

STATE OF NEW HAMPSHIRE  
PUBLIC UTILITIES COMMISSION

June 17, 2016 - 1:33 p.m.  
Concord, New Hampshire

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RE DE 16-383  
LIBERTY UTILITIES (GRANITE STATE  
ELECTRIC) CORP. d/b/a  
LIBERTY UTILITIES:  
Request for Change in Rates.  
(Hearing on Temporary Rates)

**PRESENT:** Chairman Martin P. Honigberg, Presiding  
Commissioner Robert R. Scott  
Commissioner Kathryn M. Bailey

Sandy Deno, Clerk

**APPEARANCES:** Reptg. Liberty Utilities (Granite  
State Electric) Corp. d/b/a  
Liberty Utilities:  
Michael J. Sheehan, Esq.

Reptg. the City of Lebanon:  
Clifton Below

Reptg. Residential Ratepayers:  
Donald M. Kreis, Esq., Consumer Adv.  
Office of Consumer Advocate

Reptg. PUC Staff:  
Paul B. Dexter, Esq.  
Suzanne G. Amidon, Esq.  
Thomas Frantz, Dir./Electric Division  
Les Stachow, Asst. Dir./Electric Div.  
Jay Dudley, Electric Division  
Richard Chagnon, Electric Division

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



ORIGINAL

# I N D E X

## PAGE NO.

### **WITNESS: STEVEN E. MULLEN**

Direct examination by Mr. Sheehan	17
Cross-examination by Mr. Kreis	19
Cross-examination by Mr. Dexter	49
Interrogatories by Cmsr. Scott	51
Interrogatories by Cmsr. Bailey	63
Redirect examination by Mr. Sheehan	67

### **WITNESS: JAY E. DUDLEY**

Direct examination by Mr. Dexter	74
Cross-examination by Mr. Sheehan	77
Cross-examination by Mr. Kreis	115
Interrogatories by Cmsr. Scott	117
Interrogatories by Chairman Honigberg	120
Redirect examination by Mr. Dexter	123

### **WITNESS PANEL: STEVEN E. MULLEN CHRISTIAN P. BROUILLARD**

Rebuttal direct examination by Mr. Sheehan	128
Rebuttal cross-examination by Mr. Dexter	149
Interrogatories by Cmsr. Scott	153
Interrogatories by Chairman Honigberg	157

### **DISCUSSION RE: EXHIBITS 158**

### **CLOSING STATEMENTS BY:**

Mr. Below	161
Mr. Kreis	161
Mr. Dexter	167
Mr. Sheehan	170

# EXHIBITS

EXHIBIT NO.	DESCRIPTION	PAGE NO.
1	Rate Case Filing <b>(Marked for identification ONLY)</b>	14
2	Testimony of Steven E. Mullen and Howard S. Gorman Regarding Temporary Rate Increase, including attachments (04-29-16) (See NOTE on Page 160)	14, 160
3	Tariff (Clean & redline versions) <b>(Marked for identification ONLY)</b>	14
4	Responses to Discovery, Staff 1-8, 2-2, 2-3, 2-4, and 2-5	14
5	US 10-YR quotes from the website of <i>cnbc.com</i> , Page 1 of 5, printed on 6/16/2016	22
6	Testimony of Jay E. Dudley, including attachments (06-14-16)	29
7	Response to Discovery Request Staff 1-9	34
8	Page 17 of 30 of the GSEC d/b/a Liberty Utilities Integrated Resource Plan (11-29-12)	37

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

CHAIRMAN HONIGBERG: We're here this afternoon on Docket DE 16-383, which is a rate case for Liberty, Liberty Utilities (Granite State Electric) Corp. We're here for a temporary rate hearing.

And, before we do anything else, let's take appearances.

MR. SHEEHAN: Good afternoon, Commissioners. Mike Sheehan, for Liberty Utilities (Granite State Electric) Corp.

MR. KREIS: Good afternoon, Mr. Chairman, members of the Commission. I'm Consumer Advocate Donald Kreis, here on behalf of the state's residential utility customers.

MR. DEXTER: Paul Dexter, Staff attorney, appearing on behalf of the Staff, with Suzanne Amidon. With me is Jay Dudley of the Electric Power Division, and other members of the Division.

CHAIRMAN HONIGBERG: Anyone here from Lebanon?

MR. SHEEHAN: I haven't seen him or heard from him, and I don't think the other

1 parties have either.

2 CHAIRMAN HONIGBERG: So, are there  
3 any preliminary matters we need to deal with,  
4 before we start hearing from the parties?

5 MR. SHEEHAN: There are a few,  
6 Chairman. First, there are two pending motions  
7 that we would appreciate being addressed. The  
8 first is a Motion for Confidential Treatment.  
9 One page of the filing had some compensation  
10 information. We filed a motion to have that  
11 protected. No party has filed an objection or  
12 a response.

13 The other motion was to waive Puc  
14 1203.02(d), which requires us to give 30 days  
15 notice of the rate changes in this case. When  
16 we filed the case, we had to print notices for  
17 the bills before all the numbers were final.  
18 So, we weren't able to have that notice given  
19 within 30 days. We gave notice -- we gave  
20 notice within 30 days of the fact that there is  
21 a rate case being filed and directing people to  
22 the website. As we speak, during the second 30  
23 days, accurate notices are going out in June  
24 bills. So, the customers are getting the

1 required notice in this month's bills.

2 And, again, no party has filed a  
3 response or objection to those motions.

4 CHAIRMAN HONIGBERG: Mr. Kreis, do  
5 you have any position on either of the motions?

6 MR. KREIS: The OCA has no objection  
7 to either motion.

8 CHAIRMAN HONIGBERG: Mr. Dexter?

9 MR. DEXTER: The Staff has no  
10 objection to either motion.

11 CHAIRMAN HONIGBERG: We'll grant both  
12 motions.

13 MR. SHEEHAN: Next, I'd like to mark  
14 two exhibits. The first is the entire rate  
15 case filing. Admittedly, the temporary rate  
16 pieces of it are just that, pieces of it. But,  
17 in speaking with the Clerk, it makes more sense  
18 to mark the whole filing, as that's how it  
19 appears in the Docketbook. And that would be  
20 "Exhibit 1".

21 And I have circulated a package of  
22 data responses. You have some up there, and  
23 the parties have them. And that we will be  
24 discussed -- will be discussed during today's

1       hearing, and I propose that be marked as  
2       "Exhibit 2" for identification.

3               CHAIRMAN HONIGBERG: Well,  
4       conveniently, the second of those two is  
5       premarked, right here in front of me. So, I  
6       don't have to -- Commissioner Bailey.

7               CMSR. BAILEY: Mr. Sheehan, is  
8       Exhibit 1 Bates stamped consecutively 0001  
9       through 1000?

10              MR. SHEEHAN: It's actually broken  
11       into three parts. And I was going to have that  
12       conversation with the Commission, but Ms. Deno  
13       suggested we simply mark the whole thing. We  
14       have broken the rate case filing into three  
15       parts, each 001 through 600, 001 through  
16       whatever it is. One being the "Testimony and  
17       Attachments", that's 001 through 600, the  
18       second being the filing called the "Rate Case  
19       Filing Requirements", and the third being the  
20       "Tariff".

21              So, yes, they are numbered, but  
22       they're numbered in three sequences, rather  
23       than a single.

24              CMSR. BAILEY: Mr. Mullen and

1 Mr. Gorman's temporary rate testimony starts on  
2 Page 001.

3 MR. SHEEHAN: Correct.

4 CMSR. BAILEY: Which of the three  
5 pieces does that fall into?

6 MR. SHEEHAN: That is the -- in  
7 Docketbook, it is the second piece. The very  
8 first part in Docketbook in the order is the  
9 "Rate Case Filing Requirements", the next entry  
10 is the "Direct Testimony of Steve Mullen and  
11 Howard Gorman".

12 CMSR. BAILEY: And you want that to  
13 be part of the exhibit for the permanent rate  
14 case, is that -- that's what the advice you  
15 have is?

16 MR. SHEEHAN: Yes. I mean, right  
17 now, this is an exhibit in the temporary rate  
18 hearing. But, instead of carving up the filing  
19 into pieces that would have various numbers, it  
20 was suggested that we simply mark the whole  
21 document, it would be an exhibit after today.  
22 And, should we have a hearing down the road, it  
23 will already be marked as "Exhibit 1".

24 CMSR. BAILEY: Well, my concern is



1       that there's more than one Page 001 in  
2       Exhibit 1.

3               MR. KREIS:   If I might?

4               CHAIRMAN HONIGBERG:   Mr. Kreis, make  
5       me an offer.

6               MR. KREIS:   I am concerned about the  
7       entire rate case being admitted as evidence in  
8       the temporary rate case phase of this  
9       proceeding.   Thank you.   Because, really, what  
10      ought to be before the Commission today is the  
11      Company's testimony and exhibits on temporary  
12      rates, plus the testimony that the Staff of the  
13      Commission filed pursuant to the procedural  
14      schedule, in response to the Company's  
15      testimony on temporary rates.   If you admit the  
16      entire rate case, then, really, what we end up  
17      doing here today is trying the rate case, as a  
18      kind of a preliminary round.   That isn't the  
19      way this works.

20              CHAIRMAN HONIGBERG:   There's no  
21      perfect solution to this problem, given the way  
22      the pages are numbered.   And that is -- that  
23      should not be an obstacle to doing this right,  
24      in a way that is going to make sense.

1                   Mr. Dexter, you have any thoughts on  
2                   this?

3                   MR. DEXTER: Yes. I support the  
4                   marking of the entire binder as Exhibit 1, as  
5                   proposed by the Company. Staff testimony did  
6                   make limited references to parts of the binder  
7                   that aren't under the "Temporary" tab. I have  
8                   copies of those that I was going to make an  
9                   exhibit, if necessary, just for reference.

10                  But I think the most convenient way  
11                  to proceed would be to mark the binder as  
12                  "Exhibit 1". And, if the Bench feels that  
13                  testimony is straying into the permanent rate  
14                  case, the Bench has the opportunity to cut it  
15                  off.

16                  CHAIRMAN HONIGBERG: Do you  
17                  anticipate, and maybe this is more directed to  
18                  Mr. Kreis, but Mr. Dexter as well, do you  
19                  anticipate objecting at some point to parts of  
20                  the initial filing becoming a full exhibit in  
21                  this proceeding?

22                  MR. DEXTER: No.

23                  CHAIRMAN HONIGBERG: Mr. Kreis?

24                  MR. KREIS: I tentatively have no

1       such intention.

2                   CHAIRMAN HONIGBERG:   Yes.

3                   MR. KREIS:   I certainly don't object,  
4       as a practical matter, to marking the entire  
5       binder as an exhibit, and dealing in some other  
6       fashion with the fact that the binder is not  
7       consecutively paginated with a Bates stamp.

8                   CHAIRMAN HONIGBERG:   But, if, at the  
9       end of today's hearing, we strike the ID on  
10      Exhibit 1, Exhibit 1 is an exhibit period.  
11      You're going to have a very difficult time  
12      objecting to any portion of it down the road.

13                  MR. KREIS:   I suppose.   And, I guess,  
14      subject to how things go this afternoon, I  
15      think that's okay.

16                  CHAIRMAN HONIGBERG:   All right.   I  
17      think the fact that they are not consecutively  
18      numbered, we'll just have to get over for now,  
19      if that's the way it can work.   My instincts  
20      would have been to do this differently, to pull  
21      out the parts that are relevant and mark them  
22      today as exhibits.

23                  But I don't -- there's no inherent  
24      reason why we can't do it the way you've got it

1 set up.

2 MR. SHEEHAN: There is an option, and  
3 that is, as I referenced before, we filed it in  
4 three chunks. The first, as listed in  
5 Docketbook, is "Rate Case Filing", that could  
6 be "1". And the second page sequence is all of  
7 the testimony and exhibits, that could be "2",  
8 and the third in the docketbook is the tariff,  
9 clean and redline, that could be "3". And that  
10 would avoid the page numbering issue, and would  
11 give us three documents instead of -- three  
12 exhibits, instead of one, for this first part  
13 of it.

14 CHAIRMAN HONIGBERG: And we would  
15 deal with the testimony as an exhibit today,  
16 but the other -- the other portions -- are  
17 there parts of the first -- let me see if I can  
18 word this in a way that doesn't reuse words in  
19 two different ways. Are there pages within the  
20 first part and pages within the third part that  
21 are relevant to the temporary rate hearing?

22 MR. SHEEHAN: The third part,  
23 unlikely, that's the tariff. The first part,  
24 possibly, depending on where the testimony goes

1       that was raised by Staff's testimony. They  
2       went into issues beyond the temporary filing,  
3       and it may require delving into what would be  
4       the "rate case filing" part.

5               CHAIRMAN HONIGBERG: Let's go off the  
6       record for a minute.

7                       *[Brief off-the-record discussion*  
8                       *ensued.]*

9               CHAIRMAN HONIGBERG: We're going to  
10       go back on the record. We're going to go with  
11       the latest suggestion Mr. Sheehan made, which  
12       is to mark the three segments of the filing as  
13       "Exhibits 1", "2", and "3", as he outlined.  
14       So, which is going to be 1? Is 1 going to be  
15       the testimony or is 1 what you have identified  
16       as "1" in your filing?

17               MR. SHEEHAN: Doesn't matter to me,  
18       because we filed them in separate binders. The  
19       Docketbook has them listed in order. If it  
20       would be easier for the Clerk's Office, we can  
21       break them out in the order that Docketbook has  
22       them, which would be the Rate Case Filing is  
23       "1", the Testimony and Exhibits "2", and the  
24       Tariff "3". But I don't have a strong filing

1 for that.

2 CHAIRMAN HONIGBERG: That's what  
3 we'll do, unless I hear an objection?

4 MR. DEXTER: No objection from Staff.

5 CHAIRMAN HONIGBERG: And I take it no  
6 objection from Mr. Kreis?

7 MR. KREIS: None, sir.

8 CHAIRMAN HONIGBERG: All right.  
9 That's what we'll do.

10 (The documents, as described,  
11 were herewith marked as  
12 **Exhibit 1, Exhibit 2,** and  
13 **Exhibit 3,** respectively, for  
14 identification.)

15 MR. SHEEHAN: And that would make the  
16 other thing that I submitted today "Exhibit 4",  
17 instead of whatever it had before.

18 CHAIRMAN HONIGBERG: Right.

19 (The document, as previously  
20 described, was herewith marked  
21 as **Exhibit 4** for  
22 identification.)

23 MR. SHEEHAN: I thought that was the  
24 easy one.

1           The last preliminary issue I had is  
2           the following. Mr. Mullen is here to present,  
3           to adopt his testimony and present the  
4           temporary rate case direct testimony. We  
5           understand Mr. Dudley will present the Staff's  
6           testimony. We intend to present rebuttal  
7           testimony to Mr. Dudley's. The Company would  
8           prefer to have -- and the rebuttal testimony  
9           will consist of Mr. Mullen and Mr. Brouillard.  
10          The Company would prefer to have Mr. Mullen get  
11          on the stand for his direct and cross, get off  
12          the stand, and then get back on the stand with  
13          Mr. Brouillard for rebuttal.

14                 Again, I'll leave that to the  
15          Commission's preference for an order.

16                 CHAIRMAN HONIGBERG: Any thoughts  
17          from the other parties?

18                 MR. KREIS: Yes, Mr. Chairman. The  
19          OCA is concerned about Mr. Brouillard's  
20          testimony, in that he did not file any  
21          temporary rate testimony, and, therefore, he  
22          should not be allowed to testify here today.

23                 CHAIRMAN HONIGBERG: Even in rebuttal  
24          to a filing by another party?

[WITNESS: Mullen]

1 MR. KREIS: I think we need to hear  
2 from Mr. Dudley, and then I think the  
3 Commission can determine what would be  
4 appropriate by way of rebuttal.

5 CHAIRMAN HONIGBERG: What about the  
6 other aspect of that request, which would be to  
7 have Mr. Mullen testify, go back to his seat,  
8 hear from Mr. Dudley, and then come back again  
9 to rebut?

10 MR. KREIS: I don't think I have a  
11 problem with that.

12 CHAIRMAN HONIGBERG: Mr. Dexter?

13 MR. DEXTER: Staff has no problem  
14 with that suggested order of witnesses.

15 CHAIRMAN HONIGBERG: All right.  
16 Makes sense.

17 MR. SHEEHAN: That's all I have. And  
18 I'm prepared to put Mr. Mullen on the stand,  
19 unless there's something else.

20 CHAIRMAN HONIGBERG: Are there other  
21 preliminary matters from the other side of the  
22 room?

23 MR. DEXTER: Staff has no other  
24 preliminary matters.



[WITNESS: Mullen]

1 MR. KREIS: None from the OCA either.

2 CHAIRMAN HONIGBERG: All right. Why

3 don't we go ahead then with your witnesses,

4 Mr. Sheehan.

5 MR. SHEEHAN: The Company calls

6 Steven Mullen.

7 CHAIRMAN HONIGBERG: Just before we

8 get started, where is Mr. Gorman?

