002,
20 "impact on ratepayers in Nashua", "impact on PW
21 customers" -- "PWW customers in municipalities other
22 than Nashua", and then, finally, "impact on ratepayers
23 in other towns who are part of PAC and PEU". Is that a
24 fair summary?

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1 A. Yes.

2 Q. Okay. And, I believe, further down on that same page,
3 you start to discuss economies of scale that currently
4 --

5 A. It's Page 8, Line 22 to 24.

6 Q. Now, you're aware that Pennichuck originally proposed
7 to sell all three utility divisions, in fact, the
8 entire corporation, to Philadelphia Suburban
9 Corporation, is that correct?

10 A. I was aware there was a sale. I'm not sure I knew the
11 details, you know, if it involved all three systems or
12 not.

13 Q. So, would you know then if one of the arguments the
14 Company had made in favor of the sale was is that
15 "becoming part of a larger organization would provide
16 additional economies of scale to Pennichuck Water
17 Works"?

18 A. I didn't know that specifically, but I'll accept your
19 representation that that was the case.

20 Q. Okay. Well, is that something that -- a statement that
21 you would agree with on your own accord, regardless of
22 whether Pennichuck Water Works may have stated that?

23 A. I really don't have the knowledge of all of the aspects
24 of that sale to be able to answer that. Although, I

[Witness: Patch]

1 guess I will say, in my time as Chairman of the PUC, I
2 heard that representation made in most of the mergers
3 or acquisitions that were under similar circumstances
4 that were presented to the Commission.

5 Q. And, do you agree with that, that there are those types
6 of economies of scale that can be realized?

7 A. It depends on each specific instance, I think. And, I
8 think you have to analyze them and make the
9 determination as to whether that's the case.

10 Q. Okay. So, assuming then there is the potential to make
11 that case, it's quite possible that, if Nashua --
12 excuse me, if Nashua were to acquire PWW, that the PAC
13 and PEU systems could merge with another entity to try
14 to get some of the same economies of scale that could
15 be sought in a larger transaction?

16 A. And, just to be clear, you're suggesting in your
17 question that Nashua takes over PWW, and then PEU and
18 PAC are purchased by some other company? Is that what
19 you're suggesting?

20 Q. That's -- That's the current hypothetical.

21 A. And, so, what's the question with regard to that?

22 Q. The question is is, would it then be foreseeable --
23 would it be reasonably possible that PAC and PEU could
24 then take advantage of the same economies of scale that

[Witness: Patch]

1 other utilities have argued in front of you when you
2 were a Commissioner?

3 A. Hypothetically, it's possible. I guess I heard Mr.,
4 and I may say his name wrong, Mr. Guastella testify, I
5 just came in a little earlier this afternoon, and I
6 think he said he didn't know of any other companies
7 that he thought would even be interested in that. And,
8 I don't know if that's true or not, but --

9 Q. Have you read Mr. Guastella's testimony?

10 A. I believe I read it maybe a year and a half ago, but
11 I'm not sure I've read it recently.

12 Q. Okay. Have you done your own analysis of what the
13 economies of scale might or might not be under
14 different scenarios?

15 A. No, because I don't know what those scenarios are, I
16 mean, and that wasn't part of what I was asked to do.

17 Q. Okay. Okay. Now, you're aware that Nashua, in this
18 proceeding, originally sought to purchase not only
19 Pennichuck Water Works, but also Pittsfield Aqueduct
20 Corporation and Pennichuck East Utilities?

21 A. Yes.

22 Q. And, are you also aware that Pennichuck, and I'm not
23 sure which of the different entities it was,
24 collectively or individually, sought to have those --

[Witness: Patch]

1 the PAC and PEU utilities dismissed as defendants from
2 this case?

3 A. I'm not specifically aware of that.

4 Q. Okay. But, if that were the case, I mean, wouldn't
5 this then essentially be a problem of their own making,
6 in a sense that Nashua could have bought or sought to
7 buy all three utilities?

8 A. Could you ask the question again? I'm not sure I
9 understand exactly what your --

10 MS. KNOWLTON: I just want to note
11 actually an objection for the record. To the extent that
12 Mr. Richardson is referring to "buying" and "purchasing",
13 this is an eminent domain proceeding in which the City is
14 trying to take by condemnation the assets of this utility.
15 It's not a purchase.

