

STATE OF NEW HAMPSHIRE

PUBLIC UTILITIES COMMISSION

February 24, 2011 - 10:15 a.m.
Concord, New Hampshire

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RE: DW 04-048 CITY OF NASHUA, NEW HAMPSHIRE:
Petition for Valuation Pursuant to
RSA 38:9.
DW 11-026 CITY OF NASHUA, PENNICHUCK
CORPORATION, PENNICHUCK WATER WORKS, INC.,
PENNICHUCK EAST UTILITY, INC., AND
PITTSFIELD AQUEDUCT COMPANY:
Joint Petition for Approval to Acquire
Stock in Pennichuck Corporation.
(Procedural/Prehearing conference)

PRESENT: Chairman Thomas B. Getz, Presiding
Commissioner Clifton C. Below
Commissioner Amy L. Ignatius

Sandy Deno, Clerk

APPEARANCES: Reptg. the City of Nashua, N.H.:
William F. J. Ardinger, Esq. (Rath Young...)
Andrew W. Serell, Esq. (Rath Young...)

Reptg. Pennichuck Corporation, Pennichuck
Water Works, Pennichuck East Utility, and
Pittsfield Aqueduct Company:
Steven V. Camerino, Esq. (McLane Graf...)
Sarah B. Knowlton, Esq. (McLane Graf...)

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

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

**Reptg. Merrimack Valley Regional
Water District:**

Stephen J. Judge, Esq. (Wadleigh Starr...)
Pierre A. Chabot, Esq. (Wadleigh Staff...)

Reptg. Anheuser-Busch:

John T. Alexander, Esq. (Ransmeier & Spellman)

Reptg. the Town of Merrimack, N.H.:

Edmund J. Boutin, Esq. (Boutin & Altieri)

Reptg. the Town of Milford, N.H.:

David K. Wiesner, Esq. (Olson & Gould)

Claire McHugh, *pro se*

Fred S. Teebom, *pro se*

Reptg. Residential Ratepayers:

Rorie E. P. Hollenberg, Esq.
Stephen Eckberg
Office of Consumer Advocate

Reptg. PUC Staff:

Alexander Spiedel, Esq.
Mark Naylor, Director/Gas & Water Division
James Lenihan, Gas & Water Division
Douglas Brogan, Gas & Water Division
Jayson LaFlamme, Gas & Water Division

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I N D E X

PAGE NO.

STATEMENTS OF PRELIMINARY POSITION BY:

Mr. Ardinger	6, 69
Mr. Camerino	24
Mr. Judge	30
Ms. McHugh	34
Mr. Alexander	35
Mr. Boutin	35
Mr. Wiesner	39
Mr. Teebom	39
Ms. Hollenberg	50
Mr. Spiedel	58

QUESTIONS BY:

Cmsr. Ignatius	15, 22, 60
Chairman Getz	34, 51, 65
Cmsr. Below	66

P R O C E E D I N G

CHAIRMAN GETZ: Okay. Good morning, everyone. We'll open the prehearing conference in Dockets DW 04-048 and 11-026. I'll go through some procedural background first. And, note that, on November 16, 2010, the City of Nashua and Pennichuck filed a joint motion to schedule a procedural conference and requested certain other actions. And, on November 30, the Commission issued a secretarial letter reserving today for a procedural conference. Subsequently, on February 4, 2011, the City and Pennichuck filed a Joint Petition for approval of Nashua's acquisition of Pennichuck Corporation. An order of notice was issued on February 9 in the two dockets setting the prehearing conference for this morning.

I'll note that the affidavit of publication has been filed as required by the order of notice. And, that we have Petitions to Intervene from the Town of Milford, the Town of Merrimack, the Merrimack Valley Regional Water District, Mr. Teebom. And, we also have the Office of Consumer Advocate's notice that it will be participating in this proceeding.

Are there any other Petitions to Intervene?

MS. MCHUGH: Well, Claire McHugh.

1 CHAIRMAN GETZ: Have you filed something
2 in writing, Ms. McHugh?

3 MS. MCHUGH: No.

4 CHAIRMAN GETZ: Okay. All right. Then,
5 what we'll do today is we'll go around the room, we'll
6 give the opportunity first for the Applicants to state
7 briefly their position and to see if there's any position
8 on Petitions to Intervene. If there are other, we'll give
9 all the parties who have filed a written Petition to
10 Intervene an opportunity to state their position on this
11 proceeding. To the extent there are individuals or other
12 parties who are seeking to intervene orally today, then
13 you will have the opportunity to make your statement at
14 that point. And, if the Applicants have any objections to
15 any of the Petitions to Intervene, they can let us know
16 that. And, then, I expect, as in most prehearing
17 conferences, it will be followed by a technical session.
18 And, then, to the extent there's any recommendations on
19 procedural schedule now, we'll hear those. But,
20 typically, that will come in a written statement after the
21 technical session.

22 So, I guess, to the Petitioners, is
23 there anything that -- any questions before we give an
24 opportunity to make appearances and provide a brief

1 statement?

2 (No verbal response)

3 CHAIRMAN GETZ: Hearing nothing, then,
4 Mr. Ardinger.

5 MR. ARDINGER: Yes. Good morning,
6 Chairman Getz and Commissioners. My name is Bill
7 Ardinger. I'm an attorney with the law firm of Rath,
8 Young & Pignatelli, based in Concord. With me is my
9 colleague, Andrew Serell, also an attorney with Rath,
10 Young. We both filed appearances in both dockets. We
11 represent the City of Nashua, New Hampshire in this
12 proceeding.

13 We have some representatives of the City
14 here today, and I'd like to briefly introduce them. We
15 have Mayor Donnalee Lozeau of the City; we have City
16 Corporation Counsel, Jamie McNamee; and we have John
17 Patenaude. John Patenaude has served to support the City
18 in its evaluation of this transaction as a transaction
19 executive. Recently, the Board of Aldermen has indicated
20 its support that John would serve as an interim CEO of the
21 Pennichuck Corporation structure should the transaction
22 get consummated. Those are the folks with us.

23 And, I'd be happy to go through an
24 opening position, if that makes sense right now?

1 CHAIRMAN GETZ: Please.

2 MR. ARDINGER: Okay. Very importantly
3 today to start off, we are here, as the City of Nashua
4 here, together with our colleagues behind us, the
5 Pennichuck Corporation and its representatives. This is a
6 significant change in a long history of this relationship
7 and the matters before this Commission in 04-048, the
8 eminent domain proceeding. The City is here today
9 remembering the roots of its participation in this effort,
10 which were back in 2002, when the Board of Aldermen on the
11 City voted 14 to 1 to commence a process to acquire the
12 assets of the public water -- the water system that serves
13 its public. And, the voters of the City of Nashua, just
14 to remind everyone, everyone remembers this, in January of
15 2003 approved by an 8 to 1 margin the movement forward by
16 the City to acquire the assets of this water system that
17 supplies the public need for water in Nashua.

18 Lots of litigation and controversy over
19 this history. Ultimately, in that docket, we got to an
20 order of this Commission, in July of 2008, which approved
21 the City's eminent domain taking of the assets of
22 Pennichuck Water Works, one of the utilities that
23 Pennichuck Corporation owns, and found that that taking
24 was in the public interest. This history is also filled

{DW 04-048 & DW 11-026} [Prehearing conference] {02-24-11}

1 with some very unique aspects, including that the State
2 Legislature has enacted special legislation, which is in
3 session laws. And, I just, in this opening statement,
4 remind everyone, in 2007, that was Chapter 347 of the 2007
5 laws, Section 5, which indicated and gave authority to the
6 City to acquire the stock of Pennichuck Corporation or any
7 of the subsidiaries of Pennichuck Corporation, but they
8 could not acquire the stock without a public interest
9 determination by this Commission prior to any acquisition.
10 This law that was enacted in 2007 was actually further
11 amended, in 2010, as recently as 2010, importantly, as we
12 know now, the Merger Agreement is public, as the
13 negotiations between the parties were ongoing, the City
14 saw the opportunity to provide lower cost financing by
15 issuing general obligation bonds. The Legislature
16 reviewed that 2007 legislation and passed an amendment
17 authorizing the City to have the ability to issue general
18 obligation bonds to finance its acquisition, and to ensure
19 that the bonds that it would issue would not count against
20 the debt limit of the City. So, the Legislature is
21 involved in this, in a unique long history and background.

22 This proposed transaction before you is
23 -- would occur pursuant to a Merger Agreement. The Merger
24 Agreement was signed by the parties effective as of

1 November 11th, 2010. It was announced the next day.

2 Pennichuck Corporation is the holding company, its stock
3 is traded on the NASDAQ. The announcement came on the
4 12th publicly to the markets and to most people in New
5 Hampshire.

6 On that day, the City sent out letters
7 to every one of the communities whose citizens are served
8 by water systems owned by the three public utilities that
9 are owned by Pennichuck Corporation. And, I will talk a
10 little bit just more about how the City has proceeded to
11 meet with those interested communities and provide
12 information about this proposed transaction and its
13 ramification on their citizens as well.

14 This proposed transaction has received
15 reiterated support by the public of the City of Nashua,
16 which would be issuing the bonds to finance the
17 transaction. On January 11th, the Board of Aldermen,
18 after hearings, made two findings, factual findings that
19 are required by the special legislation. They approved
20 those findings by a vote of 15 to zero. And, the Board of
21 Aldermen also on that date, January 11th, 2011, approved
22 the issuance of bonds necessary to finance this
23 transaction.