9 MR. SHEEHAN: He will not be present.

10 He was -- we chose not to bring him, in light

11 of this being a temporary rate hearing and the

12 cost that it would incur to fly him up from New

13 York. And Mr. Mullen is certainly competent to

14 address all of the issues in the testimony.

15 (Whereupon **Steven E. Mullen** Was

16 duly sworn by the Court

17 Reporter.)

18 **STEVEN E. MULLEN, SWORN**

19 **DIRECT EXAMINATION**

20 BY MR. SHEEHAN:

21 Q. Your name, Mr. Mullen?

22 A. My name is Steven E. Mullen.

23 Q. And your employer?

24 A. I'm employed by Liberty Utilities Service Corp.

[WITNESS: Mullen]

1 Q. And you filed testimony in this docket, is that  
2 correct?

3 A. That's correct.

4 Q. And, in particular, you filed testimony called  
5 "Direct Testimony of Steven Mullen and Howard  
6 Gorman - Temporary Rates", is that correct?

7 A. That's correct.

8 Q. And that appears at Page 001 of what we are  
9 calling "Exhibit 2"?

10 A. That's correct. And it consists of Pages 001  
11 through 081.

12 Q. You also filed direct testimony in the balance  
13 of the rate case, the permanent rate case, is  
14 that correct?

15 A. Yes, I did.

16 Q. And, in case we get into that testimony during  
17 today's hearing, does that testimony also  
18 appear within Exhibit 2?

19 A. Yes, it does. And that starts on Bates Page  
20 091 through Bates Page 178.

21 Q. As to both testimonies, were they prepared by  
22 you and/or under your direction?

23 A. Yes.

24 Q. And do you have any changes, first, to the

[WITNESS: Mullen]

1 temporary rate testimony?

2 A. I do not.

3 Q. Today, do you have any changes to the permanent  
4 rate testimony?

5 A. I do not.

6 Q. If I were to ask you the questions today that  
7 are written in those testimonies, would your  
8 answers be the same?

9 A. Yes, they would.

10 MR. SHEEHAN: That's all I have. I  
11 offer him for cross-examination.

12 CHAIRMAN HONIGBERG: Mr. Kreis.

13 MR. KREIS: Thank you, Mr. Chairman.  
14 Good afternoon. Good afternoon, Mr. Mullen.

15 WITNESS MULLEN: Good afternoon.

16 **CROSS-EXAMINATION**

17 BY MR. KREIS:

18 Q. Mr. Mullen, I want to ask you a few questions  
19 about the rate of return that is contained in  
20 your temporary rate testimony and the Company's  
21 request for temporary rates. I'm just going to  
22 try and move myself around so I can see you.  
23 In the Company's last rate case, Docket Number  
24 DE 13-063, the cost of capital that the

[WITNESS: Mullen]

1 Commission adopted was 7.92 percent, correct?

2 A. Yes.

3 Q. And that figure was determined pursuant to a  
4 Settlement Agreement, was it not?

5 A. Yes, it was.

6 Q. Does that Settlement Agreement contain language  
7 that suggests that the terms of the Settlement  
8 Agreement are not intended by the parties to be  
9 precedential?

10 A. I don't have the Settlement Agreement in front  
11 of me, but that's typical language.

12 Q. And do you recall that the components in the  
13 final order in Docket 13-063 involved a return  
14 on equity of 9.55 percent, a cost of debt of  
15 5.95 percent, and a capital structure of  
16 55 percent equity and 45 percent debt?

17 A. Yes.

18 Q. That was not the Company's actual capital  
19 structure at that time, was it?

20 A. That's correct.

21 Q. Is it the Company's actual capital structure  
22 now?

23 A. It is not.

24 Q. As I understand it, from Mr. Hevert's

[WITNESS: Mullen]

1 testimony, the Company's actual weighted cost  
2 of debt is 5.88 percent, true?

3 A. That's true.

4 Q. Do you expect that to go higher or lower in the  
5 immediate future?

6 A. I don't expect any changes to that right now.  
7 I'm not aware of any additional long-term debt  
8 issuances on the horizon.

9 Q. What, from your standpoint, would be  
10 inappropriate or incorrect, given the need to  
11 impute a capital structure to the Company for  
12 purposes of setting a temporary rate, of  
13 imputing a capital structure of 50 percent debt  
14 and 50 percent equity?

15 A. What was used was what was last approved by the  
16 Commission. And, for purposes of temporary  
17 rates, that is typically what the Commission  
18 has gone along with in temporary rate  
19 proceedings. We saw no need to change that.

20 Q. I understand that you haven't requested that,  
21 and I understand that's not what the Commission  
22 did in the last rate case. But my question is,  
23 what would be incorrect, from your standpoint,  
24 about using a 50 percent debt/50 percent equity

[WITNESS: Mullen]

1 capital structure?

2 A. Well, other than you mentioning the numbers, I  
3 know of no basis for it. The 55/45 is at least  
4 something that the Commission has reviewed and  
5 approved.

6 Q. At the time that the PUC approved a return on  
7 equity of 9.55 percent for the Company back in  
8 2014, do you happen to know what the prevailing  
9 interest rate on a 10-year Treasury note was,  
10 roughly?

11 A. I do not.

12 MR. KREIS: Well, I happen to have an  
13 exhibit that I would like to mark for  
14 identification. This is -- we're at "Exhibit  
15 Number 5"?

16 MS. DENO: That's correct.

17 MR. KREIS: Okay.

18 (The document, to be described,  
19 was herewith marked as **Exhibit 5**  
20 for identification.)

21 *[Atty. Kreis distributing*  
22 *documents.]*

23 MR. KREIS: Does everybody have one  
24 that needs one?

[WITNESS: Mullen]

1 BY MR. KREIS:

2 Q. Okay. Mr. Mullen, this is data that I obtained  
3 yesterday from the CNBC website. And it gives  
4 you a trend in terms of the rate of 10-year  
5 Treasury notes, going from July 2013 to  
6 January 2016. And I guess my question is, are  
7 you willing to accept this as accurate, subject  
8 to check?

9 A. Subject to check.

10 MR. KREIS: And I think the  
11 Commission can take administrative notice of  
12 this, since this is all publicly available,  
13 factually accurate data.

14 BY MR. KREIS:

15 Q. Would you agree with me that the rate on the  
16 10-year Treasury note now, in nearly mid-2016,  
17 is significantly lower than it was in either  
18 the second half of 2013 or the first half of  
19 2014?

20 A. That's what's displayed on the chart.

21 Q. How much lower, roughly?

22 A. Starting from which starting point?

23 Q. Oh, you know, starting from July of 2013,  
24 moving through January 2014. I would note that

[WITNESS: Mullen]

1 the Commission entered its order approving  
2 permanent rates for the Company in the previous  
3 rate case on March 17th, 2014, and I believe  
4 the rates were retroactive at least to the  
5 first of the year.

6 So, really, I'm just trying to establish  
7 that 10-year Treasuries, oh, you know,  
8 significantly lower, and I just want to make  
9 sure that you agree with that?

10 A. As shown on the chart, yes, I agree with it.

11 Q. Okay.

12 CHAIRMAN HONIGBERG: Mr. Kreis, I  
13 have a question for you. The bottom line of  
14 the X axis on this chart, is that -- it's not  
15 labeled. Is it your understanding, and I  
16 guess, Mr. Mullen, is it your understanding  
17 that that number would be "1.5" on that bottom  
18 line?

19 WITNESS MULLEN: As I look above the  
20 chart, when I see close of "1.55", that's my  
21 read of this chart.

22 CHAIRMAN HONIGBERG: Okay.

23 MR. KREIS: Yes. I apologize, Mr.  
24 Chairman. I looked around for the best



[WITNESS: Mullen]

1       available graphic representation of this data,  
2       and this is not perfect. And I apologize for  
3       the advertising material and all of that.

4               CHAIRMAN HONIGBERG: Oh. And,  
5       actually, I was interested in the refi rates  
6       down in the lower right-hand corner.

7               MR. KREIS: Just so long as you all  
8       agree that they're not of record in this  
9       proceeding.

10   BY MR. KREIS:

11   Q.   In the --

12               MR. KREIS: Is it okay if I go on?

13               CHAIRMAN HONIGBERG: Sure.

14   BY MR. KREIS:

15   Q.   Mr. Mullen, in the last rate case, which was  
16       13-063, there was a Settlement Agreement on  
17       temporary rates, correct?

18   A.   There was.

19   Q.   And, when that Settlement Agreement was  
20       approved by the Commission, the Company's rate  
21       of return, at least at the end of 2012, was  
22       negative 0.75 percent, correct?

23   A.   I'd have to review, but I'll take that subject  
24       to check.

[WITNESS: Mullen]

1 Q. And the then authorized rate of return was  
2 8.61 percent, true?

3 A. That an overall rate of return?

4 Q. Yes.

5 A. Again, subject to check.

6 Q. And, subject to checking all of that, you would  
7 agree, would you not, that that's a more dire  
8 situation than the under-earning situation that  
9 the Company is now in?

10 A. And that's why that temporary rate increase was  
11 higher than what we requested here.

12 Q. And, so, in other words, the need for immediate  
13 temporary rate relief for the Company was more  
14 urgent back in the previous rate case than it  
15 is today?

16 A. But it still exists, yes.

17 Q. Yes. The temporary rates in the previous rate  
18 case were designed to produce an overall return  
19 of 8.03 percent, yes?

20 A. Subject to check.

21 Q. And that is actually in excess of the overall  
22 rate of return in that case of 7.92 percent?

23 A. The overall rate of return that the Commission  
24 approved in the Settlement Agreement coming out

[WITNESS: Mullen]

1 of that case, yes.

2 Q. And, likewise, the temporary rates were based  
3 on a return on equity of 9.67 percent, also in  
4 excess of the ultimate return on equity in that  
5 case of 9.55 percent?

6 A. That's correct.

7 Q. Okay. I think that it would make sense --

8 A. If I could just add to that?

9 Q. Sure.

10 A. The 9.67 percent ROE in that temporary rate  
11 proceeding was the previously allowed ROE from  
12 the prior case for the Company.

13 MR. KREIS: Okay. Mr. Chairman, I  
14 think I need your advice at this point.

15 CHAIRMAN HONIGBERG: Okay. My ears  
16 perked up at that, Mr. Kreis. What can I do  
17 for you?

18 MR. KREIS: The rest of my questions  
19 have to do with the issues that Mr. Dudley  
20 raises in his testimony, which is -- which  
21 concern the Company's capital expenditures that  
22 are the major driver in the rate case.

23 Now, as I understood -- as I  
24 understand from what I already heard, Mr.

[WITNESS: Mullen]

1 Dudley plans on testifying on those issues, and  
2 then the Company plans on presenting their  
3 rebuttal testimony from Mr. Mullen and possibly  
4 Mr. Brouillard.

5 CHAIRMAN HONIGBERG: You never know  
6 if, in fact, they're going to feel like they  
7 need that rebuttal testimony. I would think  
8 that you have questions about what Mr. Mullen's  
9 view is of Mr. Dudley's prefiled testimony, now  
10 would be a good time to ask those questions.

11 MR. KREIS: Okay. Just it might make  
12 sense then to premark, if we haven't already,  
13 Mr. Dudley's testimony and its attachments.

14 CHAIRMAN HONIGBERG: Feel free.

15 MR. KREIS: I can't do it, because  
16 I --

17 MR. DEXTER: I would be happy to mark  
18 that at this time, if that's appropriate?

19 CHAIRMAN HONIGBERG: Sure. Whoever,  
20 I mean, I don't think there's any magic to it.  
21 It doesn't -- Mr. Dexter, you wouldn't need to  
22 do that, Mr. Kreis, you could. If you don't  
23 have copies, though, if Mr. Dexter has the  
24 copies to use, that would be great. I mean, we

[WITNESS: Mullen]

1 all have it. So, --

2 MR. KREIS: Yes. I have a copy. I  
3 would be happy to ask the Commission to premark  
4 Mr. Dudley's testimony for identification,  
5 since we're just consecutively numbering the  
6 exhibits, and it doesn't carry my -- doesn't  
7 carry my fingerprints.

8 CHAIRMAN HONIGBERG: It does now. We  
9 understand, you are not sponsoring Mr. Dudley's  
10 testimony. You want to ask a witness about  
11 things that are in that testimony.

12 MR. KREIS: Exactly. And I'm happy  
13 to be the person who has the honor of handing  
14 it to the Clerk. Because I've read it, and it  
15 might be very persuasive.

16 *[Atty. Kreis handing document to*  
17 *Ms. Deno.]*

18 CHAIRMAN HONIGBERG: So, this is  
19 "Exhibit 6", Mr. Dudley's testimony.

20 (The document, as described, was  
21 herewith marked as **Exhibit 6** for  
22 identification.)

23 MR. KREIS: Okay.

24 BY MR. KREIS:

[WITNESS: Mullen]

1 Q. Mr. Mullen, what sort of load growth has the  
2 Company experienced since its last rate case?

3 A. Overall, it's been relatively flat.

4 Q. "Relatively flat"? What do you mean?

5 A. Just what it means.

6 Q. Well, "relatively flat", as in it used to be  
7 30 percent, and now it's only 15 percent? Or  
8 "relatively flat", as in at or near zero?

9 A. The latter.

10 Q. And, so, given the lack of load growth, why did  
11 the Company find it necessary to make  
12 \$50 million in new capital investments?

13 MR. SHEEHAN: If I may interject,  
14 these questions get into topics that, although  
15 Mr. Mullen is probably capable of answering,  
16 they're really within Mr. Brouillard's  
17 expertise, which is why we had the discussion  
18 at the outset of this hearing.

19 CHAIRMAN HONIGBERG: Wow. So, you  
20 feel like these questions can't be asked until  
21 after Mr. Dudley testifies, and Mr. Brouillard  
22 then testifies, who didn't file prefiled  
23 testimony? If Mr. Mullen doesn't know, Mr.  
24 Mullen is going to have to say "I don't know".

[WITNESS: Mullen]

1 MR. SHEEHAN: I guess that's fair.

2 Thank you.

3 **BY THE WITNESS:**

4 A. In the electric utility industry, growth is,  
5 while it's a component, it is not the major  
6 component of capital investments. We also have  
7 to do lots of things for aging infrastructure.  
8 I think you're familiar with the term  
9 "nonrevenue-producing capital additions".  
10 Those, on an annual basis, can be anywhere of  
11 70 to 80 percent of the capital investment can  
12 be driven by such nonrevenue-producing things,  
13 which could be investments in existing  
14 infrastructure, reliability issues, things that  
15 go just beyond growth.

16 And, by the same token, even if we have  
17 system growth that's relatively flat over the  
18 system, that does not mean that there's not  
19 pockets of the system that do -- that are  
20 experiencing growth.

21 Q. Do you have Exhibit 2 up there with you?

22 A. The temporary -- the testimony and attachments?

23 Q. In the permanent rate case, yes.

24 A. I do.

[WITNESS: Mullen]

1 Q. Okay. If you look with me at Mr. Simpson's  
2 testimony, which has to do with the cost of  
3 service study that the Company performed, and I  
4 think the page I'd like you to look at is Bates  
5 number 543.

6 A. I'm there.

7 Q. Okay. If you look at the last three lines of  
8 his testimony on Bates Page 543, which are  
9 Lines 11 through 13, he talks about "Chart 1",  
10 which appears on the next page. Would you  
11 agree with me that Chart 1 is intended as a  
12 representation of the Company's historical  
13 plant additions and expenses?

14 A. I believe Chart 1 is labeled "Total Capacity  
15 Related Distribution Plant Additions".

16 Q. Well, I know what it's labeled, but he refers  
17 to it as the "Company's historical plant  
18 additions and expenses". And, so, my question  
19 is, is that, in fact, what is represented on  
20 Chart 1?

21 A. And, to repeat my answer, I would go with the  
22 label on the top, because, as I look at the  
23 dollar amounts there, that does not appear to  
24 represent the entire capital investment in the



[WITNESS: Mullen]

1 system.

2 Q. Okay. If you look at Chart 1, I wonder if you  
3 have a theory or an explanation for the -- I  
4 guess I would say the "spiky" nature of that  
5 graph?

6 A. When Liberty Utilities proposed -- was in to  
7 seek approval of the acquisition of Granite  
8 State Electric and EnergyNorth, it made a  
9 commitment to investing locally in the system.  
10 There were certain major investments that  
11 needed to be done that had previously been  
12 identified by the prior owner, National Grid,  
13 that, for whatever reason, had been deferred.  
14 So, what you see there, in 2013-2014, is  
15 Liberty Utilities living up to its commitment  
16 to invest in the system, and it took on some of  
17 these that -- some of these investments that  
18 were in the nature of addressing certain  
19 reliability issues that had existed for a  
20 while, whether it had to do with substations,  
21 whether it had to do with installing  
22 redundant -- redundant sources of supply for a  
23 particular area, say, like in Enfield. So,  
24 that's what you see there, is that there were

[WITNESS: Mullen]

1       certain things that needed to be done. As well  
2       as there were other items that, when you're  
3       operating a utility, sometimes what comes up  
4       is -- there is what we call "emergent  
5       projects". These emergent projects will come  
6       up during the course of a year and they need to  
7       be dealt with.