16 CHAIRMAN GETZ: Can you restate the
17 question that's pending?

18 MR. RICHARDSON: Sure.

19 BY MR. RICHARDSON:

20 Q. Assuming, subject to check, that, in fact, PAC and PEU
21 did, in fact, seek to be dismissed as defendants, isn't
22 this essentially a problem of their own making, these
23 lost economies of scale?

24 A. I guess I don't see it that way. But maybe you could

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1 explain further why you think that's the case.
2 Q. Well, what I'm trying to get at is what are the
3 economies of scale that you're describing in your
4 testimony and what are the ways that they could be
5 mitigated? And, it would seem to me that remaining --
6 the decision to be separated was one in which
7 Pennichuck played a role. Now, obviously, you've
8 stated that you're not aware of the circumstances
9 there, but -- I guess, let me ask you a more simple
10 question.

11 Is it conceivable to you that, if Nashua
12 were to buy all three utilities, and Pennichuck were to
13 agree to sell them, the lost economies of scale could
14 be mitigated?

15 A. It's conceivable, I would admit that. Because,
16 obviously, the argument on economies of scale is that
17 keeping the three companies together provides great
18 benefits in terms of the economies of scope and scale.
19 So, if they stayed together, then, presumably, that
20 particular issue, not any of the other issues, but that
21 issue would be eliminated.

22 Q. Now, let's move on then. I believe in your testimony
23 you state, on Exhibit 3002, I believe, near Page 9,
24 that you're "not convinced that the City of Nashua

[Witness: Patch]

1 (Nashua or the City) and the operator it intends to
2 hire, if it succeeds in the taking, can run the system
3 as well and as economically as PWW has."

4 A. Yes.

5 Q. Is that correct?

6 A. That's correct.

7 Q. Okay. Have you, as a lawyer or as a Public Utility
8 Commissioner, or in some other capacity, ever been
9 involved in regulating or negotiating or the operation
10 of a public/private partnership to operate a water
11 system?

12 A. I think there were situations, when I was here at the
13 Public Utilities Commission, where -- no, I guess not.
14 I guess the answer to that question is probably "no".
15 I can't think of anything specific. I thought I had
16 something in the back of my mind, but I can't really
17 think of anything.

18 Q. Okay.

19 A. And, just to note for the record, I had, you know, at
20 that point in my testimony, also referred to the
21 articles by Dr. Janice Beecher, which I think were
22 making a number of points about why there are at least
23 potential problems when a local government retains
24 ownership and hires a private operator. And, I mean,

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1 she's a well-respected expert in this area, somebody
2 who's testified before the Commission before. And, I
3 just think she had some very valid points that she had
4 raised in the articles that I attached.

5 Q. And, Dr. Janice Beecher is with a utility institute in
6 Michigan. Do you recall the name of it? I've,
7 obviously, forgotten, but I've heard it before.

8 A. I think it's the "Institute of Public Utilities at
9 Michigan State University".

10 Q. And, that's an organization that specializes in utility
11 regulation?

12 A. That's correct. And, in fact, it trains staff and
13 commissioners, I believe. I think it's the same
14 institute that I attended soon after I became a
15 Commissioner.

16 Q. And, Dr. Beecher has served as a consultant for
17 Pennichuck Water Works in cases before?

18 A. I think you're right. I'm not 100 percent sure of
19 where and when, but I think that's right.

20 Q. And, in fact, I believe Order Number 22,883 was a
21 written case that makes some reference to her testimony
22 on behalf of Pennichuck Water Works?

23 A. I'll accept your representation. I don't have that in
24 front of me.

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1 Q. You state on Page 11 of your testimony that, "If Nashua
2 was successful, customers" -- and I'll paraphrase --
3 "in towns outside of Nashua's borders would be subject
4 to the whims of Nashua officials. I'm not aware of
5 anything that Nashua has proposed, or could propose, to
6 assure the Commission that the interests of these
7 customers would be adequately protected." And, you
8 still agree with that statement?

9 A. Yes.

10 Q. Okay. Did you review, in making that statement, RSA
11 38:14?

12 A. I've looked at 38:14 at some point, but I'm not sure I
13 reviewed it, you know, when I prepared this particular
14 part of my testimony.

15 Q. Would it surprise you if that provision states that
16 "the operation by a municipality outside its own
17 borders" -- or, "outside its own limits shall be
18 subject to the jurisdiction of the Commission, except
19 as provided in RSA 362"?