24 So, what is the transaction? Briefly,

1 everyone will talk about that, this proceeding will be
2 about it, but just to briefly summarize it: The City
3 proposes to acquire sole ownership of Pennichuck
4 Corporation. Pennichuck Corporation is a parent company,
5 a holding company. It owns all of the stock of three
6 public utilities; Pennichuck Water Works, Pennichuck East
7 Utility, and Pittsfield Aqueduct Company. It also owns
8 some other corporate subsidiaries. This transaction
9 involves only City of Nashua acquiring the stock of the
10 holding company. That would be the first step that would
11 be accomplished by the merger.

12 The City intends, as it will demonstrate
13 in testimony filed with the Commission and through the
14 proceeding to maintain this current corporate structure,
15 with all the subsidiaries maintained intact. The City
16 will not acquire any direct ownership of any of the public
17 utility subsidiaries or the other corporate subsidiaries
18 owned by Pennichuck Corporation, the holding company. The
19 City intends that -- to finance this transaction with
20 general obligation bonds issued by the City and injected
21 into the transaction to pay the shareholders, the current
22 shareholders of Pennichuck Corporation, to cover other
23 transaction costs, and, as will be demonstrated in
24 testimony, to provide some rate stabilization funds to

1 ensure that rates are trying -- are able to finance the
2 transaction and stay stable during periods of unexpected
3 things like bad weather or other things.

4 The City believes and intends to show
5 that the cash flow of the three public utilities and the
6 other Pennichuck operations, which are not regulated, that
7 cash flow will be sufficient to generate cash necessary to
8 service all of the debt service on the general obligation
9 bonds it proposes to issue to accomplish this transaction.

10 The City believes that the rates that
11 will be required to generate this cash flow, and this is
12 the key point, will be lower over time than the rates that
13 will be -- would be charged under current ownership, if
14 current ownership continued. One more point on that in
15 just a moment.

16 Lastly, and very importantly, the merger
17 that is proposed settles the eminent domain dispute. It
18 resolves it in a consensual -- on a consensual basis. It
19 completely settles the dispute, that has really ultimately
20 plagued all parties with long costs and long litigation.

21 We believe, the City believes, that the
22 primary legal issue in this proceeding is whether the
23 City's acquisition of the holding company's stock is
24 consistent with the public interest. We believe the

1 principal source for that legal standard is the special
2 legislation that was issued -- approved, enacted first in
3 2007, and followed with a subsequent amendment by the
4 Legislature in 2010.

5 The City is planning to demonstrate,
6 through testimony filed jointly with the Company, that
7 this transaction satisfies that public interest standard.
8 And, we're going to ask that the Commission find that,
9 obviously. The PUC -- the Commission has already found
10 that the City's acquisition of Pennichuck Water Works, the
11 largest of the three public utility subsidiaries,
12 Pennichuck Water Works, you found that that taking would
13 be in the public interest. That taking involved the
14 City's acquisition of the assets of Pennichuck Water Works
15 for a total cost, not updated to the final purchase date,
16 but, at the time, at the end of 2008, of 2,000 --
17 \$203 million, the majority of the Commission found, and
18 that was upheld on appeal to the Supreme Court.

19 In addition, that order, as you'll
20 recall, included a requirement for a mitigation fund of
21 40 million that would provide resources that would
22 compensate for loss of synergies that could -- that exist
23 currently, as all three utilities are managed by an
24 integrated management team at Pennichuck Corporation. We

1 believe, the City believes, that this transaction is
2 better than the eminent domain transaction for the
3 following reasons: And, I know this may not be a legal
4 standard, but it's important, as the City is a public
5 body, to state this first. The City's motivation here,
6 its people, its Board of Aldermen, its elected
7 representatives, its executive mayor, believe that this
8 transaction allows the public to acquire control of a
9 precious public resource; its water supply and the land,
10 the watershed land that provides that water supply. This
11 is the driving underlying policy for us. It may not be
12 something that's entirely pristinely relevant under
13 statutes, but it would be wrong for me to fail to mention
14 that key point.

15 Importantly, we believe that another
16 reason this is better than eminent domain, it resolves the
17 dispute in a manner that has a lower cost to the citizens
18 and to the ratepayers. But, by the transaction, the City
19 acquires more assets, control of more assets at the lower
20 cost. So, by acquiring the stock of the holding company,
21 the City acquires control of the Pennichuck Water Works
22 system, the PEU system, the PAC system, and the other
23 important assets of Pennichuck Corporation, which includes
24 the Southwood Corporation, which actually owns 450 acres

1 of the watershed land. By acquiring the stock of the
2 holding company, the City ends up acquiring control of all
3 of the assets at a lower cost than the cost that was found
4 in eminent domain.

5 Critical to this whole effort is that,
6 over time, the City believes that this acquisition will
7 result in the City acquiring control of these utility
8 assets, and that ratepayers, customers will benefit from
9 lower rates over time than they would if these assets
10 remained in private hands. Two simple reasons that the
11 City plans, with the joint -- with our colleagues,
12 Pennichuck Corporation, to present evidence on, two
13 principal reasons: One, our cost of capital cost is lower
14 than a private corporation, significantly. We finance
15 this acquisition with debt, at debt rates. We do not have
16 an equity requirement that the private ownership has.
17 Second, our operating costs we project will be lower.
18 Those two things, beginning on day one, over time, we
19 believe will result in lower rates for customers, for all
20 of the -- all of the communities served by the Pennichuck
21 utilities. Fourth, we believe that this is a better
22 answer than eminent domain, because this transaction
23 preserves the current operational management of Pennichuck
24 Corporation, preserves all of the jobs that are at

1 Pennichuck Corporation, the good line folks, who do a
2 great job at Pennichuck, providing customers with the
3 services they need, and preserves those synergies of
4 integrated management. The term we've used in the debate
5 in Nashua is that this transaction proposes a "plug and
6 play". You'll remember, in the eminent domain
7 transaction, City of Nashua would pull the assets out of
8 that structure and need to operate them. And, they talked
9 about contracts with third party operators who would
10 oversee that operational management. And, that resulted,
11 by pulling it out, that the Commission felt was a
12 significant deterioration of the operational synergies
13 that have been enjoyed by the integrated system. This
14 proposal maintains that integrated synergy.

15 Yes, Commissioner Ignatius.

16 CMSR. IGNATIUS: I'm sorry. How is it
17 that if you're going to be -- everything's going to be
18 operated by the same people, doing the same kinds of work
19 under the current structure, that you just a moment ago
20 said your operating costs will be lower?

21 MR. ARDINGER: Excellent question. And,
22 our testimony addresses that and will address it before
23 the proceeding. But an answer is that Pennichuck
24 Corporation as a publicly traded corporation, has a layer

1 of corporate management that is devoted to making sure
2 they comply with those SEC requirements, the public market
3 requirements, and the extra requirements that are on
4 corporate boards and publicly traded corporations. It is
5 intended that that corporate management, as you would
6 distinguish from operational management, will no longer be
7 required following the merger, because the shares will no
8 longer be publicly traded. Those provide some significant
9 synergies, I should say directly "savings", cost savings,
10 and that we would and we intend to be able to prove.

11 In addition to preserving the jobs and
12 the current synergies that we believe will lead us to not
13 requiring the mitigation fund type of compensation here,
14 this transaction importantly preserves regulatory status
15 of the three public utilities. The City does not intend
16 to change the corporate structure of the for-profit
17 corporations that the City will be acquiring. Those three
18 public utilities therefore would remain subject to this
19 Commission's jurisdiction and regulation. That regulation
20 we believe provides an added transparency, openness, and
21 assurance to all customers of these three utilities that
22 the City's acquisition will be in their -- the entire
23 public interest, and will help to protect them over time,
24 as the City evaluates and becomes comfortable with this

1 acquisition and working with management.

2 Finally, the City plans to establish a
3 corporate governance board for management. It is -- the
4 testimony will demonstrate the City's intent in this
5 regard. The corporate governance board will have up to 13
6 members, representatives hopefully of, not only the City
7 of Nashua, but a requirement that there be representatives
8 from the other communities that are served. Hopefully,
9 these board members that will be recruited will be very
10 experienced on business and other matters. And, finally,
11 there are prohibitions on this board that would prohibit a
12 significant series of political -- elected officials and
13 other political officials in the communities from serving
14 on the board. There's an intent by the City to maintain a
15 separation here, so that these utilities continue to
16 operate, frankly, in a way that they have been operating,
17 which has provided good service to the customers.

18 As I mentioned, the City has been
19 already working with the other communities served by these
20 three utilities. The City sent out letters to the 28
21 communities served by these three utilities, over 33,000
22 customers. Since those letters went out, which invited an
23 opportunity for informational sessions and meetings, 12
24 communities have scheduled meetings. These include the 12

1 largest, communities with the largest numbers of residents
2 served by these utilities. Nine meetings have occurred,
3 and three are still scheduled to occur. And, there's
4 continuing interaction with all the communities to work on
5 a public relations, you know, communications effort, to
6 make sure that these communities are comfortable with this
7 proposed transaction.

8 One point before concluding. There is a
9 concern on our part, the City's part, and I think also on
10 our colleagues' part, the Pennichuck Corporation folks,
11 that we are going to ask, if at all possible, for the
12 most, and this will not surprise you in any acquisition,
13 for the most expeditious review possible. This
14 transaction is very dependent on interest rates. Interest
15 rates are volatile right now. If interest rates you'll
16 see begin to climb over six and a half percent, there
17 could be problems with the affordability of this
18 transaction for the City. There will be testimony on that
19 issue in this proceeding.

