

In Re:
DW 04-048/DW 11-026
CITY OF NASHUA/PENNICHUCK CORP., ET AL

AFTERNOON SESSION ONLY
October 25, 2011

SUSAN J. ROBIDAS, LCR NO. 44

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DW 04-048/DW 11-026 CITY OF NASHUA/PENNICHUCK CORP., ET AL**

1 STATE OF NEW HAMPSHIRE
2 PUBLIC UTILITIES COMMISSION
3
4 OCTOBER 25, 2011 - 1:20 p.m. AFTERNOON SESSION ONLY
5 Concord, New Hampshire
6
7 RE: DW 04-048 CITY OF NASHUA, NEW HAMPSHIRE:
8 Petition for Valuation Pursuant to RSA 38:9
9 DW 11-026 CITY OF NASHUA; PENNICHUCK
10 CORPORATION; PENNICHUCK WATER WORKS, INC.;
11 PENNICHUCK EAST UTILITY, INC.; AND PITTSFIELD
12 AQUEDUCT COMPANY:
13 Joint Petition for Approval to Acquire Stock
14 in Pennichuck Corporation
15
16 PRESENT: Chairman Thomas B. Getz, Presiding
17 Commissioner Amy L. Ignatius
18
19 Sandy Deno, Clerk
20
21 APPEARANCES:
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24 Andrew W. Serell, Esq. (Rath, Young...)
Reptg. Pennichuck Corporation, Pennichuck
Water Works, Pennichuck East Utility, and
Pittsfield Aqueduct Company:
Steven V. Camerino, Esq. (McLane, Graff...)
COURT REPORTER: Susan J. Robidas, LCR NO. 44

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1 APPEARANCES: (C O N T I N U E D)
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17 Marcia Thunberg, Esq.
18 Mark Naylor, Director/Gas & Water Division
19 James Lenihan, Gas & Water Division
20 Douglas Brogan, Gas & Water Division
21 Jayson LaFlamme, Gas & Water Division

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1 PROCEEDINGS
2 CHAIRMAN GETZ: Okay. Good afternoon.
3 We're back on the record.
4 And Ms. Thunberg, are you ready to
5 proceed?
6 MS. THUNBERG: Yes, but we have a couple
7 procedural issues regarding exhibits. And I'll defer
8 to Attorney Serell.
9 MR. SERELL: Thank you. We wanted to
10 have marked final exhibits that were not referred to
11 earlier in testimony, but they're Exhibit Numbers 12
12 through 16 and then 18 on our exhibit list.
13 And then, in addition, I'm going to ask
14 to be marked, I think what's going to be Exhibit 19,
15 the record request. So I have three copies of that.
16 And that's all for the Joint Petitioners.
17 (Exhibit 12, 16, 18, 19 marked for
18 identification.)
19 CHAIRMAN GETZ: Okay. Thank you.
20 MR. BOUTIN: I marked -- or I produced
21 exhibits and distributed them to all the parties of
22 Exhibit J that we talked about. And I placed four
23 with the clerk. So she has three for the Commission
24 and one for herself.

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1 CHAIRMAN GETZ: Thank you.
2 MR. BOUTIN: And that's already marked
3 as Exhibit J, I believe.
4 CHAIRMAN GETZ: Thank you. That's
5 helpful to those of us who are colorblind. Looks like
6 I can actually make out the green.
7 MS. THUNBERG: And with respect to
8 Exhibit 17, which was the charter that earlier this
9 morning we did not have ample copies for the Bench, I
10 have provided copies to the clerk so that she can
11 provide you with Exhibit 17. And I understand Exhibit
12 17 came in without the cover page that was as it was
13 filed with the Commission. I inadvertently copied the
14 cover page. But the clerk will be taking that cover
15 page off. So it's just the charter itself.
16 CHAIRMAN GETZ: Okay. Anything else?
17 MS. THUNBERG: I'd like to call Mark
18 Naylor as a witness.
19 (Whereupon, MARK NAYLOR was duly sworn
20 and cautioned by the Court Reporter.)
21 MARK NAYLOR, SWORN
22 DIRECT EXAMINATION
23 BY MS. THUNBERG:
24 Q. Mr. Naylor, I'd like to have you start off

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1 and have you state your name for the record.
2 A. Yes. My name is Mark Naylor.
3 Q. And I'd like to show you a document and have
4 you identify it for the record, please.
5 (Witness reviews document.)
6 A. Yes. This is the testimony that I filed in
7 this proceeding on August 30th of 2011.
8 MS. THUNBERG: And Commissioners, this
9 document has been listed in the exhibit list as
10 Exhibit 13, and I presume you have copies. I've given
11 one to the clerk.
12 CHAIRMAN GETZ: Okay.
13 BY MS. THUNBERG:
14 Q. Mr. Naylor, are your qualifications listed in
15 your prefiled testimony?
16 A. Yes, they are.
17 Q. And is your testimony today going to be
18 within your area of expertise, as noted in those
19 qualifications?
20 A. Yes.
21 Q. And the prefiled testimony, was that drafted
22 by you prior to involvement in any Settlement
23 Agreement?
24 A. Yes, it was.

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1 Q. And the Settlement Agreement that's been
2 referred to today, are you familiar with the terms of
3 that document?
4 A. Yes, I am.
5 Q. I'd like to have you give an overview for the
6 Commission on why Staff is supportive of the
7 Settlement Agreement. And in particular, I'd like to
8 have you address why Staff believes the Settlement
9 Agreement is in the public interest.
10 A. Certainly. Staff believes this Agreement
11 provides benefits to customers of all the three
12 utilities over the long term. I think the benefits of
13 this Settlement Agreement can be summarized in three
14 areas: First, the overall cost of capital is expected
15 to be lower than under current ownership, and it may
16 be substantially lower. The current equity capital of
17 the three utilities will be replaced with the City
18 bond fixed revenue requirement at an interest rate
19 that, as the Commission heard this morning, may be
20 below 5 percent. Combined with the existing debt of
21 each utility and the City's commitment to request a
22 lower cost of equity when it does accumulate equity
23 capital in the utilities in the future, the total
24 return costs may be lower, even considering that this

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1 transaction requires an acquisition premium. Future
2 capital improvements, of course, as you heard
3 testimony this morning, will be financed with debt,
4 which, of course, carries a lower cost than equity
5 capital.
6 Secondly, we are assured a continuation of
7 the good service that this company has provided over
8 the years. The management and operational personnel
9 will remain in place.
10 And I think, thirdly, the City has agreed to
11 not take withdrawals of capital from the utilities,
12 with the two exceptions that were noted this morning:
13 Repayment of the City's acquisition debt and recovery
14 of its costs incurred in the eminent domain case,
15 which, of course, has some restrictions on it, which
16 means that over time, if the utilities do generate
17 retained earnings, those earnings will be an
18 additional source of capital for future improvements
19 in the water systems.
20 There are several other benefits I think in
21 addition to those, which Staff is pleased with in
22 recommending this Agreement. One of the issues I
23 raised in testimony was a concern that there was no
24 provision in the ratemaking structure proposed

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1 originally that would potentially pass savings to
2 customers through rate cases. There was no proposal
3 to change rates at any time soon after the transaction
4 would close. And the Settlement Agreement calls for
5 rate filings in 2013, after a year of operation under
6 City ownership. And if we do see the interest rate on
7 the acquisition bonds that we hope to see, the impact
8 on customer rates may be favorable.

9 Another benefit of this Agreement, I think,
10 is that the City's request to establish a rate
11 stabilization fund has been modified through the
12 Agreement, and I think it's an improvement. The fund
13 will only be established in PWW. The rates
14 stabilization fund will be used only if necessary
15 under certain circumstances, as was discussed this
16 morning. And it's used only to insure payment of the
17 City's debt service obligation. Also, the City has
18 agreed not to seek recovery of its eminent domain
19 costs through the general obligation bonds, and that
20 reduces the total borrowing anticipated for this
21 transaction; and, of course, the City will be
22 reimbursed for those costs only as the utilities are
23 able to generate net income over time.

24 So I think that summarizes the significant

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1 benefits Staff sees of this Agreement.

2 Q. Mr. Naylor, I'd like to cover a couple points
3 that you had raised in your testimony, understanding
4 your testimony was based on -- is it fair to say that
5 your testimony was based on the petition as it was
6 filed?

7 A. Yes, it was, and, of course, in consideration
8 of the discovery materials that were generated through
9 review of the filing.

10 Q. Do you recall in your testimony raising a
11 concern about R.S.A. 378:30-a, the so-called
12 "anti-clip statute"?

13 A. Yes.

14 Q. Can you please explain how the Settlement, if
15 it does address this current concern, how it addresses
16 the concern that you had?

17 A. Well, I think some of the modifications that
18 the Settlement contains kind of alter the nature of
19 the rate stabilization fund. I think clearly it's
20 more open now to interpretation that the rate
21 stabilization fund is really more of a working capital
22 fund than it is construction work. It is not plant in
23 service. It does not represent plant in service. And
24 it is not considered permanent capital. It will exist

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1 throughout the 30-year life of the City's acquisition
2 bonds being drawn upon and replenished as necessary.
3 But at the end of the 30 years, it will be turned over
4 or credited to customers in some manner. So I think
5 in this context it is more like a working capital fund
6 than anything else.

7 Significantly, too, the rate stabilization
8 fund, under the terms of the Settlement Agreement,
9 will not be considered to be a part of the Pennichuck
10 Water Works as equity for purposes of calculating the
11 Company's capital structure; thus, it will not
12 contribute any additional weighting toward equity in
13 future rate proceedings.

14 Q. Mr. Naylor, on Page 13 of your testimony, you
15 talked about there being no mechanism for savings to
16 be passed on to customers. Can you -- does the
17 Settlement Agreement address that concern?

18 A. Yes. Could you point me to the spot in --

19 Q. I'm just looking at Page 13, Line 18.

20 A. Page 13. Yes, that's -- I referred to that
21 earlier. And as my testimony indicates, we had a
22 concern that if the City is able to obtain a lower
23 rate, there's no mechanism in place to pass savings on
24 to customers and lower rates accordingly. The

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1 Agreement provides for the three utilities to make
2 rate filings in 2013, where the CBFRR will be adjusted
3 and set, based on the actual interest rate the City is
4 able to obtain.

5 Q. Mr. Naylor, does a Settlement Agreement
6 satisfy the concerns that you had expressed in your
7 testimony?

8 A. Yes, it does.

9 Q. And is it Staff's position -- or I guess,
10 what is your opinion on the Settlement Agreement being
11 in the public interest?

12 A. I believe it is in the public interest.

13 Q. And do you believe that the Merger Agreement
14 filed by the Petitioners and modified by the
15 Settlement Agreement is also in the public interest?

16 A. Yes, I do.

17 MS. THUNBERG: Staff has no further
18 direct.

19 CHAIRMAN GETZ: Okay. Thank you. Mr.
20 Serell.

21 MR. SERELL: The City has no questions.
22 CHAIRMAN GETZ: Mr. Camerino.
23 MR. CAMERINO: No questions. Thank you.
24 CHAIRMAN GETZ: Mr. Judge.