20 A. I'll accept that that's what it says.

21 Q. Okay. And, does that change your analysis?

22 A. I don't think it does. As I indicated before in
23 response to a question from Ms. Thunberg, I don't think
24 the Commission has authority under 362:4 to take

[Witness: Patch]

1 jurisdiction over municipalities or portions of the
2 system that would be outside of Nashua, in the event
3 that the rates are essentially the same. So, I guess I
4 don't see that it changes the testimony.

5 Q. But, if I'm correct in citing to RSA 38:14, that Nashua
6 is a utility, and if RSA 38:11 were to provide that the
7 Commission can impose conditions on a utility as part
8 of this proceeding, wouldn't those be binding in the
9 same sense that they're binding on any other company
10 the Commission regulates?

11 A. Well, the Commission, in my opinion, can only accept or
12 impose conditions that it has the authority to impose.
13 In the event that it imposes a condition that goes
14 beyond the statutory authority that it has, then I
15 don't think it's a valid condition. I don't think the
16 Commission has the authority to do that.

17 Q. But that's your opinion, and, ultimately, that is a
18 question that's for the three Commissioners here to
19 decide, based on their review of those same statutory
20 provisions?

21 A. Yes. And, obviously, consulting with legal counsel on
22 that, and that may very well be a subject that will be
23 briefed in this proceeding for all I know.

24 Q. Okay. Could we bring up Exhibit 1074. Let's look at

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1 Page 1 first. Have you seen this order before? I can
2 get you a copy of the entire order, if you'd like?

3 A. Yes. This is the Warner Village Water District?

4 Q. Yes, it is. There's a provision, why don't we go --
5 or, a section on Page 7 of this decision. Why don't we
6 go to that. And, beginning with "Pursuant to RSA
7 362:4", and the whole paragraph that's below, why don't
8 you blow up that whole section. It appears to me that
9 the Commission is saying that a "municipality
10 furnishing water outside its borders shall not be
11 considered a public utility if it charges rates no
12 higher than 15 percent." But, then, it says that
13 "Nothing in this paragraph", at the bottom, and this is
14 in italics, "shall exempt a municipal corporation from
15 the franchise application requirements of RSA 374."

16 A. I see that.

17 Q. Okay. Now, on Page 12 of the decision, why don't we go
18 -- there's a concluding paragraph, I believe, where it
19 begins with -- starts with "It is reasonable". The
20 bottom paragraph, blow that up. Could you read -- why
21 don't we start with "It is reasonable", and you can
22 explain to me your interpretation of what this
23 Commission is saying here.

24 A. Do you want me to read -- I'm sorry, you want me to

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1 read the sentence that begins "It is reasonable", just
2 that sentence?

3 Q. Well, you can read that whole paragraph, if you'd like,
4 and I can give you a copy of the whole order, if you
5 want to refer to different sections of it.

6 A. And, you're asking me for an interpretation of the
7 whole order or of what?

8 Q. Well, what is the -- I'll read it to you. The
9 Commission is stating that "It is reasonable to read
10 RSA 362:4, III-a as expressing the Legislature's intent
11 to preclude economic and financial regulation of
12 municipalities under certain circumstances." But then
13 it goes onto state: "The statute, however, is clear in
14 retaining Commission regulation over franchising, which
15 pertains both to market entry and market exit." And,
16 then it goes onto state: "The granting of a franchise
17 confers on an entity the right to provide service
18 [and?] along with the right to serve goes the
19 obligation or duty to serve customers within the
20 franchise or service territory."

21 Now, I mean, in light of this, isn't it
22 the duty of a public utility, whether it's a
23 municipality or a investor-owned utility, to provide
24 service that is just and reasonable?

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1 A. It is the duty of a public utility to do that.

2 Q. Uh-huh. And, if a utility fails to do that, aren't
3 they violating the franchise application requirements
4 of RSA 374?

5 A. In the case of a public utility, that's the case. I
6 guess I would want to further explain, though, I think
7 it would be important, you know, when the Commission
8 considers this issue, to look at the -- I think it's
9 the Blair case, and I think it's cited in my testimony.
10 It was a -- It's a 1961 case, admittedly, but Blair
11 versus Manchester Water Works, in which the Supreme
12 Court said "the Commission doesn't have the authority
13 to compel a municipal utility that extends its service
14 to a small area in an adjoining town to extend its
15 service over the entire area of the adjoining town."

16 I think there were other places in my
17 testimony where I referred to the fact that I think one
18 of the major differences between a municipal utility
19 and a public utility is the Commission's authority to
20 be able to order extensions of service, which I think
21 can clearly help in a number of situations.