20 So, we are committed, as the City, to
21 working with all parties, Staff, OCA, and the Commission,
22 to work hard to a procedural schedule that recognizes this
23 need for expeditious treatment to avoid some of the
24 volatility in this market that could adversely affect the

1 economics of the deal for ratepayers.

2 The City has taken all steps necessary
3 on its side to satisfy the conditions required to go
4 forward with the transaction. That Board of Aldermen
5 approval was very important; that's done. We have to
6 still get good financing, that's a condition to the
7 transaction. In addition, this Commission's approval will
8 be the fundamental condition before going forward. The
9 Pennichuck team has to have a shareholder vote. Those are
10 the main conditions remaining. And, the Pennichuck team
11 has informed us, and they can address it or confirm it,
12 that they intend to have that shareholders meeting in May.

13 In conclusion, we filed a motion with
14 Pennichuck to consolidate the eminent domain docket and
15 its records with this one. We support that, for the
16 reasons stated in that motion. I don't need to repeat
17 them hear. We look forward to working with all the
18 parties on this transaction, which is a fairly
19 straightforward acquisition, but it has unique aspects.
20 We're going to all have to work together, and we're
21 committed to do that.

22 And, lastly, I'd like to close with this
23 public goal. The Mayor, in her remarks to the City,
24 talked about the fact that this is an investment in the

1 future of the City and the future of its residents. This
2 is not something that's on a five year time horizon. The
3 City believes that, over time, the rates will be
4 substantially lower for citizens due to the lower costs
5 we've talked about. And, after this mortgage, this bond
6 is paid off, the City believes that the grandchildren, and
7 I need to repeat this, even though it's maybe not a legal
8 issue, the children and grandchildren will own this public
9 resource, their water supply, and it will maintain good
10 service at lower cost. And, the sense of having control
11 over the water supply and its watershed land, which was
12 the reason the City initiated this back in 2002.

13 Thank you, Commissioners. I'd be happy
14 to answer any questions.

15 CHAIRMAN GETZ: Thank you, Mr. Ardinger.
16 I want to ask about the 2007 legislation. And, you, I
17 think, spoke to Section -- Chapter 347, Section 5, I,
18 talks about "the Commission shall make a public interest
19 determination prior to any such purchase", and that seems
20 straightforward. It also says, in Section 2(a), that "the
21 acquisition of stock will provide a more orderly method
22 for the City to establish, own and operate a municipal
23 water utility." And, my question gets to something you
24 said in the Petition, that "the regulated utilities will

1 continue to be public utilities within the meaning of RSA
2 362:2, and thus subject to the Commission's jurisdiction,
3 not result in a change in the legal or regulatory status."
4 And, I just want to be clear about what our, you know, the
5 Commission's regulatory role vis-a-vis setting of rates
6 for customers within the City of Nashua. In a typical
7 municipal water utility, that would be something that
8 would be under the control of the city, our regulatory
9 ratemaking role would go to customers outside of the city.

10 So, do I interpret what you're saying in
11 the Petition to say that we would -- that the Commission
12 would retain the role of setting rates for customers
13 within the City of Nashua? And, I'm just trying to
14 reconcile, in the legislation talks about a "municipal
15 water utility", is that just purely for the purposes of
16 RSA 38 or does that implicate RSA 362:2, our public
17 utility statute?

18 MR. ARDINGER: The answer, Mr. Chairman,
19 to your question is "yes." The City intends that these
20 three public utilities, which are corporate subsidiaries
21 of the holding company we would acquire, would remain
22 fully subject to this Commission's regulatory
23 jurisdiction, not only 378:7 ratemaking authority for all
24 customers served by the City, but others as well,

1 financings, 369, things like that. That's the intent.

2 The language that you focused on in the
3 special legislation is indeed talking about the two
4 findings, fact findings in Section 2, that the Board of
5 Aldermen, the governing board of the City must -- that
6 they must make. They made those two findings on January
7 11th. We do not believe that that indicates any contrary
8 position that would somehow preempt this Commission's
9 jurisdiction under its statutes to continue to regulate
10 these three utilities.

11 If, for any reason, the City desired to
12 move a step in one direction or another, that would move
13 towards ultimately a more traditional municipal form of
14 ownership, and they do not do that in this proceeding,
15 that move itself would be subject to the full Commission
16 review that it would have in a normal RSA 38 proceeding.
17 This special legislation says in it that "except as
18 otherwise expressly provided in this special legislation,
19 the provisions of RSA 38 would continue to apply." I
20 think, so the answer is "yes" to your question, full
21 jurisdiction.

22 CMSR. IGNATIUS: Can I ask, this may not
23 have a meaningful difference in the answer, help me if
24 there is a difference. It seems to me, you're either

1 saying "these will be municipal utilities, but you're
2 consenting to full regulation by the Commission as is
3 currently in place", or -- "and, for any change to that,
4 you'd have to come back before the Commission for some
5 change." Or that, "notwithstanding the City's ownership
6 of the stock of the Pennichuck Corporation, if that's
7 approved, these would -- the three utilities would not be
8 municipal utilities, and there would be no change in their
9 regulatory relationship." They're slightly different. I
10 don't know if it makes a difference in the long run. But
11 do you have a sense of which is the right answer?

12 MR. ARDINGER: I agree, they're very
13 different. The latter is our position. As a matter of
14 law, we believe the structure that we're proposing, where
15 the City owns 100 percent of the shares of the parent
16 company, and that's the only relationship, and the parent
17 company continues to own and operate for-profit
18 corporations, and those corporations provide water service
19 to citizens in this state at retail, those three utilities
20 will remain "public utilities" within the meaning of 362:2
21 and 362:4. That's our position, the latter, Commissioner.

22 CMSR. IGNATIUS: Thank you.

23 CHAIRMAN GETZ: Thank you, Mr. Ardinger.

24 MR. ARDINGER: Thank you.

1 CHAIRMAN GETZ: Mr. Camerino.

2 MR. CAMERINO: Thank you, Mr. Chairman.

3 Good morning, Commissioners. Steve Camerino and Sarah
4 Knowlton, of McLane, Graf, Raulerson & Middleton, on
5 behalf of the Pennichuck Corporation and its subsidiaries.

6 I'm going to first just briefly
7 summarize the transaction, which Mr. Ardinger went into in
8 some more detail. Talk briefly also about the issues for
9 review by the Commission in this case. Touch on why this
10 transaction is in the public interest. And, then talk a
11 little bit about the status of some related pending cases.

12 I want to start with the transaction,
13 which is a stock sale. So, the shareholders of the
14 holding company, Pennichuck Corporation, will be selling
15 their shares to the City of Nashua for \$29 a share. When
16 Nashua acquires those shares of the holding company, it
17 will become the sole shareholder of that corporation,
18 which itself owns the stock of the subsidiaries, including
19 the three regulated utilities. There's no change in
20 ownership of those utilities. Today they're owned by
21 Pennichuck Corporation; tomorrow they will be owned by
22 Pennichuck Corporation. What's changing is, who is the
23 owner of Pennichuck Corporation? Right now, those shares
24 of Pennichuck Corporation are owned by thousands of

1 individual and institutional investors. When this
2 transaction is concluded, there will simply be one
3 shareholder. Those transactions happen all the time in
4 the commercial world. It's called "taking the company
5 private". In this case, ironically, when we take it
6 private, the private owner is a public entity. But it's
7 still a separate corporation, a for-profit corporation,
8 organized under RSA 293-A.

9 That's really important, because that
10 makes this a very simple case. It's the kind of case you
11 see all the time. A public utility's holding company is
12 acquired by another owner. Normally, though, you see it
13 being acquired by another public utility holding company.
14 Here, it happens to be a municipality. But it doesn't
15 change the issues you need to look at, which is, "is the
16 acquisition consistent with the public interest?" So, why
17 is it such a simple case, because those acquisition cases,
18 as you know, can get kind of involved at times? It's a
19 simple case, because you've already passed judgment on the
20 largest part of that case, which is, "would it be in the
21 public interest for the City to own Pennichuck Water
22 Works?" And, you said "yes."

23 So, you really only need to ask yourself
24 two questions in this case. The first is, "is it in the

1 public interest for the City to also own Pennichuck East
2 and Pittsfield Aqueduct?" Because you didn't pass on that
3 in the other case. The other is, "is there anything about
4 the structure of this transaction, which is obviously a
5 little different from the eminent domain acquisition, that
6 would cause your prior finding to change?" And, for the
7 reasons that Mr. Ardinger has already articulated, we
8 don't believe there is anything that would cause that
9 conclusion to change. And, in fact, we think there are
10 more benefits than the Commission found in that case,
11 because some of the concerns that you yourself expressed
12 have now been addressed.

13 So, what are those concerns? Well,
14 first and foremost, I would suggest this Commission was
15 very worried about the impact of that acquisition on
16 Pennichuck East and Pittsfield Aqueduct Company. So
17 worried that you ordered the City to put aside \$40 million
18 to address that concern, because of the loss of the
19 integrated operation and synergies that would happen if
20 you separated off Pennichuck Water Works. This
21 acquisition takes cares of that and keeps all of those
22 entities intact.