8   Q.   Do you have a history -- or, do you have a  
9       theory about the previous spikes in that graph,  
10      the ones from 2010, 2006, and 2001?

11   A.   I would be speculating.

12               MR. KREIS: If I might, I'd like to  
13      mark another exhibit. This would be number  
14      "7", if I'm not mistaken.

15                       *[Atty. Kreis distributing*  
16                       *documents.]*

17                       (The document, as described, was  
18                       herewith marked as **Exhibit 7** for  
19                       identification.)

20   BY MR. KREIS:

21   Q.   Mr. Mullen, with respect to the document that  
22       I've just marked as "Exhibit 7", would you  
23       agree with me that this is a response that the  
24       Company provided to a data request transmitted

[WITNESS: Mullen]

1 by the Staff of the Commission in this case?

2 A. Yes. And the response was written by Mr.  
3 Brouillard.

4 Q. Okay. This response to Staff Data Request 1-9  
5 says that increased capital investments  
6 "include certain legacy projects previously  
7 identified by NG", which I assume is National  
8 Grid, "but completed by Liberty." Were the  
9 other projects not identified by National Grid?

10 A. Which other projects?

11 Q. Well, just the -- the question refers to the  
12 historical plant additions that we just talked  
13 about. And the Staff asked "Did Liberty  
14 acquire significant deferred maintenance and/or  
15 investment involving Granite State's existing  
16 infrastructure at the time of acquisition from  
17 National Grid?" And the Company gave an answer  
18 that said, if I might paraphrase, "well, these  
19 are projects that National Grid identified, but  
20 didn't complete before they sold us the  
21 Company." And my question is really whether  
22 that explains all of the capital additions that  
23 we -- the Company has completed since the  
24 acquisition or whether there were other capital

[WITNESS: Mullen]

1 needs that were not identified by National Grid  
2 that the Company only discovered after its  
3 acquisition?

4 A. Well, as I read the question, it didn't ask  
5 about "all capital additions". So, that's how  
6 it was answered. I previously explained some  
7 of the other things that you have to do on an  
8 annual basis, even you have customers who want  
9 to take service, and, to provide them service,  
10 that's a capital project.

11 Q. The Company has filed a Least Cost Integrated  
12 Resource Plan in Docket Number 16-097, assumes  
13 an annual growth in peak demand of 1.1 percent.  
14 How does that factor into the capital spending  
15 that we're talking about here?

16 A. Well, again, I'd have to refresh my memory on  
17 that plan. But that is probably a system  
18 average load growth. And you'd have to look at  
19 the -- I believe there's also different towns  
20 or other areas that are put into that plan that  
21 may have different load growth requirements.  
22 So, again, growth is only one consideration  
23 when you're looking at capital projects. So, I  
24 think it all comes together. You would have to

[WITNESS: Mullen]

1 look at the individual pockets around those  
2 particular towns, as well as the system  
3 overall.

4 MR. KREIS: Okay. I think this is my  
5 last one. I have one more exhibit that I'd  
6 like to mark.

7 *[Atty. Kreis distributing*  
8 *documents.]*

9 MR. KREIS: This will be number "8".  
10 (The document, to be described,  
11 was herewith marked as **Exhibit 8**  
12 for identification.)

13 BY MR. KREIS:

14 Q. Mr. Mullen, would you agree with me, subject to  
15 check, that what I've handed you is Page 17 of  
16 the Least Cost Integrated Resource Plan that  
17 Granite State Electric Company d/b/a Liberty  
18 Utilities completed in late 2012?

19 A. That's what it says on the top of the page. It  
20 says "Page 17 of 30", and it has a Bates page  
21 of "019" at the bottom.

22 Q. And that plan was approved by the Commission?

23 A. Yes.

24 Q. And, so, to the extent that a Least Cost

[WITNESS: Mullen]

1 Integrated Resource Plan was in effect at the  
2 time of the capital additions that we're  
3 talking about, this is the plan that was  
4 applicable?

5 A. That sounds correct.

6 Q. Could you comment on the extent to which the  
7 Company's capital investment decisions are  
8 consistent with what is described on that  
9 exhibit in Paragraph 4.6, which is basically  
10 the second half of that page? And, obviously,  
11 you can take a second to read that to yourself,  
12 if you'd like.

13 A. It's a general overview. And, I'd say,  
14 generally speaking, that sounds correct.

15 Q. So, your testimony is that you know for a fact  
16 that the Company, when it makes its capital  
17 investment decisions, follows the process  
18 that's described in that paragraph?

19 A. I would say, generally speaking, that is a --  
20 sounds correct. However, I am not personally  
21 involved in the capital investment decisions.  
22 And, so, people like Mr. Brouillard would be  
23 better -- would be better to address that.

24 Q. Okay. Now, I think it's time to turn to

[WITNESS: Mullen]

1 Mr. Dudley's prefiled testimony, which is  
2 Exhibit 6. And what I would like to talk about  
3 in Mr. Dudley's testimony is actually the  
4 attachment to his testimony, which begins at  
5 Bates Page 18 of Exhibit 6.

6 I guess my first question is that, even  
7 though this list is, which goes on for five or  
8 six or seven pages, even though this list is  
9 attached to Mr. Dudley's testimony, it's  
10 actually the Company's list, correct?

11 A. That's correct.

12 Q. And it actually comes from the Company's  
13 response to Staff Data Request 1-3?

14 A. Yes.

15 Q. Is it a complete list, as far as you know?

16 A. As far as I know.

17 Q. And what does that -- what is that a list of,  
18 in fact?

19 A. It is a list of 2014 and 2015 capital budgets,  
20 the actual budget amounts for various items,  
21 and the actual dollars spent, along with the  
22 variances.

23 Q. I guess my first question is, the first column  
24 of that list is called "Priority", and

[WITNESS: Mullen]

1 "Priority 1" is "Safety", "Priority 2" is  
2 "Mandated", "Priority 3" is "Growth", "Priority  
3 4" "regulatory obligations", and "Priority 5"  
4 is "Discretionary". Can you explain what those  
5 different priorities mean? What the difference  
6 between "safety" and "mandated" and "growth"  
7 and "regulatory obligations" and  
8 "discretionary" is?

9 A. That would be more appropriately addressed by  
10 Mr. Brouillard.

11 MR. KREIS: So again, Mr. Chairman,  
12 just for the record, I would say that what we  
13 have here is the Company not necessarily  
14 sustaining its burden with respect to temporary  
15 rates.

16 CHAIRMAN HONIGBERG: I hear -- I  
17 understand that to be your conclusion of what  
18 your -- of probably where you're going to go.

19 MR. KREIS: Thank you.

20 BY MR. KREIS:

21 Q. There are, Mr. Mullen, some significant cost  
22 overruns that are reflected on this list  
23 attached to Mr. Dudley's testimony. That would  
24 be a fair statement?



[WITNESS: Mullen]

1 A. I would say they're budget variances.

2 Q. "Budget variances". What's the difference  
3 between "budget variance" and "cost overrun"?

4 A. Well, if you had something that came up during  
5 the year, that initially had a zero dollar  
6 budget amount, and you spent money on it, that  
7 is a variance from budget. It's not  
8 necessarily a cost overrun because it wasn't  
9 anticipated in the first place.

10 Q. Okay. Can you give me an example of that  
11 phenomenon on this list?

12 A. Sure. If you look on Bates Page 18.

13 Q. Okay?

14 A. And, if you look, and this is in the "Mandated"  
15 section, and if you look about two-thirds of  
16 the way down the page, there's a project number  
17 called "8830-CD0188", and the description is  
18 "New Hampshire DOT #13933E Exit 2 Pelham Road".

19 Q. Okay. And, so, do you happen to know what that  
20 project is?

21 A. Well, based on the description there, that  
22 looks like roadwork we had to do because of New  
23 Hampshire DOT requirements. And that, as I'm  
24 looking at this, it looks like something that

[WITNESS: Mullen]

1       came up during the year we had to do, and it  
2       wasn't originally budgeted.

3   Q.   It's interesting that you raise that, because  
4       there is another Pelham item that is farther up  
5       that page.  It's called "Pelham Double Rotary  
6       NH DOT".  And, likewise, even though it wasn't  
7       budgeted, it is -- it resulted in an  
8       expenditure of "\$335,332".  So, the Company, it  
9       seems like, in 2014, had to spend a lot of  
10      money in Pelham, really, looking at almost half  
11      a million dollars or more than a half million  
12      dollars, that it wasn't expecting to spend.  
13      That seems remarkable to me.

14  A.   Well, sometimes that comes up with DOT  
15      projects.  You know, again, that's not what I  
16      spend -- that's not where I typically spend my  
17      days, dealing with construction.  But that's my  
18      general understanding.

19  Q.   So, you would have to agree with me then that  
20      the DOT is a pretty unpredictable partner?

21  A.   I would say DOT does things as they need to,  
22      just as we do.

23  Q.   Okay.  And, if you look towards the bottom of  
24      Bates Page 18, there are a couple of projects,

[WITNESS: Mullen]

1 "Granite State Transformer Purchases", and then  
2 "GSE-Dist-Subs-Blanket", in which the Company  
3 budgeted substantial amounts of money and then  
4 spent nothing on those projects. And I am  
5 curious to know why -- how or why that happens?

6 A. Those projects may have been deferred or other  
7 projects may have taken precedence.

8 Q. So, this budget process then is -- well, I  
9 guess I'm wondering how the Company -- trying  
10 to think about how to put this question in a  
11 way that isn't -- that doesn't assume an  
12 answer. To what extent is the Company's budget  
13 understood inside the Company to be a  
14 reasonable prediction of what the Company will  
15 actually spend on capital items?

16 A. I'd say we always prepare the budget based on  
17 what we reasonably see as foreseeable. For  
18 purposes of today's hearing, the budget does  
19 not enter into the calculation of temporary  
20 rates. Temporary rates are based on the books  
21 and records on file with the Commission and in  
22 terms of the amounts that are booked to plant  
23 at the end of the year. So, you know, my  
24 testimony was prepared based on actual amounts

[WITNESS: Mullen]

1       spent and not the budget.

2   Q.   Understood.  Let's look at the -- let's go on a  
3       couple of pages and look, and we've been  
4       talking about the 2014 list, and then the last  
5       half of this exhibit is actually 2015 items.  
6       Let's take a look at those.  And I, as I was  
7       looking at these yesterday, I found them  
8       hard to read, and I still find them hard to  
9       read.

10               MR. DEXTER:  If I may, Your Honor, I  
11       apologize for the poor quality of the copy of  
12       the attachment.  I do have with me the original  
13       data response, which is the same information.  
14       I'd be happy to provide that to the Parties to  
15       make it easier to read, if that's helpful?

16               CHAIRMAN HONIGBERG:  What Bates Page  
17       are we supposed to be looking at?

18               MR. KREIS:  It looks like "Bates Page  
19       022".  This is Bates Page 022 of Mr. Dudley's  
20       testimony, and also Page 023.

21               CHAIRMAN HONIGBERG:  Off the record.

22                       *[Brief off-the-record discussion*  
23                       *ensued.]*

24               CHAIRMAN HONIGBERG:  You may proceed,

[WITNESS: Mullen]

1 Mr. Kreis.

2 MR. KREIS: Thank you.

3 BY MR. KREIS:

4 Q. Mr. Mullen, 2015 went somewhat better than 2014  
5 did. Would that be a fair statement?

6 A. Well, what do you mean by "better"?

7 Q. The budget was better at predicting what would  
8 actually end up being the funds expended by the  
9 Company.

10 A. The budget variances over the year were lower  
11 than the year before. But, in the course of  
12 discovery, we also provided information about  
13 the budget variances for both of the years.

14 Q. Right. Is there a reason why 2015 had fewer  
15 budget variances than 2014?

16 A. We had fewer projects, fewer dollars involved.

17 Q. I know that you said that you really weren't in  
18 a position to describe the various -- explain,  
19 that is, the various "priority" categories.  
20 But are there certain priority categories that  
21 are more susceptible to budget variances than  
22 others?

23 A. I would say, no, a project is a project. And,  
24 depending on what comes up for the

[WITNESS: Mullen]

1       circumstances of that project, I wouldn't say  
2       that any one particular area is more subject to  
3       variances than any other.

4   Q.   If we could -- I think I'm almost done.  If we  
5       could look at Bates Page -- I'm just trying to  
6       give you a line -- I think I'm still in Bates  
7       Page 22.  There are some capital items that  
8       are -- I'm looking at the very last four items  
9       under category "Priority 2", which are mandated  
10      projects.  And those projects are marked  
11      "Finance Accrual", "Finance Unallocated  
12      Burden", "Finance Topside JE", and "Payroll  
13      Accrual".  Those don't look like capital  
14      expenses to me.  And, so, I'm wondering what  
15      those entries mean?

16   A.   What those are are accruals at the end of a  
17      period that for costs that would typically be  
18      allocated to various projects.  And, these, for  
19      2014 and 2015, those accruals were included as  
20      what you see as one project line here, rather  
21      than allocated amongst all of the other  
22      projects above.  Typically, what will happen  
23      is, you do an accrual in the following period,  
24      at the beginning of the period you reverse the

[WITNESS: Mullen]

1        accrual. What we do now, after 2015, is the --  
2        what you see on those lines would be  
3        distributed to all the other lines on the page.

4    Q.    Thank you. And, then, looking one, two,  
5        three -- four lines up from those four entries  
6        that we were just talking about, there's an  
7        entry marked "Lebanon Area Low Voltage  
8        Mitigation". There was a budgeted amount of  
9        "\$50,000" and an expended amount of \$550,444".  
10       And I'm wondering why -- why something like  
11       that would happen? "Low voltage mitigation"  
12       seems like a pretty important thing. The  
13       Company identified that as a need in its  
14       budget, but ended up spending ten times what  
15       had been budgeted. And, so, I guess my  
16       question is, how would that -- how could or  
17       would that happen?

18    A.    Well, and as I look to a response we provided  
19        in discovery to Staff 2-2, we provided a reason  
20        for this project. And it was carryover work  
21        from 2014 for Potato Road. So, this was work  
22        that had been planned for 2014 or did not get  
23        completed in 2014 and went into 2015. So, when  
24        you look at the budget amount for 2015, and

[WITNESS: Mullen]

1 anticipated there wouldn't have been that level  
2 of carryover work, and then it got completed in  
3 2015.

4 Q. And, then, farther up the list there's an item  
5 called "Relocate Distribution Dulak Street  
6 Lebanon", and in that instance the Company  
7 budgeted "\$250,000" and spent only "\$848". How  
8 would something like that happen?

9 A. I'd have to look at that project, and  
10 Mr. Brouillard could probably address it, but  
11 it could be that it happened in an earlier  
12 year, and the project got completed in an  
13 earlier year. Or, there could have been some  
14 other extenuating circumstances. But, again,  
15 I'm not familiar with each and every project  
16 that the Company undertakes.

17 MR. KREIS: Okay. Much as I would  
18 enjoy asking Mr. Mullen about every single  
19 project on those two lists. I am going to --  
20 I'm going to just tell the Chairman that I am  
21 done with Mr. Mullen.

22 CHAIRMAN HONIGBERG: Mr. Dexter.

23 MR. DEXTER: Thank you, Mr. Chairman.

24 BY MR. DEXTER:



[WITNESS: Mullen]

1 Q. Mr. Mullen, I'm looking at the large book of  
2 testimony and exhibits that I believe is:  
3 "Exhibit 2". And I'm looking at Bates Page  
4 011. Do you have that in front of you?

5 A. I will shortly. I am there.

6 Q. And I'm looking at the figure of rate base,  
7 which is \$97,428,000 and change. Do you see  
8 that figure? That's Line 23.

9 A. Yes, I do.

10 Q. And that's the rate base on which the temporary  
11 rates proposed in this proceeding were  
12 calculated, is that correct?

13 A. That's correct.

14 Q. Okay. Now, I'd like you to look at the  
15 document that's been marked as "Exhibit 6" in  
16 this proceeding, which is Mr. Dudley's  
17 testimony. And I'm looking at the same  
18 attachment that the Consumer Advocate was just  
19 asking you about.

20 A. Okay.

21 Q. And I'd like to ask you two questions. On  
22 Bates Page 021 of Exhibit 6, and there's a  
23 figure at the bottom of \$30 million,  
24 "\$30,736,000". Do you see that figure?

[WITNESS: Mullen]

1 A. That's an approximation. It's a rounded  
2 number?

3 Q. I rounded it, I'm sorry.

4 A. Yes, I do.

5 Q. Okay. Is that 30 -- roughly \$31 million  
6 included in the rate base figure that we just  
7 referenced on Bates Page 011?