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1 MR. JUDGE: No questions.
2 CHAIRMAN GETZ: Mr. Alexander.
3 MR. ALEXANDER: No question.
4 CHAIRMAN GETZ: Mr. Teebom.
5 MR. TEEBOM: I have a question.
6 CHAIRMAN GETZ: Please.
7 CROSS-EXAMINATION
8 BY MR. TEEBOM:
9 Q. Mr. Naylor, take a look at Page 10 of the
10 Settlement Agreement, item number little E.
11 A. Okay.
12 Q. So there's non-traditional, apparently,
13 ratemaking procedure, and there's traditional
14 ratemaking principle and procedure. Where are these
15 traditional ratemaking principles and procedures
16 defined?
17 A. They're defined in the Commission's
18 ratemaking practice, which has been a part of rate
19 setting for many, many years.
20 Q. Are they defined under administrative
21 procedures?
22 A. There are, in our administrative rules,
23 certain requirements for what the rate filing must
24 include. There are certain schedules, as defined in

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1 our administrative rules, that must be filed with a
2 rate case. So there is an extensive body of both
3 administrative rules and practices for us to follow in
4 setting rates in the future.
5 Q. Such things as establishing a rate base,
6 calculations that make up a rate base, the return on
7 investment, the grossing-up process, all that
8 computational stuff, where is that defined?
9 A. Some of it is in our administrative rules, in
10 our Chapter 1600 rules. Some of it is through the
11 traditional practices that the Commission has
12 followed.
13 Q. So unless you're familiar with these
14 practices, there's no way to figure it out.
15 A. Well, I know where you're going with this,
16 and I understand it's difficult for folks who do not
17 appear before the Commission on a regular basis to
18 understand a lot of it. There's a lot of different
19 things that are involved in analyzing a company's
20 financial statements and translating that into a
21 calculation of whether or not a regulating utility is
22 due for a rate increase or decrease or otherwise. But
23 I think there is an adequate body of practice and
24 tradition for us to rely on in setting rates not only

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1 for the three companies at issue here, but all of the
2 companies that this Commission regulates.
3 Q. Do you follow textbook procedures?
4 A. Could you repeat that?
5 Q. Do you follow textbook procedures or manuals?
6 A. I'm not sure. There's a lot of literature on
7 rate setting and rate practice and theory which has
8 been developed over many decades. I'm not sure you
9 will find any one particular textbook that will, you
10 know, be devoted entirely or substantially to
11 traditional cost-of-service ratemaking. But there are
12 a number of materials out there that deal with the
13 subject in considerable depth.
14 Q. Final question: For purpose of this
15 Settlement Agreement, when I refer to "acting like a
16 traditional ratemaking principle," somebody trying to
17 track a few years from now, trying to figure this out,
18 don't you think it would be a good idea to write this
19 down, the procedure used by the New Hampshire Public
20 Utility Commission in setting up a rate structure?
21 A. Well, I think there's -- as I have indicated,
22 I think there's adequate documentation of
23 cost-of-service ratemaking within the Commission's
24 orders and its administrative rules, in a number of

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1 places. I don't think there's any confusion on the
2 part of Commission Staff, the Consumer Advocate, the
3 utilities that are regulated here, the Commissioners,
4 others, that we know what needs to be done. There are
5 guidelines in our administrative rules for what must
6 be filed and the kind of schedules that must be filed.
7 So I think there's adequate documentation.
8 MR. TEEBOM: That's all the questions.
9 CHAIRMAN GETZ: Thank you.
10 Mr. Wiesner.
11 MR. WIESNER: No questions.
12 CHAIRMAN GETZ: Ms. Hollenberg.
13 MS. HOLLENBERG: Thank you.
14 CROSS-EXAMINATION
15 BY MS. HOLLENBERG:
16 Q. Just a couple questions, Mr. Naylor. Thank
17 you.
18 Would you agree that the city acquisition
19 debt, as it's defined in the Settlement Agreement, is
20 not utility debt?
21 A. I believe that is a fair representation, yes.
22 Q. And you would -- would you also agree that
23 the Joint Petitioners are not asking for approval of
24 the City's borrowing of the city acquisition debt?

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1 A. I would agree with that.
2 Q. Thank you. Would you agree that it's
3 possible that the city acquisition debt could be more
4 than the amount reflected in the Settlement Agreement?
5 A. Yes.
6 Q. And would you agree that if the city
7 acquisition debt was higher, that the higher amount
8 would be recoverable from ratepayers if the Commission
9 approved the Settlement Agreement?
10 A. Yes.
11 Q. Thank you.
12 You mentioned earlier about -- you said
13 something to the effect of interest rates on the
14 acquisition bonds that we hope to see. And I wondered
15 what Staff's expectations were or hopes were for the
16 acquisition bond debt interest rate.
17 A. Well, I'm only going by what we -- what's
18 been indicated by Mr. Patenaude for the City
19 primarily. He's indicated that rates for the general
20 obligation bonds could be less than 5 percent. I have
21 not done any research myself to verify those numbers,
22 but -- so that's the source of the information.
23 Q. And you would agree that earlier, on
24 questioning by the Joint Petitioners' counsel, that

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1 the fours were -- "somewhere in the range of the
2 fours" were mentioned?
3 A. Yes.
4 Q. Thank you. Another thing that you said a few
5 moments ago was that the rate stabilization fund, the
6 RSF, would be turned over and credited -- something to
7 the effect that it will be turned over and credited to
8 customers at the end of 30 years. And if you would
9 look at -- I wondered if you could just tell me what
10 the basis for your -- for that statement is. Is there
11 somewhere in the Settlement Agreement that states
12 that, or is that just your understanding of the
13 discussions that you've had in the context of reaching
14 the Settlement Agreement?
15 A. It's the latter. I don't believe the
16 Settlement Agreement is specific on that point.
17 Q. Okay.
18 A. But I think it's certainly my expectation,
19 and I would be surprised if anyone on the team of the
20 Joint Petitioners disagreed, that those funds would
21 not ultimately be credited back to the customers at
22 the conclusion of the 30 years.
23 Q. And if you were to look at Exhibit C to the
24 Settlement Agreement, Paragraph 1 states the RSF will

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1 remain in effect for 30 years or until the city
2 acquisition bonds are retired or refinanced. Would
3 Staff -- oh, I'll let you get there. Sorry.
4 A. Okay.
5 Q. So Paragraph 1, last sentence says, "The RSF
6 will remain in effect for 30 years or until the city
7 acquisition bonds are retired or refinanced." Would
8 Staff interpret that sentence as equating to what you
9 said earlier, which was that, when the city
10 acquisition bonds are paid off, that the RSF would go
11 back to customers?
12 A. Yes.
13 Q. Okay. Thank you.
14 MS. HOLLENBERG: Thank you. No other
15 questions.
16 CHAIRMAN GETZ: Thank you.
17 Mr. Boutin.
18 MR. BOUTIN: No questions.
19 CHAIRMAN GETZ: Okay.
20 CMSR. IGNATIUS: Thank you.
21 QUESTIONS BY COMMISSIONER IGNATIUS
22 Q. Good afternoon, Mr. Naylor.
23 A. Good afternoon.
24 Q. You described a number of issues that were in

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1 your prefiled testimony in Exhibit 13 that are no
2 longer of concern to you, given the final terms of the
3 Settlement Agreement.
4 A. Yes.
5 Q. There were a couple of areas that I wanted to
6 ask you about, that you didn't discuss with your
7 counsel, and get your view of today.
8 One is in around Pages 10 and 11, you talk
9 about a shift in the risk that a utility bears, and
10 that it seemed to you that, under the proposed
11 transaction, the utilities were seeking to be
12 assured -- or the City was seeking, that the utilities
13 be assured recovery of their revenue requirement, as
14 opposed to an opportunity to earn that revenue
15 requirement. What's your current view of that issue?
16 A. Well, it's certainly something that was of
17 concern to Staff when we began to review this merger
18 proposal. I think we quickly began to realize that
19 this is kind of the square peg/round hole scenario,
20 where we have a municipal owner at the top of the
21 pyramid and regulated utilities at the bottom. And
22 when you think about that, you sort of come to some
23 conclusions that some things just have to be different
24 to make it work. So as we moved through discovery and

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1 discussions with the parties and began to think about
2 what a Settlement Agreement might look like, I think
3 there are enough benefits to customers, both inside
4 and outside Nashua, that that concern has been greatly
5 lessened.
6 Q. You recommended on Page 14 of your prefiled
7 testimony that the three utilities move towards
8 consolidated rates. Is that still something that you
9 think should be done as part of this transaction?
10 A. It's -- well, that opinion is not obviously
11 part of the Settlement Agreement. It's not something
12 that the Settlement Agreement calls for. So I'm not
13 advocating for it at this point. I think it was one
14 way of potentially addressing some of the concerns we
15 had with the initial proposal and the initial
16 ratemaking structure.
17 As you've heard so far today, there have been
18 a number of changes and modifications made to the
19 original proposal which I think have addressed a
20 number of the concerns that Staff had and that other
21 parties had. So I'm not advocating for consolidated
22 rates at this time. It's something that may have some
23 merit. I think it would need to be studied. There
24 are some good reasons why there are different rates

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1 among the three companies: Differences in service
2 territories and the nature of those service
3 territories. For example: PWW has a core system
4 with, you know, 22- or 23,000 customers; whereas, PEU
5 tends to have smaller, separate systems. So there are
6 some reasons why there are different rates. But as
7 part of the Settlement, I'm certainly not advocating
8 for that.
9 Q. If the transaction were approved as described
10 in the Settlement Agreement, do you think the economic
11 viability of the utilities would be weakened in any
12 way?
13 A. No, I don't think so. I do think, however,
14 that the cash flow for the utilities will be -- will
15 tend to be a little bit tighter. The companies'
16 management is going to have to be very vigilant. And
17 we've already had some discussions about this. I
18 think it's quite clear that cash flow is going to be a
19 little bit tighter. So the companies will be somewhat
20 more sensitive to changes in operating expenses,
21 property taxes, this kind of thing. So the management
22 is going to be -- is going to have to be more vigilant
23 as the regulator of these utilities, and this
24 Commission will need to be more vigilant of these

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1 utilities as well. But I think on a general basis,
2 I'm not concerned that there is a risk that
3 significant problems will arise from this ratemaking
4 structure.
5 Q. How about from the perspective of the
6 ratepayer customer? Do you see any way in which the
7 reasonableness of rates will be adversely impacted if
8 approved as filed today?
9 A. No. I think it's very clear from the terms
10 of this Settlement Agreement that all customers, both
11 inside and outside Nashua, will see, in the long term,
12 lower rates than what they would have seen under
13 existing ownership. I'm quite confident of that.
14 Q. Do you anticipate any impact on quality of
15 service or adequacy of service?
16 A. No, I don't.
17 Q. Any safety issues?
18 A. No.
19 Q. Is it -- would you agree with the testimony
20 of Mr. Ware and Ms. Hartley that the management of the
21 utilities will not be different in any respect under
22 this structure than they have been in recent years
23 under the existing structure?
24 A. I agree with that testimony, yes.