23 The second thing that this transaction
24 does, you will recall that that transaction was going to

1 result in a loss of operations by the existing personnel
2 and their knowledge and their relationships, and in its
3 place there were going to be multiple contractors with
4 different relationships to one another and to the City.
5 That goes away. The same people will be operating this
6 company, they know these customers, they know the system.
7 They have your confidence, they have the Staff's
8 confidence. Even the City itself, when the parties were
9 adverse in the eminent domain case, did not criticize
10 those operations. The City conceded that the Company was
11 well operated. All of those people stay in place.

12 The next difference is that the parties
13 will demonstrate that this transaction will result in
14 lower rates over time. And, as Mr. Ardinger indicated,
15 the reason that can happen is you don't have an equity
16 requirement, there's a layer of management at the
17 corporate level that is able to go away, and so there are
18 lower operating costs. And, the City will demonstrate
19 that rates will be lower than they would have been under
20 the existing ownership and existing management.

21 And, the last reason, and maybe
22 exhaustion is never -- never a good reason, but this case
23 has been going on for nine years. Nine years since the
24 Company announced it was going to be acquired and the City

1 announced it opposed that and wanted to take the Company
2 by eminent domain. The docket has been pending at this
3 Commission for seven years next month. And, a lot of us
4 have changed jobs, most of us have changed hair color
5 during that time. It is time for this case to end and
6 this resolution does that. So, those are very, very
7 important reasons that this outcome is in the public
8 interest.

9 As to the status of other pending cases,
10 there are two rate cases pending now; one for Pennichuck
11 Water Works, one for Pittsfield Aqueduct Company. Those
12 cases need to continue on their track, and the reason is
13 simple. First of all, there's a statutory time frame in
14 which those cases have to be resolved. And, so, we need
15 to meet that in order not to have an outcome that nobody
16 would want. The second is that it, while the parties
17 standing here today very much want you to approve this
18 acquisition, we recognize that's not a foregone
19 conclusion. The two companies need new rates. They have
20 been making ongoing investments. And, if for any reason
21 this transaction weren't approved, they need to operate
22 under business as usual. And, the third is, that you'll
23 see that the rate paths that are projected are based on
24 the Companies getting their normal deserved rate relief,

1 whatever that is, as determined by this Commission. And,
2 so, we need those cases to be prosecuted and in due
3 course, according to the schedules that they currently
4 have set.

5 The other pending case, which is
6 important, is the eminent domain docket. This acquisition
7 is a settlement of that case. And, so, that's why we're
8 asking that the two cases be consolidated. The finding in
9 that case that the acquisition of Pennichuck Water Works
10 is in the public interest is central to what we're asking
11 you to find in this case. It's a very large portion of
12 what you need to determine. You've already made that
13 determination. We think that that should be brought into
14 this case. There's a lot of material in that case that
15 will be drawn on here that overlaps. And, this is a
16 settlement, as I said, of that docket. And, so, we
17 believe that the new docket on the acquisition should be
18 consolidated with that old docket.

19 As I said, the eminent domain case has
20 been around a very long time, it's taken many twists and
21 turns. I would be remiss if I didn't say we and the City
22 of Nashua very much appreciate your patience with us
23 during that long time period. We know that we have said
24 "stop", "start" more times than anyone wants to count, and

1 we know that that takes a toll on this Commission. We
2 finally reached a point where, as Mr. Ardinger said, the
3 two parties can stand here together and say "we have a
4 proposal that is good for the City, it's good for the
5 Company, it's good for the customers." We're very pleased
6 with that and we hope you will be, too.

7 We also are prepared to subject this
8 transaction to the full scrutiny of this Commission and
9 the public and all of the intervenors, and we welcome that
10 examination. And, we are very confident that, when you
11 conduct that, you will find that the entirety of the
12 transaction is in the public interest and should be
13 approved.

14 We very much look forward to working
15 with the Commission Staff, with the Consumer Advocate, and
16 the intervenors, and we look forward to the resolution of
17 the proceeding. Thank you.

18 CHAIRMAN GETZ: Thank you. Mr. Judge.

19 MR. JUDGE: Good morning. My name is
20 Stephen Judge. I'm with the law firm of Wadleigh, Starr &
21 Peters. And, I'm joined today by Attorney Pierre Chabot.
22 This is the first case that I got when I left the Attorney
23 General's Office in 2003. After 19 years in the Attorney
24 General's Office and the electric restructuring case, I

1 already had gray hair. But the case has been going on for
2 a long time. I represent the Merrimack Valley Regional
3 Water District, which has filed a Petition to Intervene in
4 this case. And, we are here to intervene in order to
5 support the transaction, to support Nashua, as we have
6 from the beginning.

7 Just a few words about the District and
8 how things have changed, a couple of relatively minor
9 issues that we have, and then I will conclude. The
10 District is made up of Nashua, as well as Bedford,
11 Pittsfield, Amherst, Londonderry, Litchfield, Pelham, and
12 Raymond. So, they are members of Pennichuck Water Works,
13 Pennichuck East, and Pittsfield Aqueduct Company.

14 We developed a charter that was approved
15 by the Attorney General and by this Commission. And, in
16 that plan, that charter, Nashua was going to take the
17 assets of Pennichuck, and then pass them onto the
18 District, and the District was going to have governance
19 over those assets. There has been a -- and, in that
20 charter, there is a detailed analysis of how that would
21 work. That there would be some aspects of the
22 organization and structure of the assets that would be
23 done by each town having a vote. So, one town, one vote.
24 And, then, some aspects would be done, recognizing that

1 most of the customers were in Nashua, and, therefore, that
2 the votes would be done by customers in Nashua, pretty
3 much control over particular aspects of it.

4 Well, there has been a shift in the
5 paradigm as we stand here today. And, we, the District
6 members, still want to have a strong voice in the
7 governance of the assets. We have met with Nashua. We've
8 had several discussions about how to change this paradigm
9 and take into consideration what had been worked out in
10 great length in the charter, and mold it into what we
11 think is a good deal for the public. And, again, can't
12 say it enough, we appreciate all of the efforts of Nashua
13 and we support them in what they're doing.

14 One relatively minor issue is that, in
15 the execution document, there is an Exhibit B, and there's
16 been some discussion of this already this morning.
17 There's going to be a corporate governance board, and that
18 board is going to be made up of 13 members, that's already
19 in the document. The document identifies to some extent
20 who is going to be on the board. What the District wants
21 to present to you is an argument that members of the
22 District should be on the board. And, I don't think that
23 there's a disagreement with the City, I think we just
24 haven't worked out exactly how the details of that would

1 happen. So, that's one of the issues that we want to
2 focus on.

3 The other issue is that, as I said, we
4 have been supporting Nashua from the beginning, including
5 participating in these hearings, as well as filing a brief
6 in the Supreme Court, and I participated in arguments at
7 the Supreme Court right along with Nashua. One of the
8 aspects of this deal is for Nashua to recover the costs
9 that they have incurred, and we believe that that is an
10 appropriate thing to happen during the pendency of all of
11 this. While it's a fraction of what the costs of Nashua
12 have incurred, there are some costs that the District has
13 incurred. The way the District has funded itself is these
14 towns have been contributing \$5,000, \$10,000 a year, since
15 2004, in order to allow their voice to be heard. And, we
16 would ask that this deal be modified so that the District
17 members can recover the costs that they have had.

18 But, in sum, we support Nashua. We
19 think this is a great step forward. The goal all along
20 has been to have these assets in the public hands. That's
21 what's happening here. So, we ask you to approve this
22 when we get to the end of the process. And, we ask you to
23 grant the Petition to Intervene to allow the District to
24 participate in the hearings. Thank you.

1 CHAIRMAN GETZ: Thank you.

2 Mr. Ardinger, can you speak to positions of the City with
3 respect to Mr. Judge's comments about the corporate
4 governance and the recovery of District costs?

5 MR. ARDINGER: Yes, Mr. Chairman. On
6 the concept of board representation, I know I would not be
7 misspeaking if I were to indicate that the City is very
8 open to the concept of having qualified individuals from
9 the District and its communities participate directly as
10 members of this corporate board.

11 With respect to the second point,
12 eminent domain costs, we have not had an adequate chance
13 to review that or the amount. So, at this point, Mr.
14 Chairman, I'm not able to respond directly to that
15 concept.

16 CHAIRMAN GETZ: Thank you. Ms. McHugh.

17 MS. MCHUGH: Good morning. I'm just
18 here to support the agenda that has been stated. That's
19 it. Thank you.

20 CHAIRMAN GETZ: So, you're not seeking
21 to intervene as a party?

22 MS. MCHUGH: Well, I want to be, yes, I
23 do want to be an intervenor. But I didn't file a
24 petition. I just orally state that I'm in favor of

1 everything that has been stated.

2 CHAIRMAN GETZ: Thank you.

3 Mr. Alexander.

4 MR. ALEXANDER: Good morning. John
5 Alexander, with the law firm of Ransmeier & Spellman, on
6 behalf of Anheuser-Busch. AB is the largest customer of
7 Pennichuck Water Works. We are intervenors in the eminent
8 domain proceeding and have participated in that. We are
9 also intervenors in the rate case that is ongoing. And, I
10 guess at this time I would orally move to intervene in
11 this docket as well. We have no position at this time on
12 the merits of the Petition.