8 A. Yes.

9 Q. Okay. And, then, --

10 A. At net book value.

11 Q. Could you explain that please?

12 A. These were put in in 2015, and there would have  
13 been some depreciation -- excuse me, that was  
14 2014, there would be some depreciation on those  
15 assets by the end of the test year.

16 Q. Thank you. So, flipping ahead two pages, to  
17 Bates Page 023, in the attachment to  
18 Mr. Dudley's testimony. Similarly, there's a  
19 figure at the bottom of "\$11,521,895". Do you  
20 see that?

21 A. I do.

22 Q. Would those figures be included in the rate  
23 base figure as well on Bates Page 011?

24 A. Yes. With my same caveat about depreciation as

[WITNESS: Mullen]

1 of the end of the year.

2 MR. DEXTER: Thank you. That's all  
3 the Staff has for cross-examination.

4 CHAIRMAN HONIGBERG: Commissioner  
5 Scott.

6 CMSR. SCOTT: Thank you. Good  
7 afternoon.

8 WITNESS MULLEN: Good afternoon.

9 BY CMSR. SCOTT:

10 Q. Keeping on the topic of the variances in your  
11 budget, let me ask you this. Should a company  
12 try to keep expenditures within the budget? Is  
13 that something a company should do?

14 A. Sure.

15 Q. Why is that?

16 A. Well, because it gives you a good idea going  
17 forward in terms of what you plan on for annual  
18 expenditures. But, in the utility industry,  
19 things can certainly come up, and things can  
20 move from one year to the next.

21 Q. And what are the ramifications if there's a lot  
22 of variances with the budget?

23 A. Well, and there are a lot of reasons for budget  
24 variances. For instance, you will see, in

[WITNESS: Mullen]

1       2014, there's a large amount for IT  
2       expenditures. Those were not initially  
3       budgeted at the local level. Those were  
4       budgeted at the Home Office level. So, then,  
5       the actual costs came in and they were booked  
6       at the local level. So, that will show as a  
7       "budget variance", but it doesn't, you know,  
8       it's not that we planned on zero, and all of a  
9       sudden we had to spend so much. There are  
10      certain things that go on. There are carryover  
11      costs from one year to the next. There are  
12      emergent projects.

13             Sometimes you may plan on a year to say  
14      "Okay, we expect to have so many customers call  
15      and request service." Well, if more customers  
16      call to request service, it's not like we say  
17      "Well, we can't, because our budget is only so  
18      much." We have a duty to provide service to  
19      those customers. So, you'll see items like  
20      that.

21             Sometimes, because of priorities that come  
22      up during a year, a project that may have been  
23      budgeted for a future year gets moved up.  
24      Sometimes you have large infrastructure

[WITNESS: Mullen]

1 projects, you might have a transformer that  
2 blows that you didn't plan on. Well, you have  
3 to replace it. There are things like that.  
4 There is many, many things that come in that --  
5 and that's why rates are figured based on the  
6 actual costs, and whether the costs are  
7 prudent, but, for each of those items, you have  
8 to look at the actual costs that were incurred  
9 and the circumstances for each of those items,  
10 to understand, you know, what went on, "how  
11 come the numbers are so different?" And that's  
12 the type of thing that we would expect to go  
13 through through the permanent part of a case,  
14 to look at all the actual costs and the  
15 circumstances of each thing, and not for  
16 temporary rates, which are books -- which start  
17 with the books and records of the Company.

18 Q. So, I'll get to that in a minute. So, what's  
19 the impact on a company, if you have a lot of  
20 variances compared to your budget, what's the  
21 impact of that?

22 A. It depends which way. The variances can go  
23 both ways.

24 Q. Okay. Let's assume, for discussion sake, say

[WITNESS: Mullen]

1       it's higher than budget?

2   A.   Well, you have to make sure you have funds  
3       available to do that, to undertake the  
4       projects. And, sometimes what that means is,  
5       depending on the nature of what caused the  
6       issues, you may have to -- it may impact the  
7       following year's budget.

8   Q.   Okay. Hypothetically speaking, and I won't  
9       attribute it to your company, because I don't  
10      mean to suggest that, you know, Staff has an  
11      obligation to do certain tasks and a certain  
12      amount of due diligence, as the Company does.  
13      You would agree with that, correct?

14   A.   Yes.

15   Q.   So, if a company were, for instance, to have  
16      non-prudent, use the word "prudency", to have  
17      non-prudent decisions in some of their  
18      projects, would cost overruns be an area where  
19      that would probably be reflected in that?

20   A.   And, again, I would say "budget variances".  
21      And, you mentioned "due diligence", and I would  
22      say, for purposes of Staff's temporary rate  
23      testimony, that it really could have done a lot  
24      more on its due diligence, in terms of looking

[WITNESS: Mullen]

1 at the reasons, that we provided reasons for  
2 things in discovery, and did not seem to be  
3 addressed in the Staff's testimony.

4 CHAIRMAN HONIGBERG: Mr. Mullen, do  
5 you remember the question?

6 WITNESS MULLEN: I saw the words "due  
7 diligence", and I followed along.

8 CHAIRMAN HONIGBERG: You jumped all  
9 over those two words, didn't you?

10 WITNESS MULLEN: I did.

11 CHAIRMAN HONIGBERG: Mr. Scott,  
12 Commissioner Scott, why don't you try that  
13 question again.

14 CMSR. SCOTT: I'm not sure I remember  
15 the question at this point.

16 CHAIRMAN HONIGBERG: If a company  
17 fails to act prudently in its projects, are  
18 budget variances a possible result?

19 WITNESS MULLEN: They're a possible  
20 result. But the only way you can determine  
21 that is to look at all of the circumstances  
22 surrounding each project, the costs that were  
23 incurred, why the costs may have changed.

24 CHAIRMAN HONIGBERG: Sure. But the

[WITNESS: Mullen]

1 base answer to that question was "yes"? There  
2 may be explanations for it, but the answer is  
3 "yes"?

4 WITNESS MULLEN: That's one factor of  
5 the entire package.

6 BY CMSR. SCOTT:

7 Q. So, you mentioned, you didn't cite the statute,  
8 but you alluded to RSA 378:27, correct?

9 A. Yes.

10 Q. All right. So, and I know you're aware, the  
11 very last sentence of that says "unless there  
12 appears to be reasonable grounds for  
13 questioning the figures in such reports."

14 A. Yes. I'm aware of that.

15 Q. So, is, and I'm kind of leaping to the end  
16 here, so, is your testimony that it would --  
17 there are no reasonable grounds to question the  
18 reports based on variances and cost overruns?

19 A. My testimony is that, in order to get a full  
20 understanding of the circumstances, it would be  
21 better off for Staff to do its analysis of the  
22 projects, and, again, temporary rates are  
23 certainly reconcilable. And, to the extent  
24 that any costs that we incur are deemed to be



[WITNESS: Mullen]

1        imprudent, that would be determined at the  
2        close of the case.

3                I think that making the leap of looking at  
4        the entire budget for two years and saying  
5        "well, things are off." I mean, if we were  
6        here and we were under budget for both of those  
7        years, I don't expect we'd be saying "well,  
8        since you were under budget, we'll give you a  
9        bonus and you can put that in."

10               So, there's a lot that goes on. And I  
11        think that trying to, for temporary rates, I'm  
12        not aware of any case, in my experience, where  
13        the Commission has made a reduction to a  
14        temporary rate request based on budget  
15        variances.

16    Q.    Thank you for that. You mentioned -- alluded  
17        to the reconciliation. So, if the temporary  
18        rates reflect something that gets disallowed  
19        later, it would come out in the wash at the  
20        end, correct?

21    A.    Yes, depending on the difference between  
22        temporary rate level and permanent rate level.

23    Q.    So, the opposite applies, too, right? So, if  
24        the temporary rate was lower, the permanent

[WITNESS: Mullen]

1 rate ends up being higher, you reconcile at  
2 that end, too, correct?

3 A. Correct. And, then, that would be recovered  
4 from customers going forward.

5 Q. So, what's the harm of, for instance, if we  
6 followed Staff's recommendation?

7 A. Well, one harm is, if you start looking at rate  
8 continuity issues, and you look at existing  
9 rates now, in this case there's a proposal for  
10 temporary rates, there's a proposal for  
11 permanent rates. So, first, you look at what  
12 the relative, you know, you see where both of  
13 those come out. And, then, as we just talked  
14 about, there's a reconciliation.

15 So, assume that permanent rates are at a  
16 level above temporary rates. So, you would  
17 have a permanent rate level that's higher than  
18 the temporary rate level. You would also have  
19 a reconciliation of permanent rates and  
20 temporary rates that would get added on to the  
21 permanent rate level, recovered going forward  
22 from that period. You would also have rate  
23 case expense recovery going forward from that  
24 period. Also, in this case, the Company has

[WITNESS: Mullen]

1 proposed a step adjustment coincident with the  
2 implementation of permanent rates related to  
3 the 2016 capital projects.

4 So, as you look at this, and if you set  
5 temporary rates at a very low level, what you  
6 could have at the end of the case, depending on  
7 how everything else comes out, is a significant  
8 jump. Whereas, if you have a temporary rate  
9 level that gives you more of a gradualism  
10 towards the permanent rate level, you see less  
11 of an impact at the end of the case.

12 Q. So, am I fair if I characterize that as "you  
13 could see rate shock"?

14 A. Yes.

15 Q. Thank you. Excuse me. Change topic for you.  
16 When I looked at Staff's testimony, which is  
17 Exhibit 6, I was a little bit taken aback by  
18 the discussion about the on-hand cash balance,  
19 \$48 in December 31st of '15. Is that normal?  
20 Should I be alarmed by that?

21 A. This is another issue where Staff didn't do its  
22 due diligence, and let me explain. Staff  
23 didn't do any analysis or inquiry into the  
24 Company's day-to-day cash management. So,

[WITNESS: Mullen]

1       it's -- and this is a case of taking a line  
2       item from the FERC Form 1, reaching a  
3       conclusion based on insufficient information.

4             The way the Company's day-to-day cash  
5       works is that, for Granite State and  
6       EnergyNorth, we have an account at JP Morgan  
7       Chase, our bank, where collections from  
8       customers come in. Then, in accordance with  
9       appropriate financial controls that have been  
10      vetted by external and internal auditors, every  
11      seven days the cash for Granite State is put  
12      into Granite State's cash account. Then, that  
13      is then swept up to our service company,  
14      Liberty Energy Utilities (New Hampshire) Corp.  
15      That entity is the entity that pays the bills  
16      for the Company. So, there is no need, on an  
17      individual basis, for Granite State to have a  
18      large amount in that cash account at any time,  
19      because that's not where the bills are being  
20      paid.

21            Also, I took a look at the activity in  
22      that cash account for the month of December and  
23      the month of January. And, depending on the  
24      timing of when the cash comes into the count --

[WITNESS: Mullen]

1 in the account, in December, it had a high of  
2 \$775,000, and in January there was a high of  
3 400 and some odd thousand dollars.

4 But, again, in order to get to some of the  
5 conclusions that Staff did, it really should  
6 have asked some more questions. And it didn't,  
7 it just took the FERC Form 1 and made some  
8 assumptions. And, you know, so, I can  
9 understand, in reading this, to anybody who's  
10 not familiar with it, "Boy, an invoice comes up  
11 for \$49, what are you going to do the next  
12 day?" It's not like that at all.

13 Q. Okay. I suspect we may hear more on that in a  
14 minute. How about the assertion in the Staff  
15 testimony about the amount of internally funded  
16 capital expenditures, should that be a concern  
17 to the Commission?

18 A. Could you give me a particular reference?

19 Q. Ooh. Well, again, Exhibit 6, and if you go to  
20 Bates 011. I didn't mark it all, but I believe  
21 that begins the discussion over how capital  
22 expenditures are funded, whether from an  
23 outside source of the capital or internal?

24 A. Right. And I think, related to this, Staff has

[WITNESS: Mullen]

1 a footnote on Page 11, number 8, that kind of  
2 questions the existence of a revolving line of  
3 credit. Again, that is something that, perhaps  
4 if Staff had picked up the phone and called me,  
5 they might have had a better understanding on.  
6 There is a revolving line of credit that  
7 Granite State has access to. It is held by  
8 Liberty Utilities Co., which is the financing  
9 arm of Liberty Utilities. That has been in  
10 existence even during the acquisition  
11 proceeding. It was an issue during DG 11-040,  
12 the acquisition proceeding. And, as a  
13 provision in the acquisition proceeding  
14 Settlement Agreement, that provides that a  
15 certain level -- minimum level of funding from  
16 that revolving credit facility is always  
17 available to Granite State and EnergyNorth. I  
18 know the revolving credit line exists, because  
19 I have a copy of it right here.

20 So, again, this is another issue, as I  
21 went through the testimony, I said "Boy,  
22 there's a lot of conclusions reached here that  
23 really should have been looked into further."

24 CMSR. SCOTT: Thank you. I think

[WITNESS: Mullen]

1       that's all I have.

2                   CHAIRMAN HONIGBERG: I'll note for  
3       the record, while Commissioner Scott was asking  
4       questions, a representative of Lebanon entered  
5       the room. So, Lebanon has appeared.

6                   MR. BELOW: Thank you.

7                   CHAIRMAN HONIGBERG: Commissioner  
8       Bailey.

9                   CMSR. BAILEY: Thank you.

10   BY CMSR. BAILEY:

11   Q.    I think most of my questions have been  
12       answered, but I just wanted to ask a follow-up  
13       question. I think it was in response to a  
14       question from Mr. Kreis, about to which you  
15       responded "Growth is not a major component of  
16       capital investment. It includes  
17       nonrevenue-producing investments, like  
18       reliability projects", and you said a couple of  
19       other things?

20   A.    Aging infrastructure. And, I think, even if  
21       you look at -- Mr. Kreis had gone through,  
22       there was, I think, five different components.  
23       There was "mandatory", there was "reliability".  
24       And, so, there's growth, there's aging

[WITNESS: Mullen]

1 infrastructure, there's some that are  
2 discretionary. And, again, there's different  
3 levels of "discretionary", which, again,  
4 Mr. Brouillard could explain a little more  
5 in-depth than I can.

6 But, yes. So, growth, while I say it's  
7 not a -- it is a component, but it's not the --  
8 and when you look at the capital investment for  
9 the year, and this isn't in particular to  
10 Granite State Electric. I think, if you look  
11 at any electric utility, you will see the same  
12 things. I think even a review of testimony in  
13 Unitil's rate case, they have a chart in there  
14 that shows annual growth expenditures of 15 to  
15 20 percent of the total capital. So, that's in  
16 line with what we have here.

17 Q. Okay. As far as reliability projects, do  
18 you -- does Granite State have a Reliability  
19 Enhancement Program?

20 A. It does.

21 Q. And don't we approve investments for that  
22 annually?

23 A. Yes.

24 Q. And are they included in this \$97 million of



[WITNESS: Mullen]

1 rate base?

2 A. They are. And they are also included in the  
3 amount Staff was proposing we not receive  
4 recovery on, even though the Commission has  
5 already approved them.

6 Q. I guess what I don't -- what I'm trying to  
7 figure out is, if you're already getting  
8 recovery on those investments, how is that part  
9 of this case?

10 A. Well, with a rate case, you restart, or similar  
11 to the Cast Iron/Bare Steel Program on the gas  
12 side.

13 CMSR. BAILEY: Okay. All right.  
14 Thank you.

15 CHAIRMAN HONIGBERG: I have no  
16 questions for Mr. Mullen.

17 Mr. Sheehan, do you have any further  
18 questions for Mr. Mullen?

19 MR. SHEEHAN: I will hit a couple  
20 points that were raised, and then defer most of  
21 the true rebuttal testimony for rebuttal.

22 CHAIRMAN HONIGBERG: But just, since  
23 you've raised it, I guess I was concerned that,  
24 perhaps at the end of Staff's presentation, you

[WITNESS: Mullen]

1       were going to say "I don't need to call those  
2       guys." So, Mr. Brouillard was never going to  
3       testify.

4               Are you committing that Mr. Mullen  
5       and Mr. Brouillard, even if you have no  
6       questions for them, you'll make them available  
7       for questioning after Staff is done?

8               MR. SHEEHAN: Yes. And part of it is  
9       because I know that there's parts of Staff's  
10      testimony that hasn't been responded to yet,  
11      and we will need to respond. So, it's a  
12      combination here. But, yes, I will make them  
13      available, even if I decide not to question  
14      them.

15              CHAIRMAN HONIGBERG: All right. So,  
16      that makes unnecessary a conversation I was  
17      going to have with you, Mr. Kreis. I was going  
18      to offer Mr. Brouillard, if they were not going  
19      to otherwise call him.

20              But, all right, it sounds like you  
21      can go ahead with what you're planning on  
22      doing. I apologize for interrupting.

