

STATE OF NEW HAMPSHIRE  
PUBLIC UTILITIES COMMISSION

May 19, 2009 - 10:05 a.m.  
Concord, New Hampshire

NHPUC JUN18'09 AM10:30

RE: DW 08-073  
PENNICHUCK WATER WORKS, INC.:  
Notice of Intent to File Rate Schedules.

PRESENT: Chairman Thomas B. Getz, Presiding  
Commissioner Graham J. Morrison  
Commissioner Clifton C. Below

Sandy Deno, Clerk

APPEARANCES: Reptg. Pennichuck Water Works, Inc.:  
Sarah B. Knowlton, Esq. (McLane, Graf...)

Reptg. Anheuser-Busch, Inc.:  
John T. Alexander, Esq. (Ransmeier & Spellman)

Reptg. the City of Nashua:  
Justin C. Richardson, Esq. (Upton & Hatfield)

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

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

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

ORIGINAL

# INDEX

PAGE NO .

WITNESS PANEL:           BONALYN J. HARTLEY  
                              DONALD L. WARE  
                              MARK A. NAYLOR  
                              JAMES L. LENIHAN

Direct examination by Ms. Knowlton	8, 37
Direct examination by Ms. Thunberg	24, 52
Cross-examination by Mr. Richardson	55
Cross-examination by Ms. Hollenberg	66

WITNESS:           STEPHEN R. ECKBERG

Direct examination by Ms. Hollenberg 99

\* \* \*

CLOSING STATEMENTS BY:

Mr. Richardson	106
Ms. Hollenberg	108
Ms. Thunberg	118
Ms. Knowlton	119

## E X H I B I T S

EXHIBIT NO.	DESCRIPTION	PAGE NO.
5	Direct Testimony of Bonalyn J. Hartley (06-28-08)	8
6	Direct Testimony of Donald L. Ware (06-28-08)	8
7	Direct Testimony of William D. Patterson (adopted by Thomas Leonard) (06-28-08)	8
8	Direct Testimony of Harold Walker, III (06-28-08)	8
9	Amended Direct Testimony of Bonalyn J. Hartley (09-05-08)	8
10	Supplemental Direct Testimony of Donald L. Ware (09-05-08)	8
11	Direct Testimony of James L. Lenihan (03-24-09)	8
12	Direct Testimony of Jayson P. LaFlamme (03-24-09)	8
13	Direct Testimony of David C. Parcell (03-24-09)	8
14	Direct Testimony of Stephen R. Eckberg (03-24-09)	8
15	Joint Rebuttal Testimony of Donald L. Ware & Bonalyn J. Hartley (05-07-09)	8
16	Settlement Agreement (05-15-09)	8
17	2007 Officer Bonus Plan Summary of Material Terms Exhibit 10.1	69

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24

**E X H I B I T S (continued)**

<b>EXHIBIT NO.</b>	<b>D E S C R I P T I O N</b>	<b>PAGE NO.</b>
18	2007 Schedule 14A Preliminary Proxy Statement	77
19	2008 Schedule 14A Preliminary Proxy Statement	80
20	Company's response to Data Request OCA 2-2	89

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

CHAIRMAN GETZ: Okay. Good morning, everyone. We'll open the hearing in docket DW 08-073. On June 23, 2008, Pennichuck Water Works filed revised tariff pages designed to increase its revenues from general metered customers by 14.72 percent. On July 23, 2008, Commission suspended the tariffs and scheduled a prehearing conference that was held on August 27 of 2008. After a hearing on temporary rates on November 12, the Commission issued an order approving an 11 percent overall temporary rate increase. And, scheduled hearings, culminating in this morning's hearings. And, we have a Settlement Agreement that was filed on May 15, 2009.

Can we take appearances please.

MS. KNOWLTON: Good morning, Commissioners. Sarah Knowlton, from the law firm of McLane, Graf, Raulerson & Middleton, here today for Pennichuck Water Works, Inc. With me from the Company is Donald Ware, Bonnie Hartley, Charles Hoepper, and Dawn Deblois. And, we have a panel that we propose to put up from the Company of Mr. Ware and Ms. Hartley, in conjunction with the Staff witnesses.

CHAIRMAN GETZ: Good morning.

CMSR. MORRISON: Good morning.

1 CMSR. BELOW: Good morning.

2 MR. RICHARDSON: Good morning, Mr.  
3 Chairman, Commissioners. Justin Richardson, here on  
4 behalf of the City of Nashua.

5 CHAIRMAN GETZ: Good morning.

6 CMSR. MORRISON: Good morning.

7 CMSR. BELOW: Good morning.

8 MR. ALEXANDER: Good morning. John  
9 Alexander, with the law firm of Ransmeier & Spellman, on  
10 behalf of Anheuser-Busch.

11 CHAIRMAN GETZ: Good morning.

12 CMSR. MORRISON: Good morning.

13 CMSR. BELOW: Good morning.

14 MS. HOLLENBERG: Good morning. Rorie  
15 Hollenberg, here on behalf of the Office of Consumer  
16 Advocate. And, with me today is Stephen Eckberg, Meredith  
17 Hatfield, and Ken Traum.

18 CHAIRMAN GETZ: Good morning.

19 CMSR. MORRISON: Good morning.

20 CMSR. BELOW: Good morning.

21 MS. THUNBERG: Good morning,  
22 Commissioners. Marcia Thunberg, on behalf of Staff. And,  
23 with me today is Mark Naylor, Jim Lenihan, and Jayson  
24 LaFlamme. And, as the Company has indicated, Mr. Naylor

1 and Mr. Lenihan will be joining a panel of four to present  
2 the Settlement Agreement. Thank you.

3 CMSR. MORRISON: Good morning.

4 CMSR. BELOW: Good morning.

5 CHAIRMAN GETZ: Well, good morning.

6 Issues we need to address before we hear from the panel?

7 MS. THUNBERG: Just by agreement of the  
8 parties, we have a nearly complete list of exhibits that  
9 we wish to identify during this hearing. There will be  
10 others that will be added through rebuttal. But, to the  
11 extent that we knew of the exhibits ahead of time, the  
12 list is before you. And, so, --

13 MS. KNOWLTON: I would just add that  
14 Exhibits 1 through 4 were marked at the hearing already.  
15 Those were at the hearing on temporary rates. So, what we  
16 would start with today is "Exhibit 5".

17 CHAIRMAN GETZ: Okay. Thank you. Then,  
18 we'll ask the court reporter to reflect that Exhibits 5  
19 through 15 will be marked for identification as in the  
20 exhibit list provided to us.

21 MS. THUNBERG: Mr. Chairman, the list  
22 goes through Exhibit 16, which is the Settlement  
23 Agreement. I put updated lists up on the Bench earlier.

24 CHAIRMAN GETZ: Thank you.

[WITNESS PANEL: Hartley|Ware|Naylor|Lenihan]

1 MS. THUNBERG: Just wanted to bring that  
2 to your attention. Thank you.

3 (The documents, as described within the  
4 proposed updated Exhibit List, were  
5 herewith marked as **Exhibit 5** through  
6 **Exhibit 16**, respectively, for  
7 identification.)

8 CHAIRMAN GETZ: Ready to proceed?

9 (Whereupon **Bonalyn J. Hartley, Donald L.**  
10 **Ware, Mark A. Naylor, and James L.**  
11 **Lenihan** were duly sworn and cautioned by  
12 the Court Reporter.)

13 **BONALYN J. HARTLEY, SWORN**

14 **DONALD L. WARE, SWORN**

15 **MARK A. NAYLOR, SWORN**

16 **JAMES L. LENIHAN, SWORN**

17 **DIRECT EXAMINATION**

18 BY MS. KNOWLTON:

19 Q. Good morning. I'll start with you, Mr. Ware. If you  
20 would state your full name for the record please.

21 A. (Ware) Donald L. Ware.

22 Q. And, Ms. Hartley, would you state your full name for  
23 the record please.

24 A. (Hartley) Bonalyn J. Hartley.

{DW 08-073} {05-19-09}



[WITNESS PANEL: Hartley|Ware|Naylor|Lenihan]

1 Q. Mr. Naylor, would you state your full name for the  
2 record please.

3 A. (Naylor) Mark Naylor.

4 Q. Mr. Lenihan, would you do the same please.

5 A. (Lenihan) James L. Lenihan.

6 Q. I'd like to start with you, Mr. Ware. Would you please  
7 state your position with the Company.

8 A. (Ware) I am President of the regulated water utilities  
9 for Pennichuck Corporation.

10 Q. How long have you held that position?

11 A. (Ware) I have held that position since 2006.

12 Q. And, what is your educational background?

13 A. (Ware) I have a Bachelor's in Civil Engineering and a  
14 Master's in Business Administration.

15 Q. And, how were you employed prior to 2006?

16 A. (Ware) I was employed as the Company's Senior Vice  
17 President responsible for operations of the regulated  
18 water utilities.

19 Q. Thank you. Ms. Hartley, by whom are you employed?

20 A. (Hartley) Pennichuck Water Works.

21 Q. And, what is your position with the Company?

22 A. (Hartley) Vice President of Administration and  
23 Regulatory Affairs.

24 Q. And, in that capacity, what are your areas of

[WITNESS PANEL: Hartley|Ware|Naylor|Lenihan]

1 responsibility?

2 A. (Hartley) I'm responsible for human resources, for  
3 customer service, and for IT, as well as the regulatory  
4 arm of the Company.

5 Q. Mr. Ware, did you file direct testimony in this case?

6 A. (Ware) Yes, I did.

7 Q. And, would you -- let's start with -- I believe you  
8 filed multiple testimonies, is that correct?

9 A. (Ware) That is correct.

10 Q. And, what is the first testimony that you filed?

11 A. (Ware) I filed prefiled testimony on June 28th, 2008.

12 Q. And, that's been marked for identification as "Exhibit  
13 6". Was that testimony prepared by you or under your  
14 direction?

15 A. (Ware) Yes, it was.

16 Q. Is it true and correct to the best of your belief?

17 A. (Ware) Yes, it is.

18 Q. If I were to ask you the questions in your testimony  
19 today, would your answers be the same?

20 A. (Ware) Yes, they would, subject to the supplemental  
21 testimony that was filed to update that.

22 Q. When was that filed?

23 A. (Ware) That was filed September 5th, 2008.

24 Q. And, that's been marked as "Exhibit 10" for

{DW 08-073} {05-19-09}

[WITNESS PANEL: Hartley|Ware|Naylor|Lenihan]

1 identification in this proceeding. With regard to your  
2 -- well, actually, can you just step back and just very  
3 briefly summarize what was the purpose of the testimony  
4 that you filed on June 28th?

5 A. (Ware) The purpose of the testimony was to identify the  
6 drivers and the need for an increase in revenues, a  
7 rate increase, for Pennichuck Water Works.

8 Q. And, why did you supplement that testimony in September  
9 of 2008?

10 A. (Ware) In September -- or, excuse me, in July of 2008,  
11 the Commission issued an order relative to the  
12 potential taking of Pennichuck Water Works, which is  
13 under consideration for this rate case. There was  
14 portions of investment that we anticipated making in  
15 the latter -- the middle to latter part of 2008, in  
16 terms of capital improvements. The nature of the  
17 order, when it came out, it was unclear to us whether  
18 the additional investment we would be making would  
19 necessarily be compensated if a taking were to be  
20 completed. And, consequently, we needed to step back  
21 from those capital improvements that we anticipated  
22 doing that were recommended or that we were going to  
23 have in this rate case, and step back from those that  
24 were not absolutely essential, until we got a better

[WITNESS PANEL: Hartley|Ware|Naylor|Lenihan]

1 handle on, you know, what we felt the nature of the  
2 ruling was for eminent domain.

3 Q. And, with regard to your September 5th, 2008 testimony,  
4 was that prepared by you or under your direction?

5 A. (Ware) Yes, it was.

6 Q. Is it true and correct to the best of your belief?

7 A. (Ware) Yes, it is.

8 Q. And, if I were to ask you the questions today that are  
9 in that September '08 testimony, would your answers be  
10 the same?

11 A. (Ware) Yes, they would.

12 Q. Did you file rebuttal testimony on May 7th of this  
13 year?

14 A. (Ware) Yes, I did.

15 Q. And, that testimony has been marked for identification  
16 as "Exhibit 11" [Exhibit 15?] today. Was that  
17 testimony prepared by you or under your direction?

18 A. (Ware) It was prepared jointly with Bonnie Hartley.

19 Q. And, if I were to ask you the questions in your  
20 rebuttal testimony today, would the answers be the  
21 same?

22 A. (Ware) Yes, they would be.

23 Q. And, is the content of that testimony true and correct  
24 to the best of your belief?

[WITNESS PANEL: Hartley|Ware|Naylor|Lenihan]

1 A. (Ware) Yes, it is.

2 Q. Ms. Hartley, I'd like to go through the same series of  
3 questions with you. Would you identify the initial  
4 testimony that you filed in this case.

5 A. (Hartley) Yes. The initial testimony was filed on  
6 June 28th, 2008, again, as Mr. Ware stated, requesting  
7 rate relief for Pennichuck Water Works.

8 Q. And, that testimony has been marked for identification  
9 as "Exhibit 5". Was that testimony prepared by you or  
10 under your direction?

11 A. (Hartley) Yes, it was.

12 Q. And, is it true and correct to the best of your belief?

13 A. (Hartley) Yes.

14 Q. If I were to ask you the questions in your testimony  
15 today, would the answers be the same?

16 A. (Hartley) Yes.

17 Q. And, do you have that same qualification that Mr. Ware  
18 offered with regard to the amended testimony that was  
19 filed in September?

20 A. (Hartley) Yes, I do.

21 Q. Okay. And, that amended testimony has been marked as  
22 "Exhibit 9" in this case. Would you identify for the  
23 Commission why you filed supplemental testimony on  
24 September 5th, 2008?

[WITNESS PANEL: Hartley|Ware|Naylor|Lenihan]

1 A. (Hartley) Well, as stated by Mr. Ware, the Company  
2 determined that certain capital improvements that  
3 weren't essential to providing service would be  
4 eliminated. And, we had previously filed for those  
5 capital projects for a step increase. So, the Company  
6 revised its filing to reflect the elimination of those  
7 capital projects, which were not critical to the  
8 operations of the Company.

9 Q. Did that testimony contain schedules reflecting those  
10 proposed changes?

11 A. (Hartley) Yes, it did.

12 Q. And, what was the overall net impact of that, of that  
13 change? And, I'm not looking for an exact dollar  
14 amount, but just in concept.

15 A. (Hartley) In concept, I believe there was a reduction  
16 in about, and I think Mr. Ware would have a better idea  
17 of how many revenue dollars related, or are you looking  
18 for capital dollars?

19 Q. Effectively, it was -- the Company decreased the amount  
20 of rate increase it was seeking?

21 A. (Hartley) Correct. Originally, we had requested -- I  
22 apologize, I don't have that right here. It was  
23 revised -- I found it -- from 5.51 percent to  
24 3.8 percent increase.

[WITNESS PANEL: Hartley|Ware|Naylor|Lenihan]

1 Q. That's for the step increase?

2 A. (Hartley) Right. The step increase relative -- the  
3 second step, which was related to these capital  
4 projects, which we eliminated.

5 Q. Okay. And, in a minute I'm going to take you through a  
6 description of the relief that the Company filed for in  
7 this case. But let's turn first to your May 7th, 2009  
8 Joint Rebuttal Testimony. Was that prepared by you or  
9 under your direction?

10 A. (Hartley) Yes. Mr. Ware and myself prepared it.

11 Q. And, is that true and correct to the best of your  
12 belief?

13 A. (Hartley) To the best of my belief, yes.

14 Q. And, if I asked you the questions today that are in  
15 that testimony, would your answers be the same?

16 A. (Hartley) Yes.

17 Q. And, why did the Company file rebuttal testimony?

18 A. (Hartley) The Office of Consumer Advocate had filed  
19 testimony in this case objecting to certain items that  
20 we had settled with the Staff. And, the Company felt  
21 that it was prudent for us to state our position on  
22 those matters.

23 Q. Turning now to the direct testimony that you filed,  
24 that which has been marked as "Exhibit 5", your initial

[WITNESS PANEL: Hartley|Ware|Naylor|Lenihan]

1 prefiled direct testimony, and the amended prefiled,  
2 which was marked as "Exhibit 9" for identification, can  
3 you summarize the particular rate relief that the  
4 Company is seeking based on those two filings?

5 A. (Hartley) Yes. The Company requested a revenue  
6 increase originally of 14.72 percent, or an increase of  
7 revenues of \$3,193,791. We also requested two step  
8 increases for capital additions that were to be put in  
9 service in 2008 and completed in the -- completed near  
10 the beginning of 2009. The step increases were for a 5  
11 -- the first step was for a 5.05 percent increase, for  
12 plant that was used and useful as of May 2008,  
13 requesting a revenue increase of \$1,095,263. The  
14 second step, which we've just explained, originally was  
15 filed for plant that would be used and useful by  
16 November 1st, 2008. But we originally asked for a  
17 request of 5.51 percent, or \$1,196,149 for revenue a  
18 increase. On September 5th, as stated, the Company  
19 revised its request for the second step, and lowered it  
20 to a 3.8 percent increase, or \$823,836.

21 Q. Mr. Ware, would you identify for the Commission what  
22 the primary drivers are that caused the need for the  
23 rate increase?

24 A. (Ware) Yes. They fall into two major categories.



[WITNESS PANEL: Hartley|Ware|Naylor|Lenihan]

1 First of all, we had substantial capital investment  
2 during the years 2007, the test year, and 2008, a total  
3 of \$20.1 million; \$8 million invested in 2007,  
4 12.1 million in 2008. The primary investment in that  
5 area was the continued work on our water treatment  
6 plant, the upgrades necessitated by changes to the Safe  
7 Drinking Water Act. And, we invested a total of  
8 15.2 million in 2007/2008; 5.8 million in 2007 and an  
9 additional 9.4 million in 2008. And, then, we had --  
10 the remaining 4.9 million was investment infrastructure  
11 replacement primarily. So, we made significant  
12 investments that we need to cover our return on that  
13 investment.