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1 Q. Thank you.
2 CMSR. IGNATIUS: Nothing else.
3 CHAIRMAN GETZ: Any redirect, Ms.
4 Thunberg?
5 MS. THUNBERG: Yes, just a couple.
6 REDIRECT EXAMINATION
7 BY MS. THUNBERG:
8 Q. Mr. Naylor, I just want to follow up on the
9 line of -- or the issue that Commissioner Ignatius was
10 getting at with your recommendation in the prefiled
11 testimony to consolidate rates.
12 Can you compare the benefits you were trying
13 to achieve with a consolidated rate with the benefits
14 the outside customers get under the Settlement
15 Agreement?
16 A. Well, I think I made the point in my
17 testimony that -- and, of course, a lot of this
18 analysis was done with the projected interest rate on
19 the acquisition debt of 6.5 percent. Although I
20 didn't think outside customers, non-Nashua customers,
21 would be harmed, I didn't see where they were going to
22 get a lot of benefit. Maybe some benefit with lower
23 debt costs or capital improvements in the future being
24 financed primarily with the debt.

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1 And so in consideration of all of the aspects
2 that this merger entails -- recovery of an acquisition
3 premium, for example, rate stabilization funds, some
4 other non-traditional aspects to it -- I think Staff
5 was primarily looking for sort of, you know, a
6 balancing, more of a balance to provide some
7 additional benefits to customers outside Nashua. And
8 I think that's quite clear in my testimony. I
9 probably couldn't find it very quickly. But I think I
10 indicated in the testimony that we were looking to
11 provide some additional benefits to customers outside
12 Nashua. And I think this Settlement Agreement and the
13 modifications that it contains from the original
14 proposal has done that.

15 MS. THUNBERG: No further redirect.
16 Thank you.

17 CHAIRMAN GETZ: Thank you.
18 Then you're excused. Thank you, Mr.
19 Naylor.

20 (Whereupon the Witness was excused.)
21 CHAIRMAN GETZ: Mr. Boutin.
22 MR. BOUTIN: I'll call Finlay Rothaus to
23 the stand.
24 (Whereupon, FINLAY ROTH AUS was duly

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1 sworn and cautioned by the Court Reporter.)
2 FINLAY ROTH AUS, SWORN
3 DIRECT EXAMINATION
4 BY MR. BOUTIN:
5 Q. For the record, just state your full name and
6 spell it.
7 A. It's Finlay Rothaus. That's F-I-N-L-A-Y,
8 R-O-T-H-A-U-S.
9 Q. As I understand it, you are an officer holder
10 with the Town of Merrimack; is that correct?
11 A. Yes. I sit on the town council and currently
12 serving as the chair.
13 Q. And how long have you had service in
14 municipal government?
15 A. Off and on in local government since 1995.
16 Prior to that, I was with the State for four years.
17 Q. Approximately 15 years. Did you serve in the
18 Legislature?
19 A. Yes, I did, for two terms, actually.
20 Q. And you're familiar with how municipalities
21 go about setting capital budgets, aren't you?
22 A. Yes.
23 Q. And you're also familiar with how
24 municipalities approve bonds?

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1 A. Yes.
2 Q. You heard Mr. Naylor's testimony that this
3 hybrid structure that we've created has at the top of
4 the pyramid a municipality; is that right?
5 A. Yes.
6 Q. And you also heard testimony this morning
7 that, in terms of capital expenses, all of the capital
8 expenses will be funded with debt?
9 A. Yes.
10 Q. And that was to be bond debt?
11 A. Yes.
12 Q. And did you also hear testimony this morning
13 that the board of aldermen in Nashua have the ultimate
14 authority to approve that?
15 A. Yes.
16 Q. Now, in your experience as a municipal
17 official, have you known --
18 MR. CAMERINO: Excuse me, Mr. Chairman.
19 I just want to object at this point. I apologize.
20 But I'm concerned about Mr. Boutin restating the
21 record from this morning, because I don't think he's
22 stating it correctly. And I don't want to get into a
23 debate about how we differ from how he's stating it.
24 And I think he could just ask questions without

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1 reprising this morning's testimony, unless he wants to
2 get the stenographer to read back, which obviously
3 would be problematic.
4 MR. BOUTIN: I'm asking the witness what
5 he understood and heard this morning. I think he can
6 testify to what he understood and heard.
7 CHAIRMAN GETZ: Well, let's -- we're
8 going to approach it this way: I think it's a fair
9 inquiry in terms of, effectively, supplemental direct,
10 I take it, to seek the opinion of the witness about
11 some of the characterizations this morning. I take
12 your point, Mr. Camerino. I don't want to slow down
13 this proceeding to go back and go through the
14 transcript to see if Mr. Boutin is repeating directly
15 word for word what was stated. But I think we're
16 going to allow his characterization as his
17 characterizations, his recollections. To the extent
18 that you want to pursue something in cross, then I
19 think that's the way we're going to have to handle
20 this. That may be the most expeditious way. So,
21 proceed.
22 MR. BOUTIN: Thank you. I'm going to
23 sit down because the steno's having trouble with
24 hearing me.

1 BY MR. BOUTIN:
2 Q. Now, the last question I asked you was about
3 how the bonds would get approved, as you heard it this
4 morning. Do you remember that?
5 A. By the aldermen.
6 Q. And do you understand -- strike that.
7 In terms of your experience in municipal
8 government, would a body like the aldermen approve a
9 capital budget or a borrowing without knowing what it
10 was for?
11 A. I would think not.
12 Q. And would you also consider it likely that
13 they would be making choices as to whether or not they
14 wanted to approve individual projects?
15 MR. SERELL: Objection. This really
16 calls for speculation. He's asking him to speculate
17 what the Nashua Board of Aldermen would do, especially
18 when there's already been testimony that they're not
19 going to look at individual line items.
20 CHAIRMAN GETZ: Mr. Boutin, response?
21 MR. BOUTIN: My response is that we
22 don't know because the charter certainly doesn't -- or
23 the articles of incorporation certainly don't speak to
24 that limitation. And in fact, how do legislative

1 to state very simply what it is that you're asking the
2 Commission to do.
3 A. From Merrimack's standpoint, we believe it's
4 critical that we be allowed by right a seat at the
5 table on the board of directors.
6 Q. And why is that?
7 A. Well, there's many reasons, not the least of
8 which we believe that it would allow issues to be
9 looked at from different perspectives, similar to that
10 that would be brought to the table by the
11 representative from the... oh, goodness... Merrimack
12 Valley Regional Water District. We believe that it
13 would have that same type of effect, as opposed to
14 just the preponderance of membership within that
15 organization being relatively controlled by Nashua.
16 And that's -- it's pretty much so we think the board
17 would be in better stead to have those different ideas
18 being brought to the table.
19 Q. Do you have any expectation as to whether the
20 presence on the board would be good for the utilities
21 or bad for the utilities, and why?
22 A. Well, I believe it would be good for the
23 utilities, again, for that -- you know, from a
24 potentially different perspective on the issues that

1 bodies in municipalities act? I think that's a fair
2 question of this witness.
3 CHAIRMAN GETZ: Well, we're going to
4 permit the question. I think it is -- I take it this
5 witness' speculation based on his experience in one
6 town and how aldermen in another town might act in a
7 particular situation and what weight we'll give to
8 that is a matter for us as the fact finders.
9 But, I mean, this goes back to
10 continuing your line of argument about the difference
11 between approving the capital budget versus the actual
12 project. So, you know, let's move this along.
13 MR. BOUTIN: All right.
14 BY MR. BOUTIN:
15 Q. Answer the question.
16 CHAIRMAN GETZ: Well, do you recall the
17 question?
18 A. If I recall it correctly, from my standpoint,
19 I would hope that I would know and would make it known
20 what was involved and included in the group of capital
21 projects to be voted on. If that wasn't the question,
22 please correct me.
23 BY MR. BOUTIN:
24 Q. That's fine. Now I'm going to just ask you

1 would be at hand.
2 Q. Would it be an advantage if things are hashed
3 out at the board level as opposed to at the PUC level?
4 A. Absolutely. I'm imagining, looking through
5 the room, it's very costly time to be sitting here.
6 And having those different ideas discussed might
7 preclude that from happening.
8 Q. Now, in terms of illustrating your testimony,
9 I'm going to walk you through some exhibits that we
10 provided the Commission today. What I'd like you to
11 do is -- we have a binder -- look at the exhibit and
12 identify it and tell the Commission why it is that it
13 was included, if you can. Fair enough?
14 Exhibit A is the first exhibit. You
15 identified that as your prefiled testimony.
16 A. Yes.
17 Q. And you adopt it today?
18 A. Do I adopt it today? Yes.
19 Q. Now, I notice that there is an attachment, a
20 two-page attachment to that prefiled testimony, which
21 is a response to a data request from Merrimack's tech
22 session data request to Joint Petitioners Set 1. Do
23 you recognize that?
24 A. Yes.

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1 Q. And can you tell me what information on that
2 is important to the Commission?
3 A. What the response shows is that approximately
4 60 percent of the watershed land owned by the
5 Pennichuck subsidiaries is in Merrimack. And the
6 second page of that attachment also shows that
7 5 percent of the revenue comes from Merrimack
8 ratepayers, and 10 percent of the Pennichuck Water
9 Works consumption is delivered to the ratepayers of
10 Merrimack.
11 Q. I'm going to show you, or ask you to turn to
12 Exhibit B. Can you tell me what that document is and
13 why it's there?
14 A. This is -- it's the water lease source
15 section of the town master plan back in 2002.
16 Q. Now, does that -- I bring your attention to
17 Page Roman Numeral IV-35.
18 CHAIRMAN GETZ: Mr. Boutin, these
19 Exhibits B through I --
20 MR. BOUTIN: Yeah?
21 CHAIRMAN GETZ: -- these were not
22 previously submitted or attached to the testimony from
23 September 8th. These are additional exhibits you're
24 seeking to introduce today?