23              MR. SHEEHAN: That's no problem.

24              **REDIRECT EXAMINATION**

[WITNESS: Mullen]

1 BY MR. SHEEHAN:

2 Q. Mr. Mullen, on the last point, exchange with  
3 Commissioner Bailey, explain for us, in a very  
4 simplistic view, that we have \$10 million in  
5 rate base. We add a million dollars for REP in  
6 a separate proceeding. So, now, we're at \$11  
7 million. And our revenue requirement was  
8 increased to cover that extra million dollars.  
9 Now, we're in a rate case a year later.  
10 Explain why we're not asking for double  
11 recovery of that REP increase in revenue?

12 A. Because, as I said, with a rate case, you will  
13 then restart where you're at. So, you know,  
14 we'll be talking about the Reliability  
15 Enhancement Program during the proceeding.  
16 But, you know, we're certainly not going to be  
17 seeking additional increases for the same  
18 plant.

19 Q. Will the revenue that we're now getting for  
20 that hypothetical REP, that million dollars I  
21 just described, was that part of the revenue  
22 deficiency that we're trying to address with  
23 this rate case?

24 A. It's part of the test year revenue that we have

[WITNESS: Mullen]

1       that was used to calculate the revenue  
2       deficiency in this case, yes.

3   Q.   Again, to use a very simplistic, so, if you  
4       were getting a thousand bucks a year in income  
5       on that \$10 million, we got an extra hundred  
6       dollars a year for the REP increase.  So, now,  
7       we're getting \$1,100 a year.  Is our rate case  
8       starting at that 1,100 and finding the  
9       difference from that to the new revenue  
10      requirement?

11  A.   Yes.  Because absent that additional recovery  
12      that was provided through the REP Program, our  
13      revenues would have been that much lower.

14  Q.   All right.  So, if we're asking for \$2,000 in  
15      this rate case, we're only asking for the  
16      difference between the 1,100 and the 2,000?

17  A.   Correct.

18  Q.   The increase we'd be asking for would be that  
19      \$900, not the full 2,000?

20  A.   Correct.

21  Q.   Okay.  You were asked by the OCA about the rate  
22      of return on -- at this temporary rate stage.  
23      And you testified that the Company based its  
24      request for its rate of return on capital as

[WITNESS: Mullen]

1           being the last approved rate of return for the  
2           Company, is that correct?

3   A.    Yes.

4   Q.    And is that typical for temporary rate  
5           proceedings in this Commission?

6   A.    Yes.

7   Q.    Are you aware of a situation where Staff  
8           recommended a different rate of return at a  
9           temporary rate hearing?

10  A.    I don't recall anything offhand.

11  Q.    Did you, in fact, recommend that when you were  
12           part of Staff?

13  A.    Ah.   Yes.

14  Q.    I reminded you.

15  A.    You did.

16  Q.    Can you tell us what the circumstances were of  
17           that recommendation by Staff to increase the  
18           rate of return at a temporary rate proceeding?

19  A.    Certainly.  In Granite State Electric's prior  
20           rate case, DE 13-063, I filed testimony on  
21           behalf of Staff that, in that case, the Company  
22           had requested an overall rate of return that  
23           was based on a 50/50 capital structure, and  
24           included a 9.67 percent ROE.  Those were from

[WITNESS: Mullen]

1 Docket DG 06-107, which was a Grid/KeySpan  
2 merger, and Granite State Electric's rates were  
3 adjusted in that proceeding, using that capital  
4 structure and using that return on equity.

5 At the time of DE 13-063, the Company had  
6 just gone through the acquisition proceeding,  
7 DG 11-040. In that proceeding, Staff -- the  
8 Company had testified about its targeted  
9 capital structure of 55 percent equity and  
10 45 percent debt. Staff expressed support for  
11 that position. When I filed testimony on  
12 behalf of Staff in temporary rates, in DE  
13 13-063, consistent with its recommendation --  
14 with its position in the more recent case, DG  
15 11-040, the Staff testimony there said that --  
16 supported a 55 percent equity/45 percent debt  
17 capital structure.

18 Also, on the cost of debt in that  
19 proceeding, the Company had used a weighted  
20 cost of debt, again, from DG 06-107. However,  
21 the test year for 13-063 was a 2012 test year.  
22 At the end of that test year, on the Company's  
23 books and records was additional debt related  
24 to the acquisition proceeding. That lowered

[WITNESS: Mullen]

1 the overall weighted cost of debt. And, as  
2 that debt was on the Company's books and  
3 records at the time, the testimony that I filed  
4 in that temporary rates proceeding also  
5 adjusted the cost of debt to what was on the  
6 Company's books and records.

7 Q. So, the two changes you recommended in the --  
8 Granite State's last rate case were changes  
9 based on more recent information, one coming  
10 out of the acquisition docket and the other  
11 coming out of the Company's actual records?

12 A. Correct.

13 Q. And, as Staff member then, you did not testify  
14 to a different rate of return or debt  
15 structure, because you thought there was a  
16 better number out there?

17 A. That's right.

18 Q. Mr. Kreis introduced the graph of the 10-year  
19 Treasury rate, and the rate on the date he  
20 printed it was one and a half percent.  
21 Following on the Commissioner's -- Chairman's  
22 suggestion, it looks like the rate today is  
23 roughly one point lower. Is that a fair  
24 characterization of this chart?

[WITNESS: Mullen]

1 A. I'd say that's fair.

2 Q. And, my question is, the rate of return, which  
3 was 9 something at Granite State's last rate  
4 case, is a big margin above 1.5, is that  
5 correct?

6 A. There are a lot of other things that go into  
7 determination of return on equity.

8 Q. You read my mind. What else goes in -- not so  
9 much -- we don't need a primer on return on  
10 equity. Is it fair to say that the 10-year  
11 Treasury is, if any, plays a small role in  
12 return on equity for the utility?

13 A. While it's an interesting chart, there are also  
14 assumptions that go in about growth rates, and  
15 all sorts of other components. And that's why  
16 cost of capital testimony is usually quite  
17 lengthy.

18 MR. SHEEHAN: That's all I have.  
19 Thank you.

20 CHAIRMAN HONIGBERG: All right. I  
21 think it's going to be time to take a short  
22 break. And that's the only witness you're  
23 calling on direct, right, Mr. Sheehan?

24 MR. SHEEHAN: Correct.



[WITNESS: Dudley]

1 CHAIRMAN HONIGBERG: And, Mr. Kreis,  
2 do you have any witnesses?

3 MR. KREIS: I do not, Mr. Chairman.

4 CHAIRMAN HONIGBERG: Mr. Below, are  
5 you going to testify or call a witness?

6 MR. BELOW: No.

7 CHAIRMAN HONIGBERG: And, then, Mr.  
8 Dexter, when we return, we'll hear from Mr.  
9 Dudley, is that correct?

10 MR. DEXTER: That's correct.

11 CHAIRMAN HONIGBERG: All right. So,  
12 why don't we break for ten minutes, and come  
13 back at five minutes after 3:00.

14 *(Recess taken at 2:55 p.m. and*  
15 *the hearing resumed at 3:12*  
16 *p.m.)*

17 CHAIRMAN HONIGBERG: I see Mr. Dudley  
18 is in position. Mr. Patnaude.

19 (Whereupon **Jay E. Dudley** was  
20 duly sworn by the Court  
21 Reporter.)

22 CHAIRMAN HONIGBERG: Mr. Dexter, you  
23 may proceed.

24 MR. DEXTER: Thank you.

[WITNESS: Dudley]

**JAY E. DUDLEY, SWORN**

**DIRECT EXAMINATION**

BY MR. DEXTER:

Q. Mr. Dudley, would you please state your name  
for the record please.

A. Jay E. Dudley.

Q. And by whom are you employed, Mr. Dudley?

A. The New Hampshire Public Utilities Commission.

Q. And what is your position with the Commission?

A. I am a Utilities Analyst IV.

Q. And how long have you been in that position?

A. It will be a year last week.

Q. And what was your position prior to this?

A. Prior to this, I was a Utilities Analyst and  
Hearings Examiner for the Vermont Public  
Service Board.

Q. And how long did you hold that position?

A. I was with the Board for seven and a half  
years.

Q. Thank you. Mr. Dudley, in connection with your  
job responsibilities here, did you review the  
Company's temporary rate filing in this  
proceeding?

A. I did.

[WITNESS: Dudley]

1 Q. And I'd like to direct your attention to a  
2 document that's been marked as "Exhibit 6" in  
3 this proceeding. Do you have that in front of  
4 you?

5 A. Yes.

6 Q. And is this document your prefiled testimony in  
7 this case?

8 A. It is.

9 Q. Mr. Dudley, do you have any corrections or  
10 updates you'd like to make to the testimony at  
11 this time?

12 A. I do not.

13 Q. And, turning to -- starting on Bates Page 004,  
14 there's a series of questions and answers in  
15 this document. Mr. Dudley, if I were to ask  
16 you the questions contained in your prefiled  
17 testimony, would your answers be the same as  
18 those contained therein?

19 A. Yes.

20 Q. And do you adopt these answers as your sworn  
21 testimony in this proceeding?

22 A. I do.

23 Q. Mr. Dudley, could you give a brief summary of  
24 your testimony and conclusions in this

[WITNESS: Dudley]

1 proceeding.

2 A. Yes. The purpose of my testimony today is to  
3 offer Staff's recommendation regarding  
4 Liberty's temporary rate request in the amount  
5 of 3.2 million. For purposes -- based on  
6 Staff's findings regarding capital  
7 expenditures, cash flow, and capital structure,  
8 and concerns over those issues, Staff is unable  
9 to offer the Commission a positive  
10 recommendation that the temporary rates, as  
11 proposed by the Company, are just and  
12 reasonable.

13 Q. Very good. Did Staff make a recommendation in  
14 their testimony?

15 A. Yes.

16 Q. As to what rates would be just and reasonable?

17 A. Yes.

18 Q. And what is that recommendation?

19 A. The recommendation is contained in my testimony  
20 at Bates Page 017. And Staff is recommending a  
21 reduction to the revenue deficiency -- to make  
22 adjustments to revenue deficiency of \$564,997  
23 for adjustments to capital structure, as  
24 covered in the testimony, and also a return

[WITNESS: Dudley]

1 adjustment of \$1.2 million, rounded, leaving a  
2 rate deficiency of 1.3, roughly \$1.4 million.

3 MR. DEXTER: Thank you. That's all I  
4 have.

5 CHAIRMAN HONIGBERG: Mr. Sheehan.

6 MR. SHEEHAN: Thank you. Good  
7 afternoon, Mr. Dudley.

8 WITNESS DUDLEY: Good afternoon.

9 **CROSS-EXAMINATION**

10 BY MR. SHEEHAN:

11 Q. Broadly speaking, your testimony raises four  
12 issues: Budget variances, cash flow, rate --  
13 capital structure, and cost of debt. Is that  
14 fair?

15 A. Yes.

16 Q. Let's take each of them one at a time. On  
17 budget variances: Do you agree that the  
18 Commission's review of a temporary rate request  
19 begins with the records of the company on file  
20 with the Commission?

21 A. Yes.

22 Q. And, for practical purposes, that means the  
23 exhibits that we've introduced today, the  
24 Company's rate filing, correct?

[WITNESS: Dudley]

1 A. Correct.

2 Q. And others?

3 A. Yes.

4 Q. I think you referenced the "FERC Form 1" in  
5 your testimony?

6 A. Yes.

7 Q. That would be another record on file with the  
8 Commission, correct?

9 A. Correct.

10 Q. In your testimony -- and you relied -- you  
11 reviewed those records as well, correct?

12 A. Yes.

13 Q. Other than the Company's filing and the FERC  
14 Form 1, what else did you review of the  
15 Company's records in preparation of your  
16 testimony?

17 A. Although, the Staff did not have time, because  
18 of the expedited nature of a temporary rate  
19 proceeding, Staff did not have time to,  
20 obviously, review the entire filing, especially  
21 in terms of the permanent rate portion of the  
22 filing. We did examine Mr. Gorman and  
23 Mr. Mullen's testimony as it relates to the  
24 temporary rates. We did look at Mr.

[WITNESS: Dudley]

1 Brouillard's and Mr. Gorman's testimony as  
2 well. And we also did a quick read of  
3 Mr. Hevert's testimony.

4 Q. And you looked at the FERC Form 1?

5 A. And the FERC Form 1, yes.

6 Q. And the discovery responses, did you review  
7 those in preparing your testimony?

8 A. Yes.

9 Q. Do you agree that the starting point for the  
10 Company's calculations coincide with the  
11 Company's FERC Form 1? That the numbers jibe,  
12 for lack of a better --

13 A. Staff was able to tie the numbers, yes.

14 Q. Would you agree that rates are based on actual  
15 numbers and not budgeted numbers?

16 A. Yes.

17 Q. And the reason that rates should not be based  
18 on budgeted numbers is because rates are based  
19 on historical, actual spending by the Company,  
20 correct?

21 A. Well, pro formed.

22 Q. Correct.

23 A. Yes.

24 Q. And rates are not based on what the company

[WITNESS: Dudley]

1        hoped to spend as expressed in a budget?

2    A.    Correct.

3    Q.    You noticed an increase in the Company's  
4        capital budget over the years that are covered  
5        by this rate case, is that correct?

6    A.    Yes.

7    Q.    If you turn to Page 10 of your testimony, Bates  
8        010, Lines 6, 7, and 8, you refer to the  
9        "aggressive posture" of the budget?

10   A.    Yes.

11   Q.    Which is "intriguing", in your words, given by  
12        the -- as you say, "none of these projects were  
13        driven by an appreciable increase in consumer  
14        demand or load growth".    Correct?

15   A.    Correct.

16   Q.    Do you think load growth is the major driver of  
17        a capital budget for an electric utility, like  
18        Granite State?

19   A.    It can be a factor, for any utility.

20   Q.    Are there other factors that could be driving  
21        capital spending for a utility like Granite  
22        State?

23   A.    Yes.    Reliability, necessity.

24   Q.    "Reliability" means what?



[WITNESS: Dudley]

1 A. Replacing older infrastructure, aging  
2 infrastructure, that is prone to failure,  
3 things of that nature.

4 Q. Would you agree that a company should be  
5 proactive in replacing such aging  
6 infrastructure?

7 A. Yes.

8 Q. And to do so according to engineering  
9 principles?

10 A. Yes.

11 Q. Is it possible that there may be load growth in  
12 one part of the utility's area and not in  
13 another?

14 A. Certainly.

15 Q. So, for example, in this, in Granite State,  
16 they could have new customers in one area, but  
17 not elsewhere. So, we do have growth and the  
18 expenses related to growth in one area, but not  
19 in another?

20 A. That's true. Although, the testimony provided  
21 by Mr. Mullen and also the testimony -- the  
22 direct testimony provided by Mr. Brouillard  
23 suggests that load growth has been minimal  
24 overall.

[WITNESS: Dudley]

1 Q. Wasn't their testimony referring to the overall  
2 system average, rather than analyzing  
3 particular pockets or areas within the  
4 utility's areas?

5 A. There was both, as I recall, from the  
6 testimony.

7 Q. In another part of your testimony, you make  
8 reference to "comparing", I think it was in the  
9 cost of debt maybe -- no, the cost of equity,  
10 to "comparing Granite State to other similar  
11 size" -- "other" -- where is the quote --  
12 "other similar size utilities". Do you recall  
13 that?

14 A. Yes.

15 Q. And did you make any review of other similar  
16 size utilities comparing what Liberty proposes  
17 in this temporary rate case?

18 A. I did look at Unitil.

19 Q. Okay. Did you see in the Unitil filing that,  
20 as Mr. Mullen just testified, 85 percent of  
21 their 2015 capital spend and 85 percent of its  
22 projected 2016 capital spend were non-customer  
23 growth. Did you know that?

24 A. I don't recall that from the filing, no.

[WITNESS: Dudley]

1 Q. Would that --

2 A. Just to be clear, Mr. Sheehan, what I did look  
3 at was the capital expenditures of the company.  
4 I didn't examine the rate filing request in  
5 great detail.

6 Q. For the record, in 16-384, it's Bates Page 249  
7 and 251. So, the fact that Liberty had  
8 relatively low or flat growth, is it fair to  
9 say is not a necessary -- necessarily mean it  
10 should have low capital spend. Do you agree  
11 with that?

12 A. I would agree with that, yes.

13 Q. As I understand -- let me strike that. Page 9  
14 of your testimony you list a number of  
15 projects, and the numbers and the dollars are  
16 taken from Liberty's numbers, with budget  
17 variances, correct?

18 A. Yes.

19 Q. And, in data request -- response to Data  
20 Request 2-2, and that is in the package of data  
21 requests that we've marked as "Exhibit 4", it's  
22 the fourth page, the answer is the fifth and  
23 sixth page, we gave explanations for those  
24 particular budget variances, correct?