14 We also experienced large increases in  
15 operating expenses in several areas. Chemical costs  
16 have more than doubled as a result of demands for  
17 chemicals in the worldwide market, and also the basis  
18 for the manufacturing of those chemicals. And, a  
19 second area, our state and local property taxes have  
20 more than doubled over the last several years, due to  
21 the fact that the state has changed its method of  
22 valuation.

23 Q. Mr. Ware, can I stop you there and ask you, what has  
24 that done to the property taxes? You said they have

[WITNESS PANEL: Hartley|Ware|Naylor|Lenihan]

1 "increased". But can you give us some sense of the  
2 order of magnitude of that increase?

3 A. (Ware) Yes. State and local property taxes will have  
4 increased from, in the test year, just a little bit  
5 over a million dollars, to about \$2.6 million at the  
6 end of 2008. And, so, they currently account for about  
7 10 percent of our revenue requirement.

8 Q. And, back to the chemical expense, can you give us some  
9 more detail on the nature of those cost increases?

10 A. (Ware) Yes. The two primary chemicals we use at the  
11 water treatment plant, one is called "ferric chloride".  
12 Ferric chloride happens to be a by-product of the steel  
13 manufacturing business. And, of course, as the economy  
14 has dropped off, there is less steel manufacturing  
15 going on, and so the supply of this by-product has  
16 dropped dramatically. At the same time, we see  
17 increases in demand for the product in both China and  
18 in India, where they're starting to implement water  
19 treatment. So, that's caused a, you know, the old  
20 supply/demand; shortage in supply and increase in  
21 demand. So, a large increase in the cost of the ferric  
22 chloride. And, then, in the area of sodium hydroxide,  
23 which we use in the water treatment plant for purposes  
24 of coagulation and final pH adjustment, that's tied to

[WITNESS PANEL: Hartley|Ware|Naylor|Lenihan]

1 the production of PVC. And, of course, with the  
2 manufacturing in PVC, due to the decline in the housing  
3 market going down, the available, you know, by-product  
4 that's used to make this sodium hydroxide is not as  
5 available. Consequently, again, you have the increase  
6 in demand associated with new treatment plants coming  
7 on line worldwide and a decrease in supply, because of  
8 a change in the manufacturing process.

9 Q. Are there other drivers of the rate increase or are  
10 those the primary reasons?

11 A. (Ware) Those would be the primary ones. The only other  
12 large one, which we're continuing to experience, and we  
13 see it coming, is pension expense change. Unfunded  
14 liability associated with the fact of the disruption in  
15 the financial markets that occurred in late 2008.

16 Q. Does the Company take any steps to mitigate cost --  
17 rate increases?

18 A. (Ware) Yes. You know, when you look at our primary  
19 cost areas, energy is a big one. We've spent a lot of  
20 time in the design of our facilities. In fact, in the  
21 new pumping station, to decrease energy costs by  
22 ensuring we use premium efficiency motors, by using the  
23 right types of motor starters with the pumps; by going  
24 with high-efficiency lighting. We also were just

[WITNESS PANEL: Hartley|Ware|Naylor|Lenihan]

1 awarded, through the American Recovery and  
2 Re-investment Act, green funds associated with the  
3 unique pumping station design that we're going to be  
4 implementing down in the south end of Nashua, which  
5 will reduce energy pumping requirements by about  
6 56 percent.

7 We're also working with, and have for  
8 the last several years, with a power broker, where we  
9 go out and we seek, on a three, six, nine, or twelve  
10 month time frame, bids on the available power supply  
11 that we're using, the power providers. And, you know,  
12 it's been a very attractive market in that area, and  
13 there are five active bidders or suppliers of power in  
14 New England, so we've been able to work with that  
15 broker to reduce our energy cost in that area.

16 We've also been promoting conservation.  
17 And, that probably sounds a little counterintuitive.  
18 But we've migrated to monthly billing. You know, we've  
19 spent money to reduce our meter reading costs, in order  
20 to promote conservation, because that keeps our energy  
21 costs down. I'd like to think that our promotion of  
22 conservation was the result in what we're seeing,  
23 because we've got a 15 percent drop in usage since the  
24 test year, across all customer classes,

{DW 08-073} {05-19-09}

[WITNESS PANEL: Hartley|Ware|Naylor|Lenihan]

1 commercial/industrial and residential. Obviously, we  
2 think some has to do with conservation and then we also  
3 have the current economic downturn, but a significant  
4 decrease in usage.

5 We're also working on controlling health  
6 care costs. We've changed our plan designs, by  
7 increasing deductibles and co-pays, doing some  
8 self-insurance, and we've also increased our employee  
9 contribution. And, so, that's another big area that  
10 we're working on controlling.

11 And, then, as always, we aggressively  
12 seek competitive quotes on anything that we purchase,  
13 whether its paper products, phone service, chemicals.  
14 And, you know, so our employees are tasked with getting  
15 the best possible pricing. That's part of what we want  
16 to do is control our cost and still continue to provide  
17 excellent customer service.

18 Q. Ms. Hartley, would you identify the classes of  
19 customers that the Company serves?

20 A. (Hartley) Yes. We have the general metered customers,  
21 and these are most of our customers, and they also  
22 include our contract customers, but mostly residential  
23 and business. We have private fire protection, such as  
24 industrial and commercial accounts. And, we have

[WITNESS PANEL: Hartley|Ware|Naylor|Lenihan]

1 public fire protection, which serves the City of  
2 Nashua, Towns of Amherst, Bedford, Merrimack, Derry,  
3 and then the special contracts, as I mentioned, with  
4 the Town of the Hudson, Anheuser-Busch, and the Town of  
5 Milford.

6 Q. For the public fire protection customers, are those  
7 primarily hydrants that you're providing service to?

8 A. (Hartley) Yes.

9 Q. Ms. Hartley, did the Company perform a cost of service  
10 study in association with its rate case filing?

11 A. (Hartley) Yes, we did.

12 Q. And, that study was marked at the hearing on temporary  
13 rates as "Exhibit 4". Are you familiar with that  
14 document?

15 A. (Hartley) I am.

16 Q. And, what were the -- can you summarize what the  
17 conclusions of that study were?

18 A. (Hartley) Well, I think the most significant conclusion  
19 from the study was that the private fire protection  
20 class of customers needed to have a significant  
21 increase. The others were relatively normal  
22 allocations, but we realized that there was -- that we  
23 were under allocated in that area.

24 Q. Can you describe whether there was any change to the

[WITNESS PANEL: Hartley|Ware|Naylor|Lenihan]

1 rate design that was made for purposes of temporary  
2 rates in this docket?

3 A. (Hartley) Yes. At the temporary rate hearing, because  
4 of the significant increase that was to be required of  
5 the private fire protection, and also because the  
6 Company had submitted the cost of service study with  
7 its original filing, it was determined through -- well,  
8 with the Staff, that perhaps a good start would be a  
9 50/50 sharing, if you will, between public and private  
10 fire protection, until Staff and the OCA and other  
11 parties could have time for discovery and data requests  
12 relative to the cost of service study. So, at that  
13 time, the decision was made to have a sharing between  
14 the public and private fire protection classes.

15 Q. Would you describe or summarize the temporary rate  
16 relief that the Company was awarded by the Commission?

17 A. (Hartley) Yes. Effective for July 28th, 2008, on a  
18 service rendered basis, the Commission awarded an  
19 11 percent increase for temporary rates. And, it  
20 required the increase in fire protection rates to be  
21 shared equally by municipal and private fire protection  
22 customers, as I stated. This resulted in a 41.5  
23 percent increase for private fire protection and a  
24 6.41 percent increase for public fire protection.

[WITNESS PANEL: Hartley|Ware|Naylor|Lenihan]

1 Also, it was determined at that time that, once  
2 permanent rates were awarded, that all the rates would  
3 be reconcilable, whether there would be a refund or a  
4 surcharge for certain classes of customers effective  
5 July 28th, 2008.

6 Q. Thank you. Mr. Ware, I meant to ask you this earlier.  
7 Did the Company file testimony of any other witnesses  
8 in this docket?

9 A. (Ware) Yes. The Company had testimony prepared by  
10 William Patterson, who was the Company's CFO at the  
11 time of the filing.

12 Q. And, is there a new CFO at the Company?

13 A. (Ware) Yes, there is. The Company has a new CO, his  
14 name is Thomas Leonard, and he has adopted the  
15 testimony of William Patterson.

16 Q. Okay. Did the Company file any other testimony?

17 A. (Ware) Yes. There was testimony filed by Harold  
18 Walker, relative to cost of capital.

19 Q. And, that's been marked as "Exhibit 8" in this docket,  
20 and the testimony of Mr. Patterson has been marked as  
21 "Exhibit 7". Mr. Ware, did you -- are you familiar  
22 with the Settlement Agreement that is before the  
23 Commission today?

24 A. (Ware) Yes, I am.



[WITNESS PANEL: Hartley|Ware|Naylor|Lenihan]

1 Q. And, did you participate in the development of that  
2 Settlement Agreement on behalf of the Company?

3 A. (Ware) Yes, I did.

4 Q. Ms. Hartley, are you familiar with that Agreement?

5 A. (Hartley) Yes, I am.

6 Q. And, did you participate in its development?

7 A. (Hartley) Yes, I did.

8 MS. KNOWLTON: I'm going to turn now to  
9 counsel for the Staff and let her qualify her witnesses,  
10 and proceed with examination on the Settlement Agreement.

11 MS. THUNBERG: Mr. Naylor --

12 (Checking the status of the  
13 microphones.)

14 MS. THUNBERG: I guess it will work  
15 without it, but I can't hear that it's working, but I'll  
16 trust that it's working.

17 BY MS. THUNBERG:

18 Q. Mr. Naylor, you already stated your name for the  
19 record. If you could just please describe your  
20 position with the Commission.

21 A. (Naylor) I'm the Director of the Gas and Water Division  
22 here at the PUC.

23 Q. And, as Director, what are your responsibilities?

24 A. (Naylor) I'm responsible for the work product of the

[WITNESS PANEL: Hartley|Ware|Naylor|Lenihan]

1 Gas and Water Division.

2 Q. And, do you have an area of expertise that you consider  
3 yourself having?

4 A. (Naylor) Yes, accounting.

5 Q. Accounting. And, as Director of the Gas and Water  
6 Division, you are using your area of expertise, is that  
7 correct?

8 A. (Naylor) Yes, I am.

9 Q. And, with respect to this docket, can you please  
10 describe what you have reviewed?

11 A. (Naylor) Yes. I've participated in a review of this  
12 filing from the outset, including the original  
13 testimony and schedules, participated in discovery, and  
14 worked with the Company and the other parties to bring  
15 this docket to today's hearing.

16 Q. And, Mr. Naylor, have you had a chance to take a look  
17 at the Exhibit List in this proceeding?

18 A. (Naylor) Yes, I have.

19 Q. And, is it correct or accurate to say that you have  
20 reviewed all of these exhibits as part of your review  
21 of the docket?

22 A. (Naylor) Yes.

23 Q. And, I'd like to just ask you specifically, with  
24 respect to Exhibit 12, Testimony of Jayson LaFlamme,

[WITNESS PANEL: Hartley|Ware|Naylor|Lenihan]

1 and Exhibit 13, Testimony of David Parcell, with  
2 respect to those exhibits, are you aware of any changes  
3 or corrections that ought to be made to those two?

4 A. (Naylor) No, I am not.

5 Q. So, is it your opinion that those two pieces of  
6 testimony are true and accurate?

7 A. (Naylor) Yes.

8 Q. And, do they represent Staff's non-settlement positions  
9 with respect to issues in this proceeding?

10 A. (Naylor) Yes, they do.

11 Q. Mr. Lenihan, I'd like to just turn to you and have you  
12 state for the record what your responsibilities at the  
13 Commission are?

14 A. (Lenihan) As a Utility Analyst for the Gas and Water  
15 Division, I review the rate proceedings that come  
16 before the Commission, as well as special contracts  
17 that come before the Commission, and a number of tariff  
18 revisions. In this proceeding, I reviewed the  
19 permanent rate request, the temporary rate request, and  
20 submitted testimony on the 24th of March regarding this  
21 permanent rate request.

22 Q. Well, thank you for segueing into your testimony. If  
23 you could please, what you're referring to is  
24 Exhibit 11, is that correct?

[WITNESS PANEL: Hartley|Ware|Naylor|Lenihan]

1 A. (Lenihan) That is correct.

2 Q. And, did you prepare that testimony?

3 A. (Lenihan) I did.

4 Q. And, are you aware of any changes or corrections that  
5 ought to be made to it?

6 A. (Lenihan) I have no changes or corrections.

7 Q. Thank you. And, so, it's your opinion that that  
8 testimony is true and accurate to the best of your  
9 recollection?

10 A. (Lenihan) Yes.

11 Q. And, do you adopt that testimony as part of your  
12 testimony here today?

13 A. (Lenihan) Yes, I do.

14 Q. And, with respect to Exhibit 16, the Settlement  
15 Agreement, Mr. Naylor, did you participate in the  
16 drafting of that document?

17 A. (Naylor) Yes, I did.

18 Q. And, Mr. Lenihan, I'll ask you the same question. Did  
19 you participate in the drafting of the Settlement  
20 Agreement?

21 A. (Lenihan) Yes.

22 Q. Mr. Naylor, I'd like to have you turn to Page 3, "Terms  
23 of the Agreement", and the "Income Requirement" section  
24 please. And, I'd like to have you just state for the

[WITNESS PANEL: Hartley|Ware|Naylor|Lenihan]

1 record how Staff came to agreeing to an 11.48 percent  
2 increase in Pennichuck's revenue requirement?

3 A. (Naylor) Well, clearly, the presentation of the  
4 settlement today indicates that the Staff, with the  
5 Company, has reached a compromise on all the issues  
6 that are implicated by the Company's filing. The  
7 Agreement contains a number of schedules, which provide  
8 the detail for what we believe is an appropriate  
9 revenue requirement for this case. As Mr. Ware  
10 indicated just a couple of moments ago, the case is --  
11 the need for an increase in this case is driven by  
12 capital investment, as well increases in expense. And,  
13 so, this is why we've reached an agreement, which  
14 results in about a 12 and a half -- excuse me, an 11  
15 and a half percent increase for permanent rates.

16 Q. Mr. Naylor, I'd like you to turn to -- actually, you  
17 may have already touched upon this, if I can just  
18 re-ask the question. On Page 4, the "Specific  
19 Adjustments", were there any adjustments that you felt  
20 were significant enough to bring to the Commissioners'  
21 attention at this hearing?

22 A. (Naylor) No, not any particular one. Simply, for the  
23 most part, this case, the permanent portion and the  
24 step adjustment that's been agreed to, are driven by

[WITNESS PANEL: Hartley|Ware|Naylor|Lenihan]

1 capital investments, primary at the Company's water  
2 treatment plant, which the Commission is familiar with  
3 from a financing proceeding two or three years ago.

4 Q. Mr. Naylor, you've reviewed a number of rate cases in  
5 water companies, is that correct?

6 A. (Naylor) Yes, I have.

7 Q. Would you consider this rate case to be more of a  
8 normal rate case for a large water company?

9 A. (Naylor) For the most part, yes.

10 Q. Now, Mr. Naylor, I'd like to just have you move onto  
11 the step adjustments, on Page 4, that section of the  
12 Settlement Agreement. And, earlier this morning Mr.  
13 Ware testified as to a number of capital additions. Do  
14 you recall that testimony?

15 A. (Naylor) Yes, I do.

16 Q. And, do you agree that that comprises a list of capital  
17 additions that are subject to the step adjustment?

18 A. (Naylor) Yes.

19 Q. And, Mr. Naylor, the step adjustment for the capital  
20 additions, do you recall what percent of a revenue  
21 requirement increase this would require?

22 A. (Naylor) Yes. It results in an additional  
23 10.61 percent increase in revenues for the Company.

24 Q. And, do you consider that increase to be significant?

[WITNESS PANEL: Hartley|Ware|Naylor|Lenihan]

1 A. (Naylor) I think it is significant, yes.

2 Q. Well, let me ask you a different way. If the  
3 Commission were to deny approval of this step increase  
4 in rates, would that have a detrimental impact on the  
5 Company's rate of return?

6 A. (Naylor) Yes. Clearly, it would.

7 Q. The Settlement Agreement does not have a specific  
8 effective date for the step agreement, correct?

9 A. (Naylor) That is correct.

10 Q. Or, I said "step agreement", I meant "step increase".  
11 And, your answer is the same, "yes"?

12 A. (Naylor) Yes, it is.

13 Q. Can you please explain what Staff is seeking with  
14 respect to the assets in the step adjustment? Is Staff  
15 and the Company asking for approval on prudent, used  
16 and useful?

17 A. (Naylor) Yes. It's simply asking the Commission,  
18 through this Agreement, the Commission's approval of  
19 this Agreement, to approve the mechanism for the step  
20 adjustment. We still need to get the Audit Staff to  
21 review the final cost records for the plant additions  
22 that are in the step. So, we just need to verify the  
23 final costs. But, if the Commission approves this  
24 Agreement, they would be making a finding that the

[WITNESS PANEL: Hartley|Ware|Naylor|Lenihan]

1 capital additions are prudent and used and useful.

2 Q. And, I'm sorry, Mr. Naylor, did you explain -- did you  
3 state that Staff will be reviewing the audit and  
4 submitting a recommendation?

5 A. (Naylor) I did not indicate that, but that is going to  
6 be the case, yes. Which is a question of verifying the  
7 final numbers.

8 Q. And, will Staff and the Company be seeking approval of  
9 the step increase, the actual rate increase, at that  
10 later time, is that correct?