22 Q. But doesn't the Commission appear to be saying here
23 that it has authority over the franchise? And, if it
24 sees a franchise condition being violated, it has the

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1 authority to enforce that?

2 A. It does appear to be saying that. But I'm not sure, in
3 the context of this particular case before us here
4 today, how that would play out.

5 Q. Now, RSA 362:4 has been amended since 1961, hasn't it?

6 A. It has been amended, although I think it's fair to say
7 that, for the most part, if anything, it was amended in
8 a way that, if anything, sort of removed some
9 jurisdiction from the Commission, rather than granted
10 it greater jurisdiction.

11 Q. But here, in this decision, the Commission appears to
12 be implementing RSA 362:4, III-a, which was also part
13 of the amendments that were made following 1961?

14 A. That's correct. But I think you need to consider any
15 order that a commission issues, any ruling that it
16 does, in the context of the facts of the case. And, I
17 don't have all of the facts of this particular case in
18 mind, but I think it involves a water district that --
19 that was actually serving a few customers, a very small
20 number outside of the borders of the district. I don't
21 think the Commission had actually granted franchise
22 authority outside of the district to serve these
23 customers. But, historically, they had been served, it
24 just had never come before the Commission. So, I think

[Witness: Patch]

1 you need to think about any words that the Commission
2 uses in the context of the case that's before it.

3 Q. I agree absolutely. But I guess let me follow up with
4 a question along that line. If we look at the
5 paragraph that's cited here: "The statute, however, is
6 clear in retaining Commission regulation over
7 franchising, which pertains both to market entry and
8 market exit." Isn't Nashua seeking to enter the market
9 at this point in this case?

10 A. I guess you could put it that way. I would like to
11 say, however, that when the -- the "Commission
12 regulation over franchising" isn't Commission
13 regulation over rates, it isn't Commission regulation
14 over all of the other things that the Commission
15 traditionally regulates, in terms of a public utility.

16 Q. But, at least in terms of the service that they
17 receive, its terms and conditions outside of the areas
18 of rate regulation and a few other areas, there
19 certainly does appear to be some jurisdiction here?

20 A. Well, I think, if you look at the actual language of
21 the statute, I think all it talks about is
22 "franchising". And, so, "franchising" is clearly not
23 as broad as I think some of the things that you
24 suggest.

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1 Q. But couldn't the Commission, in addition to imposing a
2 condition under RSA 38, couldn't it also impose a
3 condition on the conveyance of the franchises to the
4 City of Nashua under RSA I believe it's 374?

5 A. What sort of condition?

6 Q. Well, for example, why don't we pull up Exhibit 1016,
7 and let's go to Page 19. Actually, go to Page 1, just
8 so I can show that to the witness. This is the
9 testimony, I believe it was submitted in June or July
10 of 2006 from Mayor Streeter, Alderman McCarthy, and Mr.
11 Sansoucy. But I want to turn to the commitments that
12 are made by the City, and that's on Page 19. And, if
13 we could blow up at the bottom. Could you read that
14 paragraph for me?

15 CHAIRMAN GETZ: And, this is Line 16 --

16 MR. RICHARDSON: Sixteen to twenty-two,
17 and it will continue onto the next page.

18 BY THE WITNESS:

19 A. "Nashua has made a number of commitments that will
20 benefit the public interest and ensure that the
21 interests of the customers located outside of Nashua
22 are protected and treated fairly in all respects, which
23 have been ignored by Mr. Naylor. For example, Nashua
24 has committed to operate its water system according to

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1 the terms of its Water Ordinance in a manner that
2 treats all customers equally. In addition, to the
3 extent that Nashua serves customers outside of its
4 borders, it has agreed and committed to the principle
5 that the terms and conditions of its service, i.e. its
6 Water Ordinance, will continue to subject" -- I assume
7 that means "to be subject to the jurisdiction of the
8 Commission under RSA 362:4 and RSA 374. See MBS
9 Exhibit 3."

10 Q. Okay. So, isn't the City essentially asking the
11 Commission to impose as a condition that it will -- it
12 has developed a Water Ordinance, it will implement that
13 without looking at whether a customer is located in one
14 location or in one city or another, and it's asked the
15 Commission to accept that as a condition, not only
16 under RSA 38 and RSA 374, and doesn't that approach
17 work?