[WITNESS: Dudley]

1 A. You gave explanations. There's some question  
2 as to whether or not it provided sufficient  
3 detail.

4 Q. And those explanations including the following  
5 categories: One was for the IT variance in  
6 particular, that was a zero budget at the  
7 Granite State level, and a multimillion dollar  
8 spend in 2014, correct?

9 A. Yes.

10 Q. And we told you that the zero budget was  
11 because that budget was held by a parent  
12 corporation, correct?

13 A. Yes. Yes, you did.

14 Q. And, so, why did you withdraw that variance  
15 amount from your proposed change to the  
16 Company's rate base, at least for purposes of  
17 temp rates?

18 A. I withdrew 4.4 million, which you're referring  
19 back to the technical session we discussed  
20 that. And it was taken out of rate base by Mr.  
21 Mullen. We agreed with that adjustment. And  
22 we adjusted our calculations accordingly.

23 Q. And why did you deduct 4 million instead of  
24 6 million, the gross amount of the IT costs?

[WITNESS: Dudley]

1 A. Because, based on my understanding at the tech  
2 session, it was the 4.4 million that was in  
3 question. The other amount we were uncertain  
4 of.

5 Q. Wasn't the difference between a gross amount  
6 and a net amount, 6 million to the 4 million?

7 A. Yes.

8 Q. And, so, your numbers are withdrawing gross  
9 amounts from the Company's rate base.  
10 Shouldn't you have also withdrawn a gross  
11 amount of the IT budget?

12 A. Yes.

13 Q. And that would be a \$2 million difference,  
14 correct?

15 A. Yes, it would.

16 Q. Another category that the Company explained was  
17 carryover costs, i.e., a project budgeted in a  
18 prior year, but performed in the years in  
19 question, correct?

20 A. Yes.

21 Q. And we gave you some examples of those, did we  
22 not?

23 A. You did.

24 Q. We did?

[WITNESS: Dudley]

1 A. Yes.

2 Q. Would you agree that such a event, a carryover  
3 cost, does not necessarily mean the cost is  
4 imprudent?

5 A. Again, in terms of the carryover costs that  
6 were identified in the response, it lacked  
7 sufficient detail for me to answer your  
8 question.

9 Q. Okay. Let me take a step back. Is it fair to  
10 say your overall approach to this budget  
11 conversation is, if a -- if the cost of an item  
12 that we are proposing to be in rate base is  
13 greater than the budget amount, you were using  
14 the budget as a proxy for prudence, correct?

15 A. Could you restate the question please?

16 Q. Sure. Let's assume one of the items was  
17 budgeted for a million dollars, and our records  
18 show we spent \$2 million on that project.  
19 You're assuming the 2 million, the difference  
20 between the two and the one, was imprudently  
21 spent, at least for purposes of this temporary  
22 rates?

23 A. Mr. Sheehan, I, again, because of the expedited  
24 nature of a temporary rate proceeding, Staff

[WITNESS: Dudley]

1 did not have time to do a prudency review.

2 We're not ruling anything imprudent. We simply  
3 haven't had time to study that to make a  
4 determination.

5 Q. Isn't the effect of what you're doing ruling  
6 that imprudent for purposes of temporary rates?

7 A. It raises a red flag for us. The sheer size  
8 and number of the cost overages that we've seen  
9 raise a red flag as -- for us as to the  
10 cost-effectiveness of Liberty's capital  
11 budgeting and planning process. If it had only  
12 been one, two or three of these items,  
13 Mr. Sheehan, we wouldn't be here today. But  
14 there are numerous.

15 Q. Can you answer my question please? Isn't what  
16 you are doing, by removing the excess or the  
17 variance from the temporary rate calculation,  
18 the equivalent, again, for temporary rate  
19 purposes of calling it "imprudent"? It has the  
20 same effect. It's removing it from what  
21 temporary rates will be calculated on, correct?

22 A. Well, you're referring to a disallowance,  
23 which, ultimately, will be something that the  
24 Commission will have to determine. But, yes, I

[WITNESS: Dudley]

1 would agree with you.

2 Q. And this proxy you've done on a blanket basis,  
3 you've compared the \$30 million spent to the  
4 \$18 million budget, and said, "therefore, \$12  
5 million needs to be removed from rate case",  
6 again, limited to this temporary rate  
7 conversation?

8 A. Uh-huh. Yes. Mr. Mullen stated earlier that  
9 those expenditures are a part of the 97.4 rate  
10 base that's proposed for temporary rates.

11 Q. Right. And you've decided, because it was  
12 over -- because of the budget variance, we're  
13 going to pull \$12 million out of that?

14 A. I decided that, because there are significant  
15 questions surrounding those cost overruns, that  
16 it would be appropriate to take them out, yes.

17 Q. Wouldn't it have been appropriate to raise that  
18 question in testimony, and say "we have", and  
19 not necessarily to recommend removal for  
20 ratemaking purposes, but to say "Staff has  
21 concerns about these variances, which we will  
22 explore when we have the time to dive into each  
23 project and decide whether they were prudently  
24 incurred or not"?



[WITNESS: Dudley]

1 A. I think my testimony overall does raise those  
2 concerns.

3 Q. But you also recommend they be removed for  
4 temporary rate purposes in the meantime?

5 A. Yes.

6 Q. So, you raise them and you're recommending a  
7 finding based on those concerns?

8 A. Yes.

9 Q. Another possibility for budget variance, we've  
10 talked about the IT specifically, we've talked  
11 about carryovers generally, are -- are you  
12 aware that the Company renovated many of its  
13 buildings during 2014?

14 A. I believe I saw that in a data response, yes.

15 Q. And the data response said that, when they went  
16 to do those renovations in these very old  
17 buildings that had not been renovated, they  
18 found surprises that cost a lot of money. Did  
19 you see that?

20 A. Yes, I did see it. But I don't know the  
21 details behind those surprises.

22 Q. Did you ask?

23 A. No.

24 Q. The Company also talked about I think what Mr.

[WITNESS: Dudley]

1 Mullen called "emergent projects", things that  
2 come up during the year, correct?

3 A. Yes, he did.

4 Q. And you're very familiar that, in any utility,  
5 projects come up during the year that require  
6 attention?

7 A. They may, yes.

8 Q. And, if they didn't have a project with it, it  
9 may be a perfectly prudent project, and in this  
10 case you're asking that it not be counted?

11 A. It's true. It may be. Again, there wasn't  
12 sufficient time to do a full prudency review.  
13 But, nevertheless, it's included as a variance,  
14 many of those are included as a variance. They  
15 are substantial. And they served as cause for  
16 reasonable doubt.

17 Q. And it's Staff's position, if a project is not  
18 budgeted, but carried out in a particular year,  
19 it should not be included for temporary rate  
20 purposes?

21 A. Could you repeat that again?

22 Q. A project is not budgeted, comes up during the  
23 year, it should not be included for temporary  
24 rates. Is that Staff's position?

[WITNESS: Dudley]

1 A. It should be included, if prudent, yes.

2 Q. But you've excluded them all in this case?

3 A. They were excluded, because, again, they were  
4 significant, and there remains a cloud of doubt  
5 around whether or not they were prudent.

6 Q. Page 10, Lines 16 to 21, you talk about -- you  
7 suggest that the Company either did not perform  
8 any self-assessment or root causes for the  
9 variances or didn't do a very good one. You  
10 see that?

11 A. I do see that.

12 Q. How did you come to that --

13 A. But I don't -- I didn't characterize it as "not  
14 a very good one".

15 Q. That was my word. Fair enough. What did you  
16 base that on?

17 A. Once again, the sheer number of the overages,  
18 the amount, \$30 million in 2014, the budget had  
19 started out at approximately 18 million, and it  
20 wound up at 30. 30 million equates to about a  
21 third of the rate base that's being proposed  
22 for temporary rates. To me, that's  
23 substantial. In 2014, there were approximately  
24 140 projects, compared to what Liberty proposes

[WITNESS: Dudley]

1 for 2016, which is about 65 projects. It goes  
2 to the extreme number of cost overruns, which I  
3 list in my testimony on Bates Page 009. And  
4 those are just a few of the more significant  
5 ones.

6 But it appears that -- it raises questions  
7 as to whether or not Liberty, the project  
8 management arm of Liberty, once they saw these  
9 costs spiraling, what was the decision process?  
10 How could so many of these cost overruns occur  
11 within one year? This certainly raises  
12 questions about the budgeting and planning  
13 process. Was it logical? Was it reasonable?  
14 Those are valid questions.

15 Q. Did you ask those questions to have answers  
16 today?

17 A. No, I did not. But there were data requests  
18 made in those areas.

19 Q. So, when I asked the question "what did you do  
20 to determine that there were" -- "that the  
21 Company", I'll find the exact quote, "it  
22 appears", at the very end, "it appears that  
23 such self-assessment may have been limited",  
24 and you're talking about the root cause

[WITNESS: Dudley]

1       assessment. You didn't ask any questions about  
2       what self-assessment Liberty did to address  
3       these number differences. You are saying  
4       "merely by fact of these large variances, there  
5       must be problems in their self-assessment  
6       process"?

7   A.   The sheer number implies that.

8   Q.   You also said that, given the short time nature  
9       for a temporary rate hearing, you didn't have  
10      time to dive into each of these projects and  
11      satisfy yourself one way or another whether  
12      each project was prudent or not?

13   A.   That is correct. But, I'm not lawyer, but my  
14      understanding of the legal standard is whether  
15      or not there's reasonable question to question  
16      those numbers. To me, that equates to  
17      reasonable doubt.

18   Q.   The size --

19   A.   And, I think there is.

20   Q.   I'm sorry. So, again, it's merely the size in  
21      the number, that's it. Therefore question,  
22      therefore don't include?

23   A.   It's the size and frequency of occurrence.

24   Q.   Did Staff analyze Unitil's budget variances as

[WITNESS: Dudley]

1 part of their temporary rate case?

2 A. No.

3 Q. Why not?

4 A. We limited our -- again, we had a limited  
5 amount of time to review this information. I  
6 did take a look at the capital expenditures  
7 budgeted by Unitil, and their capital  
8 expenditures over the last two years.

9 Q. But you chose not to look at any variances  
10 within Unitil, is that correct?

11 A. I didn't see that that information was  
12 provided.

13 Q. Did you try to find it?

14 A. I did look through, time -- providing the time  
15 constraint, I did try to find it, yes.

16 Q. Wouldn't it be a good measure to see how a  
17 roughly similar utility performed on budget  
18 variances, when you were going to include this  
19 in the testimony in this case?

20 A. It would have. But I was able to glean from  
21 the capital expenditures of Unitil that it was  
22 less.

23 Q. The second topic in your testimony  
24 chronologically is the cash flow, at least

[WITNESS: Dudley]

1       that's my title for it. My first question is,  
2       whatever cash processes Liberty has, is it fair  
3       to say it has no bearing on ratemaking?

4   A.   Yes.

5   Q.   So, why did you include it in a ratemaking  
6       testimony?

7   A.   Because, in response to Data Request 1-4, which  
8       I believe I've included as Attachment --  
9       Attachment JED-3, the Company responded that it  
10      relies heavily on internally generated cash  
11      flow to fund these expenditures. And what I  
12      had noticed in review of the FERC Form 1s, in  
13      particular, the cash flow statement, I was  
14      stricken by the amount of cash depletion that  
15      was reflected in those statements.

16  Q.   Do you have Exhibit 4 up there, which is the  
17      data requests that I marked this morning?

18  A.   Yes, I do.

19  Q.   Would you turn to the very last page, which is  
20      Staff 2-5?

21  A.   Yes. Okay. I have that.

22  Q.   And there you sought questions and answers that  
23      focus directly on this issue of how much cash  
24      is available, correct?

[WITNESS: Dudley]

1 A. Yes.

2 Q. And the first response is that "Liberty always  
3 has sufficient cash available due to the  
4 availability of a revolving credit facility."  
5 Did you see that?

6 A. Yes.

7 Q. Why did that not allay your concerns?

8 A. In the original Data Request 1-4, the Company  
9 did not allude to the existence of a revolving  
10 line of credit. In my study of the financial  
11 statements in the FERC Form 1, I was able to  
12 find any indication of a revolving line of  
13 credit. Typically, you see differences in  
14 balances from year to year. You see uses in  
15 short-term debt in the statement of cash flows.  
16 I didn't see any of that. I don't doubt that  
17 one exists. But, at the time that Data Request  
18 1-4 was -- the response to 1-4 came in, there  
19 was no indication from the Company that they  
20 had a credit line.

21 Q. This is 2-5. And it says, under oath, we do  
22 have one, and that was available to you when  
23 you wrote your testimony, correct?

24 A. I was unable to corroborate it.



[WITNESS: Dudley]

1 Q. And how would you corroborate that?

2 A. Again, usually, there's a reflection of that  
3 activity in the financial statements. Also,  
4 the Company provided no details as to the line  
5 of credit, what its credit limit is, what its  
6 terms are. It merely said that it had one.

7 Q. You could have called? Correct?

8 A. I could have called. However, I was unsure of  
9 communications with the Company outside of a  
10 technical session.

11 Q. You certainly could have had your attorney call  
12 me, correct?

13 A. That's my understanding now, yes.

14 Q. And you heard from Mr. Mullen that there is, in  
15 fact, a credit facility of I believe it's  
16 several hundred million dollars?

17 A. I have. I take his testimony at face value.  
18 But I have no detail in the record to look at.

19 Q. You also heard him testify that, in Docket  
20 11-040, there is a Settlement Agreement and an  
21 order requiring Liberty to have such a credit  
22 facility?

23 A. Yes.

24 Q. And did you know that when you wrote your

[WITNESS: Dudley]

1 testimony?

2 A. No, I did not.

3 Q. And I think -- when you looked at the FERC Form  
4 1 and saw the \$47 or whatever it was, did you  
5 try to inquire why there was that low a cash  
6 balance on that form?

7 A. I did ask the question at the tech session. I  
8 don't recall what the response was.

9 Q. You're aware that FERC Form 1 really is a  
10 snapshot, on December 31 of the year, "report  
11 what you have in the bank", correct?

12 A. Yes. Of course.

13 Q. And, so, you knew it probably was a different  
14 number the day before and the day after?

15 A. It's possible, yes.

16 Q. And it would be -- would it be a fair question  
17 to ask "how different is it the day before and  
18 day after, i.e., is it always \$45-ish or is it  
19 bigger numbers?"

20 A. It would have been a fair question. Although,  
21 what I've seen with other utilities is -- I've  
22 never seen a utility spend itself down to a  
23 near zero level. Typically, what I would see  
24 is tens of thousands, even millions of dollars

[WITNESS: Dudley]

1 left in cash reserves at year-end. That's what  
2 I'm used to seeing. So, I was little -- I was  
3 a little concerned about \$48 in the checking  
4 account as of December 31st, 2015, and only  
5 \$500 the year before. Typically, you see more  
6 cash on hand than that.

7 Q. Having seen that, and having recognized it as  
8 unusual, in your opinion, did you make any  
9 request to find out why the number was so  
10 small?

11 MR. KREIS: Mr. Chairman, I have to  
12 object to this ongoing line of questioning.  
13 Really, the extent to which Staff inquired of  
14 the Company's cash balance in its checking  
15 account on the December 31st date, or even last  
16 week, is really not relevant. And I think the  
17 Company has already well-established what the  
18 explanation is for that \$48 balance.

19 And I think that we should, since  
20 it's Friday afternoon, we should move on,  
21 because this is beginning to seem like  
22 badgering Mr. Dudley.

23 CHAIRMAN HONIGBERG: I'm sure Mr.  
24 Dexter appreciates your support there.

[WITNESS: Dudley]

1 MR. KREIS: I'm sure.

2 CHAIRMAN HONIGBERG: No, I'm  
3 actually -- I'm wondering if Mr. Dexter has an  
4 opinion on Mr. Kreis's objection?

5 MR. DEXTER: I don't object to  
6 Mr. Kreis's objection. I didn't raise the  
7 objection myself. I think counsel for the  
8 Company is getting close to the point where  
9 it's being repetitive. But I didn't feel the  
10 need to object at this point. I think  
11 Mr. Dudley's responses are responsive to the  
12 question. And I believe he -- I don't know if  
13 he was cut off or not, but I believe he was  
14 talking about other utilities. And, so, no, I  
15 don't object to Mr. Kreis's objection.

16 CHAIRMAN HONIGBERG: Overruled.

17 MR. SHEEHAN: I personally can't  
18 think of anything I'd rather do on a Friday  
19 afternoon.

20 BY MR. SHEEHAN:

21 Q. So, --

22 CHAIRMAN HONIGBERG: That's a very  
23 strange thing to say, Mr. Sheehan.

24 MR. SHEEHAN: I know.

[WITNESS: Dudley]

1 CHAIRMAN HONIGBERG: Very strange  
2 thing.

3 MR. SHEEHAN: I'll take the Fifth.

4 BY MR. SHEEHAN:

5 Q. Mr. Dudley, you testified that you saw these  
6 low numbers, you thought it was unusual, and I  
7 was asking you what steps you took to maybe  
8 find out why, what was Liberty doing that may  
9 be different to allay your fears? And I don't  
10 know, I think that's where we left off. What  
11 did you do to try to find out if what Liberty  
12 was doing was appropriate or not?