11 A. (Naylor) Yes, that's correct.

12 Q. Mr. Lenihan, I just wanted to ask you a few questions  
13 pertaining to rates. And, you're aware that the  
14 Company filed cost of service study reports and an  
15 update, is that correct?

16 A. (Lenihan) That's correct.

17 Q. And, have you reviewed those reports?

18 A. (Lenihan) I have.

19 Q. And, you heard Ms. Hartley testify today about how  
20 Staff and the Company resolved how the cost of service  
21 study should be considered in temporary rates, correct?

22 A. (Lenihan) That is correct.

23 Q. And, that being a 50/50 division of fire protection  
24 rates, am I restating her testimony correctly?



[WITNESS PANEL: Hartley|Ware|Naylor|Lenihan]

1 A. (Lenihan) Yes, that's correct. When Staff and the  
2 Company met regarding a temporary rate recommendation  
3 there was not, at the time, sufficient opportunity to  
4 review the findings in the cost of service study. So,  
5 given that there was a larger increase for the public  
6 -- private fire protection rates, the parties agreed to  
7 split the increase between the municipal and the  
8 private, in order that a full investigation and a  
9 review of the recommendations in the cost of service  
10 study can be conducted prior to a --

11 MS. HOLLENBERG: Excuse me. I'm sorry  
12 to interrupt. We just can't hear very clearly. I'm  
13 sorry, Jim. If you could just speak up a little bit.  
14 Thanks.

15 **BY THE WITNESS:**

16 A. (Lenihan) The recommendation in the temporary rate  
17 proceeding between Staff and the Company was to not  
18 follow the recommendations in the cost of service  
19 study, pending an investigation or a review of the  
20 recommendations in the study.

21 CHAIRMAN GETZ: I think you may have to  
22 speak a little louder or get closer.

23 WITNESS LENIHAN: Oh. Is that better?

24 MS. HOLLENBERG: We're getting old back

[WITNESS PANEL: Hartley|Ware|Naylor|Lenihan]

1 here, so our hearing isn't as good as it used to be.

2 MR. TRAUM: She means me.

3 WITNESS LENIHAN: Is that better?

4 **BY THE WITNESS:**

5 A. (Lenihan) Staff did perform an examination, a more  
6 thorough examination of the recommendations in the cost  
7 of service study for the purposes of making a  
8 recommendation in the permanent rate proceeding, which  
9 is before us today. And, I testified that, after  
10 review and after interrogatories and Company responses,  
11 I'm satisfied that the recommendations, as stated in  
12 the cost of service study, should be implemented for  
13 the purposes of a permanent rate adjustment. That was  
14 primarily the thrust of my participation and my  
15 testimony in the permanent rate proceeding.

16 So, the split between the public and the  
17 private fire protection, for the purposes of temporary  
18 rates, is now -- the allocation of the revenues will  
19 follow the recommendations of the cost of service study  
20 in the permanent rate portion of this proceeding.

21 BY MS. THUNBERG:

22 Q. Thank you, Mr. Lenihan. Mr. Lenihan, with respect to  
23 Page 6 and the "Rate Impact" section, do you have  
24 Exhibit 16, the Settlement Agreement, in front of you?

[WITNESS PANEL: Hartley|Ware|Naylor|Lenihan]

1 A. (Lenihan) I do.

2 Q. And, on Page 6, the "Rate Impact" section?

3 A. (Lenihan) I have that.

4 Q. Okay. I just would like you to explain, there's a  
5 reference to an "11.27 percent" rate increase and a  
6 bill impact of being about "\$3.66" a month. And, we  
7 know that the step adjustment comprises about a  
8 10.62 percent or .61 percent [10.61] increase, and that  
9 translates as an estimated \$4.00 a month bill impact.  
10 Can you just explain or clarify why a smaller percent  
11 increase would have a larger bill impact?

12 A. (Lenihan) I just want to check something.

13 MS. THUNBERG: Mr. Chairman, can I just  
14 go back and try to get the mikes up again, because I can  
15 barely hear my witness? Thank you.

16 **BY THE WITNESS:**

17 A. (Lenihan) Yes, I'll attempt to explain that seeming  
18 anomaly.

19 BY MS. THUNBERG:

20 Q. Thank you.

21 A. (Lenihan) In calculating the customer charge and the  
22 volumetric charge, there are certain cost elements that  
23 go into the analysis of how those rates should be  
24 adjusted. And, for the purposes of the permanent rate,

[WITNESS PANEL: Hartley|Ware|Naylor|Lenihan]

1 the cost elements in the customer charge and the  
2 volumetric charge were different from the components of  
3 those elements in the step adjustment, and they caused  
4 the customer charge and the volumetric charge to move  
5 not exactly in a one-for-one basis as would be if one  
6 were to apply a certain percentage increase to the  
7 customer charge and the volumetric charge. The charges  
8 are actually adjusted in the study to reflect actual  
9 cost elements that have changed and form the basis for  
10 determining the customer charge and the volumetric  
11 charge. So, there isn't a one-for-one relationship  
12 between the percentage adjustments in the permanent  
13 case and in the step adjustment. They're off slightly.  
14 But that's why the effect of the step adjustment is  
15 slightly higher than it is for the permanent rate  
16 adjustment. Although, the percentages are a little off  
17 in those allocations.

18 Q. Mr. Lenihan, do you have a opinion as to the just and  
19 reasonableness of the permanent rate increase and the  
20 step rate increase?

21 A. (Lenihan) I believe that the adjustments to the  
22 permanent rates and the adjustment resulting from the  
23 step are just and reasonable and consistent with the  
24 requirements.

[WITNESS PANEL: Hartley|Ware|Naylor|Lenihan]

1 Q. Mr. Lenihan, I just have a follow-up question. With  
2 respect -- we have temporary rates in place, is your  
3 understanding, is that correct?

4 A. (Lenihan) That is correct.

5 Q. And, with the permanent rate, can you just explain how  
6 recoupment, from Staff's perspective, will occur?

7 A. (Lenihan) Well, for the -- let's just take the fire  
8 protection. They will be adjusted, and so that the  
9 results of the study in the permanent and the step  
10 adjustment will not reflect any sharing of the fire  
11 protection revenue between the private and the  
12 municipal. That the permanent rate and the step  
13 adjustment rates for the fire will be reflective of the  
14 recommendations in the cost of service study.

15 As far as the metered customers, they  
16 will -- there will be a one-time adjustment for the  
17 difference between the permanent and temporary rates.  
18 And, it's a relatively small difference, between the  
19 11 percent for temporary rates and the permanent  
20 adjustment of 11, I believe, 27 [11.27] -- I think it's  
21 a \$2.00 estimated charge will be the recoupment amount,  
22 in a one-time charge.

23 Q. Mr. Lenihan, when you say a "recoupment of \$2.00", I'd  
24 like to just draw your attention to Page 7 of the

[WITNESS PANEL: Hartley|Ware|Naylor|Lenihan]

1 Settlement Agreement. And, approximately the sixth  
2 line down, what you were saying with a "one-time  
3 surcharge of \$2.00", that's -- what you're referring to  
4 is Staff's recommendation, is that correct?

5 A. (Lenihan) That's correct.

6 Q. And, I'd just like to get you to comment procedurally,  
7 with temporary rates in effect, is it Staff's  
8 understanding that the Company will be filing a  
9 reconciliation report that Staff will review, and that  
10 Staff will, in turn, file a recommendation with the  
11 Commission as to the appropriateness of the recoupment  
12 calculation?

13 A. (Lenihan) I believe that to be the case, yes.

14 Q. Okay. Mr. Naylor, I'd like to just turn back to you,  
15 and with respect to the rates that are being proposed  
16 in this Settlement Agreement, do you have an opinion as  
17 to the just and reasonableness of the rates?

18 A. (Naylor) Yes. I believe the rates, as proposed in the  
19 Agreement, are just and reasonable. I think the  
20 Agreement that we've reached is a good -- good outcome  
21 for this case, given all of the factors taken into  
22 consideration.

23 BY MS. KNOWLTON:

24 Q. Mr. Ware and Ms. Hartley, I know Mr. Naylor went

[WITNESS PANEL: Hartley|Ware|Naylor|Lenihan]

1 through some of the elements of the income requirement  
2 that begin on Page 3 of the Settlement Agreement. But,  
3 Mr. Ware, if you could just identify for the Commission  
4 what the stipulated rate base is and the rate of return  
5 that the Company has agreed to in this case?

6 A. (Ware) Yes. For purposes of the permanent rate  
7 increase, the agreed upon consolidated rate base was  
8 \$77,843,943, excuse me. For purposes of the  
9 Settlement, I understand that the Staff is still  
10 completing their audit, and we have an estimated amount  
11 at present of \$89,916,554.

12 Q. And, when you say "estimated", that's that -- that  
13 difference between the 77 million and the 89 million is  
14 the result of the step increase capital additions?

15 A. (Ware) That is correct.

16 Q. And, just summarize for us again what are the nature of  
17 those capital additions that are in the step?

18 A. (Ware) In the step itself were primarily the additions  
19 to the water treatment plant, which accounted for  
20 9.4 million of the 12.1 million. There was also the  
21 completion of the replacement of the Fifield tank,  
22 which was about 2.3 million. And, then, we had  
23 infrastructure improvements to a pumping station and to  
24 some existing pipeline that was around \$365,000.

[WITNESS PANEL: Hartley|Ware|Naylor|Lenihan]

1 Q. What is the overall rate of return to which the Company  
2 agreed?

3 A. (Ware) 7.38 percent.

4 Q. And, is that predicated upon a stipulated cost of  
5 equity between the Staff and the Company?

6 A. (Ware) Yes, it is.

7 Q. And, what was that level that the Staff and the Company  
8 agreed to?

9 A. (Ware) 9.75 percent.

10 Q. And, is there a cost of debt to which the Company has  
11 agreed?

12 A. (Ware) Yes. Yes, there is.

13 Q. And, can you identify that? I believe it's on Page 3  
14 of the Settlement Agreement, if you have that before  
15 you.

16 A. (Ware) Cost of debt was at 5.46 percent.

17 Q. And, in your opinion, do you believe that this income  
18 requirement represents a reasonable compromise of all  
19 of the issues in the case?

20 A. (Ware) Yes, I do.

21 Q. Ms. Hartley, do you have an opinion on that same  
22 question?

23 A. (Hartley) Yes, I believe it's a reasonable result for  
24 this case. Thank you.

{DW 08-073} {05-19-09}



[WITNESS PANEL: Hartley|Ware|Naylor|Lenihan]

1 Q. Okay. With regard, Mr. Ware, to the step increase for  
2 the capital additions, is it your understanding that  
3 the calculation of that step increase will be separate  
4 from the permanent rates that are set in this docket?

5 A. (Ware) Yes.

6 Q. And, do you understand why that's being calculated  
7 separately?

8 A. (Ware) Yes, I do.

9 Q. Why is that?

10 A. (Ware) It has to do with when those facilities became  
11 used and useful, relative to the timing of the  
12 permanent increase versus the timing of what would be  
13 the step increase, which we believe would be tied to  
14 the issuance of an order in this case.

15 Q. And, is it also your understanding that the Staff and  
16 the Company agreed to calculate that separately so that  
17 there wouldn't be any compounding affect associated  
18 with the step?

19 A. (Ware) That is correct.

20 Q. Ms. Hartley, turning to rate design, which is discussed  
21 on Page 5 of the Settlement Agreement, the Settlement  
22 refers to an "Attachment C", which is an update to the  
23 cost of service study. Can you explain to the  
24 Commissioners why the Company updated the cost of

[WITNESS PANEL: Hartley|Ware|Naylor|Lenihan]

1 service study for purposes of settlement?

2 A. (Hartley) Yes. The actual allocation or allocable  
3 percentages to the revenue have not changed. But what  
4 changes as a result of settlement and agreement between  
5 the parties is the actual revenue requirement that  
6 would be required. So, therefore, any time there's a  
7 change in the revenue required, we ask -- in this case,  
8 what we did was we asked our consultant to reformulate  
9 the cost of service study to recognize the matters that  
10 have been settled in this case, in particular, the  
11 total revenue requirement, and including the step  
12 increase. The step increase, again, we, for  
13 illustrative purposes, has been provided what that  
14 impact would be. But, again, I state, as Staff has and  
15 Mr. Ware, that we're waiting for the final audited  
16 numbers, and there might be a slight tweaking of that  
17 as a result of those findings.

18 Q. The Settlement Agreement also contains a Report of  
19 Proposed Rate Changes as "Attachment D", and I believe  
20 that starts on Page 74 of the Settlement Agreement?

21 A. (Hartley) Yes.

22 Q. Do you have that before you?

23 A. (Hartley) Yes, I do.

24 Q. Would you walk the Commission through the Report of

[WITNESS PANEL: Hartley|Ware|Naylor|Lenihan]

1 Proposed Rate Changes and how the rate increase, as  
2 proposed, plays out at each customer class?

3 A. (Hartley) Yes. On Page 74 -- excuse me, just let me  
4 unclip this. On Page 74, Attachment D, Page 1 of 3,  
5 there are three pages that are reflected here. One  
6 shows you what the effect would be for the permanent,  
7 the other one shows you the effect on the step, and  
8 then the combined. Again, assuming the estimate we  
9 have, which is fairly close, I believe, to what the  
10 audit results will be for the second step and the first  
11 step. Just to take you through the permanent increase,  
12 as reflected, we have an 11.48 percent overall  
13 increase, which results in a revenue increase of \$2.4  
14 million, \$2,491,347. And, then, following the cost of  
15 service study that's been allocated by the different  
16 classes of customers. And, you will note that the  
17 general metered customers will be receiving an  
18 11.27 percent increase. And, just to note, the  
19 temporary rate was 11 percent, so there's only a slight  
20 difference between the permanent and the temporary  
21 increase in this case. The private fire protection, as  
22 we stated, will see the most significant increase, and  
23 that will be an 80.17 percent. And, then, we have our  
24 contracts, Anheuser-Busch at 12.96 percent increase,

[WITNESS PANEL: Hartley|Ware|Naylor|Lenihan]

1 and Milford at 12.19 percent, and the Hudson contract  
2 at 9.33 percent. And, then we had a cost of debt is  
3 11.4 -- so, the increase would be 11.48 percent. The  
4 second -- any questions on that?

5 Q. Yes. Why don't you, if you could walk us through the  
6 impact of the step increase for each of the customer  
7 classes.

8 A. (Hartley) Sure.

9 Q. And, then I'll ask you to walk us through the combined  
10 impact.

11 A. (Hartley) Sure. On Page 2, we have provided a schedule  
12 that shows the impact of the step increase, which, for  
13 this case, is 10.62 percent on a combined basis. That  
14 was the first step and the second step. The general  
15 metered customers will experience a 10.65 percent  
16 increase, or approximately \$1.8 million of additional  
17 revenue. The private fire protection, again, will have  
18 the largest and most significant increase of  
19 17.15 percent, approximately \$84,000. And, the public  
20 fire hydrants, 9.45 percent. And, then, our contracts  
21 again, for Anheuser-Busch, would be an increase of  
22 10.82 percent; for Hudson, a 10.75 percent increase;  
23 and for the -- I'm sorry, for the Milford contract,  
24 10.75 percent; and, for the Hudson contract,

[WITNESS PANEL: Hartley|Ware|Naylor|Lenihan]

1 10.48 percent. Resulting in an additional revenue  
2 increase of approximately \$2.3 million for the combined  
3 steps.

4 And, then, the final schedule has been  
5 provided to show the combination. Again, we didn't  
6 compound, but it is the combination of the step and the  
7 permanent increase, which results in a 22.09 percent  
8 increase overall for all classes of customer, resulting  
9 in approximately \$4.8 million of additional revenue.  
10 And, to be specific, the general metered customers will  
11 experience a 21.93 percent increase, or approximately  
12 \$3.8 million of additional revenue. And, again, the  
13 fire hydrants, the private fire hydrants, will see the  
14 most significant increase at 97.32 percent, or  
15 approximately \$481,000 of revenue. And,  
16 Anheuser-Busch, an 8.72 percent increase, approximately  
17 \$215,000 in additional revenue.

18 Q. Ms. Hartley, actually, can I stop you there?

19 A. (Hartley) Sure.

20 Q. Is that -- I think Anheuser-Busch is 23.78 percent, is  
21 that -- am I reading that right?

22 A. (Hartley) Oh, I'm sorry, it was public hydrants. It's  
23 very small writing, and I'm old, too. So, I apologize  
24 for that. Yes, you're correct. The 215,000, or the

[WITNESS PANEL: Hartley|Ware|Naylor|Lenihan]

1 8.72 percent for Anheuser-Busch. And, then, we have  
2 our contracts --

3 Q. I think you just made the same mistake again. Just to  
4 clarify for the record, the 8.72 percent is for the  
5 public fire protection.

6 A. (Hartley) Oh, I see. I'm sorry. Okay. I got it.  
7 There. Okay. Public fire protection will be 8.72  
8 percent, or \$215,000 in additional revenue, and that  
9 would include all of our municipal accounts. And,  
10 then, further down, the Anheuser-Busch contract at  
11 23.78 percent, or approximately \$252,000 worth of  
12 additional revenue. And, the next are the results of  
13 the Milford contract, which is 22.94 percent increase,  
14 or approximately \$14,000 of additional revenue. And,  
15 the Hudson contract, I can't really see it,  
16 19.81 percent, or about \$56,000 of revenue. And, I  
17 think that does it. For all -- resulting in  
18 22.09 percent, or \$4.8 million total additional  
19 revenue, resulting in 26 -- proposed overall revenues  
20 of \$26,498,336.

21 Q. What will be the impact of these increases, if approved  
22 by the Commission, on an average residential customer  
23 of the Company?