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1 MR. BOUTIN: They're essentially
2 illustrative, yes, Your Honor -- yes.
3 CHAIRMAN GETZ: Illustrative of what?
4 MR. BOUTIN: Illustrative of the points
5 in his prefiled testimony.
6 CHAIRMAN GETZ: But not cited to in any
7 way in his testimony.
8 MR. BOUTIN: No.
9 CHAIRMAN GETZ: Okay.
10 BY MR. BOUTIN:
11 Q. Did you -- strike that.
12 Has the water district, the Merrimack Water
13 District, indicated to the council whether or not it
14 has excess capacity which might be available for its
15 expansion?
16 A. Yes. Essentially, this water resources
17 section in the master plan speaks to the concerns of
18 the water district, in that during peak demand times,
19 there is in fact a shortage, and the water district
20 would not be able to fulfill its deliverables at those
21 times without strict conservation measures. And
22 that's within the water district's current area that
23 they supply. To expand down further into the area
24 covered by the Pennichuck franchise, it would be an

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1 impossibility, they claim.
2 Q. All right. I'd also refer you to Exhibit C,
3 and in particular to Page 8. Can you tell me why
4 that's there?
5 A. This is a chart for the Merrimack Valley
6 Regional Water District. And Page 8 and 9 actually
7 speak to the voting and how voting might happen. The
8 Town of Merrimack believes that -- our concern is that
9 this organization's group is, in essence, controlled
10 by Nashua, because votes that would deal with tariffs,
11 the rate structures and charges that would be applied
12 would be a vote of the customer; and that, in essence,
13 is Nashua, just by sheer numbers of the customer base
14 that they do hold, which is why Merrimack chose not to
15 participate.
16 CHAIRMAN GETZ: And this is basically
17 the same position you're taking in your brief and
18 writing in your brief that you filed yesterday?
19 MR. BOUTIN: Yes, it is. The difference
20 in the briefing is strictly that, as I read the
21 Merrimack Charter, the voting by customer is
22 controlled by Nashua because, as you heard Mr. Ware
23 testify, 80 percent of the PWW customers are in
24 Nashua; 67 percent of the entire system's customers

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1 are in Nashua. And when it comes to nominating the
2 director, the charter is silent, although it was
3 pointed out this morning in testimony, to be fair,
4 that some people read the charter, again on Page 9, as
5 saying that that will be a vote by director. Since it
6 wasn't at the time a vote -- or wasn't at the time
7 contemplated that there would be this type of vote,
8 then I think the charter is ambiguous. And it was
9 this Nashua control that essentially prevented
10 Merrimack from joining in the first place.
11 MR. SERELL: I'm going to object to that
12 question. I think it's compound, leading. Counsel's
13 testifying. That wasn't even really the question.
14 CHAIRMAN GETZ: Well, I'm not sure if
15 he's testifying or arguing. But it seems that I'm not
16 sure of the necessity of going through this witness to
17 get, again, into the record arguments that are going
18 to be made. It's really not testimony. It's argument
19 about what weight we should give or what
20 interpretation we should give these documents.
21 MR. BOUTIN: Well, I --
22 CHAIRMAN GETZ: Mr. Judge, what did you
23 have?
24 MR. JUDGE: Just as far as this witness

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1 is concerned, and Attorney Boutin hasn't touched on
2 this, but the document on the Page 8 states that the
3 rule is that the vote is by director, unless there is
4 something in the document that specifically says
5 otherwise. This gentleman is not a legal scholar.
6 His opinion about what the document means, I think, is
7 meaningless. And I think we should move off this
8 subject. I think you're right. It's a matter of
9 legal opinion. It's not a matter of testimony.
10 MR. BOUTIN: Well, I was through,
11 anyway.
12 CHAIRMAN GETZ: I'm sorry?
13 MR. BOUTIN: I was through, anyway, with
14 Exhibit C.
15 MR. JUDGE: Then I move to strike his
16 answer to that testimony -- to that question.
17 MR. BOUTIN: I don't think it should be
18 stricken. I think it has some relevance.
19 CHAIRMAN GETZ: Well, we're going to
20 take this all under advisement because I want to see
21 where else you're going with it, because it strikes me
22 that all of these so-called exhibits -- I'm not sure
23 what's supplemental testimony and what's argument
24 because I haven't had a chance to read all of them.

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1 But to the extent that they're supplied today at a
2 hearing, appended to a document that was prefiled in
3 September, I'm concerned about how this comports with
4 the reasonable process.
5 MR. BOUTIN: Well, I can tell you that I
6 provided everybody with copies in advance of the
7 hearing, including the paper I filed. But in terms of
8 the remaining documents, they are all maps and
9 illustrative of the testimony, and should aid the
10 Commission as opposed to impede it.
11 CHAIRMAN GETZ: And where exactly does
12 it Exhibit D come from?
13 MR. BOUTIN: Exhibit B is --
14 CHAIRMAN GETZ: No, D.
15 MR. BOUTIN: D?
16 CHAIRMAN GETZ: Is that extracted from
17 somewhere?
18 MR. BOUTIN: No, it's a document
19 provided to me by Attorney Ardinger in response to a
20 question that I asked him.
21 CHAIRMAN GETZ: So that's a data
22 response?
23 MR. BOUTIN: It wasn't a formal data
24 request. But I don't think there's a dispute as to

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1 where it came from or what it is.
2 CHAIRMAN GETZ: I think we can move
3 through this, recognizing we'll treat them as marked
4 for identification. And to the extent when we, at the
5 close of hearing, deal with admitting exhibits into
6 evidence, to the extent there's any objections, we'll
7 deal with the objections at that point. So let's
8 proceed through this package of materials.
9 BY MR. BOUTIN:
10 Q. All right. Exhibit D, if you could turn to
11 that. Can you tell me what that means to you?
12 A. Actually, you just touched on it. It was
13 provided by Nashua's lawyers. It identifies Nashua's
14 view that Merrimack contains 5.6 of Pennichuck Water
15 Works' assets, based on cost.
16 Q. And Exhibit F [sic], tell me what that is?
17 A. That's taken from the town master plan of
18 2002. It shows the area supplied by the Merrimack
19 Village District, which is our water supplier, for a
20 majority of our residential area.
21 Q. And then I'm going to go to Exhibit F. Tell
22 me that what is and why it's there.
23 A. This map was compiled as part, again, of our
24 current master plan update. And the map shows that

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1 there are 419 acres of watershed protection parcels
2 owned by Southwood Corporation.
3 Q. And those are all shown on this map colored
4 in orange?
5 A. Actually, most of these are -- there are
6 other parcels, just under 200 acres, that are
7 elsewhere, not shown on this map.
8 Q. Well, are they elsewhere, or are they parcels
9 owned by Pennichuck Corporation and not shown?
10 A. I'm sorry. Ask that again?
11 Q. Are they elsewhere, or are they parcels owned
12 by Pennichuck Corporation in Merrimack and not shown
13 on this chart?
14 A. No, these are in Merrimack.
15 Q. And the additional acreage that you -- I'm
16 going to --
17 A. It is in Merrimack as well.
18 Q. I'm going to refer you to the data request
19 which is attached as Exhibit 1 -- or exhibit --
20 Attachment 1 to your testimony. And does that speak
21 to the acreage you're trying to identify?
22 A. Yes, it does.
23 Q. Now, what is Merrimack's concern with these
24 watershed parcels?

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1 A. Well, part of the potential development of
2 those parcels down the road would be at issue.
3 Q. I'm going to turn now to Exhibit G. Can you
4 identify it and can you tell us why it's there?
5 A. Okay. This item shows transitional parcels,
6 parcels that are underdeveloped and likely to move for
7 future development and have a great impact on the --
8 potentially with regards to the franchise agreement
9 that the Town has with Pennichuck.
10 Q. I'm going to skip Exhibit H and go to Exhibit
11 I. Can you identify that and tell us why that's
12 there?
13 A. This exhibit shows partly vacant parcels that
14 consist of about 415 acres.
15 Q. Now, this entire area is also shown on the
16 new Exhibit J; is it not?
17 A. Yes, it is.
18 Q. And all of the parcels that are colored in
19 blue are within the Pennichuck franchise area; is that
20 right?
21 A. The transitional properties. Yes, they are.
22 Q. What is the zoning of that zone -- of that
23 area?
24 A. That's our industrial area. And it's a large

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1 preponderance of our industrial zone in Merrimack.
2 Q. Now, is there an area of Nashua that competes
3 for the same type of industry and commercial
4 development as this does?
5 A. I'd say the 101 corridor would be part of
6 that. So, yes.
7 Q. And last, that new Exhibit J that I referred
8 to is the same map with the franchise outlined in
9 green; is that correct?
10 A. Is that --
11 Q. Is that correct?
12 A. That's correct, yes.
13 Q. Does that comport with your understanding?
14 A. That this is the franchise zone?
15 Q. Yeah.
16 A. Yes.
17 Q. Yeah. Now, the area that's shown within the
18 franchise area, can you tell me what type of customers
19 are there, water customers?
20 A. Industrial users.
21 Q. So they're relatively large users?
22 A. Large users and a potential -- future
23 potential large users, yes, which is our concern.
24 Q. And I take it that you have some concern

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1 that, seated on the board, you could mitigate any
2 problems there?
3 A. It's not a matter of mitigation. It's a
4 matter of offering input that would be beneficial more
5 so to the region as opposed to just Nashua.
6 MR. BOUTIN: I have nothing further.
7 CHAIRMAN GETZ: Thank you.
8 Let's start with Ms. Hollenberg. Do you
9 have questions for this witness?
10 MS. HOLLENBERG: No. Thank you.
11 CHAIRMAN GETZ: And we'll go around with
12 Mr. Wiesner. Any questions?
13 MR. WIESNER: No questions, Mr.
14 Chairman.
15 CHAIRMAN GETZ: Mr. Alexander?
16 MR. ALEXANDER: No question.
17 CHAIRMAN GETZ: Mr. Judge?
18 MR. JUDGE: Yes, a few questions. Thank
19 you.
20 CROSS-EXAMINATION
21 BY MR. JUDGE:
22 Q. Am I correct in stating that you're elected
23 by the voters of Merrimack?
24 A. Yes.

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1 Q. And you are here today representing the
2 interests of Merrimack?
3 A. Yes.
4 Q. The member of the board that you're seeking
5 to have be placed on the Board of Directors of the
6 Pennichuck Corporation would be there to represent the
7 interests of Merrimack?
8 A. No, they'd be there to have insight
9 available, another answer to issues that pertain to
10 the water works as a whole.
11 Q. Did you just testify that one of the issues
12 that you wanted to have dealt with by the board was
13 future large water users in Merrimack?
14 A. I'm saying that's our -- the potential is
15 there. I mean, that is our concern, that those ideas
16 wouldn't be able to be conveyed without a member of
17 our community sitting on the board of directors.
18 Q. And that is an idea that would benefit
19 Merrimack.
20 A. Yes, I guess it would.
21 Q. Would you tell me how that would benefit
22 Pittsfield Aqueduct Company?
23 A. Because it would recognize that the seating
24 on the directors is not necessarily in the best

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1 interests of anybody but Nashua, and that's the
2 concern.
3 Q. If Merrimack had a seat on the board and
4 caused future large water users to go to Merrimack,
5 how that would benefit Pittsfield Aqueduct Company?
6 It wouldn't, would it?
7 A. No, I guess it wouldn't.
8 Q. And it wouldn't benefit Pennichuck East
9 either, would it?
10 A. Okay.
11 Q. So what you're asking for is for Merrimack's
12 purposes, and Merrimack's purposes only; isn't that
13 correct?
14 A. Well, again, as I stated earlier, the
15 Merrimack Valley Regional Water District is in the
16 same position. It's offering opinion and ideas that
17 might not otherwise be carried by the City of Nashua.
18 Q. Were you here earlier when there was
19 testimony that the Merrimack Valley Regional Water
20 District contains members of PEU, PAC and PWV?
21 A. Did they do what? I'm sorry?
22 Q. Were you here earlier when there was
23 testimony, or are you aware of the fact that the
24 Merrimack Valley Regional Water District contains

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1 members that are in Pittsfield, members that are in
2 Pennichuck East, and members that are in Pennichuck
3 Water Works?
4 A. Yes.
5 Q. And do you understand that they have a much
6 broader interest than just what's good for Merrimack?
7 A. Well, I think the same would hold true the
8 other way. I don't understand how it might be
9 different.
10 Q. You said you've been on the town council
11 since 1995?
12 A. No, I was on the boards of selectmen at that
13 time until 2001, and then 2006 to current I'm sitting
14 on town council.
15 Q. So were you involved when Merrimack had an
16 opportunity to draft the charter of the Merrimack
17 Valley Regional Water District?
18 A. As a matter of fact, from what I understand,
19 that in fact they did contribute to that cause.
20 Q. And were you aware that Merrimack was asked
21 to join the Merrimack Valley Regional Water District?
22 A. Yes. And I think for the reasons that I
23 stated earlier, there was a concern that, in fact,
24 that representation, because of the type of voting,