13 CHAIRMAN GETZ: Thank you. Ms. Pressly.

14 MS. PRESSLY: I am not an intervenor.

15 CHAIRMAN GETZ: Thank you. Mr. Boutin.

16 MR. BOUTIN: Thank you, Mr. Chairman. I
17 represent the Town of Merrimack. My name is Edmund
18 Boutin. And, I am with the law firm of Boutin & Altieri.
19 At this point in time, Merrimack is not certain whether it
20 supports or opposes the transaction. It is very concerned
21 that there are some questions that need to be answered
22 before it can take a position. I just received most of
23 the prefilled testimony in the last 24 hours, so I have not
24 had a chance to study it. But I'm concerned, first of

1 all, that the basis for any statements about whether or
2 not there's long-term rate stability is something that's
3 going to take 20 years to find out. I also, in terms of
4 rate stability, notice that, although there are certain
5 regulatory costs that might be saved, most of them are
6 still there, because you do have a private corporation
7 operating as a public utility, if what I heard is true.
8 So, there's going to be a minor cost, if any, and probably
9 with the SEC, a few compliance issues being the only ones.
10 Otherwise, regulatory compliance issues are going to be
11 there across the gamut.

12 I'm concerned on the issue of bonding.
13 I've heard representations that the City has authorized
14 \$210,000 in bonds. I've seen, at least in a book that --
15 or, in part of the prefiled testimony that I can look at,
16 that the acquisition cost for the shares is 138 million.
17 I don't know what the transaction costs are. I don't know
18 what the use of, for instance, if they talk about "rate
19 stabilization money", I don't know what use bond money can
20 -- what use the bond money can be put to, in terms of rate
21 stabilization, and that requires some explanation. And,
22 it may be in the prefiled testimony, I just haven't seen
23 it. But, certainly, \$50 or \$60 million is a significant
24 number.

1 I also don't know whether or not there
2 is debt being assumed as part of this transaction. I
3 assume there is. I don't know what it is. The reason I
4 bring these things out is because the position of the
5 utility and the City is that the prior public interest
6 determination really should be given preclusive effect of
7 some kind. And, I don't think you can do that. I think
8 the Legislature was very clear that, if this structure
9 were to be implemented, that it requires a full public
10 interest determination.

11 Now, I remind you that the last time,
12 and Merrimack was an intervenor, this was an \$82 million
13 acquisition. All of the testimony that was prefiled, all
14 of the bases for that eminent domain proceeding, were, in
15 fact, disproven, disproven by a considerable degree. So,
16 until we've studied these things and until the Commission
17 has had a chance to conduct a full inquiry, there's no way
18 to determine whether or not this transaction is going to
19 be in the public interest.

20 So, I think that there ought to be a
21 orderly process, a period of time for discovery to be
22 conducted, and so that we can get to the point where we
23 understand and know what this transaction is really about.
24 For instance, this morning I heard that, yes, Nashua is

1 going to subject this corporation to full PUC regulation.
2 But there may be a time in the future when it chooses to
3 come to the Commission and say "we don't want to be a
4 regulated utility anymore." Of course, that's what the
5 first battle was about. And, the terms of this battle
6 ought to be "Is it going to be a regulated utility? Is it
7 going to remain that way?" I think, unless we do answer
8 some of these questions, we're not going to be able to
9 determine whether or not this is in the public interest at
10 all.

11 If this is a private utility, we're
12 "taking it private" is what I heard, then rate setting is
13 going to include a guaranteed rate of return, just like
14 any other utility. How does that affect the cost
15 calculation? Where what is being said here is that "we
16 don't have to worry about equity", for instance, "we don't
17 have to worry about profitability." And, yet, when
18 they're going to come before the Commission and ask for
19 rates, they're going to ask for a profit component, just
20 as if they were a fully private utility with an equity
21 component.

22 So, I'm not certain here exactly what
23 we're stepping into. And, for that reason, Merrimack
24 reserves its rights and urges the Commission to take an

1 orderly and full review of the public interest of this
2 transaction, and to continue its oversight of ratemaking,
3 so that we understand what impact the ratemaking has on
4 the public interest determination. Thank you.

5 CHAIRMAN GETZ: Thank you. Mr. Wiesner.

6 MR. WIESNER: Mr. Chair and
7 Commissioners, I'm David Wiesner, with the law firm of
8 Olson & Gould. And, we represent the Town of Milford in
9 these proceedings. Milford is a backup water supply
10 customer of Pennichuck Water Works, and has been an active
11 participant, intervenor in the eminent domain proceedings,
12 and has sought intervention in this new merger docket.

13 We have not yet developed a position on
14 the merger. And, I think I can represent that we're not
15 here to oppose the merger. But I think I would agree with
16 Attorney Boutin that a full inquiry is necessary to make
17 sure that the interest of customers, both the regulated
18 customers and the backup supply customers, such as our
19 client, are adequately protected. Thank you.

20 CHAIRMAN GETZ: Thank you, Mr. Wiesner.
21 Mr. Teebom.

22 MR. TEEBOM: Thank you, Mr.
23 Commissioner, Commissioners. My name is Fred Teebom. I'm
24 a former Alderman-at-Large. I'm a former intervenor. I

1 was intervenor in the o4-048 rate case, and I had to
2 resign when I was elected Alderman. Now, I did not run
3 last time, so I was not party to any of the discussions
4 that took place behind closed doors that led to the
5 agreements before you. But I have been able to examine
6 all this, because the minutes were unsealed, although I
7 made a Right-to-Know request that the Mayor made available
8 the model, the financial model, both in Excel program
9 form, as well as the printed form. And, of course, I've
10 examined in some detail, which I presume you will also,
11 the various agreements under the corporation and all these
12 minutes. And, I have concerns.

13 Let me say that, first of all, I've
14 always been on the record of opposing eminent domain, in
15 fact, I ran for alderman on that proposition back in 2005,
16 and supported, if you're going to buy Pennichuck, buy the
17 whole corporation, don't just the piece that's in Nashua.
18 It never made sense to me. So, I've always been a
19 supporter of the stock purchase. In fact, I testified in
20 committee when the law back in 2007 was first being
21 considered.

22 But, having now examined all this
23 documentation that's available, I've got concerns. And,
24 let me say that I've documented these. The document is --

1 I know this is registered now on the PUC website, so
2 anybody can look at it.

3 Just a brief summary what's in the
4 summary, some of the concerns I have. First of all, if
5 you look at the stock price of 29 bucks, and multiply that
6 times the number of shares, you come up with \$135 million.
7 The City's actually, and there's a number brought out
8 earlier, looking for \$160 million to conclude its
9 purchase. The difference between 160 million and 135.2
10 million is about 24.8 million. That's the processing cost
11 to conclude this purchase. That contains the Golden
12 Parachutes by all the top officials that are leaving
13 Pennichuck. It contains stock options. There's some
14 300,000 shares worth of stock options at 9 bucks a share
15 cost to Nashua. There's about \$5 million worth of
16 consulting fees. All these attorneys here are being paid.
17 It's about \$2 million for the City and \$3 million for
18 Pennichuck. That's on top of the \$11 million plus that's
19 already been spent in this, 11 million has already been
20 spent.

21 I'm concerned about the stock price of
22 \$29 that was mentioned. Just a year ago, the Mayor came
23 out and said the stock should not be valued more than \$25
24 from the consultant -- the very same consultant she has

1 today. So, why does \$25 suddenly, that's a top price a
2 year ago, why is it \$29 now? And, we're talking about
3 4 million shares. So, we're talking about a substantial
4 amount of money that's -- the difference between 25 and 29
5 has never been explained.

6 The big concern I have as a ratepayer is
7 why is this not part of the City? The City has a sizeable
8 Public Works -- the City of Nashua has a sizeable Public
9 Works Department. They're running a wastewater CSO,
10 combined sewer overflow facility, that's running at
11 \$20 million a year, and they're running a water -- a
12 landfill operation of about 6 -- \$7 million a year, a
13 combined 27 and a half million dollars annually is the
14 budget of the Public Works, for sewer and for landfill.
15 Why is this not part of the City?

16 There was always concern, when I was an
17 Alderman, people look at all the previous minutes that are
18 now unsealed, it was always supposed to be part of the
19 City. Veolia was going to get hired through a
20 transitional phase to operate the water company, then
21 Veolia was going to pull out and the City would take over.
22 Why the separate corporation? Who are we trying to
23 protect?

24 If it were part of the City, it would be

1 part of the City's Merit Program and it would be publicly
2 reviewed, the salaries would reviewed and subject to
3 public scrutiny. It would be subject to all normal
4 government operations. Mr. Camerino mentioned, you got
5 the strange thing of taking a corporation private, but it
6 really belongs to government. That doesn't make any sense
7 at all. Think about it.

8 Now, this is a taxable corporation. If
9 you look at the documentation, it's in here, in the
10 Agreement, a taxable corporation. Why pay taxes of
11 39.61 percent cooperate tax rate, the highest in the
12 world? The United States pays the highest corporate tax
13 rates in the world, 39.61 percent. Why? If this entity
14 were part of the City, it would be not taxable. That's
15 part of the IRS Code, I quote the citation, Section 115 in
16 the Title 26 of the U.S. Code. Utilities are not taxed if
17 they're part of a political subdivision or part of a
18 political entity. Why is this a taxable corporation?
19 Nobody would explain that. I hope you examine that.

20 The bond rating along on a taxable
21 corporation is high. They talk about 6 and a half percent
22 in the financial models. The City pays 3 percent, a
23 little less than 3 percent. The City's bonds are
24 nontaxable, tax-exempt. The City pays a little below

1 3 percent, the Mayor just mentioned that in her address.
2 The City has a AAA bond rating. Why is this a taxable
3 entity? Why pay 6 and a half percent on a very large sum
4 of money? We're talking about \$220 million for the
5 authorization, another \$60 million to make this thing
6 happen. To buy Pennichuck, to pay off all the consultants
7 and all the CEOs, and this holding fee reserve fund of
8 5 million that somebody mentioned. But this other \$60
9 million have to be absorbed as long-term Pennichuck debt
10 nobody mentioned. So, the total bond is \$220 million.
11 Why a taxable bond? Why 6 and a half percent? Why is
12 that in the interest of the public, like myself, as a
13 ratepayer?