24 A. (Hartley) Excuse me. The impact, I believe, was

{DW 08-073} {05-19-09}

[WITNESS PANEL: Hartley|Ware|Naylor|Lenihan]

1 related on Page 6 of the Settlement Agreement. And,  
2 for the permanent increase, we're talking, for a  
3 residential customer using 9.53 hundred cubic feet of  
4 water, would result in an annual bill of about \$502 a  
5 year, or about an increase of \$366 per month.

6 Q. Can I stop you there? \$3.66 a month?

7 A. (Hartley) Per month, sorry, yes, or \$43.95 per year.  
8 For the step increase, there will be an additional  
9 increase of approximately \$48.14 per year, or \$4.01 per  
10 month for the average residential bill, using the same  
11 level of consumption. Totally, for the residential  
12 customers, including the step, the combined step and  
13 the permanent, will result in an increase of about  
14 \$7.67 per month, resulting in approximately a \$550 per  
15 year annual water bill.

16 Q. Does the Company calculate any -- is there any such  
17 thing as an average private fire protection bill?

18 A. (Hartley) No. There would have to be an average for  
19 each size private fire protection. So, for instance,  
20 that would be a 6-inch or an 8-inch, depending on the  
21 size of the fire protection service.

22 Q. I'd like you to address the recoupment aspect of the  
23 Settlement Agreement, which the discussion begins on  
24 Page 6 and carries over to Page 7. Would you explain

[WITNESS PANEL: Hartley|Ware|Naylor|Lenihan]

1       how the -- starting with the general metered customers,  
2       how the Company will recoup the difference between the  
3       temporary and the permanent rates, along with the step,  
4       the proposed step increase?

5   A.   (Hartley) First of all, I think it's important to note  
6       that we are using what we consider very close  
7       estimates, but they will be estimates, because what the  
8       Company will do, it will go back effective July 28th  
9       for service rendered, we will go back and we will  
10       actually adjust each customer's bill according to their  
11       own usage. So, everyone's will be a little different,  
12       so that, for me to say what an individual customer  
13       might receive, I wouldn't know at this point. However,  
14       we did do an average. And, for the residential  
15       customers, it probably will work out to be about \$2.00  
16       for a recoupment. And, that's because the difference  
17       between the permanent and the temporary is very slight,  
18       it's only 0.27 percent. So, in that case, we are  
19       suggesting that it will be a one-time charge on the  
20       customer's bill, once the Commission issues an order.  
21       And, then, the Company will run through its programming  
22       and determine what each customer would be, would  
23       experience as a result of that difference.

24   Q.   What do the Staff and the Company propose with regard



[WITNESS PANEL: Hartley|Ware|Naylor|Lenihan]

1 to recoupment for the fire protection customers?

2 A. (Hartley) Well, we determined that that should be over  
3 12 months, given the significant increase to the  
4 private fire protection class of customers. And, that  
5 a credit would be given to the municipal accounts  
6 similarly over a 12 month period, to adjust for that  
7 significant difference.

8 Q. Did the Company incur rate case expense as part of this  
9 case?

10 A. (Hartley) Yes, we did.

11 Q. And, what are the nature of the expenses incurred?

12 A. (Hartley) Primarily, for legal. Obviously, the two  
13 consultants for the ROE testimony and the cost of  
14 service study, and as well as some administrative  
15 expenses relative to this case.

16 Q. Does the Settlement Agreement provide for or recommend  
17 approval of any of the rate case expense?

18 A. (Hartley) Yes. Well, first of all, they would be  
19 subject to Staff's review, which hasn't taken place  
20 yet. I will tell you, we're estimating rate case  
21 expenses a little over \$100,000 in this case. And, if  
22 we were to factor everything considered, it would be  
23 about a \$4.00 one-time surcharge on the customers'  
24 bills.

[WITNESS PANEL: Hartley|Ware|Naylor|Lenihan]

1 Q. Do you believe that that amount is reasonable?

2 A. (Hartley) Yes.

3 Q. The last issue I'd like you to address, Ms. Hartley, is  
4 Section H, III.H, titled "Tariff Fee Changes", which  
5 appears on Page 8 of the Settlement Agreement. Do you  
6 see that before you?

7 A. (Hartley) Yes.

8 Q. Would you explain what this provision of the Settlement  
9 Agreement is intended to address?

10 A. (Hartley) Yes, I will. During the discovery process,  
11 it was noted that the Company's service fees had not  
12 been updated since 1999. So, therefore, as part of  
13 this case, the Company agreed with Staff and its  
14 findings that these should be adjusted accordingly.  
15 So, as part of the second step, you will note there's  
16 been an adjustment for -- to recognize the additional  
17 revenues for those service fees.

18 Q. And, let me just stop you there. When you say  
19 "additional revenues", those are revenues that are  
20 going to be generated as a result of an increase in the  
21 service fees?

22 A. (Hartley) Yes. Yes.

23 Q. And, what kind of fees are being increased?

24 A. (Hartley) The reconnection fees and collection fees for

[WITNESS PANEL: Hartley|Ware|Naylor|Lenihan]

1 the -- most often the nonpayment of accounts, and as  
2 well as a service connection fee that we -- inspection  
3 fee that we use for new services.

4 Q. Why do those fees need to increase?

5 A. (Hartley) Primarily due to labor, increases in labor  
6 over a period of time.

7 Q. So, is it the cost of the time of the Pennichuck  
8 employee to go out --

9 A. (Hartley) Yes.

10 Q. -- and perform that service has gone up?

11 A. (Hartley) Yes, and some truck charges. And, that's  
12 primarily the items that are part of that calculation.

13 Q. Does the Company charge uniform service fees across all  
14 three of its regulated utilities, being Pennichuck  
15 Water Works, Pennichuck East Utility, Inc., and  
16 Pittsfield Aqueduct Company, Inc.?

17 A. (Hartley) Yes. And, in fact, in 1999, as part of that  
18 change, when we changed the service fees at that time,  
19 the Commission permitted the Company to also change its  
20 tariff fees for the other regulated utilities. And,  
21 that's just to create a uniformity and consistency  
22 across the regulated utilities for these collection  
23 fees, and to eliminate some confusion amongst  
24 customers.

[WITNESS PANEL: Hartley|Ware|Naylor|Lenihan]

1 Q. So, what is it that the Company and the Staff is  
2 recommending to the Commission as part of this  
3 Settlement with regard to these tariff fee changes?

4 A. (Hartley) Following this hearing today, the Company  
5 will file a petition with the Commission to change its  
6 tariff service fees just for these two items for  
7 Pennichuck East and for Pittsfield Aqueduct Company.

8 Q. And, is the purpose of that to keep all three  
9 utilities' fees in synch?

10 A. (Hartley) Yes.

11 Q. Ms. Hartley, do you believe that the rates that are  
12 proposed in the Settlement Agreement, if approved by  
13 the Commission, would result in just and reasonable  
14 rates?

15 A. (Hartley) I do.

16 Q. Do you believe that those rates are -- that approval of  
17 this rate and proposed rate increase is in the public  
18 interest?

19 A. (Hartley) I do.

20 Q. Mr. Ware, in your opinion, if the Commission were to  
21 approve the proposed Settlement Agreement, do you  
22 believe that the resulting rates would be just and  
23 reasonable?

24 A. (Ware) Yes, I do.

[WITNESS PANEL: Hartley|Ware|Naylor|Lenihan]

1 Q. And, do you believe that approval of the Settlement  
2 Agreement is in the public interest?

3 A. (Ware) Yes, I do.

4 MS. KNOWLTON: I have nothing further  
5 for the witnesses. Though, I would like to reserve the  
6 right to recall Mr. Ware and Ms. Hartley to rebut, if  
7 Mr. Eckberg is going to take the stand, to rebut his  
8 testimony, if necessary.

9 MS. THUNBERG: And, Staff has just one  
10 more direct question, if we may.

11 BY MS. THUNBERG:

12 Q. Ms. Hartley, you talked about the tariff changes on  
13 Page 8 of the Settlement Agreement and how Pittsfield  
14 Aqueduct and Pennichuck East are going to be brought up  
15 to these changes. But I don't think we got on the  
16 record what the dollar amount of the changes are. Are  
17 you able to speak to that or --

18 A. (Hartley) Yes, I am.

19 WITNESS HARTLEY: Sarah, if you would be  
20 kind, just for one second, she has the tariff sheets.

21 MS. KNOWLTON: May I hand something to  
22 the witness? We have the tariff sheets that we're going  
23 to be filing today.

24 WITNESS HARTLEY: I just want to make

[WITNESS PANEL: Hartley|Ware|Naylor|Lenihan]

1       sure I'm accurate.

2                       (Atty. Knowlton handing document to  
3                       Witness Hartley.)

4                       WITNESS HARTLEY: Thank you.

5       **BY THE WITNESS:**

6       A.     (Hartley) The service connection and disconnection of  
7               water service and collection charges during regular  
8               hours will be \$46, increasing from I believe 28. The  
9               nonregulated -- non-regular hours would increase to  
10              \$63. I'm trying to remember the previous charge, I  
11              think it's -- I think it's about \$45. And, then,  
12              finally, the service pipe connection fee, which is (b),  
13              would increase from \$85 to \$160. And, those are the  
14              only increases that we were recommending at this time.  
15              The rest of the charges seem to be in line with the  
16              appropriate cost.

17                    MS. KNOWLTON: I have the amount of the  
18                    current charge, if I can show you that.

19                    MS. THUNBERG: That was my only  
20                    question, Ms. Hartley. So, if you just wanted to wait to  
21                    make sure that what you just read into the record is  
22                    accurate.

23                    CHAIRMAN GETZ: Well, I think, for our  
24                    purposes, I think she's testified to the best of her

[WITNESS PANEL: Hartley|Ware|Naylor|Lenihan]

1 recollection, and this will be the subject of a separate  
2 petition at a later date, so I think we can proceed. So,  
3 is that the conclusion of the direct?

4 MS. KNOWLTON: It is for me. Thank you.

5 MS. THUNBERG: And for Staff. Thank  
6 you.

7 CHAIRMAN GETZ: And, I take it correctly  
8 that neither of you have questions for the other's  
9 witnesses?

10 MS. THUNBERG: Staff has --

11 MS. KNOWLTON: I have none.

12 MS. THUNBERG: Staff has already asked  
13 them.

14 CHAIRMAN GETZ: Thank you.  
15 Mr. Richardson.

16 MR. RICHARDSON: Thank you, Mr.  
17 Chairman. I have a couple of quick questions, hopefully.  
18 Some of which has been covered already, so I'll try to go  
19 over just the municipal fire protection charges.

20 **CROSS-EXAMINATION**

21 BY MR. RICHARDSON:

22 Q. But, Ms. Hartley and Mr. Lenihan, I understand that, as  
23 part of the temporary rate approval, there was an  
24 increase for municipal fire protection charges of

[WITNESS PANEL: Hartley|Ware|Naylor|Lenihan]

1 approximately 6.41 percent, is that right?

2 A. (Hartley) That's correct.

3 Q. Okay. And, that increase resulted in large part due to  
4 the sharing that was discussed of the private fire  
5 protection costs with municipal fire protection costs,  
6 is that right?

7 A. (Hartley) That's correct.

8 Q. And, Mr. Lenihan, you agree with that as well?

9 A. (Lenihan) Yes, I do.

10 Q. Okay. If I look at the Temporary Settlement Agreement,  
11 which is Exhibit 3, on Page 13, approximately I'm going  
12 to call it "Line 3", there's a figure there of  
13 "\$186,907". And, is that the cost that was to be borne  
14 by municipal fire protection customers for the private  
15 fire protection sharing?

16 MS. THUNBERG: Mr. Chairman, before the  
17 witness responds, I'd like to give him a copy of the  
18 exhibit that Mr. Richardson is referring to.

19 (Atty. Thunberg handing document to  
20 Witness Lenihan.)

21 MS. THUNBERG: Mr. Richardson, you were  
22 referring to Page 13?

23 MR. RICHARDSON: Yes. Exhibit 3.

24 BY MR. RICHARDSON:



[WITNESS PANEL: Hartley|Ware|Naylor|Lenihan]

- 1 Q. And, if you go to Page 13, the handwritten number "13"  
2 on the bottom, it's an exhibit. And it refers to  
3 "Requested share with municipal fire for private fire  
4 protection, 186,907". And, excuse me, if you go to the  
5 previous page, you see there's a line item "Requested  
6 municipal fire increase" that corresponds to this  
7 shared amount. It's different by one dollar. And, my  
8 question basically is, so that amount is the private  
9 fire protection cost that municipal fire protection  
10 class was required to bear as a result of the approval  
11 of temporary rates in this case?
- 12 A. (Hartley) On an annualized basis.
- 13 Q. Yes.
- 14 A. (Hartley) Yes.
- 15 Q. And, Mr. Lenihan, is that your understanding as well?
- 16 A. (Lenihan) Yes.
- 17 Q. Now, if I'm correct, the cost of service study for  
18 permanent rates actually recommended a decrease in fire  
19 protection rates, is that right?
- 20 A. (Hartley) Correct. Correct.
- 21 Q. And, that was approximately a negative 0.73 percent?
- 22 A. (Hartley) Correct.
- 23 Q. And, Mr. Lenihan, you agree with that as well?
- 24 A. (Lenihan) Yes.

[WITNESS PANEL: Hartley|Ware|Naylor|Lenihan]

1 Q. So, and what I gather from that is that, prior to the  
2 rate case filing, municipal fire protection customers  
3 were paying a little bit more than their share of the  
4 Company's actual cost to provide service to that class?

5 A. (Hartley) Very slight amount, yes.

6 Q. Mr. Lenihan, is that --

7 A. (Witness Lenihan nodding affirmatively).

8 Q. Okay. By nodding, you --

9 A. (Lenihan) Yes. Yes, I concur.

10 Q. But the Settlement Agreement hasn't proposed to refund  
11 any amounts that were collected prior to the filing of  
12 the rate case?

13 A. (Hartley) No.

14 Q. Now, I'd like to look at the Settlement Agreement --  
15 well, let me just confirm that the Settlement Agreement  
16 doesn't specify exactly how the municipal fire  
17 protection customers are to be reconciled for the  
18 charges that they paid above what was recommended in  
19 permanent rates, is that right?

20 A. (Hartley) I believe it does speak to the fact that it  
21 will be refunded over 12 months. Let me get to that.

22 Q. I agree. But my question was directed to the fact that  
23 there is not a schedule that shows what the refund  
24 amount will be for a particular class?

{DW 08-073} {05-19-09}

[WITNESS PANEL: Hartley|Ware|Naylor|Lenihan]

1 A. (Hartley) No. First of all, within the fire -- the  
2 public fire protection class, you have several  
3 municipal fire protection accounts. Those would all  
4 individually, based on the timing and their costs,  
5 prior to when temporary rates were set, would be  
6 reconciled to the July 28th, 2008 effective date, and  
7 will be refunded over 12 months. In -- just maybe I'm  
8 going to leap ahead a little bit, but, in the case of  
9 the City of Nashua, we estimate that to be  
10 approximately, again, I haven't run through the whole  
11 calculation, but it will be approximately \$135,000 of  
12 refund over 12 months.

13 Q. And, that is based on what effective date for permanent  
14 rates?

15 A. (Hartley) July 28th, 2008.

16 Q. Okay.

17 A. (Hartley) So, we'll go back and reconcile it.

18 Q. But, under that assumption, so are you assuming that  
19 the temporary rates were in effect July 28, 2008, and  
20 the permanent rates came into effect as of --

21 A. (Hartley) Whenever they come into effect. Whenever --  
22 it could change. That's why we've got a little --  
23 we've got a moving target. Obviously, the recoupment  
24 can only speak to what -- I don't know when we'll

[WITNESS PANEL: Hartley|Ware|Naylor|Lenihan]

1 actually get the order. Whatever the effective date of  
2 the order is, looking back to July 28th, everything  
3 will be reconciled for permanent rates versus temporary  
4 rates. And, particularly, the impact on -- that's  
5 important for the private and public fire protection  
6 over the 12 months going forward after that.

7 Q. So, hypothetically, let's assume that the permanent  
8 rates were approved July 28th, 2009. So, there would  
9 be one year, and the amount that the fire protection  
10 class would be credited would be approximately the  
11 \$186,000, I believe it was?

12 A. (Hartley) Well, hypothetically. But there's an issue  
13 there, because, at the beginning of every year, the  
14 City of Nashua, as well as our other public fire  
15 protection accounts are updated for retirements,  
16 additions. So, it's dynamic. But, whatever the  
17 difference is, they will -- there will be a full  
18 reconciliation. Any schedule is always prepared for  
19 all of the public fire protection accounts in a letter  
20 explaining the details, and how we will be recouping or  
21 refunding the monies over the 12 months. And, then,  
22 we'll actually have a schedule of the 12 months going  
23 forward, so they will know exactly what will be charged  
24 to them or refunded or credited, if you will.

[WITNESS PANEL: Hartley|Ware|Naylor|Lenihan]

1 Q. And, by "additions" and "retirements", you're referring  
2 primarily to the number of inch feet of pipe and the  
3 number of hydrants?

4 A. (Hartley) Yes.

5 Q. Okay. Well, let's look then, just briefly, at the  
6 schedule that shows that. And, I'd like to look first  
7 at the one for permanent rates, which is Exhibit 16,  
8 and why don't we look at Page 45 of Exhibit 16. And,  
9 am I correct in understanding this shows the revenue  
10 requirement for hydrants to be approximately \$463,197  
11 per year?

12 A. (Hartley) Yes.

13 Q. And, from that, a cost per hydrant for permanent rates  
14 was derived of 188 -- excuse me, \$188.44?

15 A. (Hartley) Per hydrant, correct.

16 Q. So, in the City of Nashua's case, you could apply that  
17 charge to the number of hydrants and you'd come up with  
18 the hydrant component of fire protection costs?

19 A. (Hartley) Yes. All things being equal. This is --  
20 These are based on test year results, and they're  
21 annualized.