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1 which I think you alluded to earlier I might not
2 understand, wouldn't adequately represent the
3 different members of that -- of your group, but in
4 fact might represent that of Nashua.
5 Q. Do you have any background in understanding
6 legal documents?
7 A. Apparently not.
8 Q. Would you agree with me that you don't
9 understand how the voting works in the charter?
10 A. I'm telling you what I understand is what I
11 just told you.
12 Q. Based on what? What's the basis of your
13 understanding?
14 A. Discussions with my attorney, with my fellow
15 town councilors, with our town manager.
16 Q. Have you ever asked the Merrimack Valley
17 Regional Water District how the voting would work?
18 A. No.
19 MR. JUDGE: I don't have anything
20 further. Thank you.
21 CHAIRMAN GETZ: Mr. Teebom.
22 CROSS-EXAMINATION
23 BY MR. TEEBOM:
24 Q. Yeah, I'd like to ask a couple questions

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1 about that map, Exhibit G [sic]. These blue
2 properties, are those currently properties of
3 Southwood or Pennichuck?
4 A. A couple of those are, yes.
5 Q. Couple? Acreage-wise, how many -- of all of
6 these, which are Southwood?
7 A. Hold on just a moment. I'll pull that up.
8 MR. BOUTIN: First of all, I'd like to
9 make sure we're all on the same page. You're
10 referring to Exhibit G?
11 MR. TEEBOM: J.
12 MR. BOUTIN: Exhibit J has nothing to do
13 with Southwood. Exhibit J are vacant properties. Go
14 ahead.
15 A. I was going to say, though, that out of
16 Exhibit J there are -- it appears to be two parcels
17 that are Southwood Corporation. And I can't call them
18 out to you. I can point to them, but I don't know
19 that you'd know what I was pointing at.
20 BY MR. TEEBOM:
21 Q. I'm not -- I can't figure out your concern
22 there. If they were all part of Southwood, then they
23 would all be under the control of Nashua ultimately
24 because Nashua owns the whole thing. But if they do

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1 not belong to Southwood, then what is your concern
2 about Nashua owning Pennichuck?
3 A. Our concern is that the potential
4 development -- our industrial base is relatively small
5 in Merrimack. This is a large part of it right here.
6 And our inability -- our ability or inability to get
7 water into there, this industrial zone, is very
8 critical as time goes on. And we're relying on the
9 Pennichuck franchise to do that.
10 Q. We're talking about land here, apparently;
11 right?
12 A. Hmm-hmm.
13 Q. You said some of these parcels are Southwood,
14 just a couple of them.
15 A. Yes.
16 CHAIRMAN GETZ: Well, let's --
17 BY MR. TEEBOM:
18 Q. Other than the fact --
19 CHAIRMAN GETZ: Hold on. Let's make
20 sure we're talking about the right map, because I
21 think this is very confusing. Would it make more
22 sense, Mr. --
23 THE WITNESS: Rothaus.
24 CHAIRMAN GETZ: -- Mr. Boutin or

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1 Rothaus, to be working off of Exhibit F? That
2 actually shows, I think, Southwood Corp. parcels.
3 Do you have Exhibit F, Mr. Teebom?
4 MR. TEEBOM: Well, I'm --
5 CHAIRMAN GETZ: Well, do you have
6 Exhibit F?
7 MR. TEEBOM: I have Exhibit J. It's J
8 I'm addressing, because J, I think, is the map. J has
9 been introduced.
10 CHAIRMAN GETZ: They've all been
11 introduced. But maybe you know, maybe he knows what,
12 from Exhibit J, you know, what parcels are Southwood.
13 I don't.
14 MR. TEEBOM: No. Mr. Chairman, I'm just
15 trying to find out the concern of this councilor from
16 Merrimack. If it's just a few parcels, I don't see
17 the big deal. That's what I'm trying to figure out.
18 If it's all Southwood, I can understand his concern.
19 So I'm trying to figure out how many of these parcels
20 are Southwood and how many are not. Because if
21 they're not Southwood, then why is he concerned?
22 Nashua only controls Southwood.
23 A. Right. And our concern, Mr. Teebom, is to
24 the future of the -- of our industrial zone relies

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1 heavily on being able to get water from -- through our
2 Pennichuck Water Works franchise agreement. That's
3 where the concern is. It isn't that there are two
4 parcels that are owned by Southwood Corporation within
5 our industrial zone. It's the fact that, in the
6 future, it's of critical necessity that we're able to
7 do that; otherwise, we wouldn't be able to develop our
8 industrial zone.
9 BY MR. TEEBOM:
10 Q. Well, your concern is not the parcels. It
11 concerns whether Nashua is going to service you with
12 water.
13 A. We want them to understand our issues, I
14 think, yes.
15 Q. Okay. I completely lost the train of the
16 questioning.
17 I don't know understand what -- on what basis
18 do you expect that Nashua would not serve you with
19 water for these industrial properties?
20 A. I don't know. Maybe completing -- competing
21 interests. I don't know.
22 Q. Well, if you don't know, I mean, it's just
23 conjecture.
24 A. Yes, it is conjecture, I suppose.

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1 MR. TEEBOM: I guess I lost the point of
2 the earlier questioning, and I have no further
3 questions.
4 CHAIRMAN GETZ: Okay. Ms. Thunberg.
5 MS. THUNBERG: Staff has no questions.
6 Thank you.
7 CHAIRMAN GETZ: Mr. Serell.
8 MR. SERELL: I'll defer to Attorney
9 Camerino first.
10 CROSS-EXAMINATION
11 BY MR. CAMERINO:
12 Q. Good afternoon, Mr. Rothaus.
13 A. Good afternoon.
14 Q. I just have a few questions about
15 Anheuser-Busch.
16 As I understand it, one of Merrimack's major
17 concerns is the proper and fair treatment of
18 Anheuser-Busch. Is that a fair statement?
19 A. Yes.
20 Q. Okay. And you mentioned some consumption
21 statistics and revenue statistics before for Merrimack
22 as a share of Pennichuck. It would be fair to say,
23 isn't it, that Anheuser-Busch -- the reason perhaps
24 that Anheuser-Busch is such a focal point of your

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1 concern is it's the vast majority of the consumption
2 by customers within the Town of Merrimack, isn't it?
3 A. They are. They do have the contract that you
4 I'm sure are alluding to. And that is true. It is a
5 10-year contract. But I think our bigger concern
6 would be the fact of that entire industrial zone and
7 its development in the future.
8 Q. But your basis for seeking representation has
9 to do with the revenues and volume of water that are
10 consumed by Merrimack; right?
11 A. Yes.
12 Q. And so you think that warrants separate
13 representation for Merrimack; right?
14 A. Yes.
15 Q. And so what I am just trying to confirm is
16 that, of that Merrimack consumption, the vast majority
17 of it is by Anheuser-Busch; correct?
18 A. It is.
19 Q. Something on the order of what? More than
20 70, 75 percent? Do you know?
21 A. Oh, I'd say more than 75 percent, I'm sure.
22 Q. Okay. And Anheuser-Busch has signed the
23 Settlement Agreement; have they not?
24 A. Yes.

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1 MR. CAMERINO: Thank you.
2 CHAIRMAN GETZ: Mr. Serell.
3 MR. SERELL: I have no questions.
4 CMSR. IGNATIUS: Thank you.
5 QUESTIONS BY COMMISSIONER IGNATIUS
6 Q. Good afternoon.
7 A. Good afternoon.
8 Q. Correct me if I'm wrong. Did you state that
9 your goal in having a seat at the Pennichuck
10 Corporation Board is to have input on the regional
11 issues, not to control the vote or to sway votes, but
12 to have an input on regional issues that affect
13 Merrimack?
14 A. I think that's accurate. I think one vote
15 wouldn't sway the entire board of directors. It's
16 quite large -- would be quite large.
17 Q. And then did you also say that Merrimack
18 chose not to participate in the water district because
19 it felt it would be outvoted, so there was no reason?
20 A. No, it wasn't that it was outvoted. It was
21 just -- and there is some possibility that I don't
22 understand because I don't have that legal mind that's
23 necessary. But the way I understood it was that a
24 vote by customer would in fact negate the rest of the

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1 Merrimack Valley Regional Water District's vote, when
2 it's a vote of the customer.
3 Q. So you didn't see the opportunity for having
4 input on regional issues at the district level.
5 A. The input would have been there. It would
6 have been, yes.
7 Q. On the maps and the other exhibits that are
8 attached -- or are in addition to your prefiled
9 testimony -- and those had some attachments of their
10 own -- but the rest of the items here in the notebook,
11 B through I -- and we'll leave off J for a moment --
12 was there any reason that you were not able to produce
13 those when you filed your testimony?
14 A. No, I can't tell you why we did not file
15 them.
16 Q. I know you don't routinely appear here, so
17 you wouldn't know that our practice is to have things
18 filed in advance and that all parties have an
19 opportunity to question and evaluate and make sure
20 that they understand in advance.
21 A. Sure.
22 Q. J is different, obviously. It was created
23 today.
24

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1 CMSR. IGNATIUS: I guess no other
2 questions. Thank you.
3 CHAIRMAN GETZ: Any redirect, Mr.
4 Boutin?
5 MR. BOUTIN: None.
6 CHAIRMAN GETZ: Okay. Then the witness
7 is excused. Thank you, sir.
8 (Whereupon the Witness was excused.)
9 CHAIRMAN GETZ: I take it there are no
10 other witnesses; is that correct?
11 (Chairman Getz and Cmsr. Ignatius confer.)
12 CHAIRMAN GETZ: Okay. Then let's turn
13 now to the exhibits. Is there any objection to
14 striking the identifications and admitting the
15 exhibits into evidence?
16 (No verbal response)
17 CHAIRMAN GETZ: Okay. Hearing no
18 objection, we'll admit them into evidence.
19 But I do have one question with respect
20 to the Joint Petitioners' Exhibit 18, and it refers to
21 a Docket DW-04-100 and Commission review of charter
22 pursuant to R.S.A. 53-A:5. I haven't gone back to --
23 you haven't provided that, and I haven't gone back to
24 the docket book in that case. Is that one document

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1 you're looking to introduce, or everything that's in
2 the docket book?
3 MR. SERELL: Yeah, I can reply to that.
4 It's one specific page, and it actually has been
5 provided. And the only reason was because -- I'm
6 sorry if I didn't make extra copies for the
7 Commissioners. It wasn't important to the Joint
8 Petitioners at all. Attorney Judge, on behalf of his
9 client, asked us to have both the Merrimack Valley
10 Regional Water District Charter admitted and then also
11 the order of this Commission approving it. So it's
12 not important to us. It was something Attorney Judge
13 asked for, and we didn't have any problem providing
14 it.
15 CHAIRMAN GETZ: So, for full
16 identification then, it's just the one document issued
17 June 4, 2004.
18 MR. SERELL: Correct.
19 MR. JUDGE: And just to clarify a little
20 more. There was some question about the PUC approving
21 the charter. So I just wanted to make sure that there
22 was no question about that.
23 CHAIRMAN GETZ: Okay. Thank you.
24 Anything else with respect to any of the exhibits