18 A. I don't think it works. And, it's, in part, for the
19 reasons that I stated before, sort of two different
20 reasons. One is, first of all, I'm not familiar with
21 all of the provisions of that ordinance. So, I don't
22 know exactly what's contained in it or what isn't, what
23 might be missing from it. An ordinance is subject to
24 amendment at any point, you know, by the normal

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1 procedures that are used to amend an ordinance in a
2 municipality.

3 And, then, beyond that, it seems to me
4 that the Commission needs to question whether what
5 Nashua is asking it to do it really has the authority
6 to do. And, so, I think that's a question the
7 Commission has to analyze. And, then, beyond that,
8 there is the enforcement issue that we talked about
9 earlier, in response to a question from Ms. Thunberg,
10 which is essentially that, if there are a lot of
11 conditions, if the Commission were to grant Nashua's
12 request and impose a lot of conditions, I think there's
13 a serious question of how those are enforced and what
14 could be done in the event that the conditions aren't
15 followed one year, two years, five years, ten years
16 down the road.

17 Q. And, that's a question that comes up -- well, I'll
18 strike that. I'll withdraw that question. So, let's
19 assume that a condition has been violated or let's
20 assume an amendment has been made to the ordinance, and
21 the Commission -- a customer outside of the City of
22 Nashua files a complaint. Couldn't they do that under
23 I believe it's RSA 365? And, if Nashua has committed
24 under RSA 38:11 and under RSA 374 and 362 that it will

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1 be subject to the Commission's jurisdiction, doesn't
2 that give the Commission the authority to then say
3 "Nashua, we disagree with how you've implemented this,
4 and we're going to order you to amend your ordinance or
5 we're going to order you to provide a different level
6 of service"?

7 A. I don't think so, because I don't think you've
8 addressed the question of the Commission's underlying
9 authority to approve a condition that gives it
10 authority over something that the statutes don't give
11 it authority over. I think that's an underlying legal
12 question that has to be addressed first. And, I would
13 cite to the -- I think it's the Greenwood case, which
14 is a fairly recent case in Federal District Court, that
15 involved a hydropower purchased power agreement. And,
16 I think the bottom line on that case, and I think
17 there's other New Hampshire Supreme Court case law that
18 supports the fact that the Commission really only has
19 the authority that is granted to it by statute, and
20 can't, even by virtue of approving a settlement
21 agreement that is consensual among the parties or
22 conditions in this case that the City of Nashua says it
23 would agree to, I don't think the Commission can agree
24 to impose conditions that it has no authority to

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1 impose.

2 Q. Okay. Could you read the text of RSA 38:11 for me.

3 A. "When making a determination as to whether the purchase
4 or taking of utility plant or property is in the public
5 interest under this chapter, the Commission may set
6 conditions and issue orders to satisfy the public
7 interest. The Commission need not make any public
8 interest determinations when the municipality and
9 utility agree upon the sale of utility plant and
10 property."

11 Q. Doesn't that provision in and of itself give the
12 Commission authority to impose conditions to protect
13 the public interest, whether they're how Nashua treats
14 customers outside of its borders or whether its water
15 ordinance or whether it's any of the other commitments
16 that Nashua has volunteered or offered to this
17 Commission to say it would abide by?

18 A. I don't think so. I don't think it just gives the
19 Commission carte blanche authority to set whatever
20 conditions it wants. I think it requires an analysis
21 of this statute, along with other statutes that give
22 the Commission particular authority. I think you need
23 to look at the whole picture. I think it's important
24 to, you know, to look at legislative intent in certain

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1 circumstances, too, and that might be required here.
2 But I just don't -- I guess I just don't buy the fact
3 that I think that that gives the Commission authority
4 to impose whatever conditions it wants.

5 Q. Now, and that is -- I'd like to ask you if this
6 provision changes your opinion? This is RSA 38:14, and
7 I'll read it for you from the middle. It states: "The
8 operation by a municipality outside its own limits
9 shall be subject to the jurisdiction of the Commission
10 except as provided in RSA 362." Now, I don't
11 understand what parts are left over that would be
12 subject to the Commission's jurisdiction, if you're
13 saying that "conditions imposed under 38 aren't
14 enforceable", "if franchise requirements aren't
15 enforceable", what's left over to be enforced? What
16 was the Legislature saying here?

17 A. I mean, without doing a thorough analysis of this, it's
18 difficult for me to say exactly what the Legislature
19 was saying here. But, clearly, there's an exemption
20 for RSA 362. And, as I've already indicated, I think
21 362:4 limits the Commission's jurisdiction. And, so, I
22 think if you read this together with 362:4, then I
23 think there is a serious question about whether the
24 Commission would have jurisdiction to impose conditions

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1 that essentially went beyond the authority of
2 regulation that is granted to the Commission under
3 362:4.