22 Q. Yes.

23 A. (Hartley) When a cost of service study is prepared,  
24 Mr. Palko uses -- he requests certain information from

[WITNESS PANEL: Hartley|Ware|Naylor|Lenihan]

1 the Company. And, at that time, we gave him this  
2 information regarding hydrants and inch foot charges.  
3 But, again, it can be dynamic. Then, when you look at  
4 a test year, the revenues can be slightly different,  
5 regarding the various classes, because you're using  
6 at-the-end-of-the-year results. And, if there were any  
7 changes in that test year, our rates are set on test  
8 year results. Our cost of service study is prepared by  
9 year-end data. So, there's always slight differences,  
10 is what I'm trying to tell you.

11 Q. So, what you're saying is essentially that the current  
12 charge is based on the number of hydrants, not based  
13 upon what the cost of service study used to calculate  
14 the charge per hydrant?

15 A. (Hartley) Well, I'm not sure I'm following you. Maybe  
16 I'll say it differently, maybe I can say it correctly.  
17 When we set rates, it's based on test year revenues.  
18 Which, in this case, could be different for the  
19 municipal fire protection class of customers, because,  
20 when Mr. Palko prepares his cost of service study, it's  
21 based on a year-end total number of hydrants, without  
22 all the dynamics that go into a test year, of  
23 in-and-outs, if you will, and the ebb and flow of maybe  
24 some changes. And, don't forget, this is a 2007. And,

[WITNESS PANEL: Hartley|Ware|Naylor|Lenihan]

1 we surcharged, if you will, the City of Nashua going  
2 through 2008, I think it was July 28th forward, so  
3 there will be some variances there, too. Because it  
4 may have been actually more -- there may be -- we may  
5 have actually charged more, because there may be a  
6 difference in hydrants and inch foot charges based on  
7 the 2008 year.

8 Q. But, at the --

9 A. (Hartley) In other words, you can't compare the cost of  
10 service study to the dollar to the test year revenues.

11 Q. But, at the end of the day, what you're asking this  
12 Commission to approve is a charge per hydrant?

13 A. (Hartley) Correct. That is correct.

14 Q. And, that charge is \$188.44?

15 A. (Hartley) And, all things considered equal, that's what  
16 you will be charged.

17 Q. Okay.

18 A. (Hartley) But I cannot tell you for sure there are  
19 2,458 hydrants at this point in time for the City of  
20 Nashua. That's what I'm trying to say.

21 Q. Understood.

22 A. (Hartley) Okay.

23 Q. So, let's look at what was approved for temporary rates  
24 quickly then, and that I believe is in Exhibit 3. And,

[WITNESS PANEL: Hartley|Ware|Naylor|Lenihan]

1       why don't we turn to Page 12 of Exhibit 3. And, if you  
2       see the "Annual" -- there's an item down towards the  
3       bottom of Page 12, and it says "Annual Cost Per  
4       Hydrant" of "\$202.02".

5   A.   (Hartley) I must not have the same page as you, Mr.  
6       Richardson. Oh, the temporary order.

7   Q.   Yes. Exhibit 3, Page 12. It's a Schedule 10, Page 1  
8       of 4.

9                   CHAIRMAN GETZ: Of the Settlement.

10   **BY THE WITNESS:**

11   A.   (Hartley) Settlement, sorry. Yes. It was 202, \$202.02  
12       per hydrant, based on the temporary increase of  
13       11 percent.

14   BY MR. RICHARDSON:

15   Q.   So, then, is my understanding correct that what the  
16       Company will be doing to calculate the reconciliation  
17       for hydrant charges is to subtract the permanent rates  
18       from the temporary rates? So, in other words, subtract  
19       \$188.44 from \$202.02, to come up with a credit for the  
20       -- an annualized credit for hydrants?

21   A.   (Hartley) Yes. Not exactly like that methodology,  
22       basically, we do it pretty simply. What were you  
23       charged and what should you have been charged? And,  
24       so, the difference will come out to that.

{DW 08-073} {05-19-09}



[WITNESS PANEL: Hartley|Ware|Naylor|Lenihan]

1 Q. Okay. Mr. Lenihan, is that the approach you would  
2 agree with or Staff would agree with?

3 A. (Lenihan) That appears to be reasonable, yes.

4 Q. And, is it then fair to say that we would do the same  
5 thing for the inch foot charges that are shown on these  
6 schedules? And, I believe, let's look at temporary  
7 rates, the inch foot charge is at the bottom of Page 12  
8 of Exhibit 3, and it is 0.11602?

9 A. (Hartley) Correct.

10 Q. And, that's annualized dollars per year per inch foot?

11 A. (Hartley) Yes.

12 Q. Okay. And, for permanent rates, we're looking at,  
13 again, Exhibit 16, Page 45, the annualized per charge  
14 -- charge per inch foot, excuse me, is 0.10823?

15 A. (Hartley) Correct.

16 Q. And, so, the difference for that would be the  
17 annualized reconciliation amount?

18 A. (Hartley) All things considered equal, yes.

19 Q. And, it's the Company's intention to make a filing with  
20 this Commission following approval of this Settlement  
21 Agreement to implement that, is that correct?

22 A. (Hartley) Yes. We will file a schedule, which will  
23 indicate the refund or credit in this case or the  
24 surcharge in the private fire protection with the

[WITNESS PANEL: Hartley|Ware|Naylor|Lenihan]

1 Staff.

2 Q. And, is that Staff's understanding as well.

3 A. (Lenihan) Yes.

4 MR. RICHARDSON: Thank you. I have no  
5 further questions.

6 CHAIRMAN GETZ: Thank you. Mr.  
7 Alexander?

8 MR. ALEXANDER: No questions. Thank  
9 you.

10 CHAIRMAN GETZ: And, let's see.  
11 Ms. Hollenberg, do you have substantial cross?

12 MS. HOLLENBERG: I think I probably have  
13 about 15 minutes or so of cross, could be a little bit  
14 longer, but depending on how it goes.

15 CHAIRMAN GETZ: Well, let's go off the  
16 record for a second.

17 (Brief off-the-record discussion  
18 ensued.)

19 CHAIRMAN GETZ: All right. Let's take  
20 ten minutes now, and then we'll resume with  
21 Ms. Hollenberg.

22 (Whereupon a recess was taken at 11:34  
23 a.m. and the hearing resumed at 11:52  
24 a.m.)

[WITNESS PANEL: Hartley|Ware|Naylor|Lenihan]

1 CHAIRMAN GETZ: Okay. We're back on the  
2 record, and turning to Ms. Hollenberg.

3 MS. HOLLENBERG: Thank you. Good  
4 morning.

5 WITNESS HARTLEY: Good morning.

6 WITNESS WARE: Good morning.

7 BY MS. HOLLENBERG:

8 Q. I have some questions to start off with on the issue of  
9 the incentive compensation. And, I'm wondering if you  
10 have Mr. Eckberg's testimony, a copy of that before you  
11 right now? If you don't, I can give you one.

12 A. (Hartley) I don't have one. I'm sorry.

13 Q. It's Exhibit -- It's been premarked as "Exhibit 14".

14 A. (Hartley) Yes. Thank you very much.

15 Q. And, just to start with, you would agree that the  
16 Company's filing included a *pro forma* adjustment for  
17 bonuses paid to officers and senior management?

18 A. (Hartley) Yes.

19 Q. And, that the revenue requirement proposed in the  
20 Settlement Agreement includes that same amount?

21 A. (Hartley) Yes.

22 Q. If you could turn to Attachment 5 of Mr. Eckberg's  
23 testimony, Exhibit 14. It's Page 31.

24 A. (Hartley) Yes.

{DW 08-073} {05-19-09}

[WITNESS PANEL: Hartley|Ware|Naylor|Lenihan]

1 Q. This is a response, your response to Data Request OCA  
2 1-13.

3 A. (Hartley) Correct.

4 Q. And, you were asked to describe the adjustments for the  
5 2007 bonuses. And, you discuss, if you could just  
6 follow along with me, you state "The bonus pool for  
7 2007 is based on the Company-wide pre-tax, pre-bonus  
8 income achieved for the full year." Did I read that  
9 correctly?

10 A. (Hartley) That's correct.

11 Q. And, it continues, and it says "The pool has two  
12 components; an automatic percentage at 55 percent of  
13 total compensation of all plan participants and a  
14 discretionary component of 45 percent that is based on  
15 meeting individual goals and objectives, including  
16 financial goals."

17 A. (Hartley) Correct.

18 Q. Thank you. In your rebuttal testimony, you reference  
19 the 2007 Bonus Plan.

20 A. (Hartley) Correct.

21 Q. And, I'd like to show you what I will ask to be marked  
22 as the next exhibit, "Exhibit 17". And, this was  
23 obtained from the SEC's website. You see the link at  
24 the top of the page?

[WITNESS PANEL: Hartley|Ware|Naylor|Lenihan]

1 A. (Hartley) Yes.

2 (The document, as described, was  
3 herewith marked as **Exhibit 17** for  
4 identification.)

5 BY MS. HOLLENBERG:

6 Q. And, would you agree that this is the "2007 Officer  
7 Bonus Plan, Summary of Material Terms"?

8 A. (Hartley) Yes.

9 Q. And, you made the point in your rebuttal that  
10 Mr. Eckberg based his conclusions on the 2008 Plan,  
11 rather than the 2007 Plan?

12 A. (Hartley) Yes.

13 Q. If you could turn to Page 4 of Exhibit 14,  
14 Mr. Eckberg's testimony please.

15 A. (Hartley) Yes.

16 Q. And, I'm just going to ask you to look at Page 4, which  
17 is the summary of the 2008 Plan. And, I'm also going  
18 to ask you to look at same time at the Exhibit 17 I  
19 just handed you, which is the 2007 Plan. And, do you  
20 agree that halfway down the page, 55 percent is the  
21 same for both? 55 percent is automatic, and that's the  
22 same for 2007 and 2008?

23 A. (Hartley) I believe you're correct. I've just got to  
24 find it. Yes.

{DW 08-073} {05-19-09}

[WITNESS PANEL: Hartley|Ware|Naylor|Lenihan]

1 Q. And, the same numbers apply to the discretionary  
2 amount, it's 45 percent discretionary?

3 A. (Hartley) Correct.

4 Q. Okay. And, below the percentages, there's a sentence  
5 that says in both: "If Company-Wide income falls  
6 below", and there's a space there, "no cash bonuses  
7 will be payable under the Plan." Did I read that  
8 correctly?

9 A. (Hartley) Yes.

10 Q. And, that's the same in 2007 and 2008?

11 A. (Hartley) Correct.

12 Q. Thank you. Would you agree, just to step back, that  
13 the amount included in the filing for the executive  
14 compensation is \$269,955?

15 A. (Hartley) That sounds correct, yes.

16 Q. In your rebuttal testimony, you refer to the "Goals and  
17 Objectives" portion of the Bonus Plan. Do you recall  
18 that?

19 A. (Hartley) Yes.

20 Q. And, that was at Page 3. Nearly in the center you  
21 begin a paragraph about that. This "Goals and  
22 Objectives" portion of the Plan, that's the 45 percent  
23 that you refer to, the 45 discretionary percent of  
24 bonuses paid by the Plan?

[WITNESS PANEL: Hartley|Ware|Naylor|Lenihan]

1 A. (Hartley) Correct.

2 Q. You also identify on Page 3 certain accomplishments  
3 that were included for that discretionary portion of  
4 the Plan for 2007. You agree that that list is not  
5 exclusive, correct?

6 A. (Hartley) Are you talking about when I refer to my own  
7 individual accomplishments for 2007?

8 Q. Yes.

9 A. (Hartley) That's not exclusive, no. That was just some  
10 highlights from my own accomplishments regarding  
11 customer service initiatives.

12 Q. And, as I believe you mentioned in response to the data  
13 request that we marked as Exhibit -- or that was, I'm  
14 sorry, that's Attachment 5 to Mr. Eckberg's testimony,  
15 some financial goals are also included?

16 A. (Hartley) Yes.

17 Q. I'd like to have you look right now at another document  
18 that I obtained from the SEC's website. And, I wasn't  
19 intending to put this in as an exhibit, although I'm  
20 open to the preferences of the Staff and the Company.  
21 I just wanted to direct --

22 MS. HOLLENBERG: It's a rather lengthy  
23 exhibit, I'm not intending to use it as an exhibit. So,  
24 unless Staff and the Company want me to, it's a 54-page

[WITNESS PANEL: Hartley|Ware|Naylor|Lenihan]

1 exhibit, and I just want to talk about, really, one and a  
2 half pages of it. So, --

3 CHAIRMAN GETZ: Well, you certainly can  
4 use it for the purposes of cross, and we'll determine if  
5 we think we need it.

6 WITNESS HARTLEY: Can I ask --

7 MS. HOLLENBERG: Yes.

8 WITNESS HARTLEY: -- what year are we  
9 referring to here?

10 MS. HOLLENBERG: This is --

11 (Atty. Hollenberg handing document to  
12 Witness Hartley.)

13 WITNESS HARTLEY: 2007.

14 MS. HOLLENBERG: Yes.

15 WITNESS HARTLEY: Thank you.

16 MS. HOLLENBERG: And, actually, I only  
17 have -- I'm going to have to share my copy with you,  
18 because, if that's all right with your attorney and the  
19 Commission, because I only have -- if I could have that  
20 one back?

21 WITNESS HARTLEY: Sure.

22 MS. HOLLENBERG: Thanks. And, I'll  
23 share this copy with you. Commissioners, so you can look  
24 at it.



[WITNESS PANEL: Hartley|Ware|Naylor|Lenihan]

1 (Atty. Hollenberg distributing  
2 documents.)

3 MS. HOLLENBERG: Thank you.

4 BY MS. HOLLENBERG:

5 Q. And, if I could just ask you some questions about some  
6 language that appears on Page 20. This -- You would  
7 agree that this section refers to, the section with the  
8 highlighted paragraphs, --

9 A. (Hartley) Sure.

10 Q. -- refers to executive compensation?

11 A. (Hartley) That's correct.

12 MS. KNOWLTON: And, I can't -- there's  
13 nothing highlighted on my copy. So, can you identify the  
14 paragraph?

15 MS. HOLLENBERG: Sure. Yes. It's the  
16 first paragraph under the "Executive Compensation"  
17 section. Thank you for mentioning that.

18 BY MS. HOLLENBERG:

19 Q. And, that first sentence states "The Company's primary  
20 compensation objective is to provide a total  
21 compensation package that enables the Company to  
22 attract, retain, and motivate highly qualified and  
23 dedicated executives."

24 A. (Hartley) Correct.

[WITNESS PANEL: Hartley|Ware|Naylor|Lenihan]

1 MS. KNOWLTON: It's kind of -- is there  
2 -- I just kind of feel like you're right on the witness's  
3 space. So, I just -- can she have a little space for her  
4 to answer the questions --

5 MS. HOLLENBERG: Sure. We have one copy  
6 and --

7 MS. KNOWLTON: -- can we get another  
8 copy or --

9 CHAIRMAN GETZ: Let's have one person  
10 speak at a time.

11 MS. HOLLENBERG: I have one copy, and  
12 I'm reading upside-down, and I apologize for that. I  
13 wasn't intending to crowd the witness's space.

14 (Document handed back to Atty.  
15 Hollenberg.)

16 MS. HOLLENBERG: Thank you. I'm going  
17 to give you this one then.

18 BY MS. HOLLENBERG:

19 Q. You would agree that the bonuses are a part of the  
20 compensation paid to executives?

21 A. (Hartley) Yes.

22 Q. So, --

23 A. (Hartley) And other professionals and senior management  
24 in the Company.

[WITNESS PANEL: Hartley|Ware|Naylor|Lenihan]

1 Q. Okay. And, so, the compensation that's discussed in  
2 this portion, and the primary objective relates to all  
3 compensation paid to the Company's officers and senior  
4 management, is that correct?

5 A. (Hartley) Yes. That's what it states.

6 Q. And, going to the second paragraph, that states:  
7 "Another important objective of the Compensation Plan  
8 Program is to provide incentives for Company's  
9 executives to achieve the Company's financial  
10 objectives. Accordingly, bonuses paid to executives  
11 under the Company's Bonus Plan are principally based on  
12 the achievement of corporate earnings at levels that  
13 meet the Company's financial objectives and are  
14 expected to produce competitive returns for  
15 shareholders." Did I read that correctly?

16 A. (Hartley) Yes, you did.

17 Q. Okay. And, if you go to the fourth full paragraph,  
18 it's the paragraph following the next question. That  
19 states: "The Company's executive compensation  
20 structure is designed to reward executives for  
21 achievement of both individual and corporate level  
22 goals and objectives. The primary corporate objective  
23 is to attain the Company's budgeted level of pre-tax  
24 income before extraordinary eminent domain costs as

[WITNESS PANEL: Hartley|Ware|Naylor|Lenihan]

1 approved by the Board at the outset of the fiscal year  
2 as more fully described below."

3 A. (Hartley) Yes.

4 Q. And, in the next section, the next paragraph, it states  
5 that "The CEO annually reviews and approves individual  
6 goals and objectives for each executive officer." Did  
7 I read that correctly?

8 A. (Hartley) Yes.

9 Q. And, that is the -- those are the "goals and  
10 objectives" portion of the Bonus Plan, which relates to  
11 the 45 percent under the 2007 Bonus Plan?

12 A. (Hartley) Yes.

13 Q. And, "These goals reflect each officer's primary duties  
14 and responsibilities, including areas such as sales  
15 growth, new business development, operating expense,  
16 and/or capital spending control, and other managerial  
17 and administrative duties. Each executive's  
18 compensation is directly tied to the achievement of  
19 these goals." Did I read that correctly?

20 A. (Hartley) Yes, you did.

21 Q. Thank you. And, so, the financial aspects of your  
22 goals and objectives could include some of these items  
23 that are discussed in this, in this proxy statement, is  
24 that correct?