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1 then?
2 (No verbal response)
3 CHAIRMAN GETZ: Okay. Well, is there
4 anything we need to address prior to opportunity for
5 closings? Mr. Camerino.
6 MR. CAMERINO: One, hopefully, minor
7 procedural matter. I alerted Staff and a couple of
8 the parties to this.
9 I know that there were a couple of
10 documents provided during the discovery process --
11 they're not in the record -- for which confidentiality
12 was sought. And we recognized last night that we have
13 not filed a motion on those. And I just wanted to
14 alert the Commission to that and ask for leave to
15 submit that, say within a week of today, so that the
16 Commission could include that in its final order.
17 CHAIRMAN GETZ: Any objection to that
18 process?
19 (No verbal response)
20 CHAIRMAN GETZ: Hearing nothing, then if
21 you could file that within a week, that would be good.
22 Okay. So then, anything else before
23 opportunities for closings?
24 (No verbal response)

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1 CHAIRMAN GETZ: Then with respect to
2 closings, I guess this is the -- well, I guess this
3 would be the order I would suggest: We go to start
4 with Mr. Boutin, then Ms. Hollenberg. And then we
5 would go to the -- go to Mr. Wiesner. Well, Mr.
6 Teebom's not here at the moment. But then Mr.
7 Alexander, Mr. Judge, Ms. Thunberg, and then Mr.
8 Camerino and Mr. Serell. Is that acceptable?
9 MR. SERELL: Yes. My only caveat would
10 be that Attorney Ardinger will be closing for the
11 City.
12 CHAIRMAN GETZ: All right. Then Mr.
13 Boutin.
14 CLOSING STATEMENT BY MR. BOUTIN
15 MR. BOUTIN: Well, we have been
16 participating in this proceeding as an intervenor
17 throughout.
18 Tell me if you have a problem with me.
19 And throughout we have requested
20 representation on the board. And I think that we've
21 stated the reasons, although with a great deal of
22 difficulties. Trying it this way is almost like the
23 criminal case when you try to get -- chip at the edges
24 until you get a chance to put on a witness.

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1 But what we have tried to establish is
2 that Merrimack isn't necessarily antagonistic to the
3 utility. What it has a problem with is if the utility
4 is so under the control of Nashua, that it effectively
5 sets up a competition with the utility's own
6 customers. And because of the adjacent development
7 districts, which are the two most active development
8 districts I believe in this area of the state -- and I
9 think that's probably something you might take notice
10 of -- the request for a board member is a way to allay
11 problems rather than a way to create them; and that
12 is, to be able to get on the board and make concerns
13 both of Merrimack, but also -- let's face it, they're
14 part of the reason, too -- the region. Much is made
15 of the fact they didn't join the Merrimack Valley
16 Water District. If you recall at the time that was
17 created, that was created as part of the 04-048
18 process. It was going to be an operating utility if
19 the eminent domain went through. And at that time,
20 decisions on things like capital expenditures were to
21 be voted on by customer. "Voted on by customer" means
22 80 percent of the votes would have been Nashua's at
23 the time. Merrimack didn't see an opportunity to do
24 anything there, especially in the 04-048 context,

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1 because Nashua was resisting regionalization and
2 introduced testimony in several respects in that
3 proceeding about regionalization.
4 Now Merrimack is faced with the prospect
5 of not having a voice, not having a vote, despite the
6 fact that it's part of the core system. It's the only
7 part of the core system where there's any significant
8 industrial base. And Merrimack's whole industrial
9 base is in the area served by Pennichuck. So it has
10 an interest in bringing to the table those things that
11 could benefit all of the ratepayers, because
12 industrial development is by far the most profitable.
13 They're larger users of water. They don't require a
14 proliferation of main extensions. They may require
15 main extensions for themselves, but they're generally
16 economical to do, as I understand it.
17 So Merrimack is looking to be a customer
18 that is going to benefit the system -- or a territory
19 that's going to benefit the system as a whole. Pipes
20 to other areas go through Merrimack.
21 And what we've tried to do is to
22 establish not a sense that there's antagonism, but a
23 sense that there's a potential for cooperation. It's
24 one seat on the board. Merrimack -- or Nashua already

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1 has designed the charter so that they can pick
2 somebody who doesn't reside in Nashua to be on the
3 board. One person. They can now pick somebody from
4 the water district who's -- that's unclear even from
5 the testimony -- who is nominated by the District, but
6 may be rejected, I guess, by Nashua.
7 In the end, we have been through a long
8 process of working with everybody here, in terms of
9 this ratemaking. And we were heavily involved in
10 that. We got it to the point where we didn't oppose
11 the Settlement Agreement in its ratemaking iterations,
12 or in any other iterations, except for this question
13 of corporate government.
14 I've argued in my brief, but I'll argue
15 it briefly here. There's nothing wrong with having a
16 board composed of people who may have interests.
17 Classes of stock in business corporations are
18 generally represented by different directors. Each
19 class may nominate its own directors. They obviously
20 have different interests. You may have other
21 situations where the board of directors may be
22 composed of geographic representatives. There's no
23 limitation on the qualifications of directors in New
24 Hampshire law of business corporations. But here you

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1 have the ultimate hammer and the ultimate authority in
2 the Nashua Board of Aldermen. So to argue that this
3 would create a faction because you have different
4 points of view, everybody has to look to the Nashua
5 Aldermen for ultimate approval of those things that
6 matter most: Capital expenditures funded with debt.
7 All capital expenditures are funded with debt under
8 this proposal. Therefore, having a board with an eye
9 on that and having an independent voice with an eye on
10 that isn't much different than having an audit
11 committee on a publicly held corporation to keep an
12 eye on things and be able to bring things to the table
13 at meetings before they become problems. That's why
14 we've presented this case. I realize it's not much of
15 a case because of the fact that we are talking some
16 very nuance things about a structure that's not been
17 approved before by this Commission, as far as I know.
18 And again, the top of the pyramid is the municipality,
19 and it flows down to business corporations. So, for
20 this reason, being part of the business corporation is
21 very important, because at least we get that much
22 farther up the pyramid to be able to make our voice
23 known. Thank you.
24 CHAIRMAN GETZ: Thank you.

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1 Ms. Hollenberg.
2 CLOSING STATEMENT BY MS. HOLLENBERG
3 MS. HOLLENBERG: Thank you. Thank you,
4 Commissioners, for the opportunity to make this
5 closing statement.
6 The Office of Consumer Advocate does not
7 oppose the Settlement Agreement or the transaction as
8 modified by the Settlement Agreement. We view the
9 modifications to the transaction to be an improvement
10 to the transaction as originally proposed. In
11 particular, we believe that the Settlement comes
12 closer than the original proposal to achieving some
13 balance of benefits and burdens between Nashua
14 residents and those who live outside the City.
15 In addition, the Settlement properly
16 excludes from the City's debt and from the recovery in
17 rates the City's \$5 million in eminent domain costs.
18 We are disappointed, however, that the
19 Settlement Agreement requires the City, and ultimately
20 the customers of the three utilities, to pay more than
21 \$2 million in severance benefits to Pennichuck
22 executives. We hope that the diligence that we have
23 seen from the City will continue as it undertakes to
24 secure the acquisition debt and that these efforts

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1 will result in an interest rate that is as low as
2 possible. We look forward to seeing the benefits of
3 the proposed -- of the lower interest rates passed on
4 to all Pennichuck customers.

5 We'd like to thank the parties for their
6 efforts and cooperation throughout these proceedings.
7 We particularly appreciate and thank the mayor for her
8 time and attention that she has dedicated in finding a
9 resolution to the very protracted and contentious
10 eminent domain litigation. Thank you.

11 CHAIRMAN GETZ: Thank you.
12 Mr. Wiesner.

13 CLOSING STATEMENT BY MR. WIESNER
14 MR. WIESNER: Yes. Thank you,
15 Commissioners. The Town of Milford has signed the
16 Settlement Agreement, supports the terms and
17 conditions of the Settlement as a significant
18 improvement over the proposal originally described in
19 the Joint Petition. And we urge the Commission to
20 approve the Settlement Agreement and the Joint
21 Petition, subject to the Settlement terms and
22 conditions, as soon as possible so that the benefits
23 of lower interest rates are available to all customers
24 of all utilities. Thank you.

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1 CHAIRMAN GETZ: Thank you.
2 CLOSING STATEMENT BY MR. TEEBOM
3 MR. TEEBOM: Yes, sir. My name is Fred
4 Teebom. I'm the only signatory to the Settlement
5 Agreement who is not an attorney, for I am a citizen
6 intervenor acting on behalf of all the citizens who
7 have questioned this acquisition. I am the only
8 ratepayer who took the City to court just before the
9 enabling vote in 2003 under R.S.A. 38, because I
10 claimed that the voters were not informed of the true
11 cost and consequence of their vote -- namely, no pro
12 and con positions were published by the City.

13 Many of us were concerned about seeing
14 2,000 acres of conservation land transferred from a
15 regulated utility to an unregulated real estate arm of
16 Pennichuck Corporation. Over 1,000 acres were
17 transferred for \$37 an acre and sold at an average
18 cost of between \$20,000 and \$30,000 an acre. Not a
19 penny of this enormous windfall profit went to benefit
20 the ratepayers. That started this acquisition train
21 on the path of over-emotion -- "they're stealing our
22 water" -- when Pennichuck agreed to be merged with an
23 out-of-state company that was, in turn, owned by a
24 French company, Veolia. Nearly a decade and many

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1 events later, you now must decide whether Nashua's
2 acquisition of the entire corporation, not just the
3 PWW component within Nashua, is in the public
4 interest.

5 For \$152 million, all borrowed money,
6 exactly what is Nashua buying? All developable land
7 in Nashua has been sold at this point. The nearly
8 500 acres that could still be developed lies outside
9 Nashua, mostly in Merrimack. All the real estate
10 known as HECOPS have been sold. Silted ponds remain
11 contaminated sites, conditions of pipes underground
12 unknown, liabilities unknown.

13 The Hartley spreadsheets in the
14 Settlement Agreement, following a PUC financial model
15 using mostly unwritten rules, show that there is a
16 slight reduction in the revenue requirement under
17 Nashua ownership as compared to the current ownership,
18 in spite of the fact that Nashua must incur
19 \$11 million, roughly, annual payments over 30 years on
20 the \$152 million debt that currently does not exist,
21 all to be reimbursed by ratepayers, not taxpayers.

22 How is that possible? It's done by
23 financing all capital improvements, hundred-percent
24 finance. Nashua agreed to run against a rate base

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1 less than half of the current Pennichuck rate base and
2 against about 3 percent lower pretax rate of return --
3 in other words, a much, much more leniently run
4 operation. Is that possible, especially if you
5 consider that this is a taxable corporation owned by a
6 government, municipality?