4 Q. I'd like to look at Exhibit 3002, Page 7. And, in your
5 testimony, you state that "PWW has made a significant
6 contribution to the public good in New Hampshire
7 through its willingness to expand its operations in the
8 state. PWW has taken over a number of smaller water
9 systems and provided good quality water at reasonable
10 rates to customers of those systems." Now, I guess
11 I'll look at rates first. Did you perform an analysis
12 of the rates charged by different utilities, and in
13 order to determine whether those were -- where those
14 fell in that range?

15 A. No, I did not do an analysis.

16 Q. Okay.

17 A. I will say that, you know, from my nine and a half
18 years here at the Commission, and being familiar
19 generally with what's going on in the industry, I think
20 I have some sense of what's reasonable and what isn't.
21 But I did not do an analysis.

22 Q. Okay. Well, let's talk about the other component then.
23 The taking over of troubled systems or satellite
24 systems that "would have further deteriorated where the

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1 rates would have been much higher to provide comparable
2 service". You gave as an example, looking at Page 7,
3 Line 21, the "Pennichuck for Maple Haven in Epping and
4 Glen Woodlands in Derry". Now, is it -- it's your
5 opinion, I take it, that allowing Nashua to establish
6 its own water system would cause that type of activity
7 to end?

8 A. It would certainly be curtailed, because Pennichuck has
9 exhibited over the time that I was at the Commission,
10 and since then, sort of the unique ability to be able
11 to take over these systems and to do it in a way that I
12 believe benefits the entire system, and particularly
13 benefits those systems that it takes over.

14 Q. Okay.

15 A. So, it would definitely be curtailed. I couldn't say
16 it would be eliminated.

17 Q. Well, we asked essentially the same question to Mark
18 Naylor in this case. And, if you look at his response
19 in Exhibit 5014, Page 49, I believe, and this is a
20 response to Data Request 6-45. Could you read the
21 request.

22 A. "Please identify and list all "troubled systems"
23 acquired by PWW, PEU or PAC, and state when such
24 acquisitions occurred, the number of customers, and the

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1 docket number of the Commission under which the
2 acquisitions were approved."

3 Q. And, you see that Mr. Naylor provided a list there.
4 And, by my count, it looks like there are four systems
5 that the Company has acquired since 2000, and six that
6 were prior to 2000, does that sound about right?

7 A. Did you say "six prior to 2000"?

8 Q. Yes, I believe it's a total of ten; four of which have
9 occurred in the year 2000 or later.

10 A. I mean, that appears to be right.

11 Q. Okay. And, we submitted another request to Mr. Naylor.
12 And, if we turn to Page 52, let's take a look at that.
13 And, if you could read the request again, I'd
14 appreciate it.

15 A. Can I just qualify on the last answer? I mean, I'm
16 saying that "it appears to be correct" in terms how
17 Mr. Naylor answered the question. I haven't gone back
18 and done an analysis, as to whether I think there are
19 any other systems that might have been troubled that
20 were acquired. And, I have great respect for
21 Mr. Naylor, and I assume he was thorough in preparing
22 this, but I haven't done that analysis.

23 Q. Could you read the request. And, this is now 6-46,
24 that's on Page 52 of Exhibit 5014.

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- 1 A. "Please identify and list all "troubled systems"
2 acquired by any other investor-owned water utility in
3 New Hampshire and state the date of such acquisition,
4 the number of customers, and the docket number of the
5 Commission under which each acquisition was approved."
6 Q. And, why don't we look at Lakes Region Water Company.
7 And, by my count, it looks like there are eight total
8 acquisitions that they have done, five of which are
9 subsequent to the year 2000. Does that sound accurate?
10 A. It sounds right.
11 Q. So, then, it appears, according to Mr. Naylor, that
12 Lakes Region Water Company has acquired a greater
13 number of systems than the combined acquisitions of
14 PEU, PAC, PWW, at least since the year 2000?
15 A. I think that's fair.
16 Q. Okay. Now, do you know how many customers Lakes Region
17 Water Company has?
18 A. I don't off the top of my head.
19 Q. Let's look at Exhibit 1132, Page 57. I'll represent to
20 you that this is a document that is from the PUC
21 website. Have you seen a document similar to this
22 before?
23 A. I think I have at some point.
24 Q. And, it states here that Lakes Region Water Company has

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1 "1,585 customers". Does that sound consistent with
2 your experience?