[WITNESS PANEL: Hartley|Ware|Naylor|Lenihan]

1 A. (Hartley) Certainly could.

2 Q. And, do they?

3 A. (Hartley) Yes. I believe that all of these goals or  
4 these items that are listed have financial, as well as  
5 administrative, as well as managerial goals associated  
6 with them.

7 Q. And, I'd like you to look at what --

8 MS. HOLLENBERG: Did I ask for that last  
9 one to be marked as an exhibit? I don't believe I did.

10 CHAIRMAN GETZ: You didn't.

11 MS. HOLLENBERG: Okay.

12 CHAIRMAN GETZ: My understanding was you  
13 weren't going to. But, I think, for completeness of the  
14 record, let's mark that. It's a proxy statement?

15 MS. HOLLENBERG: Yes.

16 CHAIRMAN GETZ: As "Exhibit Number 18"  
17 for identification.

18 (The document, as described, was  
19 herewith marked as **Exhibit 18** for  
20 identification.)

21 MS. HOLLENBERG: Okay. That's the 2007  
22 proxy statement. And, I'm going to ask the witness a  
23 couple of questions about the 2008 proxy statement. I  
24 only have two copies. I was trying to conserve paper. I

[WITNESS PANEL: Hartley|Ware|Naylor|Lenihan]

1 will get the Clerk copies of those documents at the end of  
2 the hearing.

3 CHAIRMAN GETZ: Thank you.

4 BY MS. HOLLENBERG:

5 Q. Ms. Hartley, if I could ask you to turn to Page -- it's  
6 the Page 33 at the top, 33 of 73. And, would you  
7 agree, based on our discussion of the 2007 proxy  
8 statement, which has been marked as "Exhibit 18", that  
9 there appears to be a similar discussion in this 2008  
10 proxy statement about executive compensation?

11 A. (Hartley) It's been changed somewhat, but there's some  
12 similar references.

13 Q. And, just to walk you through a couple of those  
14 references, again, halfway through, after the first  
15 question on executive compensation, the first sentence  
16 again states: "The Company's primary compensation  
17 objective is to provide a total compensation package  
18 that enables the Company to attract, retain, and  
19 motivate highly qualified and dedicated executives."  
20 Did I read that correctly?

21 A. (Hartley) Yes.

22 Q. And, the second paragraph, "Another important objective  
23 of the Compensation Program is to provide incentives  
24 for the Company's executives to achieve the Company's

[WITNESS PANEL: Hartley|Ware|Naylor|Lenihan]

1 financial objectives. Accordingly, bonuses paid to  
2 executives under the Company's Bonus Plan are  
3 principally based on the achievement of corporate  
4 earnings at levels that meet the Company's financial  
5 objectives and are expected to produce competitive  
6 returns for shareholders." Did I read that correctly?

7 A. (Hartley) Yes, you did.

8 Q. Thank you. And, the last paragraph on that page  
9 states: "The Company's executive compensation  
10 structure is designed to reward executives for the  
11 achievement of both individual and corporate level  
12 goals and objectives. The primary corporate objective  
13 is to attain the Company's budget levels of pre-tax  
14 income before extraordinary eminent domain costs as  
15 approved by the Board at the outset of the fiscal year  
16 as more fully described below." Did I read that  
17 correctly?

18 A. (Hartley) Yes, you did.

19 Q. And, again, on the first paragraph on the next page,  
20 states: "The CFO annually reviews and approves  
21 individual goals and objectives for each executive  
22 officer. These goals reflect each primary office" --  
23 "each officer's primary duties and responsibilities,  
24 including areas such as sales growth, new business

[WITNESS PANEL: Hartley|Ware|Naylor|Lenihan]

1 development, operating expense, and/or capital spending  
2 control, and other managerial and administrative  
3 duties. Each executive compensation" -- "Each  
4 executive's compensation is directly tied to the  
5 achievement of these goals." Did I read that  
6 correctly?

7 A. (Hartley) Yes, you did.

8 Q. Thank you. So, basically, in 2007 and 2008, the  
9 executive compensation, as stated in these proxy  
10 statements, the goals -- the primary goals were to  
11 achieve a certain level of income. And that, once that  
12 income is met, then the officers and senior management  
13 are eligible for the bonuses?

14 A. (Hartley) Yes.

15 Q. Thank you.

16 MS. HOLLENBERG: And, I'm not sure again  
17 if I marked that as an exhibit for identification, but  
18 that would be "Exhibit 19" please.

19 CHAIRMAN GETZ: Okay. So marked.

20 MS. HOLLENBERG: Thank you.

21 (The document, as described, was  
22 herewith marked as **Exhibit 19** for  
23 identification.)

24 BY MS. HOLLENBERG:



[WITNESS PANEL: Hartley|Ware|Naylor|Lenihan]

1 Q. Ms. Hartley, do you agree that the Company's filing  
2 includes an annualized amount for the change from  
3 quarterly to monthly billing?

4 A. (Hartley) Yes.

5 Q. And, that change occurred in November of 2008, is that  
6 correct?

7 A. (Hartley) That's correct.

8 Q. And, that the revenue requirement proposed in the  
9 Settlement Agreement includes that amount proposed by  
10 the Company?

11 A. (Hartley) Yes, it does.

12 Q. Do you also agree that the Company's filing included an  
13 annualized amount for the new hires in 2008?

14 A. (Hartley) Yes.

15 Q. And, for wages -- and that was for wages and benefits?

16 A. (Hartley) Yes.

17 Q. And, that the revenue requirement proposed in the  
18 Settlement Agreement includes these amounts proposed by  
19 the Company?

20 A. (Hartley) Yes, it does.

21 Q. Thank you. On the subject of the improvements made to  
22 the Coburn Woods system, when did the Company convert  
23 to individual meters?

24 A. (Hartley) Would it be okay if I turn this over to Mr.

[WITNESS PANEL: Hartley|Ware|Naylor|Lenihan]

1 Ware?

2 Q. Yes. Thank you. Yes.

3 A. (Ware) We're depending upon my recollection as I answer  
4 this, because there's a lot that goes on. But I  
5 believe we took over operations in December of -- there  
6 was -- I guess to step back, there was a master meter,  
7 and we converted to individual meters. And, I honestly  
8 don't recollect the time frame in which that happened.  
9 But it did happen either in early 2000 -- sometime in  
10 2007 or in 2008.

11 Q. Okay. And, I guess I don't know the answer to the  
12 question. I don't know if it helps for you to look at  
13 Attachment 12 to Mr. Eckberg's testimony, which is  
14 Exhibit 14. That is the Schedule 1, Attachment A, that  
15 was submitted by the Company with its original filing.  
16 And, Subsection (d) references Coburn Woods. And, I  
17 guess says that the -- the way I'm reading it, it says  
18 in 2007 Coburn Woods was still based on a master meter.  
19 And that, in 2008, the Company converted. So, do you  
20 have a sense of when that occurred, may have occurred  
21 in 2008? Earlier? Later? In the middle?

22 A. (Ware) I'm sorry, I don't. I do not recall when it  
23 happened.

24 Q. And, you would agree that the, as we can see from this

{DW 08-073} {05-19-09}

[WITNESS PANEL: Hartley|Ware|Naylor|Lenihan]

1 attachment to Mr. Eckberg's testimony, that the Company  
2 did propose an adjustment to its revenues for the  
3 improvements that it made to the Coburn Woods system?

4 A. (Ware) That is correct. Basically, when you say "the  
5 improvements", we went to individual meters versus the  
6 master meter, worked with the association to reduce  
7 unaccounted for water. And, as a result, there was a  
8 large drop in the amount of billed consumption.

9 Q. And, also, in that same document, the Schedule 1,  
10 Attachment A, which is Attachment 12 to Exhibit 14, in  
11 that paragraph, the fourth sentence, it states "The  
12 impact of billing individual meters and the reduction  
13 in leakage will result in a reduction in revenues."  
14 How -- So, I guess I don't know how to interpret that,  
15 and I was wondering if you could clarify. Is the  
16 impact of billing individual meters, i.e. the increased  
17 cost of billing individual meters, incorporated into  
18 this calculation?

19 A. (Ware) The revenue numbers that were there just  
20 resulted from the change in the number of billing  
21 units. And, we added back in you're billing more  
22 individual meters. So, we took the total billings that  
23 would be derived from the reduced consumption and the  
24 increased number of bills. And, subtracted that from

[WITNESS PANEL: Hartley|Ware|Naylor|Lenihan]

1 the previous billing through a single meter and the  
2 consumption associated with it.

3 Q. Okay. So, it doesn't include the cost of actually the  
4 billing? And, what I mean by that, like you're asking  
5 in this case for an adjustment for monthly billing  
6 costs. It doesn't include the cost of billing an  
7 additional amount of meters?

8 A. (Ware) This happened in 2008. I believe that the, you  
9 know, the billing *proforma*, and perhaps Mrs. Hartley  
10 can correct me on this if I'm wrong, was based on 2007  
11 number of bills that were actually issued. So, that  
12 would have included one monthly bill to the Coburn  
13 Woods Association in 2007 would have been the *proforma*  
14 for billing expenses versus doing the 219, 220 bills  
15 per month that started sometime in 2008.

16 Q. I'd like to turn to the issue of the revenues from the  
17 cellular telephone tower leases. You are familiar with  
18 the Audit Report that Staff generated in this case?

19 A. (Ware) Yes.

20 Q. And, you would agree that that Audit Report refers to  
21 the Company's sale of certain cellular telephone tower  
22 leases?

23 A. (Ware) Yes.

24 Q. And, for convenience, the pages of that audit related

[WITNESS PANEL: Hartley|Ware|Naylor|Lenihan]

1 to that are attached to Exhibit 14, Mr. Eckberg's  
2 testimony, at Attachment 17. The Company refers in  
3 rebuttal to the sale of the property upon which these  
4 towers are situated. Just to be clear, the Company has  
5 not sold the property upon which the cellular towers  
6 are located, is that correct?

7 A. (Ware) That is correct.

8 Q. And, the property upon which these towers are located  
9 is included in rate base under the proposed Settlement  
10 Agreement, is that correct?

11 A. (Ware) Yes, it is.

12 Q. And, how about the towers themselves? Are they  
13 included in rate base?

14 A. (Ware) No, they are not.

15 Q. Who owns the towers?

16 A. (Ware) The towers are owned by the cellphone companies.

17 Q. In your rebuttal, you discuss the value of the land  
18 upon which these towers are located. And, I just want  
19 to make sure I understand. Are these values the same  
20 values the Company would sell this property for?

21 A. (Ware) This is the value that is on the books for the  
22 property that is -- that the cell towers sit on.

23 Q. So, if the Company were to sell this property, it would  
24 have a different value?

[WITNESS PANEL: Hartley|Ware|Naylor|Lenihan]

1 A. (Ware) We could not sell this property because it's  
2 integral to the tank sites.

3 Q. If the Company, for the purposes of this question, just  
4 as a hypothetical, resulted in selling the Company and  
5 its assets and franchise to a municipality, would the  
6 value be the same as the value you've indicated in your  
7 testimony?

8 A. (Ware) If you're saying, if we were to go out and if we  
9 could sell this on the open market, would we sell it  
10 for more than its original cost? The answer to that  
11 would be "yes". Keeping in mind that the shareholders  
12 own the land, and that any value that is associated  
13 with the sale of land goes to the shareholders.

14 Q. Okay. But I just wanted to establish that it may have  
15 a different value if it were sold. Thank you. Would  
16 you agree that the revenue sharing was part of the  
17 Settlement Agreement that the Commission approved?

18 A. (Ware) Yes, it was.

19 Q. And, you state in your rebuttal that this was from a --  
20 I think you said this was the result of, let me just  
21 find the language, "the Company's prior rate  
22 proceeding." And, are you referring to DW 06-73?

23 A. (Ware) As far as I'm aware, you know, the sharing of  
24 revenue was occurring before that case.

{DW 08-073} {05-19-09}

[WITNESS PANEL: Hartley|Ware|Naylor|Lenihan]

1 Q. Okay. Do you -- Would you accept subject to check that  
2 that was the result of a settlement agreement in the  
3 previous rate case, which is DW 04-052?

4 A. (Ware) Yes, subject to check.

5 Q. Does Staff have any recollection about that, Mr.  
6 Naylor? When the rate sharing, what settlement  
7 agreement and what order, what case it involved?

8 A. (Naylor) I don't specifically, but, if you told me it  
9 was the '04 case, it wouldn't surprise me.

10 Q. Okay. I could show you -- strike that. So, the  
11 revenue -- So, for the sake of argument, what I'm  
12 hearing is that the revenue sharing was a term of a  
13 settlement agreement in a case prior to the last rate  
14 case, is that correct? The DW 06-073 was the last rate  
15 case. So, the revenue sharing existed before that?

16 A. (Ware) Yes, based on the information that you've  
17 provided.

18 Q. And, you would agree, though, that it's -- you don't  
19 recall or do you recall whether or not it arose in that  
20 case?

21 A. (Ware) I do not recall.

22 Q. Do you recall whether it was existing at the time of  
23 that case?

24 A. (Ware) Yes. I believe it was existing at the time of

{DW 08-073} {05-19-09}

[WITNESS PANEL: Hartley|Ware|Naylor|Lenihan]

1 the 2006 case.

2 Q. Okay. So, it would follow that it occurred in a rate  
3 case before that?

4 A. (Ware) Yes.

5 Q. Okay. Thank you. So, it was continued then from a  
6 previous rate case into the prior rate case, that  
7 revenue sharing?

8 A. (Ware) Yes.

9 Q. You state in your rebuttal that the last full year of  
10 revenues from the cell tower leases was 2006. When did  
11 you sell the leases?

12 A. (Ware) I believe the leases were sold, and this is  
13 subject to check, in -- I think it was in early 2007.  
14 But, again, that's not under my governance. So, you  
15 know, if we need an actual date, we would have to check  
16 that.

17 Q. When do the leases expire?

18 A. (Ware) The leases -- all leases, obviously, have a time  
19 horizon.

20 Q. Do you know the period of time of the leases?

21 A. (Ware) Well, of course, we no longer own the leases.

22 Q. Uh-huh.

23 A. (Ware) We sold the leases to a company.

24 Q. I understand that. But did they have a time period



[WITNESS PANEL: Hartley|Ware|Naylor|Lenihan]

1 before you sold them?

2 A. (Ware) There was a time horizon associated with each of  
3 the leases, yes.

4 Q. And, do you recall what they are?

5 A. (Ware) I do not have any idea. There was multiple  
6 leases with multiple timeframes.

7 Q. And, is it your -- at the time that the leases do  
8 terminate according to the contracts, and I understand  
9 that they're owned by a new entity, but will you then  
10 be able to execute new leases for the towers?

11 A. (Ware) No.

12 Q. So, you basically sold the right to lease the towers?

13 A. (Ware) That is correct.

14 Q. Okay.

15 MS. HOLLENBERG: I'd like to ask Ms.  
16 Hartley to look at the next document, which I would ask to  
17 be marked for identification. I believe it would be  
18 "Exhibit 20".

19 (Atty. Hollenberg distributing  
20 documents.)

21 CHAIRMAN GETZ: It will be so marked as  
22 "Exhibit 20".

23 MS. HOLLENBERG: Thank you.

24 (The document, as described, was

[WITNESS PANEL: Hartley|Ware|Naylor|Lenihan]

1 herewith marked as **Exhibit 20** for  
2 identification.)

3 BY MS. HOLLENBERG:

4 Q. Ms. Hartley, would you agree that this is your response  
5 to OCA 2-2?

6 A. (Hartley) Yes.

7 Q. And, Subsection (b) asked you to explain certain  
8 charges paid to the United Way of Greater Nashua for an  
9 Annual Meeting Dinner. And, you responded "One  
10 executive attended the Nashua United Way Annual Dinner  
11 representing the Company as part of our continued  
12 support for the community we serve." Did I read your  
13 response correctly?

14 A. (Hartley) Correct.

15 Q. Do you have your -- Do you have the Company's 1604.01  
16 filing at the table up there?

17 A. (Hartley) No, I do not.

18 Q. I have copies which I could show you. I only have one  
19 copy, though. Do you have the filing? Specifically,  
20 Section 11. Mr. Ware, if I could just ask you a  
21 question on the cell tower issue while you're getting  
22 the filing for Ms. Hartley.

23 MS. KNOWLTON: Can I hand the witness  
24 this filing?

{DW 08-073} {05-19-09}

[WITNESS PANEL: Hartley|Ware|Naylor|Lenihan]

1 CHAIRMAN GETZ: Yes.

2 MS. KNOWLTON: Thank you.

3 (Atty. Knowlton handing document to  
4 Witness Hartley.)

5 BY MS. HOLLENBERG:

6 Q. Mr. Ware, before I continue with Ms. Hartley, --

7 A. (Ware) Yes.

8 Q. -- one additional question. If you could just state  
9 what happened to the revenues from the sale of the  
10 leases of the cell towers?

11 A. (Ware) The revenues for those, from the sale, were  
12 reinvested by the Company as equity in the water  
13 treatment plant.

14 Q. And, the sharing, the revenue sharing that was agreed  
15 to and approved by the Commission in a prior rate case  
16 was discontinued after that?

17 A. (Ware) Yes, because there's no longer a revenue stream  
18 associated with the lease.

19 Q. Thank you. Ms. Hartley, I just have a couple of  
20 questions about Section 11 of the Company's 1604.01  
21 filing.

22 A. (Hartley) Sure.

23 Q. With respect to the Annual Meeting Dinner of the United  
24 Way of Greater Nashua, I believe that that's listed on

{DW 08-073} {05-19-09}

[WITNESS PANEL: Hartley|Ware|Naylor|Lenihan]

1 the "Meetings and Convention" pages?