7 So, why did I sign on? Why did I sign
8 on to this Agreement? Because \$152 million for the
9 entire company, or \$212 million if you add the debt,
10 is a lot less than \$243 million for just PWW set by
11 the Commission in the eminent domain case. Because we
12 have simply come too far on this acquisition train.
13 If Nashua is able to pull this off, if the
14 ever-growing capital-investment debt does not go out
15 of control as time goes on -- like I said, all that is
16 borrowed -- if rates are kept reasonably within the
17 same rate structure under the Pennichuck ownership,
18 without extra cost to the Nashua taxpayers -- and I
19 don't believe for a minute it would be less; I think
20 it would be higher -- if all that happens, a really
21 big challenge for a very lean operation, then 30 years
22 from now, after the \$152 million acquisition debt is
23 paid off, then there will be a big windfall. Then,
24 the water rates will no longer need to support

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1 \$11 million in annual payments.
2 So, if all this should come true, I mean
3 hopefully will come true, I agree to sign on. Thank
4 you.
5 CHAIRMAN GETZ: Thank you.
6 Mr. Alexander.
7 CLOSING STATEMENT BY MR. ALEXANDER
8 MR. ALEXANDER: The signature of
9 Anheuser-Busch on the Settlement Agreement should not
10 be construed to endorse any particular composition of
11 the water board, but it can fairly be construed to
12 express the Company's hope and expectation of a long
13 and fruitful relationship with the City of Nashua and
14 the new Pennichuck.
15 CHAIRMAN GETZ: Thank you. Mr. Judge.
16 CLOSING STATEMENT BY MR. JUDGE
17 MR. JUDGE: Thank you. I sit here today
18 representing eight communities: Amherst, Bedford,
19 Londonderry, Litchfield, Pelham, Raymond, Pittsfield
20 and Nashua. And as I made the point several times
21 today, those communities are in every one of the
22 regulated utilities.
23 The District did not blindly follow
24 Nashua. In fact, I believe we were the last ones to

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1 sign the Settlement Agreement. There's a bit of a --
2 and it may be a red herring here, and I just want to
3 talk about that for a minute.
4 The regulated utility that services the
5 franchise area on Exhibit J has a requirement to
6 service the customers there. So the idea that the
7 regulated utility's going to stop serving customers
8 for some reason or is going to be in competition
9 between Merrimack and Nashua I think leads nowhere.
10 The Merrimack Valley District is
11 regional. We drafted a charter long ago. And the
12 charter I think had enough foresight in it because it
13 was designed to go for a long term. I don't think
14 there's been any dispute really here on the legal
15 issue that the charter's rule is that you vote by
16 director. There are exceptions to that rule. And no
17 one has identified any exceptions which would cause
18 there to be a vote by customers. So you have eight
19 communities, each of which gets one vote in terms of
20 nominating a director, in terms of telling that
21 director what it is that that community, the regional
22 district, thinks is important.
23 Finally -- or two things: One is
24 Merrimack could have petitioned the Joint Petitioners.

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1 They were invited to join the District. I urged them.
2 I remember going to the meeting down in Merrimack and
3 asking them to join the District. And whatever
4 problems they may have had in the past of the vote by
5 customer is completely academic at this point.
6 Finally, I have -- I'm in the
7 interesting position of representing the District,
8 which includes Nashua. So that means I get to
9 represent Nashua, as well as the District. And both
10 District and Nashua have been wonderful clients. I
11 particularly want to thank the mayor, who I think went
12 the extra mile to make this happen. The District is
13 very well pleased with the result that has come out
14 here.
15 We ask that you approve this Agreement
16 and, again, do it as, you know, quickly as reasonably
17 possible so we can take advantage of the financial
18 climate that we have at this time.
19 And I thank the Commission and the Staff
20 and OCA for cooperating and making this schedule go as
21 fast as they could. Thank you very much.
22 CHAIRMAN GETZ: Thank you.
23 Ms. Thunberg.
24

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1 CLOSING STATEMENT BY MS. THUNBERG
2 MS. THUNBERG: Thank you, Commissioners,
3 for your time today. And Staff's position is
4 respectfully requesting the Commission approve the
5 Settlement Agreement. As Mayor Lozeau started out in
6 her testimony today, time is of the essence with
7 respect to the bond rates. And the bond rates being
8 so low allowed parties to resolve some pretty major
9 differences. So we're hoping that the Commission will
10 approve this. Staff feels that the Settlement
11 Agreement modifications to the original petition are a
12 much better deal for customers than what the original
13 petition laid out. So with that, Staff is very
14 supportive of the Settlement terms. Thank you.
15 CHAIRMAN GETZ: Thank you.
16 Mr. Camerino.
17 MR. CAMERINO: I think I'll -- if Mr.
18 Ardinger would like to go first, I'll let him go so
19 that I don't step on anything he's got to say.
20 CHAIRMAN GETZ: Mr. Ardinger.
21 CLOSING STATEMENT BY MR. ARDINGER
22 MR. ARDINGER: Thank you, Mr. Chairman
23 and Commissioner Ignatius for a chance to offer a few
24 closing points.

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1 The task before the Commission is to
2 evaluate whether this proposed acquisition of stock of
3 Pennichuck Corporation by the City is in the public
4 interest. That's in the special legislation that
5 governs this proceeding, which the legislature first
6 passed in 2007 and then amended to refresh it in 2010,
7 indeed, to allow the City the opportunity to further
8 enhance the value of a potential acquisition by using
9 its general obligation, its general credit. This is a
10 complicated transaction. You all in this room have
11 lived through this fight much longer than I have. I'm
12 a Billy Come Lately to this case.

13 When I first talked to the mayor about
14 this, I said this is complicated. You have to thread
15 a needle in order to get to a good transaction for the
16 citizens through tax law, through municipal law,
17 through the finance and capital markets, through
18 political issues, through corporate law, fiduciary
19 law, and also through administrative law. This brings
20 it all together.

21 But I would submit to you, while there
22 are many, many details involved in this transaction,
23 that the proposed acquisition, as modified by the
24 Settlement Agreement that most of the parties here

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1 have signed on to -- and in the key parts, none of the
2 parties have stated that they object to the key parts
3 of the Agreement -- that the reasons why this proposal
4 is in the public interest are pretty straightforward
5 and pretty clear.

6 First, this would end the uncertainty
7 that has plagued the City and this company for almost
8 a decade. It would allow everyone to move forward on
9 a common basis. And that uncertainty will enhance the
10 ability to develop economic development, create
11 further jobs and to settle the issue and move on to
12 other important issues in the community. That's been
13 very important to the board and to the mayor.

14 Second, this preserves jobs. It
15 preserves the integrated management structure that has
16 been in place that this Commission focused on in the
17 prior proceeding, the eminent domain proceeding. It
18 preserves that synergistic management structure with
19 the same operational team, including Mr. Ware and
20 Bonnie Hartley, who was here today and who has been
21 such a key part of that team. And that's a great
22 value in this economy, has been very important to the
23 City, its mayor and its board of aldermen.

24 Third, as everyone has testified to, the

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1 prospect is that, under the ratemaking structure
2 proposed in the Settlement Agreement, as modified by
3 the Settlement Agreement, that the rates under City
4 ownership over the period from closing forward will be
5 lower than the rates would be to customers under the
6 existing corporate ownership. That's a critical part,
7 I would submit to the Commissioners, about what the
8 public interest is here. Why are rates lower? I
9 don't want to repeat the testimony. But it's helpful
10 sometimes to restate it in simple terms.

11 First, the City has pledged in its first
12 proposal, and as enhanced by the Settlement Agreement,
13 to contribute its superior access to low-cost capital
14 to these utilities and their ratepayers. The City is
15 blessed right now with a rating from some rating
16 agencies that is better than the United States
17 Government. Strange as that may seem, it is committed
18 to contribute that superior access for the benefit of
19 these utilities and their customers.

20 Second, the proposal of the City is
21 different. It doesn't fit into the regular,
22 traditional ratemaking agreement hole. I think Mark
23 talked about square peg/round hole. It doesn't fit
24 perfectly into that. But we'd submit to you that it's

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1 been modified in a key way by the City at the outset
2 and improved by the Settlement Agreement, because it
3 would propose to allocate the benefit of that
4 lower-cost capital and the savings on operational
5 costs with the management to every customer,
6 regardless of where they live. This is not a proposal
7 that would try to treat citizens of Nashua better or
8 worse than citizens of other communities or of other
9 utilities. The allocation method, the apportionment
10 methodology that is proposed by the petitioners and in
11 the Settlement Agreement, and reflected in an
12 illustrative manner in the schedules in very
13 detailed -- apologize to Mr. Teebom for that -- but
14 very detailed ratemaking schedules as an example in
15 Ms. Hartley's testimony, shows that these benefits are
16 allocated on an apportionment methodology to every
17 utility and every customer. So it's shared.

18 Related to that, the City has come to
19 the table from the beginning under the premise that it
20 would not pursue a traditional ratemaking structure.
21 If what that meant is there had to be an attempt by
22 the City to collect a profit from ratepayers, a higher
23 equity return, you'll note -- and this is Mr. Naylor's
24 testimony -- that this is skinny, the cash flow. We

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1 have to be careful and watch it. But we'd agree, in
2 part, that's due to the fact that the City has
3 transferred -- sought to transfer in its ratemaking
4 structure every dollar of the interest rate benefit,
5 if it can achieve it, through that benefit to
6 ratepayers, not even one profit or arbitrage debt on
7 that CBFRR rate or its own capacity to borrow debt
8 through these utilities for future capital
9 expenditures. That's important.

10 And how have we made that? We
11 back-stopped that important thing in the Settlement
12 Agreement with a commitment, that we would hope that a
13 Commission order would confirm, that we would not seek
14 to distribute any good performance, any profit above
15 the amount necessary to service our debt. We would
16 not seek to distribute it in the form of dividends or
17 other distributions to the City for the City to use
18 for its general account. We're not seeking in the
19 City -- we have not proposed a ratemaking methodology
20 that would allow us to look to these utilities as a
21 method of raising funds to finance anything other than
22 the debt we've used to acquire these utilities and
23 transfer that good interest rate to these customers,
24 with one exception, as Mr. Patenaude noted, on ability

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1 to collect an amount of money from good performance
2 over time, subject to caps, that could go and
3 reimburse the city taxpayer for the important costs
4 that many leaders of the City have committed to, to
5 try to and get us to this point to achieve these
6 consumer benefits, those of the eminent domain costs.
7 But as Attorney Hollenberg mentioned, and the Consumer
8 Advocate has mentioned, not one dollar of those
9 eminent domain costs are baked into the ratemaking
10 structure. That's an important improvement, and the
11 City agrees with it in the Settlement Agreement.

12 A lot -- in addition to lower rates, a
13 lot has been made about and talked about today of the
14 governing structure. The City and its board of
15 aldermen, the mayor, have proposed a corporate
16 governance structure. Now, it's hard to set up a
17 governance structure. That charter for regional
18 districts are complicated. What we look to at the
19 City is to rely on the existing, clear fiduciary law,
20 corporate law responsibilities that exist for board
21 members to serve the interest of the corporation, the
22 interest of the utility, and not a particular
23 parochial interest of those who were appointed it.
24 Yes, there are members of this board who will be

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1 residents and citizens of Nashua. But remember, we
2 have to demonstrate to another area of law, the
3 capital and finance markets and our rating agencies,
4 that the City is very focused on preserving this --
5 the strong functioning of these utilities so that they
6 are able to generate the debt to support the
7 acquisition bonds.