3 A. I mean, it doesn't sound inconsistent. I can't
4 honestly say whether that's a correct number or not,
5 but --

6 Q. Okay. So, if Lakes Region Water Company is able to
7 acquire a greater number of systems than the three
8 Pennichuck utilities, at least since 2000, there must
9 be some factor other than size that's at play here?

10 A. Well, I think you have to look at the systems that were
11 acquired. I think you have to look at the
12 circumstances. I think you have to look at the number
13 of customers affected, you know. I mean, number of
14 systems, it would be interesting if you had a chart
15 that showed the number of customers in the systems that
16 were acquired by Nashua [Pennichuck?] versus the number
17 of customers in the systems acquired by Lakes Region.

18 Q. But do --

19 A. So, I don't know. There are a lot of things certainly
20 to think about in that context.

21 Q. But, certainly, if we're talking about troubled
22 systems, one would expect the number of systems would
23 be small -- or, excuse me, the number of customers
24 would be small?

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1 A. In troubled systems?

2 Q. Yes. As Mr. Naylor has used the term or as you would
3 understand it?

4 A. I don't know that I'd necessarily agree with that. It
5 seems to me that Consolidated Water some might have
6 regarded as a "troubled water system", and the number
7 of customers involved in that, I don't know that it
8 appears on this chart, but I think it's a fairly
9 significant number of customers.

10 Q. Now, isn't the "troubled system" issue, this is going
11 to be the type of question you're told never to ask in
12 law school, but the --

13 A. And, I was probably told never to answer it.

14 (Laughter.)

15 BY MR. RICHARDSON:

16 Q. Well, you understand that the Department of
17 Environmental Services, in 1997, was given authority by
18 the Legislature to develop I believe what's called a
19 "Capacity Assurance Program"?

20 A. I'm not familiar with that.

21 Q. Okay. Let me pull this up. This is RSA 485, which, as
22 I'm sure you know, is the Safe Drinking Water Act at
23 the state level. And, Paragraph 12 states that "The
24 Commission may adopt rules to ensure the long-term

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1 viability of public drinking water systems as required
2 by the Safe Drinking Water Act." And, in fact, the
3 Department of Environmental Services reviews all water
4 system applications now and determines whether or not
5 there's an adequate business plan in place, doesn't it?

6 A. I don't know that for a fact. But I don't have reason
7 to disagree with you.

8 Q. But that sounds to me like it might be a mechanism for
9 ensuring that troubled systems aren't generated in the
10 first instance?

11 A. I guess it could be.

12 Q. Okay.

13 A. But, if your underlying premise is that "there are no
14 more troubled systems in the state", I don't think
15 that's the case. I think there are troubled water
16 systems still in existence here in the state that will
17 need to be addressed in the future. And, I certainly
18 hope that any systems that are built going forward are
19 less troubled than those in the past. But I don't
20 think the authority of the DES will necessarily
21 guarantee that we won't have any future troubled water
22 systems. It doesn't mean that there aren't other
23 troubled water systems out there.

24 MR. RICHARDSON: No further questions.

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1 CMSR. BELOW: One question, Mr. Patch.

2 BY CMSR. BELOW:

3 Q. What's your experience working with or analyzing
4 municipal utilities?

5 A. I would say it's pretty limited. I guess there were,
6 on occasion, municipal utilities came before us here at
7 the Commission, when I was a member of the Commission.
8 Manchester Water Works was in on occasion for one thing
9 or another. I guess there could have been a few other
10 municipal water systems that came in. None are coming
11 to mind right now. I mentioned before that I was
12 involved in that Manchester Water Works case that came
13 before the Commission, you know, representing
14 Pennichuck in that particular situation.

15 CMSR. BELOW: Okay. Thank you.

16 CHAIRMAN GETZ: Redirect?

17 MS. KNOWLTON: Yes. Thank you.

18 REDIRECT EXAMINATION

19 BY MS. KNOWLTON:

20 Q. Mr. Patch, you're not currently counsel for any of the
21 Pennichuck companies, are you?

22 A. No.

23 Q. When were you last counsel for Pennichuck Water Works?

24 A. I think that order was 2003. So, it essentially

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1 terminated, I believe, at around that time.