2 A. (Hartley) Yes, I see that. The \$35.

3 Q. Yes, ma'am. Thank you. And, then, I'd like to ask you  
4 about Subsection (e). "Please provide information  
5 about the Rotary meetings attended during the test  
6 year. Please provide copies of the documents  
7 received." And, the response is that "Mr. Densberger  
8 is a member of the Rotary", and that "the Company pays  
9 his annual dues."

10 A. (Hartley) Yes.

11 Q. Okay. And, those annual dues are reflected in the  
12 "Membership" portion of that Section 11,  
13 Section 1604.01 filing, is that correct? It's \$145.  
14 It's the second to the last one at the bottom. It  
15 would be a separate page from the "Meetings and  
16 Conventions".

17 A. (Hartley) Oh, I'm sorry.

18 Q. That's okay.

19 A. (Hartley) Okay. "Membership", I'm sorry. Okay. I see  
20 it. Thank you.

21 Q. Okay. Thank you.

22 A. (Hartley) You are correct.

23 MS. HOLLENBERG: If I could just have a  
24 moment please.

[WITNESS PANEL: Hartley|Ware|Naylor|Lenihan]

1 (Short pause.)

2 BY MS. HOLLENBERG:

3 Q. Ms. Hartley, when you testified this morning, you  
4 stated that the reason you filed rebuttal was that you  
5 had settled -- the Company had settled with the Staff  
6 before you filed your rebuttal testimony, is that  
7 correct?

8 A. (Hartley) Yes, I believe that is correct. Yes. Just  
9 trying to think of the sequence of events. But, yes,  
10 we had settled our matters with the Staff. But I  
11 believe at that point the OCA still had some,  
12 obviously, some issues, so we rebutted. However, I'd  
13 like to say one thing. Can I ad-lib a little? We did  
14 settle some matters that were of concern to the OCA;  
15 clearly working capital, pension expense. So, there  
16 were some -- I want to say there were some similar  
17 issues amongst all the parties that were settled. I  
18 just thought I'd like to add that.

19 Q. Thank you. Either Mr. Ware or Ms. Hartley, you  
20 testified this morning that some of the efforts of the  
21 Company to mitigate the increases in rates include  
22 obtaining competitive quotes from providers. Do you  
23 recall that?

24 A. (Ware) Yes.

{DW 08-073} {05-19-09}

[WITNESS PANEL: Hartley|Ware|Naylor|Lenihan]

1 Q. Could you tell me if you obtained competitive bids on  
2 any of the items that you will be including in your  
3 rate case expenses?

4 A. (Ware) I do not believe we went out for any competitive  
5 quotes. We use legal staff that is familiar with the  
6 Company, familiar with the Company's operations, and  
7 consequently we don't have to bring them up to speed  
8 and educate them as to the process. So, we've worked  
9 and felt that we've gotten very good service from both  
10 our legal staff, as well as our cost of service and  
11 equity expert.

12 Q. Thank you. I just want to clarify with both Staff and  
13 the Company. A number of times the step adjustment was  
14 referred to as "related to capital additions", and I  
15 wanted to clarify that the step adjustment is not only  
16 related to capital additions, is that correct?

17 A. (Hartley) That is correct. There were some other items  
18 that were included as part of the step adjustment.  
19 Some chemical expense, I believe, and pension. I'd  
20 like to say one thing, just to add to Mr. Ware's  
21 comments regarding the rate case expense. The Company  
22 prepares all of the exhibits, all of our testimony, all  
23 of our responses. And, we do have legal counsel that  
24 reviews that, and, obviously, represents us here before

[WITNESS PANEL: Hartley|Ware|Naylor|Lenihan]

1 the Commission. But I do think it's important for the  
2 Commissioners and you folks to know that we do not use  
3 consultants without some real critical analysis.  
4 Granted, we did not go out to bid, but we are very  
5 careful in how we use our consultants. And, we prepare  
6 all of our own information and all our exhibits  
7 internally. So, I think that's important to know.

8 Q. Okay. Thank you. Mr. Naylor, do you have a sense of  
9 when Audit will be done with its review of the step  
10 adjustment items?

11 A. (Naylor) I don't have an exact date, but I believe they  
12 have started it.

13 Q. And, to clarify, the effective date of the step  
14 adjustment is going to be after that review occurs and  
15 after a recommendation is made to the Commission by the  
16 Staff and the Company, is that correct?

17 A. (Naylor) I believe the language in the Agreement, and  
18 I'm looking for it now, yes, it begins at the bottom of  
19 Page 4 of the Agreement. "The Settling Parties agree  
20 and recommend to the Commission that the two step  
21 adjustments originally proposed by Pennichuck be  
22 combined into one step adjustment in the tentative  
23 amount of \$2.3 million subject to audit, or an  
24 additional 10.61 percent increase, effective upon the

[WITNESS PANEL: Hartley|Ware|Naylor|Lenihan]

1 Commission's approval of this Agreement on a bills  
2 rendered basis."

3 Q. So, the step adjustment is effective upon the approval  
4 of this Agreement, which includes permanent rates,  
5 despite the fact that the audit may not be done?

6 A. (Naylor) It's our expectation that we will have a  
7 report to the Commission fairly quickly.

8 Q. So, you're expecting to have a report to the Commission  
9 before the Commission issues its order on permanent  
10 rates and this Settlement Agreement?

11 A. (Naylor) That's our expectation, yes.

12 Q. Okay. And, for clarification, I think Mr. Ware said  
13 this on direct, but there is no reconciliation  
14 associated with the step adjustment?

15 A. (Ware) That is correct.

16 Q. Thank you. Mr. Lenihan, you thought you would escape  
17 this morning without a question from me. But just, I  
18 was wondering, I was having some trouble following you  
19 on the explanation of the differences between the  
20 larger increase for permanent rates and the smaller  
21 increase for the step adjustment, yet the impacts are  
22 reversed, if that makes any sense. Could you explain  
23 how that developed or how that occurred?

24 A. (Lenihan) The overall permanent increase of



[WITNESS PANEL: Hartley|Ware|Naylor|Lenihan]

1 11.48 percent, which is 11.27 percent for the general  
2 metered customer, reflects an increase of 8.2 percent  
3 for the fixed meter charge and a 10.5 percent for the  
4 volumetric charge. This is an effective increase of  
5 9.58 percent for the permanent. The overall step  
6 increase of -- in revenue of 10.61 percent, that's  
7 10.65 percent for the metered -- general metered class,  
8 reflects an increase of a 10.35 percent for the fixed  
9 charge and a 10.58 percent increase for the volumetric  
10 charge. This is an overall effective increase of  
11 10.49 percent. As a result, the cost elements produce  
12 a higher effective percentage increase in the step  
13 versus the permanent increase.

14 Q. So, if I'm following you, the overall increase, once  
15 it's broken down, for the residential customers, for  
16 both the step and the permanent, is -- it's different  
17 than the overall increase, firstly?

18 A. (Lenihan) That's correct. It's slightly different.

19 Q. And, because of that, that results in the differences  
20 in the impact?

21 A. (Lenihan) That is correct.

22 MS. HOLLENBERG: Okay. I think I  
23 understand that. One moment please.

24 (Short pause.)

[WITNESS PANEL: Hartley|Ware|Naylor|Lenihan]

1 MS. HOLLENBERG: I have nothing further.  
2 Thank you.

3 CHAIRMAN GETZ: Any redirect?

4 MS. KNOWLTON: I have none.

5 CHAIRMAN GETZ: Then, the witnesses are  
6 excused. Thank you.

7 MS. KNOWLTON: Mr. Chairman, may I take  
8 something up? I actually don't have any cross-examination  
9 for Mr. Eckberg. I would, you know, I'm willing to agree  
10 to the admission of his testimony.

11 CHAIRMAN GETZ: Ms. Hollenberg.

12 MS. HOLLENBERG: Well, I guess, if Staff  
13 has questions, then I will ask him. I think what is  
14 helpful to have him take the stand is to just basically,  
15 as Ms. Hartley alluded to in her testimony, there are some  
16 issues that have been resolved that Steve raises in his  
17 testimony that the Settlement Agreement resolves. And, I  
18 think, so it would be helpful for the Commission to hear  
19 from him as to the OCA's position on the Settlement  
20 Agreement. And, we were not planning to do any kind of  
21 lengthy summary of his testimony.

22 CHAIRMAN GETZ: I think that's a  
23 reasonable way to proceed.

24 MS. HOLLENBERG: Okay.

{DW 08-073} {05-19-09}

[WITNESS: Eckberg]

1 MS. KNOWLTON: Just so I understand, so  
2 he's just going to be testifying as to the Settlement  
3 Agreement?

4 MS. HOLLENBERG: I was planning to have  
5 him testify as to the issues that he raised in his  
6 testimony, to enumerate them, to specify which of those  
7 issues are resolved by the Settlement Agreement, and to  
8 specify which of those issues, in our opinion, remain live  
9 issues for determination by the Commission.

10 MS. KNOWLTON: Well, if he's going to  
11 take the stand, I mean, I may cross him then.

12 MS. HOLLENBERG: Okay.

13 CHAIRMAN GETZ: Well, that's your  
14 opportunity.

15 MS. HOLLENBERG: Does Staff have a  
16 desire to cross-examine him or no?

17 MS. THUNBERG: Staff is going to wait  
18 until we hear what the additional explanations are. But,  
19 at this point, Staff has conferred with OCA, because  
20 initially Staff thought its only cross would be having  
21 Mr. Eckberg describe what were the settled issues.

22 MS. HOLLENBERG: I'm happy to make an  
23 offer of proof, if you would prefer that? If the Company  
24 would prefer that?

{DW 08-073} {05-19-09}

[WITNESS: Eckberg]

1 MS. KNOWLTON: Sure. That's fine.  
2 That's fine with me.

3 CHAIRMAN GETZ: Well, let's -- I would,  
4 I guess, prefer that let's get him sworn in, adopt his  
5 testimony. And, if he wants to make a distinction between  
6 or explain what has been adopted through the Settlement  
7 and what is not, then let's get that on the record.

8 MS. HOLLENBERG: Okay.

9 CHAIRMAN GETZ: I think we know pretty  
10 much where we are, but let's just make sure we're clear on  
11 which issues are which. So, if he could take the stand.

12 MS. HOLLENBERG: Okay. So, if I could  
13 call Stephen Eckberg to the stand please.

14 (Whereupon **Stephen R. Eckberg** was duly  
15 sworn and cautioned by the Court  
16 Reporter.)

17 **STEPHEN R. ECKBERG, SWORN**

18 **DIRECT EXAMINATION**

19 BY MS. HOLLENBERG:

20 Q. Good afternoon.

21 A. Good afternoon.

22 Q. Would you please state your full name.

23 A. My name is Stephen R. Eckberg.

24 Q. And, are you employed by the OCA?

[WITNESS: Eckberg]

1 A. I am, yes. I'm employed as a Utility Analyst by the  
2 New Hampshire Office of Consumer Advocate.

3 Q. You filed testimony in this proceeding, do you agree  
4 with that?

5 A. Yes, I did.

6 Q. And, does your testimony include any information about  
7 your education and experience?

8 A. Yes. My qualifications are included with my testimony  
9 as Attachment 1.

10 Q. Was your testimony prepared by you or under your  
11 direction?

12 A. Yes, it was.

13 Q. And, is it true to the best of your knowledge?

14 A. Yes.

15 Q. Do you have any corrections to make?

16 A. Yes. I would mention that, on Pages 7 to 8 of my  
17 testimony, where I discuss my recommendation regarding  
18 pension expense, I did not include, unfortunately, the  
19 necessary allocation factor when calculated the impact  
20 of that recommendation. However, I believe this issue  
21 is moot at this point, as I'll discuss shortly.

22 Q. Thank you. And, except for those corrections, would  
23 your answers to the questions within your testimony be  
24 the same today as they were when you initially

[WITNESS: Eckberg]

1       responded to them?

2       A.    Yes, they would be.

3       Q.    Could you please briefly identify the issues you  
4       discuss in your testimony?

5       A.    Certainly.  The issues that I'll enumerate here were,  
6       in fact, listed on Page 2 of my testimony.  And,  
7       briefly, there's eight items here.  They include  
8       incentive compensation to executives; the Company's  
9       *proforma* increase for fuel costs; pension expenses;  
10      calculation of cash working capital; customer billing  
11      expenses; a revenue adjustment for system changes made  
12      in Coburn Woods; changes to the Company's *proforma*  
13      adjustments for salary and benefits expenses for  
14      personnel newly hired after the end of the test year;  
15      and, finally, the income from the sale of the cellphone  
16      tower leases.

17      Q.    Are you aware of the fact that Staff and the Company  
18      filed a Settlement Agreement in this case?

19      A.    Yes, I certainly am.

20      Q.    And, have you reviewed that agreement?

21      A.    Yes, I had the opportunity to review that thoroughly  
22      yesterday.

23      Q.    Does the Settlement Agreement resolve any of the issues  
24      that you raise in your testimony?

{DW 08-073}   {05-19-09}

[WITNESS: Eckberg]

1 A. It does, actually. A little while ago Ms. Hartley  
2 testified that there were -- there was, in fact, some  
3 resolution of several issues. I believe, if I heard  
4 her correctly, she mentioned "cash working capital" and  
5 "pension expenses". From my perspective, I would say  
6 that those aren't the issues that I would mention right  
7 now. The issues that I feel have been resolved are the  
8 fuel expenses and the pension costs. Because Staff  
9 witness, Mr. LaFlamme, in his testimony took almost the  
10 identical position that I did in my testimony on the  
11 fuel cost and pension cost issues. And, so, it appears  
12 that Staff's position on those issues was incorporated  
13 into the terms of the Settlement Agreement. And, the  
14 OCA has no objection to the way those issues were  
15 resolved.

16 Q. And, if you could very briefly just summarize the  
17 remaining issues that the OCA continues to dispute.

18 A. Certainly. Well, briefly, one could look at the list  
19 of eight issues in my testimony and cross off the  
20 "pension costs" and the "*proforma* increase for fuel  
21 costs". If you'd like me to be a little bit more  
22 detailed than that, I'd be glad to.

23 CHAIRMAN GETZ: I think we've got the --  
24 by subtraction, we know where we are.

[WITNESS: Eckberg]

1 MS. HOLLENBERG: Okay. I would just ask  
2 to clarify one issue in particular, which was mentioned by  
3 Ms. Hartley, and Mr. Eckberg just mentioned it, which is  
4 the working capital issue?

5 CHAIRMAN GETZ: Okay.

6 MS. HOLLENBERG: Thank you.

7 **BY THE WITNESS:**

8 A. Certainly. In my testimony, though I did mention -- I  
9 certainly discussed cash working capital, and though  
10 the Settlement has set the calculation of cash working  
11 capital at I believe 12.33 percent, in my testimony I  
12 propose a rate that was somewhat higher than that,  
13 which was actually 16.56 percent. And, the reason for  
14 that was because I advocated for a consistent treatment  
15 of changes in the post test year period. So, I was  
16 connecting the issue of cash working capital with the  
17 annualization of certain costs for monthly billing, as  
18 well as the annualization of costs for new hires, both  
19 the salary and benefits costs.

20 MS. HOLLENBERG: Thank you. I don't  
21 have anything further for this witness, and he is  
22 available for cross-examination.

23 CHAIRMAN GETZ: Thank you.

24 Mr. Richardson, do have anything?



[WITNESS: Eckberg]

1 MR. RICHARDSON: No.

2 CHAIRMAN GETZ: Mr. Alexander?

3 MR. ALEXANDER: No questions.

4 CHAIRMAN GETZ: Ms. Knowlton?

5 MS. KNOWLTON: I have nothing.

6 CHAIRMAN GETZ: Ms. Thunberg?

7 MS. THUNBERG: Nothing. Thank you.

8 CHAIRMAN GETZ: Okay. Then, you're  
9 excused. Thank you, Mr. Eckberg.

10 WITNESS ECKBERG: You're very welcome.  
11 Always a pleasure.

12 CHAIRMAN GETZ: Is there any objection  
13 to striking the identifications and admitting the exhibits  
14 into evidence?

15 MS. THUNBERG: None.

16 MS. HOLLENBERG: I will allow  
17 Mr. Richardson to go first, if he'd like.

18 MR. RICHARDSON: Just a request that the  
19 City of Nashua, and perhaps other intervenors, be provided  
20 with a copy of the exhibits that were added today.

21 MS. HOLLENBERG: Yes. I'm sorry. I'd  
22 be happy to do that. I'm sorry.

23 CHAIRMAN GETZ: With that *proviso*, then  
24 the exhibits will be admitted into evidence.

1 MS. HOLLENBERG: I would actually just  
2 like to comment on the Settlement Agreement, which was  
3 filed on Friday. And, it was due on Wednesday, and I'm  
4 not taking an objection to the Commission considering it  
5 today, but I do believe that the parties who have  
6 proffered the Settlement Agreement need to request a  
7 waiver of the rules, which require its filing within a  
8 certain period of time before the hearing.

9 CHAIRMAN GETZ: Is such a request for a  
10 waiver to be made?

11 MS. KNOWLTON: Yes. The Company would  
12 ask that the Commission waive the requirement of its  
13 procedural rules requiring advance filing. The Settlement  
14 Agreement, I don't believe that -- you know, a draft of it  
15 was circulated to the parties in the docket prior to its  
16 execution, offering the parties a chance to review and  
17 participate in the settlement. So, while it was filed on  
18 Friday, it was circulated prior to that. So, I believe  
19 that the parties haven't been prejudiced by it not being  
20 filed earlier.

21 MS. HOLLENBERG: And, if I could just  
22 clarify, it is not my argument that we were prejudiced.  
23 But I would like to clarify that we did receive a copy of  
24 the Agreement the day before, which was Thursday, which

1 was a day after the Settlement Agreement was due under the  
2 rules. And, we were not invited to participate in the  
3 Settlement Agreement. It was presented to us as an  
4 agreement of Staff and the Company, and given to us for  
5 our notification.