8 An important point that came out today
9 with Commissioner Ignatius' questions is that a very
10 big change here -- and I believe this is one of the
11 most important items in the public interest -- is that
12 the deliberations of these corporations are going to
13 be subject to the Right To Know Law. This is
14 administrative law. The board of aldermen and the
15 mayor, in reviewing this transaction and trying to set
16 up an appropriate governance structure, thought that
17 the right answer here, obviously as shareholder, as
18 the City, the board of aldermen and the mayor,
19 operating in their capacity -- and by the way, it's
20 not just the board of aldermen. Under the City
21 charter of Nashua, decisions of that shareholder are
22 going to be made by their normal process, which is the
23 board of aldermen and the mayor. The mayor who has
24 sat before you today and testified in this proceeding

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1 has full rights as an active mayor. And she intends
2 to be part of this decision-making, as she is on every
3 issue in the city. But the bottom line is: Every
4 decision they make is subject to the Right To Know
5 Law. For Attorney McNamee, that's easy.

6 What is a little trickier is, what about
7 the corporations and this corporate board? In the
8 articles -- baked into the articles and the by-laws is
9 a commitment that the proceedings and deliberations of
10 this board will be fully public and subject to the
11 Right To Know Law. That transparency is a further
12 protection for any party who has an interest in the
13 decision-making of these three utilities over
14 extensions of capital, plant, other improvements.

15 Finally, the last reason I just want to
16 summarize in this list of why this is in the public
17 interest is that, unlike the eminent domain
18 proceeding, the City has proposed, and the Settlement
19 Agreement confirms, that these three utilities will
20 continue under existing law as regulated utilities,
21 subject to the oversight in public of this Commission.
22 In this very complicated case, that additional
23 certainty provides comfort to many. If someone has a
24 question about whether the mayor and board of aldermen

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1 will exercise their rights even-handedly, they have a
2 couple of shots at the apple: No. 1, they sit in the
3 meeting and listen to the debate. They take a
4 transcript and record. And No. 2, they can come here,
5 because this Commission reviews capital expenditures.
6 This Commission reviews other aspects in every rate
7 case. And you have the ability to initiate on your
8 own motion reviews of these issues. And we think the
9 City believes in this case, with this unique
10 complexity, the continued regulatory oversight of
11 these utilities serves the public interest.

12 I have only have two more points and
13 then I'll finish. And I thank you for the opportunity
14 to go a little bit longer here. It's an important
15 issue for the City.

16 I want to repeat the points that others
17 have made. The group of parties in this room, in the
18 face of a very complex case, worked together.
19 Everyone, without speaking out of school about
20 Settlement discussions, no matter whether the parties
21 signed on or not, they all contributed greatly to the
22 production of the Settlement Agreement. And we all
23 worked together. And that is a good thing. This is
24 not a private company that is acquiring another

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1 private company. This is a public body. And the
2 respect that this public body, the City, got from this
3 proceeding, I can represent on behalf of the City, was
4 very important, very much appreciated. And the result
5 is much better than -- not impossibly better, but much
6 better than we proposed. And we thank the parties for
7 that.

8 My last point is a request. You've
9 heard it before. We're asking for an order of the
10 Commission approving the acquisition is in the public
11 interest, and, Commissioner Ignatius, to make the kind
12 of findings and approvals that are listed in the
13 Settlement Agreement. The City of Nashua has been
14 very forceful in the discussions of the Settlement
15 Agreement, in trying to get in that Settlement
16 Agreement those approvals and findings that it
17 believes it needs when it turns to its rating
18 agencies, when it turns to other constituencies that
19 it serves, and to say we are approved on a
20 self-supporting basis, and you can continue to
21 maintain our high-quality credit rating which allows
22 us to get to a lower interest rate for all of our debt
23 and for this debt. That's important to us.

24 And so we request, respectfully, that

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1 any order considering these things, if it were to
2 approve the transaction, be sensitive to the fact that
3 the parties have worked hard, and the City has worked
4 hard to consider items and put forth items that are
5 needed for many constituencies, including our credit
6 market issues.

7 Finally, timing. I don't need to repeat
8 it. I do not know what comes tomorrow. I do know
9 what I've got today. Interest rates are low. If, as
10 the mayor said and requested, if an order -- every
11 utility who comes before you asks this, and I'm
12 embarrassed to ask you. But I need to ask on behalf
13 of the City that the order come as promptly as
14 possible. If it were to come, as the mayor said, in
15 mid-November, and if a 30-day period for rehearing
16 motions were to conclude without a motion being filed,
17 there is a possibility that the City would be able to
18 close this by the end of the year. And the shorter
19 time period between now and closing is a less risk
20 that we experience an adverse movement in interest
21 rates.

22 And so with that request, I want to
23 thank the Commission for that opportunity to offer
24 closing thoughts.

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1 CHAIRMAN GETZ: Thank you.
2 Mr. Camerino.
3 CLOSING STATEMENT BY MR. CAMERINO
4 MR. CAMERINO: Thank you, Mr. Chairman.
5 You know, it's easy to get overwhelmed,
6 after 10 years of litigation and threatened litigation
7 and pretty complicated schedules, it's easy to get
8 overwhelmed with what seems like the complexity of
9 this case. But in many ways, it's a case which you've
10 seen many, many times before, which is the acquisition
11 of a utility. That's really what we have. We have,
12 if you think about it, a public interest, a "no net
13 harm" test. It's in the context as a follow-on to an
14 eminent domain case. The one twist, obviously,
15 because it is the follow-on to an eminent domain case,
16 is that the purchaser is a municipality. But
17 otherwise, you've seen this case dozens of times
18 before. And the analysis you need to be applying is:
19 Is there a harm to customers? And I think the Joint
20 Petitioners feel extremely strongly, and you've heard
21 from the other parties as well, there's not only no
22 net harm, but there are benefits. There are real,
23 substantial benefits to customers that this
24 transaction makes possible.

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1 The other thing about this case that
2 makes it a little easier is it doesn't occur in a
3 vacuum. We had extensive litigation on whether the
4 City of Nashua would be allowed to acquire Pennichuck
5 Water Works and all of the systems that that entity
6 operates, not just the city system and the core
7 system, but all the systems that it operates. And
8 this Commission determined that that acquisition was
9 in the public interest, even in a setting where the
10 City would have completely controlled, through the
11 aldermen directly, the operations of that utility. So
12 you've already made that determination. And I'm not
13 suggesting that you're somehow legally bound by that,
14 but I suspect you don't really care to revisit it,
15 either. You've put a lot of consideration into that
16 and you understood the consequences of it and you made
17 a determination. So the real question in this case
18 is: Is there something about what's been proposed
19 that would cause you to change that determination with
20 regard to Pennichuck Water Works? And is there
21 something that's been -- and then also you need to
22 look at independently the acquisition of PEU and PAC,
23 because those were not under consideration in the
24 prior case. But that's really all you need to do

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1 here, is say: Is the acquisition of those other two
2 subsidiaries in the public interest? And is there
3 something that we've learned here that would cause us
4 to come to a different conclusion than in the eminent
5 domain case?
6 We suggest that this transaction is
7 better in every way. Why is this acquisition in the
8 public interest? You're going to end up with the same
9 operating personnel. That wasn't true in the eminent
10 domain case. You're going to have continued full PUC
11 jurisdiction. That wasn't true in the eminent domain
12 case. And you're going to have lower rates not just
13 for Pennichuck Water Works, but also for the other
14 entities than you would have under continued
15 Pennichuck Corporation ownership. So in every way,
16 this meets the "no harm" standard and produces
17 substantial benefits.
18 You'll recall that, in the eminent
19 domain case you were sufficiently concerned about what
20 would happen to PEU and PAC, that you ordered the City
21 to pay over \$40 million into a mitigation fund. That
22 was a very large step, a very large dollar amount.
23 There obviously was no way to even know for sure if
24 that \$40 million would take care of all of the harm.

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1 There was a lot of risk represented there. That risk
2 is gone. The concerns addressed by it are gone.
3 You're going to have customers served by the same
4 operating management and field personnel. No changes
5 there. There's no Veolia. There's no third-party
6 contractors. There's no overseers of the third-party
7 contractors. All gone. And as you've seen, for very
8 concrete reasons -- which are the lower cost of
9 capital and the elimination of some of the
10 higher-level management costs associated with a public
11 company -- the operating costs will be lower. And so
12 those are very real, knowable reasons that you can see
13 that if you otherwise operate the utility in the same
14 way, the rates will be lower. It's not complicated.
15 The spreadsheets may be complicated, but the basic
16 things that get you there are really pretty simple.
17 The last thing it gets you is,
18 obviously, the resolution of nine and a half years of
19 disputes, about seven and a half years of which have
20 been here at the Commission. And I think the best way
21 to know that Mr. Ardinger wasn't involved in the
22 beginning is that he and I are about the same age, and
23 he's got a very different hair color.
24 So this is the end of that. And I think

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1 you can imagine there were disputes before that, that
2 arose. This will be the end of that relationship, and
3 we think that's very positive.
4 I want to talk extremely briefly about
5 the governance issue, because I don't think it's
6 really Pennichuck's place to say too much about this.
7 That's really the City's issue. But this is not a new
8 issue, if you think about it. The two things that I
9 think you want to focus on are -- first of all, with
10 all due respect for Merrimack, I think they have it
11 backwards. I would think that an individual
12 municipality would want to make sure that individual
13 municipal interests were not being represented on the
14 board, and that what Nashua is saying about
15 professional management is the thing you'd want to
16 make sure occurred. And there's no reason -- I don't
17 think you've heard any particular reason in the
18 evidence to think that Merrimack should get a special
19 position vis a vis all the other municipalities that
20 are served. And so I think, from our vantage point,
21 what the City has proposed is far better than what
22 Merrimack has proposed.
23 But the second point goes back to what I
24 said about this not being new. We had an eminent

1 domain case. And had the eminent domain taking gone
2 forward as approved by this Commission, Merrimack
3 would not have had a representative at the board of
4 aldermen when they met to discuss what should happen
5 with Pennichuck Water Works. So while that might be a
6 refinement that Merrimack would like, we don't think
7 it's in the public interest. We don't think it needs
8 to be layered on.

9 So, as you know, this case has been
10 extremely contentious. As I've said, it's gone on for
11 nearly a decade. You're looking at parties that know
12 how to disagree. We're really good at that. We're
13 all here today in agreement, with one exception:
14 Again, with all due respect, Merrimack. I know they
15 hold their view very strongly about the item they're
16 asking for. But in the scheme of things, in the
17 scheme of disagreements that you see, that is a fairly
18 minor issue. And I think that what you've been
19 presented with is really something close to a miracle,
20 in terms of the end of this dispute: A very broad
21 agreement on all fronts that delivers lower rates to
22 customers, with the same management in place. And we
23 think that's an agreement that should be approved.
24 Thank you.

1 CHAIRMAN GETZ: Thank you. Well, let me
2 just say, I was wondering if I was going to see the
3 end of this proceeding during my term of service,
4 having been here for the full number of years. And my
5 hair is a lot whiter, and there's much less of it than
6 most people in the room.

7 But we will take the matter under
8 advisement, and we will issue an appropriate order as
9 promptly as we can. Thank you, everyone.

10
11 (WHEREUPON, the hearing was adjourned at 3:15 p.m.)

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**AFTERNOON SESSION ONLY - October 25, 2011
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AFTERNOON SESSION ONLY - October 25, 2011
DW 04-048/DW 11-026 CITY OF NASHUA/PENNICHUCK CORP., ET AL

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