13 A. Just want to take a moment to review the data  
14 requests, Mr. Sheehan.

15 Q. Sure.

16 (Short pause.)

17 **BY THE WITNESS:**

18 A. Again, I recall the question was asked at the  
19 tech session. I don't recall the answer. But  
20 I accept the Company's explanation.

21 BY MR. SHEEHAN:

22 Q. You had that information before your testimony,  
23 though, isn't that correct?

24 MR. DEXTER: What -- objection. What

[WITNESS: Dudley]

1 information is counsel referring to?

2 BY MR. SHEEHAN:

3 Q. Staff 2-5, there is a "revolving credit  
4 facility available", "it is a fully committed  
5 revolving credit facility", *etcetera*. We told  
6 you straight up "there is one and we use it."  
7 And the Company just wants to understand why,  
8 given that information, the Staff still felt it  
9 necessary to publicly critique the Company on  
10 its cash management problems, essentially  
11 saying "we have an empty checkbook"?

12 A. Because I have no detail on the line of credit,  
13 I know nothing about it. And the financial  
14 statements, as referenced -- as reflected in  
15 the FERC 1s, show no short-term credit  
16 activity.

17 Q. And you now know, because that's being held by  
18 a financing affiliate?

19 A. Yes. Which I didn't know before, Mr. Sheehan.

20 Q. Capital Structure, Page 13-14 of your  
21 testimony, you testified that it "appears to be  
22 on the high side". And that capital structure  
23 is the 55/45 that the Company proposed,  
24 correct?

[WITNESS: Dudley]

1 A. Yes.

2 Q. And on what basis did you conclude that it  
3 "appears to be on the high side"?

4 A. Appears to be on the high side in comparison  
5 with the mean capital structure referenced in  
6 Mr. Hevert's testimony.

7 Q. And Mr. Hevert arrived at a different mean  
8 capital structure of what?

9 A. His capital structure, or mean capital  
10 structure based on his proxy group, was  
11 51.67 percent equity/48.33 percent debt.

12 Q. And his proxy group is a number of other  
13 utilities that he thinks are similar enough to  
14 Granite State that what is good for that proxy  
15 group should be good for Granite State. Is  
16 that a fair overview of what a proxy group is?

17 A. Well, I don't recall Mr. Hevert saying "What's  
18 good for them is good for Liberty". But I do  
19 recall that the proxy group, they are similar  
20 situated utilities, yes.

21 Q. Do you -- is Staff accepting Mr. Hevert's proxy  
22 group for -- of what's an appropriate proxy  
23 group for Liberty Utilities/Granite State?

24 A. No, we are not. We're merely using the proxy

[WITNESS: Dudley]

1 group as a benchmark, as a reference point. We  
2 have not had time to examine Mr. Hevert's  
3 testimony in any great detail, nor have we had  
4 time to really examine the proxy group that he  
5 proposes.

6 Q. Let me get this straight. You want the  
7 Commission to adjust the capital structure on a  
8 proxy group that you're not comfortable  
9 supporting as being an appropriate proxy group?

10 A. I didn't say "I wasn't comfortable", I just  
11 don't know whether or not we would be  
12 comfortable with it. What our purpose was in  
13 doing that was that we wanted to find a  
14 appropriate benchmark that is more in line with  
15 current market conditions.

16 Q. Well, either you're using it or you're not.  
17 Are you using Mr. Hevert's proxy group in this  
18 case?

19 A. We're using the mean proxy group as a reference  
20 point to compare with the capital structure  
21 proposed by Mr. Mullen and Mr. Gorman.

22 Q. But you're not prepared to accept that proxy  
23 group?

24 A. We're not prepared to accept it in terms of the



[WITNESS: Dudley]

1 permanent rate case, because we've had no  
2 opportunity to do any analysis or research.

3 Q. But you are for the temporary rate case?

4 A. For the temporary rate case, we think it's an  
5 appropriate benchmark to use.

6 Q. Do you know where the 55/45 that the Company is  
7 proposing comes from?

8 A. That comes from the last rate case in 13-063,  
9 approved at a settlement by the Commission.

10 Q. The Commission approved that as reasonable for  
11 Granite State two years ago?

12 A. Two and a half years ago, yes.

13 Q. The order was two years this spring, right?

14 A. Right.

15 MR. KREIS: March 17th was a date in  
16 the winter, not the spring. Just for the  
17 record.

18 CHAIRMAN HONIGBERG: There was no  
19 testimony that it was "March 17th". Is that --  
20 was it March 17th?

21 MR. KREIS: That is, in fact, the  
22 date of Order Number 25,638, in Docket 13-063.

23 CHAIRMAN HONIGBERG: We'll take  
24 administrative notice that is, in fact, a

[WITNESS: Dudley]

1 winter date.

2 MR. KREIS: Thank you.

3 WITNESS DUDLEY: I wasn't quite  
4 finished with my answer, --

5 MR. SHEEHAN: Sure. Go ahead.

6 WITNESS DUDLEY: -- with Mr. Kreis's  
7 interjection.

8 **BY THE WITNESS:**

9 A. But we didn't have time to compile our own  
10 proxy group. So, Mr. Hevert's proxy group was  
11 available, it was in the record, and our  
12 assumption was that it was up-to-date. So, we  
13 decided to use it.

14 BY MR. SHEEHAN:

15 Q. You understand that the Commission, according  
16 to Mr. Mullen, the history of this Commission  
17 is to accept the last approved rate for  
18 temporary rates, with that one exception that  
19 he described?

20 A. Yes. But my understanding is that, actually,  
21 in the last rate case, a different capital  
22 structure was proposed at that time as well.

23 Q. Right. And Staff said "you should use the  
24 45/55 that was suggested in the acquisition

[WITNESS: Dudley]

1 docket", in fact, that's what the Commission  
2 approved, right?

3 A. That's what they approved. But that was not  
4 the capital structure proposed by the Company  
5 at that time.

6 Q. And they -- I'll leave the Commission's  
7 recollection to Mr. Mullen's testimony.

8 The last topic was cost of debt. You  
9 agree that the weighted average cost of debt on  
10 Granite State's books, based on what's  
11 currently outstanding, is 5.88 percent?

12 A. Yes.

13 Q. And would you agree that any future borrowings  
14 that the Company may make, by definition, are  
15 not on their books?

16 A. In order to arrive at an imputed capital  
17 structure, yes.

18 Q. And, again, generally speaking, the Commission  
19 does not make rates on hypothetical future  
20 activity by a utility, correct?

21 A. That is correct. However, Liberty's current  
22 capital structure is approximately 75 percent  
23 equity/25 percent debt, which really isn't  
24 appropriate for ratemaking purposes. So, thus

[WITNESS: Dudley]

1 the reason for the hypothetical capital  
2 structure that Mr. Mullen and Mr. Gorman are  
3 proposing and the one that Staff is proposing.

4 Q. You propose a change to the cost of debt by  
5 assuming the Company borrowed money from its  
6 corporate partners at some rate that you  
7 estimated, is that correct?

8 A. Well, we did -- well, that was based mostly on  
9 a response to Staff 1-4, which is my Attachment  
10 JED-3. And, in its response, the Company said  
11 that, "if it were to borrow, it would not go to  
12 the outside market, that it would borrow  
13 internally." And, if you turn to Page 13 of my  
14 testimony, I provide a table from Mr. Hevert's  
15 testimony, which shows the current debt  
16 schedule for the Company.

17 And what we did was we took the Company's  
18 data response at face value and said "okay".  
19 Based on their current capital structure, their  
20 debt component is currently 25 percent. They  
21 have got to get up to 45 percent, or, in our  
22 case, they have to get up to 48 percent. In  
23 order to do that, one assumes or one imputes  
24 that additional borrowing will take place.

[WITNESS: Dudley]

1 That additional borrowing, based on the  
2 Company's data response, is going to be  
3 borrowed internally, and it will likely be  
4 borrowed at rates that are commensurate with  
5 what has been offered in the past. And you can  
6 see that in Table 9, it's between three and a  
7 half and 4.8 percent.

8 Q. And on what do you base that? That their  
9 future borrowings would be the same as the  
10 borrowings that are now four years old?

11 A. Based on the information that's available.

12 Q. And the information was simply that, if we  
13 borrow, if, sometime in the future, it would be  
14 intercompany. There was no description of when  
15 that would be or at what rate that would be,  
16 correct?

17 A. No, it wasn't.

18 Q. And you assumed that it would happen,  
19 therefore, we should consider it for temporary  
20 rates in this case, and that it would be at the  
21 same terms that are now four years old?

22 A. To us it was logical that they would borrow  
23 internally, based on their data response, and  
24 that they would not go to the market, as they

[WITNESS: Dudley]

1       said. We took a conservative approach.

2   Q.   Wouldn't a "conservative approach" be to follow  
3       what the Commission approved just two years and  
4       three months ago?

5                   CHAIRMAN HONIGBERG: That's  
6       sustained. It's a little too argumentative for  
7       now, for 3:55, on Friday afternoon.

8   BY MR. SHEEHAN:

9   Q.   You make a footnote reference to Treasury  
10       bonds. Without beating a horse, is it fair to  
11       say that the Treasury rates are lower than they  
12       were a few years ago, but that that rate is one  
13       of many, many components that goes into both a  
14       cost of debt and a return on equity?

15   A.   Oh, yes, it is. They are. They are lower,  
16       yes.

17   Q.   And it is one of many, many factors that goes  
18       into cost of debt and return on equity?

19   A.   We didn't -- we didn't touch return on equity.  
20       We didn't analyze return on equity. That is  
21       something that we will do in the permanent part  
22       of the rate case. We did not do it for  
23       purposes of temporary rates. We merely  
24       accepted what Mr. Gorman and Mr. Mullen

[WITNESS: Dudley]

1 provided.

2 Q. On Page 15 and 16 of your testimony, there are  
3 two different rates of return you list, one on  
4 Page 15, Line 11, one on Page 16, Line 20. Can  
5 you explain why they are different?

6 A. I'm sorry, Mr. Sheehan. Could you pinpoint  
7 that again for me please?

8 Q. Sure. Page 15, Line 11.

9 A. Yes.

10 Q. And 16, Line 20.

11 A. The Line 11 that you're referring to is the  
12 return that Staff came up with in imputing its  
13 capital structure of roughly 51.6/48.3 percent.  
14 That's the weighted average cost of capital  
15 that Staff came up with, 7.55 percent. The  
16 other number is Liberty's proposed cost of  
17 capital of 7.9 percent.

18 Q. Well, why are you using different numbers in  
19 those two charts?

20 A. Well, these are two different things. We're  
21 proposing a capital structure different from  
22 Mr. Mullen. That capital structure resulted in  
23 a weighted average cost of capital of  
24 7.5 percent. We merely took the same analysis

[WITNESS: Dudley]

1       that Mr. Gorman and Mr. Mullen did in TEMP-1  
2       and applied our rate of return. And came up  
3       with a little over half a million dollar  
4       difference.

5   Q.   But, when you calculated the so-called "cost  
6       overruns", you used the higher return?

7   A.   We used the higher return, because that is what  
8       the rate base is based on in Mr. Mullen and  
9       Mr. Gorman's testimony. And, that's it.

10   Q.   Several times today, Mr. Dudley, you've  
11       mentioned that you didn't have sufficient time  
12       to do certain research activities. In such a  
13       case, isn't it the fair thing to do is to rely  
14       on the books and records that the Company has  
15       provided, and to allow temporary rates to be  
16       based on that, so that then the Staff and the  
17       parties can dive into all of these issues over  
18       the next six or eight months, so you can do  
19       that thorough vetting of all these figures?

20   A.   We did rely on the books and records and the  
21       information that was submitted; thus the source  
22       of our concern.

23   Q.   If you look at the Mullen/Gorman testimony,  
24       Page 13, Line 72.



[WITNESS: Dudley]

1 MR. DEXTER: Could you provide a  
2 Bates stamp number? There's two Mullen/Gorman  
3 testimonies. In the permanent rates or the  
4 temporary rates?

5 MR. SHEEHAN: Bates 013, temporary.

6 MR. DEXTER: Temporary rates. Thank  
7 you.

8 BY MR. SHEEHAN:

9 Q. Do you have that?

10 A. I do have that, yes.

11 Q. And that's the figure of 21,900,000 some odd  
12 dollars?

13 MR. DEXTER: I don't understand the  
14 question.

15 MR. SHEEHAN: I didn't ask the  
16 question.

17 CHAIRMAN HONIGBERG: There is no  
18 question yet. He's just trying to get him to  
19 the number. That the number on Line 72 of  
20 Bates Page 013 is "21.9".

21 MR. DEXTER: Thank you. I missed the  
22 reference, the line reference.

23 **BY THE WITNESS:**

24 A. I have that, yes.

[WITNESS: Dudley]

1 BY MR. SHEEHAN:

2 Q. And do you know what that is?

3 A. Yes. That's deferred taxes.

4 Q. And that's a increase or a deduction from rate  
5 base?

6 A. That is a deduction.

7 Q. The Company has reduced its rate base by  
8 \$21 million?

9 A. Yes.

10 Q. Do you know how that's calculated?

11 A. The deferral for taxes? It's my understanding  
12 that it's taxes at the time of acquisition.  
13 That is as much as I know about it.

14 Q. Did you do any investigation into this number?

15 A. No.

16 Q. Any reason why you didn't do any investigation  
17 into this number?

18 A. I took the Company's number at face value.

19 Q. Would you agree with me that that's probably  
20 the largest single number in this entire rate  
21 case?

22 A. It is large. Although, since it's tied with  
23 acquisition, it didn't surprise me.

24 MR. SHEEHAN: That's all we have.

[WITNESS: Dudley]

1 Thank you.

2 CHAIRMAN HONIGBERG: Mr. Below, do  
3 you have any questions for the witness?

4 MR. BELOW: I do not.

5 CHAIRMAN HONIGBERG: Mr. Kreis?

6 MR. KREIS: Just a couple of  
7 questions for Mr. Dudley.

8 BY MR. KREIS:

9 Q. Mr. Dudley, you adopted the cost of equity from  
10 the last rate case in computing your  
11 recommendations in your testimony, correct?

12 A. That is correct, yes.

13 Q. 9.55 percent?

14 A. Yes.

15 Q. To your knowledge, is the Commission or the  
16 Staff obliged to do that?

17 A. No.

18 Q. You would agree with me, based on Exhibit 5,  
19 that 10-year Treasury notes are at least one  
20 point lower now than they were at the time the  
21 Commission approved 9.55 percent in the  
22 previous rate case, would you not?

23 A. That is what the exhibit indicates, yes.

24 Q. So, all other things being equal, wouldn't you

[WITNESS: Dudley]

1 expect a reasonable return on equity to be at  
2 least one point, if not 1.5 points, lower now  
3 than it was then?

4 A. Well, there's a lot, Mr. Kreis, that goes into  
5 finalizing a return on equity. That analysis  
6 is something that we're going to perform in the  
7 permanent portion of the rate case. We did not  
8 do it here because of time constraints. We  
9 merely accepted what the Company provided.

10 Q. I understand that. But, just looking at the  
11 sort of "rough justice" standard that the  
12 temporary rate statute provides us with, I'm  
13 just wondering if it might be theoretically  
14 reasonable to expect a return on equity that's  
15 at least one point lower now than it was two  
16 years ago?

17 A. We would have to go into a pretty in-depth  
18 analysis in order to arrive at a different  
19 return on equity.

20 Q. To your knowledge, is the Staff of the  
21 Commission obliged to adopt the capital  
22 structure that the Commission used in the last  
23 rate case?

24 A. I wasn't, but Mr. Mullen's testimony appears to

[WITNESS: Dudley]

1 indicate so.

2 Q. Well, Mr. Mullen has his opinion. I'm  
3 wondering what yours is?

4 A. I was not aware of that, no.

5 Q. Is there any reason to suppose that it would be  
6 illegal or unreasonable to impute a perfect  
7 50/50 capital structure to the Company, again,  
8 for purposes of the "rough justice" standard in  
9 the temporary rate statutes?

10 A. I'm sorry, you said "illegal"?

11 Q. Or unreasonable?

12 A. No. It wouldn't be unreasonable, no.

13 MR. KREIS: Okay. I think those are  
14 all the questions I have, Mr. Chairman.

15 CHAIRMAN HONIGBERG: Commissioner  
16 Scott.

17 CMSR. SCOTT: Thank you.

18 BY CMSR. SCOTT:

19 Q. We've obviously or you've obviously spent a lot  
20 of time talking about "FERC Form 1s" today?

21 A. Yes.

22 Q. And I believe you've agreed that -- or, at  
23 least accepted that the utility's assertion  
24 that they have a revolving credit facility?