6 MS. KNOWLTON: It was my understanding  
7 that OCA, they participated in the discovery and the  
8 technical sessions in the case, but it was my  
9 understanding, and I believe I was informed by OCA that  
10 they were not going to settle here. So, if there was  
11 someone that wanted to settle, that wanted to participate,  
12 certainly my apologies for that. But I never heard from  
13 OCA that they were interested in settling.

14 CHAIRMAN GETZ: Okay. Well, I  
15 understand the purpose of the rule, I understand the  
16 language of the rule, and a request for waiver has been  
17 made. Is there any other procedural issues we need to  
18 address before we provide an opportunity for closings?

19 (No verbal response)

20 CHAIRMAN GETZ: Okay. Hearing nothing,  
21 then, Mr. Alexander, do you have something?

22 MR. ALEXANDER: I have nothing.

23 CHAIRMAN GETZ: Okay. Mr. Richardson.

24 MR. RICHARDSON: Thank you, Mr.

1 Chairman. The City of Nashua takes no position on the  
2 Settlement Agreement. However, in the event that the  
3 Commission is inclined to approve the Agreement, the City  
4 believes that the City should -- excuse me, the Commission  
5 should order that the municipal fire protection rates be  
6 reconciled in accordance with RSA 378:29, as explained by  
7 the witnesses in their testimony today. The reason for  
8 doing that is that the terms of the Settlement Agreement  
9 aren't expressly clear on how that will be done. And, we  
10 would like to see the adjustments made that were discussed  
11 by the witnesses in their testimony, and that those  
12 adjustments ultimately be subject to approval by the  
13 Commission in this proceeding, so that we have a chance to  
14 comment on that important element.

15           You may recall during the testimony the  
16 amount involved is significant. There's an annual charge  
17 of \$186,907, more or less, that are at issue, assuming  
18 that permanent rates are approved on or about July 28th,  
19 which would make that a full year for the temporary rates  
20 having been in effect. And, there was an approximately a  
21 six and a half percent increase -- percent increase for  
22 temporary rates, I believe, when, in fact, the cost of  
23 service study indicated that it should have actually gone  
24 down slightly for the permanent rates.

1                   So, we believe that it would be, in  
2                   order to make the final rates approved under the  
3                   Settlement Agreement just and reasonable, that that  
4                   reconciliation should take place as explained by the Staff  
5                   witnesses and the Company's witnesses.

6                   CHAIRMAN GETZ: Thank you.  
7                   Ms. Hollenberg.

8                   MS. HOLLENBERG: Thank you. As you  
9                   heard just a few moments ago, when Mr. Eckberg took the  
10                  stand, the Office of Consumer Advocate is pleased with the  
11                  results of a couple of issues that it raised in its  
12                  testimony; those being the pension expenses and the fuel  
13                  cost expenses. However, we do continue to dispute several  
14                  issues. Those being the incentive compensation, the  
15                  annualization of test year expenses, the lack of an  
16                  adjustment for the expenses associated with Coburn Woods,  
17                  and the revenues from cellular telephone tower leases.

18                 In addition, we also object to certain  
19                 -- including certain other expenses related to meetings  
20                 and memberships, which were asked -- questions were asked  
21                 of Ms. Hartley when she was on the stand.

22                 On the issue of incentive compensation,  
23                 it's our position that it's clearly established practice  
24                 at this Commission that an expense must be both necessary

1 to providing service and to provide a benefit to  
2 ratepayers to be included in the Company's cost of service  
3 for ratemaking purposes. This standard is set out in  
4 *Appeal of Manchester Gas Company*, 129 New Hampshire 800,  
5 1987. We don't think that the Company's executive officer  
6 incentive compensation meets this standard. In its  
7 rebuttal, the Company claims that the OCA failed to tie  
8 its -- that the OCA -- the Company tried to explain why  
9 the OCA failed to tie related to the incentive  
10 compensation. But, in our opinion, the Company appears to  
11 miss the point what the OCA is making there about the  
12 triggers for awarded certain percentages of the bonus  
13 pool. It's our position that the tying was not related to  
14 the numbers, rather it was related to the legal standard  
15 and the Company's proof. The point is that the Company's  
16 initial filing did not contain sufficient justification  
17 for its inclusion of this amount in rates. In other  
18 words, the Company, which bears the burden of proof and  
19 production on this issue, failed to provide sufficient  
20 detail concerning the terms of the 2007 Bonus Plan for the  
21 parties or the Commission to reasonably discern that the  
22 incentive compensation was both necessary to provide  
23 service to customers and provides a benefit to customers.

24 Also, the Company rightly points out

1 that Mr. Eckberg's testimony refers to its 2008 Bonus  
2 Plan. However, based on the limited information provided  
3 about the 2007 Plan in the Company's response to OCA 1-13,  
4 which is Attachment 5 to Mr. Eckberg's testimony,  
5 Exhibit 14, and the 2007 Plan itself, which is Exhibit 17,  
6 I believe this morning, it appears that the critical terms  
7 of the 2007 Bonus Plan are the same. Namely, the  
8 incentive compensation is not paid unless a certain level  
9 of income is earned, and the majority of the Bonus Plan is  
10 automatic.

11 Consequently, the OCA's recommendation  
12 on this issue remains the same; that the Commission should  
13 disallow the entire amount of the incentive compensation  
14 proposed by the Company and Staff. The incentive  
15 compensations benefit Company shareholders, because it is  
16 ultimately dependent on the company-wide income. And,  
17 this is particularly the case with the majority portion  
18 that is automatically awarded, without any relation to  
19 specific goals and objectives. With regard to the other  
20 amounts allowed, those also include goals that are  
21 financially related.

22 On the issue of annualization of test  
23 year expenses, as Mr. Eckberg described in his testimony,  
24 the Company has proposed in the joint Settlement Agreement

1 offered by the Staff and Company proposes to annualize  
2 certain expenses incurred by the Company during the 12  
3 months beyond the test year; that is January 1, 2008  
4 through December 31, 2008. The OCA objects to this  
5 treatment as it conflicts with the Commission's  
6 well-established, traditional, historical test year  
7 methodology, which includes only *proforma* adjustments to  
8 test year operation and maintenance expenses for known and  
9 measurable changes incurred during the 12 months following  
10 the test year.

11 The OCA is not aware that this issue has  
12 been recently litigated, in fact, many cases come to the  
13 Commission, rate cases come to the Commission as  
14 settlement agreements, but the OCA is aware of several  
15 cases from the '80s and early '90s, when the Commission  
16 clearly enunciated its commitment to the policy that  
17 expenses incurred during the 12 months following the test  
18 year should not be annualized. Rather, only actual  
19 amounts associated with this post year test -- post test  
20 year time period were allowed. Those cases include  
21 Manchester Gas Company, which was originally DR 85-215.  
22 In that case, the Company originally proposed to annualize  
23 payroll increases -- I'm sorry, 85-214. And, the  
24 adjustments, Staff did not -- in that case, Staff did not



1 agree with the Company's adjustments. And, the Public  
2 Utilities Commission at that time stated that adjustments  
3 to test year expenses refers to expenses incurred more  
4 than 12 months beyond the end of the test year, which we  
5 have disallowed. The Company -- This order was then  
6 brought before the Commission again on rehearing, and the  
7 Commission at that time said the PUC -- they disallowed  
8 the Company's *proforma* adjustments to test year expenses  
9 for known and measurable changes occurring more than 12  
10 months beyond the end of the test year. It stated  
11 "Allowing adjustments for expenses", and it's important to  
12 remember that these were annualized wage expenses, as we  
13 have before the Commission right now, "incurred beyond 12  
14 months after the end of the test year is contrary to the  
15 well-established regulatory principle of matching test  
16 year expenses and revenues. This matching is necessary to  
17 obtain an accurate determination of a utility's operating  
18 income."

19 These two orders were affirmed on appeal  
20 to the Supreme Court. In Southern New Hampshire Water  
21 Company, DR 89-224, on rehearing, the Commission had  
22 before it a settlement agreement before -- between the  
23 Staff and the Company, which requested modification of a  
24 final order on permanent rates. And, these modifications

1 included an adjustment for tax year 1990 increases in  
2 property taxes. In that case, the PUC only allowed the  
3 portion of the tax bill attributed to the calendar year  
4 1990 as a *proforma* adjustment to test year operating  
5 expenses. And, they also agreed to increase the operating  
6 expenses by half of a 1990 to 1991 DES fee, and they state  
7 "Because six months of the period covered by the new fee  
8 is within the 12 months following the end of the test  
9 year, there should be no" -- "there should be a net  
10 adjustment to the *proforma* test year production expenses."

11 In EnergyNorth Natural Gas, Inc., DR  
12 91-212, the Company requested annualized -- proposed to  
13 annualize all known and measurable changes and expenses in  
14 the 12 months following the test year. In that case, the  
15 Staff opposed the proposed out-of-time investment and its  
16 expenses, and it states in that order "Staff came to this  
17 conclusion based on the fact that the current methodology  
18 properly matches revenues and expenses, whereas the  
19 modification suggested by the Company would skew the  
20 matching formula resulting in unjust rates to customers."  
21 The PUC computed the Company's required revenues by  
22 applying its traditional and historical test year  
23 methodology and only allowed *proforma* adjustments  
24 occurring within the 12 months following the test year.

1 And, it's notable that the Commission also declined to  
2 adopt annualizations of proposed revenues that the Staff  
3 had proposed.

4 And, lastly, I'll just mention that, you  
5 know, these are -- these are cases that have occurred in  
6 the '80s and early '90s. But, in Pennichuck Water Works,  
7 the last -- the rate case 2004-056 [04-056?], the  
8 Commission did cite the EnergyNorth case in support of its  
9 use of an historical test year methodology.

10 What is most remarkable to the OCA on  
11 this issue of annualization of expenses is the fact that  
12 the Staff took a position in its testimony on pension  
13 expense that we believe is consistent with the OCA's  
14 position on these adjustments. Specifically, the Company  
15 proposed to recover through permanent rates additional  
16 pension plan expenses spread over future years, starting  
17 in 2009. In prefiled testimony, both Staff and the OCA  
18 oppose this proposal. Staff stated specifically that it  
19 "has a concern that such a request constitutes an improper  
20 stretching of the test year. The Company is requesting  
21 consideration of a 2009 level of pension expense in a case  
22 with a 2007 test year." Staff continues: "The Company's  
23 request in this instance is to use its anticipated 2009  
24 pension expense level. Staff believes that such a request

1 constitutes a departure from the balancing" -- "from  
2 balancing the interests of the stockholders of the utility  
3 and its customers." Staff then includes that "Using 2009  
4 pension expenses in this case does not constitute a proper  
5 balance balancing of the interests" -- I'm sorry, "does  
6 not result in a proper balancing of the interests, and  
7 further does not meet the known and measurable standard  
8 for proforma adjustments." These are exactly our points  
9 on the annualization of the monthly billing, the  
10 annualization of the new hires in 2008, the wages and  
11 benefit expenses.

12 On the issue of the Coburn Woods'  
13 expenses, the Company is proposing to reduce its test year  
14 revenue to account for improvements to and the reduction  
15 in leakage in the Coburn Woods system. However, the  
16 Company has declined to reduce its test year expenses for  
17 a significant decrease in its expenses realized as a  
18 result of fixing the leaks in Coburn Woods. And, in part,  
19 the Company contends that other expenses offset the  
20 savings in production expenses.

21 The Company, in our view, however, has  
22 failed to quantify these other expenses that should be  
23 offset or demonstrate how they should offset the savings  
24 realized from the reduced production expenses at Coburn

1 Woods. And, the Company should not have it both ways;  
2 reduced revenues, but not reduced expenses, related to the  
3 same quantity of water. Consequently, the revenue  
4 requirement should be reduced in recognition of the  
5 savings. Customers should not continue to pay the Company  
6 for these costs which the Company no longer incurs.

7           On the issue of revenue from cellular  
8 tower leases, the Company, as you've heard, in a  
9 Settlement Agreement in a prior rate case, offered to  
10 share revenues from cellular tower leases with customers  
11 in the Settlement Agreement, and the Commission approved  
12 this Agreement. It sounds from the testimony that this  
13 Agreement occurred before the last rate case, and the  
14 Company continued that treatment in the last rate case.  
15 In offering to share these revenues to the Commission, and  
16 allowing the Commission to approve this, the Company  
17 agreed that the revenue requirement that resulted from the  
18 sharing of these revenues was just and reasonable. And,  
19 the Commission approved the Company's promise to split the  
20 cell tower leases, but then the Company found a way to  
21 avoid this treatment and keep all the profits for itself  
22 and its shareholders. The Commission should require the  
23 Company to keep its deal. The Commission should require  
24 the Company to split the revenues received from the sale

1 of the cellular tower leases.

2 The Company's transfer of the cellular  
3 tower leases, after recognition in rates of the revenue  
4 associated with these leases, recalls for us a similar  
5 transfer by a regulated utility of revenues to a third  
6 party. Specifically, after years of recognition in rates,  
7 Verizon New Hampshire transferred its revenues from  
8 Directory Publishing to the detriment of its customers.  
9 In that case, the Commission responded by requiring the  
10 continued imputation of these revenues for the purposes of  
11 setting rates, as well as for the utility's assessment by  
12 the Commission. And, the Supreme Court upheld the  
13 Commission's ruling. We think that the Commission should  
14 -- to make a decision that is consistent with this ruling.

15 Lastly, on the issue, although it is a  
16 small issue, I acknowledge, the amounts included in the  
17 rates for purposes of Mr. Densberger's Rotary dues and for  
18 the dinner at The United Way, are very small amounts. But  
19 they really are -- it really is about the principle of  
20 having ratepayers pay for meals that are not directly  
21 related to their -- or benefit them, not directly related  
22 to their service or of any benefit to them. And, we  
23 believe that the Commission should disallow the recovery  
24 of the cost of Mr. Densberger's Rotary membership, as well

1 as the annual -- The United Way Annual Meeting dinner.  
2 And, you know, there may be others in there, but these are  
3 ones that stuck out to us. And, we just don't think it's  
4 appropriate that the Company should recover this. And, we  
5 don't feel that the Company has shown that these are  
6 necessary to providing service to customers or provide any  
7 benefit to ratepayers.

8 Before closing, I just would say that,  
9 you know, we certainly appreciate the Company's effort to  
10 mitigate the cost of increases. And, we do appreciate  
11 their efforts in this case, as well as Staff's efforts in  
12 the case during the period of discovery. We are still  
13 concerned that the cost to customers are high, and it is  
14 continuing to rise.

15 And, with that, I will close. Thank you  
16 very much.

17 CHAIRMAN GETZ: Thank you.  
18 Ms. Thunberg.

19 MS. THUNBERG: Yes. Good afternoon,  
20 Commissioners. Thank you very much for your time today.  
21 Staff respectfully requests the Commission approve the  
22 increases that are -- increases in the Company's revenue  
23 requirement that are represented in the Settlement  
24 Agreement today. Staff believes that the rates to

1 customers that will be recovering the revenue requirement  
2 are just and reasonable.

3 And, we lastly request that the  
4 Commission approve the terms of the Settlement Agreement.  
5 Thank you.

6 CHAIRMAN GETZ: Thank you.  
7 Ms. Knowlton.

8 MS. KNOWLTON: Thank you. A settlement  
9 is necessarily a compromise of the issues among the  
10 parties that are participating in the settlement, and  
11 that's exactly what the Settlement that's before this  
12 Commission is about. The Staff and the Company reached a  
13 settlement, and took into consideration all of the issues  
14 that were raised in this case and reached a total  
15 compromise on all of those. So, I think it's important to  
16 remember that that is what a settlement is. And,  
17 certainly, it's this Commission's long-standing precedent  
18 to favor settlements and encourage parties to settle as a  
19 means to amicably resolve issues in the case.

20 And, here, the Company actually did  
21 include in the Settlement issues, you know, that were  
22 raised by the OCA. So, in an effort to accommodate, you  
23 know, issues raised by others that weren't participating  
24 in the Settlement, in an effort to address what they felt



1 was a correct result, they did that.

2 I would also just note that settlements  
3 typically are not cited by this Commission as precedent.  
4 So, the fact that the Company has, you know, settled an  
5 issue in a particular case in one way is not necessarily,  
6 I don't believe, binding precedent going forward.

7 What this case is largely about, as Mr.  
8 Ware and Mr. Naylor testified, is it's largely about  
9 capital additions that the Company made to bring its water  
10 treatment plant in compliance with the Safe Drinking Water  
11 Act. The Company has invested over \$21 million in the  
12 water treatment plant, and other capital upgrades, that  
13 are critical to make for it to be able to run the utility  
14 in a manner that complies with laws and regulations.  
15 There are other expenses in the case, but I think that's  
16 the primary driver of the rate increase.

17 Mr. Ware testified that the Company has  
18 taken into consideration and has implemented a number of  
19 efforts to mitigate the increase of its costs to  
20 customers. And, certainly, the Company is sensitive to  
21 the impact of a rate increase, particularly in this  
22 economy.

23 All of the Company -- All of the  
24 witnesses that testified in support of the Settlement

1 testified that they believe that this Settlement would  
2 result in rates that are just and reasonable and in the  
3 public interest.

4 The Company would request that the  
5 Commission approve the Settlement in its entirety, without  
6 any adjustments whatsoever. And, I believe that it is a  
7 fair compromise of all of the issues that are before the  
8 Commission today.

9 I'd like to thank the Staff and all of  
10 the parties to the docket. We had a lot of discovery in  
11 this case, and a lot of technical sessions, and I  
12 appreciate the participation of everybody in the conduct  
13 of that aspect of the case. Thank you.

14 CHAIRMAN GETZ: Okay. Then, thank you,  
15 everyone. We will close the hearing and take the matter  
16 under advisement.

17 **(Whereupon the hearing ended at 1:12**  
18 **p.m.)**

19  
20  
21  
22  
23  
24