14 The board itself is totally independent.
15 After an initial period of three years, the board appoints
16 its own members. All the City of the Nashua does, through
17 the Aldermen and Mayor, approve the appointment, but they
18 don't make the appointment anymore. After three years,
19 the board makes its own appointments. Why? Where is the
20 public oversight?

21 And, this board, except for some reserve
22 powers, which deal with whether they can sell land or
23 acquire more debt, operating this new entity is completely
24 independent, subject to the board. Union contracts, wage

1 increases, wages, salaries paid to CEOs, not at all
2 subject to the public scrutiny, totally up to the
3 independent board. Just hired a CEO for \$190,000 a year.
4 At least the Board of Aldermen could approve that one,
5 whether you think it's high or not. But, after three
6 years, that's all up to the board, totally independent.
7 Why? Why outside the City's merit system? Serious
8 question.

9 Now let's talk about the financial
10 stuff. \$160 million of new debt that Pennichuck doesn't
11 have. The consultants claim that the cost is \$160 million
12 of new debt, at the 6 and a half percent interest, is
13 offset by operational savings. Operational savings are
14 you don't pay shareholders. And, if you look at what
15 Pennichuck is being paid, 4.662 million shares, of 78
16 cents a share per year, there's \$3.6 million. There's
17 \$2 million of maximum savings. If you paid less salaries
18 and you have less corporate reporting to be done to the
19 SEC, and one of the attorneys questioned that, you save 5
20 or \$6 million. But the cost of financing \$160 million is
21 far greater than that. Far greater than that.

22 So, I look at the model, I will not go
23 into detail here, because there's not much time, but I
24 pulled up some charts. The first chart that Pennichuck

1 presented to the Board of Aldermen at public meetings is
2 that at all times, day one, revenue requirements under
3 City ownership is less than Pennichuck ownership. That's
4 the first chart. And, that's in all of their briefs. If
5 you look at the more detailed, the model itself, and work
6 off -- brought out the spreadsheets, and I'm not changing
7 their model any, you find there's a different story.
8 Revenues are higher day one under City ownership. After
9 30 years, after 30 years of \$160 million bond to buy this
10 thing is paid off, then the costs drop by \$12 million.
11 And, will there be a savings? Probably. So, after 30
12 years, I think the ratepayers could expect the savings, if
13 those strange things happen, but not before 30 years, and
14 that's shown in their own model.

15 Now, they're saying in the model that
16 the model may change. But I've not seen any change,
17 although you probably will see a change now. But that's
18 Chart Number 2. Chart Number 3 shows that, after 30
19 years, there's still a substantial debt of 170 -- \$160
20 million debt, \$170 million debt. And, that is because
21 this is a questionable area. Capital expenses are all
22 financed every year, \$7.75 million borrowed, and each of
23 those borrowings are put on a 30-year repayment schedule.
24 And, it keeps accumulating every year. The result of

1 which is this curve. The 160 -- the total bond is being
2 paid down, but, after 30 years, the debt remains. Because
3 the \$60 million long-term debt is not paid off yet, and
4 there's this new debt accumulating for capital expenses.
5 That comes directly from the model. I didn't invent that.
6 And, that's what this chart shows, which is the next
7 chart, how the \$7.75 million debt accumulates every year,
8 financed for 30 years.

9 Total debt service keeps going up, until
10 after 30 years, that \$160 million is paid, and then they
11 have a drop, a substantial drop. Thirty years.

12 The final chart shows how this model is
13 being manipulated. Now, the modeling is done by C.F.
14 Downer. I have nothing against C.F. Downer. I didn't
15 know them from anybody else, but I did some research on
16 them. C.F. Downer is an investment bank. They make
17 deals. They have no utility background, nothing about
18 water background. They have 142 transactions listed on
19 the website. You can look it up. Not a single one of
20 them is a utility, the ones that they divulge the
21 information on. Of the 142, there's 89 divulging
22 information on the website. You poke into each of those,
23 nothing about utilities. Twenty of these that they
24 reveal, they reveal 20 of the 142, they reveal financial

1 information, kind of unusual, actually, 20 of those are
2 between seven and a half to \$250 million. But there's
3 only three that are above 100 million. We're talking here
4 about a deal that's a \$220 million deal.

5 The largest they had is 150 million, and
6 that was cookware. They deal with cookware, chemical,
7 materials handling, you name it, but not utilities.
8 You're familiar with the Sansoucy model, at least they
9 dealt with utility issues.

10 So, let's see. That pretty much sums up
11 my conclusion. I'm a ratepayer. What I see, when I run
12 my own finances, that, if you use the 6 and a half percent
13 interest rate for the 160 million, the rates will go up
14 about, at three percent -- the rates will go up 7 percent
15 if it were to finance at 3 percent, the City rate. The
16 rates go up 18 percent if they're financed on the taxable
17 6 and a half percent corporate rate. And, that's using
18 the equal payment, not using a standard bond schedule. A
19 standard bond schedule is, well, you're familiar with,
20 that's just like paying mortgages.

21 The model has been manipulated to make
22 it into a deal. That's what investment bankers do. These
23 are tax losses. The final charts, they show a lot of tax
24 losses. Maybe that's why this is a taxable corporation.

1 I don't know. There's nothing in the minutes really
2 addressing the taxable corporation issue, but there are
3 losses for 18 years in this corporation. And, that's
4 probably how they keep the revenues down, because the
5 revenues should go up 18 percent to cover all that debt.

6 In conclusion, I'm for the stock
7 purchase. I think, after 30 years, our grandchildren,
8 great grandchildren will thank us for making this deal,
9 thirty years from now. What happens in the first 30
10 years, I can afford it. I can afford 18 percent increase.
11 We have big increases anyway. We had what, a 20 percent
12 request recently? I can certainly afford the 8 percent
13 increase. I think people will be willing to pay an
14 increase in their rates. But an independent board, no
15 control over who runs it, I don't know what we're gaining.
16 All of Pennichuck was owned by a corporation. Suddenly,
17 the corporation doesn't exist, and now it's owned by the
18 City, but the City has no control of it than approve its
19 board. What has the public gained?

20 Now, true, this corporation has a couple
21 reserve items. They cannot sell land and they cannot
22 assume new debt. That's certainly part of the control. I
23 like that control, that's good. So, generally, I could be
24 in favor, if I could figure out or you could figure out

1 why the agreement is structured the way it is. Thank you.

2 Any questions?

3 CHAIRMAN GETZ: Thank you.

4 Ms. Hollenberg.

5 MS. HOLLENBERG: Thank you. With the
6 Commission's permission, I'll just sit. I'll remain
7 seated and speak loud enough. But, if you have any
8 difficulty hearing me, just let me know.

9 At this time, the OCA has no position.
10 We're still reviewing the filing. I would offer a few
11 comments, however, in an effort to assist the Commission
12 with its decision in this case, as well as with the
13 parties' consideration in discovery of the issues that
14 come up.

15 I would note two issues or two comments
16 on the order of notice. Firstly, the first paragraph of
17 the order of notice references the Merger Agreement as
18 being "filed with the Commission on November 16th in the
19 eminent domain docket." And, I would just ask the
20 Commission to take notice that the Merger Agreement was
21 filed as an attachment to a procedural motion in the
22 eminent domain case, and it was not filed at that time for
23 review or approval by the Commission. And that, until the
24 time of the Aldermen's approval and ratification of it in

1 early January, it was nonbinding on the City.

2 Secondly, I would note that the order of
3 notice does not refer to the chapter laws that are the
4 special legislation which form the basis or part of the
5 basis for the Commission's decision of public interest
6 consideration in this case. The OCA agrees with the Joint
7 Petitioners that these chapter laws, as well as RSA
8 374:30, are the bases for the Commission's public interest
9 review of the proposed transaction. And, I leave it to
10 the Commission's discretion as whether the notice needs to
11 be amended for purposes of including the special
12 legislation as among the issues to be considered.

13 CHAIRMAN GETZ: Well, let me ask two
14 questions. And, let me get back to the first point. I'm
15 not sure I understood the import of your point about the
16 citation in the first paragraph of the order of notice to
17 the "November 16" filing?

18 MS. HOLLENBERG: Sure. I just want to
19 be sensitive or I would ask you to be sensitive, in light
20 of the Petitioners' request for a quicker paced
21 proceeding, you know, I would like to just point out that
22 this docket is only beginning at this time, and the Joint
23 Petition was really not something that was available or
24 ripe for review until this time. And, so, to the extent

1 that there is an urge to hasten the pace of this
2 proceeding, I just ask that the Commission be mindful of
3 the fact that we are only now receiving the most, you
4 know, we just received the testimony. And, the Merger
5 Agreement was, to the extent that the order of notice
6 suggests that the Merger Agreement was "filed for PUC
7 consideration", we would disagree with that.

8 CHAIRMAN GETZ: Okay. And, are you
9 taking the position that the order of notice -- that the
10 notice is defective because it didn't expressly cite to
11 the legislation from 2007?