2 Q. Was that a matter of public record in that docket, --

3 A. Yes.

4 Q. -- that you represented Pennichuck Water Works?

5 A. That was.

6 Q. We've heard some questioning about Lakes Region Water
7 Company. Are you aware of any recent events or issues
8 or problems regarding Lakes Region and its ability to
9 provide safe and clean water to its customers?

10 A. I have been involved as counsel for a homeowners
11 association that has been before the Commission on a
12 couple of issues related to Lakes Region Water Company.
13 So, I'm familiar generally with some issues that relate
14 to Lakes Region.

15 Q. Are you familiar at all with any issues involving the
16 quality of the water provided to its customers?

17 A. I think I've heard some issues related to that, but I
18 don't have a lot of specific knowledge about water
19 quality, you know, issues in particular.

20 MS. KNOWLTON: All right. No further
21 questions.

22 CHAIRMAN GETZ: Then, I think that
23 completes the examination of Mr. Patch. So, you're
24 excused. Thank you.

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1 THE WITNESS: Thank you.

2 CHAIRMAN GETZ: I think, let's address
3 tomorrow's order. I think we've established earlier that
4 Mr. Daniels would be going first for Milford. And, I want
5 to confirm that the -- we'll go from 9:00 to 11:00, then
6 we'll break till approximately 12:30, and try to resume at
7 12:30. Ms. Pressley is scheduled to testify tomorrow. If
8 memory serves me, there may be an outstanding objection to
9 some of her earlier testimony? I can refresh my memory,
10 but I believe that's the case.

11 MR. CAMERINO: I think, frankly, it's
12 the exact same situation as Ms. McHugh. And, so, whatever
13 -- I'm not even sure, frankly, where we left that, but
14 it's the identical issue.

15 CHAIRMAN GETZ: Okay. Well, I'll review
16 the papers tonight. And, then, it's, I guess, after
17 Ms. Pressley, then we'll go with -- is there an issue with
18 who's going to be testifying for the Town of Merrimack?

19 MR. CAMERINO: I understand from
20 Mr. Boutin that Mr. McCray will be the witness. And, if I
21 could speak for Ms. Thunberg, she told me during the break
22 that Attorney Sullivan indicated that his witness,
23 Mr. Scanlon, needs to come in the afternoon. So, that
24 would affect the order.

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1 CHAIRMAN GETZ: Okay. And, then, we'd
2 go to Mr. Mills for Anheuser-Busch, Mr. Alexander?

3 MR. ALEXANDER: That's right.

4 CHAIRMAN GETZ: Okay. Is there anything
5 else we need to address before we close today?

6 MR. CAMERINO: This is sort of
7 pre-planning for pre-planning. But I was talking with a
8 couple of the other counsel here, and it's still looking
9 like we will only have one day of hearings next week.
10 And, it's likely, it seems, that at the end of that day
11 there are probably a number of procedural matters,
12 exhibits, that we may need to take up. And, so, as we
13 plan for -- our thought was we would all coordinate with
14 each other, see how many of those we can come to agreement
15 on, and then maybe leave a little time on Tuesday at the
16 end of the day -- or, Wednesday to address those as well,
17 so we don't have to come back a separate day on procedural
18 matters.

19 MR. UPTON: My only concern about that
20 is we're going to need the transcripts to figure out what
21 exhibits have properly been identified and everything and
22 marked. And, I'm just worried that, by Wednesday, we
23 won't have the ability to do that. But I have no problem
24 with sitting down with Mr. Camerino and trying to agree on

1 the exhibits that are properly before the Commission.

2 CHAIRMAN GETZ: Okay. And, well, if we
3 have to come back a different day to do that, I'm assuming
4 all we would need would be the attorneys to deal with
5 those issues.

6 MR. UPTON: Yes, that, or we could, by
7 letter, notify the Commission the list of exhibits.

8 CHAIRMAN GETZ: And, we're going to have
9 to make some kind of ruling on what gets introduced.

10 MR. UPTON: Yes.

11 MR. CAMERINO: Right. And, actually,
12 that's the main reason for me mentioning it right now.
13 It's just so that people are thinking in advance of that
14 as to what those issues might be, and we're not working
15 out on the record a lot of things that, if we had only
16 talked about, we would have resolved.

17 CHAIRMAN GETZ: That would be greatly
18 appreciated. Okay. Let's close the hearing for today.
19 We'll recess until tomorrow morning at 9:00 a.m. Thank
20 you.

21 (Hearing adjourned at 4:49 p.m. and the
22 hearing to reconvene on September 19,
23 2007, commencing at 9:00 a.m.)

24