12 MS. HOLLENBERG: Well, I guess I would
13 leave that to your discretion to decide. I just felt I
14 would point it out at this time, so it's not something
15 that comes up later as a procedural defect. We're just
16 beginning this docket. I just wanted to bring it to the
17 Commission's attention to assist you.

18 CHAIRMAN GETZ: Is there anything
19 further?

20 MS. HOLLENBERG: Yes. Thank you. The
21 other thing I would mention related to the pace of the
22 procedural schedule is that the OCA plans to hire an
23 expert, which, if approved, would assist us in
24 consideration of the public interest issues and any

1 proposed rate structure sought by the Joint Petitioners.

2 As the Commission and some of the
3 parties are aware, the OCA requires Governor and Executive
4 Council approval of their contracts with expert witnesses.
5 This could take some time, and I would just point it out
6 for purposes of the procedural schedule.

7 I would like to mention the topic of
8 eminent domain costs, which have been referenced this
9 morning, and which I think is an important issue and one
10 that not be considered lightly by anyone. We're talking
11 about \$11 million to litigate the case up to the point of
12 through the eminent domain proceeding. And, at the time,
13 back in November, in the pending PWW rate case, the OCA
14 filed a motion that asked the Commission to exclude the
15 consideration of eminent domain costs in that proceeding,
16 based on representations by the Pennichuck companies that
17 they would not seek recovery of these costs, if they were
18 -- if Nashua were to acquire Pennichuck. I believe that
19 the Commission, in a secretarial letter dated October 28,
20 2010, determined that the OCA's motion was not ripe for
21 consideration, and stated that it would reconsider the
22 OCA's request to the extent that circumstances change
23 after legal briefs are filed in DW 04-048. And, as the
24 Commission is aware, those legal briefs were never filed,

{DW 04-048 & DW 11-026} [Prehearing conference] {02-24-11}

1 because the Joint Petitioners reached the agreement that
2 we're here to consider today.

3 I plan to, after this hearing, file a
4 request in the Pennichuck Water Works rate case asking the
5 Commission to reconsider its decision on the OCA's motion,
6 in light of the changed circumstances. And, I would just
7 mention that to you at this time. I also would like to
8 mention that Nashua does seek to recover its costs in this
9 proceeding. It's mentioned in the Petition, its 5 to
10 \$6 million worth of costs. And, even the Commission's
11 expenses and the recovery of those are teed up as an issue
12 in the Commission's order of notice in this, in DW 11-026.
13 So, I really think that, to the extent that there is any
14 recovery of eminent domain costs, that that be considered
15 at one time, with all the parties that are seeking
16 recovery of those costs, within the context of the eminent
17 domain proceeding, which will continue through the
18 acquisition docket.

19 I would note that the Joint Petitioners
20 are requesting approval for a ratemaking structure. And,
21 I would say that that has not gone unnoticed by our
22 office. I think it's an unusual proposal in an
23 acquisition case, based on my experience anyway. And, I'm
24 not sure, perhaps because I am only now reviewing the

1 filing and I have not read the testimony yet, if this is
2 actually a request for a rate case within an acquisition
3 docket or if this is rather a request for approval of the
4 proposed rates in the two pending rate cases. I would say
5 that, to the extent that it is the former, that the Joint
6 Petitioners are in this case asking for approval of the
7 proposed rates in those cases, that such a request is more
8 properly considered in the context of the pending rate
9 cases, and that Nashua can petition to intervene at this
10 time, if it chooses to do so.

11 The statements of the Joint Petitioners
12 that the rates are likely to result in -- are likely to
13 result from the rate cases now pending will be sufficient
14 to meet the cash requirements associated with the
15 operations and debt service that the City anticipates, I
16 would state that, you know, the OCA expects that the
17 Commission will fully explore the assumptions underlying
18 and the sensitivity of the Company's financial model,
19 particularly concerning the pending proposed rates. Also,
20 if the viability of the proposed acquisition depends on
21 the outcome of the pending rate cases, rate cases that
22 will be resolved by the summer of this year, should the
23 Commission await the outcome of those cases before
24 commencing its investigation of the proposal? And, then,

1 I guess a secondary question would be, could the
2 Commission delay its consideration of the proposed
3 acquisition of Pennichuck Corp. to do that.

4 The OCA is concerned not only -- the
5 OCA, as always, is concerned about the impact of the
6 proposed transaction on the residential customers as a
7 whole. And, I would say that we are particularly
8 concerned about the impacts of the proposed transaction on
9 the customers who live outside of Nashua. We view those
10 customers as having less political say and opportunity in
11 the management of the utilities' parent company, if the
12 acquisition were approved.

13 I would say -- one moment please. On
14 the comments today that the proposed, and in the Joint
15 Petition, that the proposed acquisition of the Pennichuck
16 utilities, all three of them, is better than the eminent
17 domain taking of PWW, I would just assert that these are
18 not, and to the extent that there is an argument that the
19 public interest finding in the eminent domain case
20 precludes a second or a different public interest inquiry
21 in this case related to PWW, I would just urge that
22 they're not the same thing. The taking of the one, of the
23 one utility, is not the same as the acquisition of all the
24 utilities. And, so, they seem like different things to

1 me. I wonder if -- I also wonder, based on the
2 representations to date, if most of the benefits
3 annunciated by the Company's counsel in its opening, as
4 well as in its Petition, will primarily inure to the
5 ratepayers that live in Nashua. And, whether or not the
6 costs will be spread, though, equally amongst all
7 ratepayers, which could include actually taken -- taken
8 logically out, if you're allowing the Company to recover
9 through the purchase price its eminent domain costs,
10 you're going to have people in the North Country, at Birch
11 Hill, paying for Nashua's eminent domain costs.

12 I'm very concerned about the suggestion
13 of the Water District this morning that its costs should
14 also be covered by the deal. I did not expect that. But
15 I will have -- I'm sure we'll have a position on that at
16 some point in the future. Taken logically out, this would
17 mean that ratepayers of Pennichuck would pay for another
18 party's legal expenses. And, I believe that the orders of
19 notice that are issued by the Commission typically
20 include, pursuant to the Administrative Procedures Act,
21 that a party may participate in a proceeding at its own
22 cost.

23 In closing, I would just say that the
24 OCA looks ahead to a productive proceeding, whatever shape

1 it takes, and participating with the Joint Petitioners,
2 the Commission Staff, and other parties, as an equal and
3 vital participant, as is customary of the practice in the
4 other acquisition dockets at the PUC. Thank you.

5 CHAIRMAN GETZ: Thank you. Mr. Speidel.

6 MR. SPIEDEL: Thank you, Mr. Chairman.
7 Alexander Spiedel, for the Staff of the Commission,
8 together with Mark Naylor, Jim Lenihan, Doug Brogan, and
9 Jayson LaFlamme. I'm substituting for Marcia Thunberg
10 today.

11 Staff has no objection to the
12 intervention petitions that have been filed in this
13 docket. Staff has not yet had the opportunity to
14 extensively review the Joint Petition and subsequent
15 prefiled testimony. However, Staff has identified a
16 number of areas that it expects to explore in our review
17 of the request.

18 1. The proposed transaction will keep
19 all three regulated utilities under Commission
20 jurisdiction. Staff needs to sort through the legal
21 issues that arise from this structure.

22 2. The prefiled testimony cites to
23 lower costs under municipal ownership. In light of
24 traditional principles of cost-based ratemaking, Staff has

1 questions about Nashua's intention to not pass along these
2 savings to customers until sometime well in the future.

3 3. The prefiled testimony states that
4 the utility's capital improvement plan will not be changed
5 by the acquisition. Staff intends to confirm that and
6 intends to explore in depth the issue of access to
7 capital, an issue critical to the ownership and operation
8 of public utilities.

9 4. The regulated utilities operate
10 subject to an affiliate agreement with their unregulated
11 affiliates. Staff has questions about whether those
12 agreements' terms will and should change as a result of
13 the savings projected by this acquisition.

14 5. Staff will also review the
15 appropriateness of recovering Nashua's eminent domain
16 related expenses from non-Nashua customers.

17 In sum, we look forward to working with
18 the Joint Petitioners and the other parties in developing
19 a procedural schedule in the technical session which
20 follows this prehearing conference. Thank you.

21 CHAIRMAN GETZ: Thank you.

22 Mr. Ardinger, it may be largely moot on a procedural issue
23 if we consolidate, because I think most of the -- if not
24 all of the parties seeking intervention are already

1 parties to 04-048. But do you have any objections to any
2 of the interventions?

3 MR. ARDINGER: No objections.

4 CHAIRMAN GETZ: Okay. Thank you. You
5 have an opportunity -- Mr. Camerino.

6 MR. CAMERINO: Yes. Just a logistical
7 and housekeeping issue on that. We also have no
8 objection. But what we would ask the Commission to do is,
9 just for the -- to clean up the service list, if there
10 were a process by which we could notify all of the parties
11 in the eminent domain case that they must at least submit
12 a letter indicating they want to continue to participate,
13 we would very much appreciate that.

14 CHAIRMAN GETZ: Okay. Thank you. Well,
15 Mr. Ardinger, I'm going to give you, and Mr. Camerino, at
16 the petitioners, a last chance to respond to anything
17 you've heard from any of the other parties. But I think
18 Commissioner Ignatius had a particular question.

19 CMSR. IGNATIUS: I've read the Motion to
20 Consolidate. And, I confess I don't see -- I don't really
21 understand why it's, in your view, better than a sort of
22 clean slate and begin with the new docket. The orders
23 stand. You don't need to consolidate for those orders to
24 be in effect. So, what is the benefit to consolidating

1 the two dockets and the two records, and rather than just
2 having this Joint Petition stand on its own?

3 MR. ARDINGER: Thank you for the
4 question, Commissioner. I'm going to answer for the City.
5 And, as the City's new representation, I do not have the
6 same history that my colleague with gray hair does, who
7 was with it at the commencement of the proceeding. We
8 think that there's a direct relationship between this
9 Merger Agreement and consensual resolution and the eminent
10 domain dispute that came before. We think that that is
11 reflected in the Merger Agreement itself with the exhibit
12 that provides for the settlement of that docket. The
13 information that is contained in that docket may, in fact,
14 be stale, be not relevant, but the history that's in that
15 docket, the documents and records that were created, we
16 think do not have any negative effect if they are rolled
17 into this docket and acknowledged as part of this docket.
18 We think it will actually help provide the continuity and
19 understanding of the meaning and of this transaction,
20 proposed transaction, as a resolution to that, to that
21 continuity.

22 So, for these general reasons, that I
23 think there's a lot of very valuable information that is
24 in that docket. Bringing it into this docket will have no

1 negative effect, in my view. There is no expectation on
2 the parts of either of the Petitioners, I'm sure
3 Mr. Camerino will agree with this, that this Commission,
4 that Staff, that OCA, that any intervenor will do anything
5 other than a full complete review of the proposed
6 transaction and all of its effects based on new, fresh
7 evidence. But there is -- I just believe you cannot deny
8 the relationship that exists between the transaction that
9 is now before you on this petition in 11-026 to the
10 history and the documents and that are -- that you've
11 suffered with for so many years in 04-048. I'm sure Mr.
12 Camerino will have more.

13 CMSR. IGNATIUS: The concern I have,
14 just to pinpoint, and, then, Mr. Camerino, you may be able
15 to respond to this as well, we're held to make decisions
16 based on the record, and not to go beyond that, but to
17 fully be responsible for the evaluation of what is in the
18 record. And, so, to take a record which is now, you know,
19 many years out and add to it, and, as you say, much of the
20 information has evolved, may be stale, may no longer be
21 the real numbers that are important or the real issues
22 that are important, concerns me. That what are we basing
23 our decision on? What is the Supreme Court, if this were
24 ever to be appealed, however it comes out, basing it on?

1 And, it helps in some ways to consolidate it. I think it
2 does raise some concerns from an administrative point of
3 view as well.

4 MR. CAMERINO: Maybe I could address
5 that. And, let me start with "why do we need
6 consolidation or something like it?" And, I think we're
7 certainly prepared to work with the Commission and parties
8 if a different formulation is more helpful to the
9 Commission.

10 Obviously, we've already articulated,
11 from a public interest standard point of view, why the
12 fact that this is a settlement of that docket is
13 important. But it is also important from a legal
14 standpoint, which is that this is a resolution of the
15 eminent domain process. And, so, the City's legal
16 authority, as we understand it, to acquire even the
17 holding company is as a settlement of an eminent domain
18 proceeding. And, to be quite direct, that eminent domain
19 proceeding is not over. There was a process that was
20 necessary to come back to this Commission and bring the
21 valuation up-to-date. And, before that occurred, the
22 parties settled on a different value. It is important to
23 us that the legal underpinning, the eminent domain
24 process, not be closed at this Commission. And, so, we

1 have very consciously made sure that the Commission did
2 not close that docket, and that this acquisition is in the
3 context of that docket.

4 However, understanding that we're also
5 asking you to review something that you didn't review
6 before, which is the Pennichuck East and Pittsfield
7 Aqueduct Company acquisitions, we thought it was
8 appropriate to file this as a separate docket as well.

9 So, from a legal, as well as a factual
10 standpoint, it's very important to the Joint Petitioners
11 that this filing be considered in the eminent domain
12 proceeding, as well as if you want to -- as well as in a
13 separate docket number.

14 That said, first of all, I would
15 acknowledge that none of us facing in this direction
16 understand logistically what it means when we say "could
17 you consolidate it" it is for those of you facing this
18 direction. And, maybe that unleashes a whole lot of
19 practical problems that you'd rather not have. And, so,
20 that's one reason we'd be prepared to work on that.

21 The second is, I would offer, I
22 understand the concern that, Commission Ignatius, you're
23 saying about the record. And, frankly, if there were a
24 new intervenor at this point, they would have the same

1 problem of "what is it you're drawing on from that other
2 docket?" I think we're prepared to commit that, as we
3 draw on things from that docket, we would specifically
4 identify them and say "this is part of the record we need
5 in order to move forward on the acquisition."

6 So, I would hope that that would address
7 that concern. So that, if there were an appeal, it would
8 be clearly identified what portions of that record were
9 now being relied upon. But it is absolutely critical to
10 us that this acquisition be considered in the context of
11 the eminent domain proceeding as well.

12 CMSR. IGNATIUS: Thank you.

13 CHAIRMAN GETZ: I guess, along those
14 lines, what things we would be taking official notice or
15 administrative notice of under 541-A?

16 MR. CAMERINO: Yes. I understand what
17 you're saying, Mr. Chairman, except that one could take
18 official notice of something from another docket and still
19 not be in that docket. And, that's the oddity of this
20 situation that I think causes Commissioner Ignatius's
21 question. What we are suggesting actually is, in a sense,
22 we're still in that docket. And, I understand that that
23 causes some other concerns. And, all I can say right now
24 is we'd be prepared to try to address that and come up

1 with something that is procedurally and legally
2 sufficient.

3 CMSR. BELOW: Could you just clarify the
4 terms of the Settlement, sort of the effective -- the
5 timing with regard to the parties' understanding of when
6 -- of whether you've had a point of now return with regard
7 to settling the eminent domain case, now that the Board of
8 Aldermen have authorized the issuance of the bond, and
9 essentially taken their steps under the special
10 legislation to kind of close -- get close to closing the
11 deal from the City's of point of view?

12 MR. ARDINGER: Yes, Commissioner Below.
13 The Merger Agreement has an exhibit, which you've probably
14 had a chance to look at it, the Settlement Agreement.
15 That Settlement Agreement, when it was signed, was fully
16 binding on both parties. It provides for the settlement
17 of the eminent domain docket and proceeding, no matter
18 what happens. However, the effective date of the release
19 of the, you know, the final request for settlement
20 withdrawal of the case from the City, withdrawal of the
21 petition for eminent domain, that will not be released
22 until the point where the Merger Agreement is, you know,
23 terminated, because, say, for example, this Commission --
24 the Commission does not approve this transaction, the

1 Merger Agreement would be terminated. That would be --
2 that withdrawal will be released, it's in escrow right
3 now. So, there is no circumstance under that agreement
4 where the settlement of the eminent domain docket will not
5 occur.

6 However, to Mr. Camerino's point, the
7 settlement of that docket cannot be -- cannot occur before
8 we have resolved this transaction with this proposed
9 merger. And, the reason is, because it is very important
10 for a lot of reasons, including the legal basis that
11 Mr. Camerino said, for this settlement to be viewed as
12 what it is, which is the ultimate settlement of a
13 long-standing eminent domain dispute, through this formal
14 transaction, which was specifically approved by the
15 Legislature.

16 CMSR. BELOW: So, just to be clear, the
17 settlement is fully binding on both parties now, but it's
18 in escrow, so it's not really effective until this, until
19 a merger agreement plays out, one way or the other?

20 MR. ARDINGER: Yes. Absolutely right.
21 And, so, but no matter how it plays out, at the end of the
22 day that piece of paper will get filed with this
23 Commission in accordance with that Settlement Agreement
24 and the docket will be settled or withdrawn.

1 CMSR. BELOW: And, so, that's part of
2 why you see the two cases as --

3 MR. ARDINGER: Very related.

4 CMSR. BELOW: -- linked and needed to be
5 consolidated, in effect?

6 MR. ARDINGER: Yes, sir.

7 MR. CAMERINO: Could I? Just one thing
8 I want to clarify. I think there's a document called a
9 "withdrawal" or a pleading that would be filed with the
10 Commission to close the eminent domain proceeding. I
11 think that's what Mr. Ardinger is referring to. But we --
12 the parties have resolved their differences, which one
13 would normally call a "settlement", by executing the
14 Merger Agreement. What we haven't done is ended the
15 eminent domain docket. And, if you think about it, under
16 the statutory structure, the statutory structure
17 contemplates that the parties at any time could reach
18 agreement. That's what we've done. But we've done it in
19 a structure, a stock deal, that was specially authorized,
20 because the normal eminent domain statute really speaks in
21 terms of assets.

22 CHAIRMAN GETZ: Mr. Ardinger or
23 Mr. Camerino, anything else that you would like to say
24 before we close the prehearing conference?

1 MR. ARDINGER: Only briefly. That the
2 concerns that were raised today, we -- the City intends
3 for a full, open proceeding, and looks forward to working
4 with all parties to try and address those concerns.

5 CHAIRMAN GETZ: All right. Then, what
6 we'll do at this point is close the prehearing conference.
7 I understand the parties will be meeting in a technical
8 session. I'm hopeful there will be an agreement to a
9 procedural schedule, file something in writing with us.
10 And, if there is not agreement, then we'll -- I assume
11 there will be different positions put forth in what is
12 written and we'll make a decision on that.

13 So, with that, we'll close this
14 prehearing conference and await further information.
15 Thank you, everyone.

16 **(Whereupon the prehearing conference**
17 **ended at 11:51 a.m.)**