[WITNESS: Dudley]

1 A. Yes.

2 Q. Does that change your recommendation in any  
3 way?

4 A. No, it does not.

5 Q. Okay. Looking at the variances in the capital  
6 budget, I think I understand taking exception  
7 to, you know, the Company went through the  
8 effort of budgeting, here's the number, and  
9 that the ultimate number ended -- the cost  
10 overrun, if you will, ended up being whatever  
11 factor times that. So, I think I understand  
12 taking exception to that.

13 What I'd like you to help me understand  
14 is, the Company has discussed there are things  
15 that come up which are not on the budget, so  
16 they weren't anticipated. Why are you looking  
17 at those?

18 A. Things come up, but -- as described by the  
19 Company, but what that doesn't explain is the  
20 severity and degree of some of these cost  
21 overruns.

22 The response provided in 2-2 provided some  
23 explanation. But what it doesn't tell me, what  
24 it doesn't tell Staff is what the thought

[WITNESS: Dudley]

1 process was when some of these costs started  
2 spiraling out of control. What was the process  
3 internally?

4 In order to do a full prudency review,  
5 which we haven't had time to do, involves many  
6 different things. It involves obtaining the  
7 opinion and analysis of an engineer, who can  
8 look at plans and designs and specs and examine  
9 how they were changed and why, or not changed  
10 at all. It would involve an audit of work  
11 orders, change orders, invoices, communications  
12 internally between management and project  
13 management. There wasn't time to do that here.  
14 There will be time to do it in the permanent  
15 portion of the rate case.

16 But what has been offered thus far from  
17 the Company really sheds no light on the actual  
18 decision-making process itself, and whether or  
19 not it was reasonable. Again, Staff has  
20 serious concerns about the cost-effectiveness  
21 of that budget process.

22 Q. Thank you. Have you seen any evidence that  
23 some of the cost overruns are not appropriate?

24 A. No. If you look at my Attachment JED-1, you

[WITNESS: Dudley]

1 see the projects are identified. There's a,  
2 you know, a brief short description of what  
3 that is. But there's not sufficient detail,  
4 Commissioner Scott, to make that determination.

5 Q. Okay. So, would you agree with my  
6 characterization, a lot of the discussion  
7 really is over level of due diligence and when  
8 that applies, is that a fair assessment of the  
9 discussion today?

10 A. Yes.

11 CMSR. SCOTT: Okay. Thank you.  
12 That's all I have.

13 CHAIRMAN HONIGBERG: Commissioner  
14 Bailey?

15 CMSR. BAILEY: No questions.

16 BY CHAIRMAN HONIGBERG:

17 Q. Mr. Dudley, I understood you to answer a  
18 question earlier about the cost variances or  
19 overruns to be something that "caused you to be  
20 uncertain of the Company's books, because they  
21 were large and there were a lot of them." Is  
22 that a fair assessment of what you said  
23 earlier? That's not exactly your words, but --

24 A. There is some uncertainty associated with that,



[WITNESS: Dudley]

1       yes.

2       Q.   All right.  Just a few seconds ago, in response  
3           to a question by Commissioner Scott, you used  
4           the phrase "spiraling out of control" to refer  
5           to those.  What is the basis for your statement  
6           that these -- that these variances reflect a  
7           situation that is "spiraling out of control",  
8           because I'm fairly certain that Mr. Mullen  
9           would -- and Mr. Brouillard would probably  
10          disagree with that assessment?

11       A.   Well, maybe the characterization "out of  
12           control" wasn't appropriate.  "Spiraling",  
13           however, I think is.  And, if you look at the  
14           overages that I provide on Page 9 of my  
15           testimony, let's just take one, for example.  
16           The very first one, budgeted at "193,000", and  
17           then winds up costing "1.7 million".  The next  
18           one, budgeted at "26,000", winds up costing  
19           "780,000".  And on and on it goes.  And this is  
20           just a list of ten of the more serious ones.  
21           If you examine my Attachment JED-1 in detail  
22           line-by-line, you will find that they are  
23           numerous.

24       Q.   And we looked at that, and I did see a number

[WITNESS: Dudley]

1 of them, and I do agree with it -- with you  
2 that the first one on your list, that  
3 "CNN015", --

4 A. But the --

5 Q. -- is eye-popping, as are a number of others.  
6 But, if you go to Exhibit 4, and the response  
7 the Company gave to Staff 2-2, that first item  
8 is one that they gave an explanation for. And  
9 I think you sort of broadly said "those  
10 explanations weren't adequate" in some way. If  
11 you could take a minute and review what's --  
12 what the Company said about CNN015 there on the  
13 top of -- it's not a numbered page, but it's  
14 the --

15 A. Yes. I have it, Mr. Chairman. Thank you.  
16 Well, for example, the "conversion of the work  
17 management system". Well, I know nothing about  
18 that work management system. What was  
19 involved? What decisions were made? How did  
20 they plan for this? This response provides no  
21 information on that.

22 I certainly understand conversions and how  
23 they go, because I've been through them. But  
24 there's really no detail to give me an answer

[WITNESS: Dudley]

1 for why it went from 193,000 to 1.7 million.

2 CHAIRMAN HONIGBERG: I don't have any  
3 others questions. Thank you.

4 Mr. Dexter, do you have any further  
5 questions for Mr. Dudley?

6 MR. DEXTER: Yes. I just have a few  
7 questions.

8 **REDIRECT EXAMINATION**

9 BY MR. DEXTER:

10 Q. So, Mr. Dudley, on the issue of cash  
11 management, there was reference to Data Request  
12 Staff-5, I confess I'm confused by the exhibit  
13 numbers at this point. I think it's part of  
14 Exhibit 4. I'll get that for you in just a  
15 minute.

16 A. Do you mean "2-5", Mr. Dexter?

17 Q. 2-5, it's the last response in Exhibit 4. Do  
18 you have that in front of you?

19 A. I do.

20 Q. Do you see Response (c)?

21 A. I do, yes.

22 Q. Okay. Did you hear Mr. Mullen's testimony  
23 today about Response (c)?

24 A. I did, yes.

[WITNESS: Dudley]

1 Q. Would you consider Mr. Mullen's testimony today  
2 or Response number (c) to be more expansive and  
3 more helpful in answering your question?

4 A. It contained a lot of detail that I did not  
5 know before, yes.

6 Q. Which is that? Which contained a lot more  
7 detail? Mr. Mullen's response today or this  
8 data response?

9 A. Mr. Mullen's response today.

10 Q. If you had had Mr. Mullen's response that he  
11 gave today in this data response, would the  
12 footnote that you included in your testimony,  
13 Footnote number 8, on Bates Page 011, would  
14 that footnote have been different?

15 A. It probably wouldn't have been there.

16 Q. Thank you. I'd like to turn to the table that  
17 you included in your testimony, the table  
18 regarding the weighted cost of debt. It  
19 appears on Page 13, Bates 013 of your  
20 testimony. Do you have that?

21 A. Yes.

22 Q. Okay. Is it correct that the first four debt  
23 instruments that were listed on that table are  
24 intercompany?

[WITNESS: Dudley]

1 A. Yes, that's correct.

2 Q. And is it correct that the last three are  
3 external, external financings, in your  
4 understanding?

5 A. In my understanding is that they're with  
6 certain life insurance companies, yes.

7 Q. Okay. Is it your understanding that the first  
8 four were issued more recently than the last  
9 three?

10 A. Yes.

11 Q. Okay. I think it was -- you were asked about  
12 whether the Company was issuing new debt. Are  
13 you proposing in this case that the Company is  
14 issuing new debt?

15 A. No, not at all.

16 Q. Okay. Then, why is the cost of debt important  
17 in your proposal?

18 A. Well, the cost of debt is important, because,  
19 in Mr. Mullen and Mr. Gorman's proposal, they  
20 costed out the debt at the same rate,  
21 5.88 percent. The problem is that you have a  
22 component within that debt component that  
23 hypothetically would constitute new debt. And,  
24 based on the data response of the Company, the

[WITNESS: Dudley]

1 Company said it was not going to go outside, in  
2 the private market, to, if it had to, to obtain  
3 new debt. Any future funding or financing  
4 would come internally. So, what Staff did was  
5 we took that at face value, and took a weighted  
6 average of the current internal cost of debt,  
7 and imputed it for the assumed debt portion in  
8 our proposed capital structure.

9 Q. And, because you had to assign a cost of debt  
10 to that imputed debt component of the capital  
11 structure, how did you come up with that rate?

12 A. It was the weighted average of the four  
13 Liberty -- borrowings from Liberty Utilities'  
14 companies that you see in Table 9, at the top  
15 of Table 9. We took the average of those and  
16 averaged them out.

17 Q. Which -- I'm sorry. Which you indicated are  
18 more recent than the both three?

19 A. That's correct.

20 Q. Thank you. Is it Staff's position in this case  
21 that any of these capital expenditures that  
22 we've been discussing, with the cost overruns  
23 or the budget variances, are imprudent?

24 A. We have not been able to make a prudence

[WITNESS PANEL: Mullen~Brouillard]

1 determination, based on the time and the  
2 information filed.

3 Q. Is that something that Staff plans to do during  
4 the permanent phase of this proceeding?

5 A. Yes, it is.

6 Q. Okay. Are any of the positions that you've  
7 stated today meant to apply to the permanent  
8 phase of this proceeding?

9 A. No.

10 MR. DEXTER: Thank you. No further  
11 questions.

12 CHAIRMAN HONIGBERG: All right.  
13 Thank you. Mr. Dudley, I think you can return  
14 to your seat.

15 You have no other witnesses, correct,  
16 Mr. Dexter?

17 MR. DEXTER: No other witnesses.

18 CHAIRMAN HONIGBERG: Mr. Sheehan, I  
19 think you intend to call Mr. Mullen and Mr.  
20 Brouillard?

21 MR. SHEEHAN: Correct.

22 CHAIRMAN HONIGBERG: Off the record.

23 *[Brief off-the-record discussion*  
24 *ensued.]*

[WITNESS PANEL: Mullen~Brouillard]

1 CHAIRMAN HONIGBERG: All right. Mr.  
2 Patnaude.

3 (Whereupon **Christian P.**  
4 **Brouillard** was duly sworn by the  
5 Court Reporter, joining **Steven**  
6 **E. Mullen** (*previously sworn*) as  
7 a witness panel.)

8 CHAIRMAN HONIGBERG: Mr. Sheehan.

9 MR. SHEEHAN: Thank you.

10 **STEVEN E. MULLEN, PREVIOUSLY SWORN**

11 **CHRISTIAN P. BROUILLARD, SWORN**

12 **REBUTTAL DIRECT EXAMINATION**

13 BY MR. SHEEHAN:

14 Q. Mr. Mullen, I don't need to go through it with  
15 you. Mr. Brouillard, your name and occupation  
16 please.

17 A. (Brouillard) Thank you. My name is Christian  
18 Brouillard. I'm employed as the Director of  
19 Engineering by Liberty Utilities Service  
20 Corporation. In my capacity as Director of  
21 Engineering, I am responsible for delivery  
22 system planning and capital investments,  
23 engineering and design, and maps and records  
24 integrity.



[WITNESS PANEL: Mullen~Brouillard]

1 Q. You filed testimony in this case. Is that  
2 testimony that you filed relevant to the issues  
3 that at least we're planning to talk about  
4 right now?

5 A. (Brouillard) Yes, they are.

6 Q. And which testimony is that?

7 A. (Brouillard) That is --

8 Q. You filed two pieces of testimony, correct?

9 A. (Brouillard) That is correct. My testimony  
10 begins, and I'll reference it via Bates page,  
11 my testimony begins on Bates Page 179 and  
12 concludes on Bates Page 196.

13 Q. And, generally, what is the topic of that  
14 section of your testimony?

15 A. (Brouillard) The topic of that section includes  
16 a breakdown of the capital expenditures during  
17 the period for which we are seeking permanent  
18 rate recovery.

19 Q. And your other piece of testimony is on what  
20 topic?

21 A. (Brouillard) That is jointly with Mr. Hall, and  
22 it is predominantly a forward-looking proposal  
23 regarding the future of the Company's recovery  
24 for certain categories of capital investments.

1 Q. Okay. Sort of a step adjustment kind of  
2 mechanism?

3 A. (Brouillard) That is correct.

4 Q. So, focusing on the first set of testimony,  
5 I'll go through the validation of that. Did  
6 you prepare that testimony yourself or under  
7 your direction?

8 A. (Brouillard) Yes, I did.

9 Q. And do you have any changes to that testimony  
10 you would like to put on the record today?

11 A. (Brouillard) No, I do not.

12 Q. And, if I were to ask you the same questions  
13 that are written in that testimony, would your  
14 answers be the same today?

15 A. (Brouillard) Yes, they would.

16 Q. And, so, you adopt that testimony?

17 A. (Brouillard) Yes.

18 MR. KREIS: Mr. Chairman, if I may,  
19 this is probably the appropriate time to state  
20 that I object to the admission of Mr.  
21 Brouillard's permanent rate case testimony in  
22 the temporary rate case phase of this  
23 proceeding. I did not come prepared to  
24 cross-examine any witnesses relating to the

[WITNESS PANEL: Mullen~Brouillard]

1 testimony that they have prefiled in the  
2 permanent rate case. It is not appropriate for  
3 the temporary rate case phase, and that  
4 testimony should not be admitted.

5 CHAIRMAN HONIGBERG: Mr. Sheehan.

6 MR. KREIS: I mean, we can do the  
7 whole rate case here.

8 CHAIRMAN HONIGBERG: I heard you.

9 MR. SHEEHAN: It's a fair objection.  
10 And I went through the process, in the event  
11 that some of the cross does touch on topics  
12 covered in his testimony, and that should be  
13 under oath. If we finish this process -- and,  
14 frankly, I don't have his testimony in front of  
15 me, I have notes to cover the rebuttal. If we  
16 finish his testimony, and there's been no  
17 discussion of what is in his prefiled  
18 testimony, I would not object to that request  
19 by the OCA.

20 But, at this point, I don't know -- I  
21 don't know what's going to happen. And  
22 Mr. Brouillard -- Mr. Kreis actually asked  
23 about questions that were in Mr. Brouillard's  
24 realm of expertise, which includes budgeting,

[WITNESS PANEL: Mullen~Brouillard]

1       which includes all the stuff that is covered in  
2       his prefiled direct testimony.

3               CHAIRMAN HONIGBERG: Well, I  
4       understand that. But you're calling him as a  
5       rebuttal witness in response to testimony put  
6       on by Staff.

7               MR. SHEEHAN: Correct.

8               CHAIRMAN HONIGBERG: And, if it is a  
9       happy coincidence that the prefiled testimony  
10      in the direct case does some of that, there are  
11      probably specific questions and answers you'd  
12      want to direct us to, or just ask him the  
13      questions.

14              I'm very sympathetic to Mr. Kreis's  
15      argument. I'm not sure that it's appropriate.

16              MR. SHEEHAN: I will agree. With  
17      that, if the appropriate step is to withdraw  
18      that exercise we just went through, it's  
19      already in the exhibit, and maybe it gets  
20      marked as not part of the exhibit. But I'll  
21      just ask Mr. Brouillard the questions I was  
22      going to ask him.

23              CHAIRMAN HONIGBERG: Well, it is  
24      clearly part of the exhibit that we've marked,

[WITNESS PANEL: Mullen~Brouillard]

1 and this is the discussion we had at the  
2 beginning. You know, the question was "what  
3 was going to be used as part of this  
4 proceeding?" And I don't -- I don't remember  
5 now whether this was identified as such.

6 But it seems to me you've got  
7 specific questions you need to ask or would  
8 like to ask Mr. Brouillard about Staff's  
9 testimony. And I'm not sure that anything in  
10 his prefiled testimony would have done that,  
11 except to the extent it's a happy coincidence.

12 MR. SHEEHAN: And I don't disagree.

13 CHAIRMAN HONIGBERG: Sustained.

14 MR. KREIS: Thank you.

15 BY MR. SHEEHAN:

16 Q. Mr. Mullen, on the issue of budget variance, I  
17 assume you've read Mr. -- you've read Staff's  
18 testimony?

19 A. (Mullen) I have.

20 Q. First, there was a quote from his testimony  
21 that the budget costs were "spiraling out of  
22 control", and I believe Mr. Dudley withdrew the  
23 phrase "out of control" just a moment ago. Do  
24 you have any comment on the existing phrase

[WITNESS PANEL: Mullen~Brouillard]

1       that the budgets were "spiraling"?

2   A.   (Mullen) Certainly, and Mr. Brouillard may want  
3       to add to this. But, I think, even just  
4       simplistically, if you look at the differences  
5       between 2014 variances and 2015 variances, I  
6       think that, if it were "spiraling", then the --  
7       I think even Staff admitted that 2015 variances  
8       were much lower than 2014.

9   Q.   And, on a total basis, what was the percentage  
10       difference between budget and actual in 2015,  
11       roughly?

12   A.   (Mullen) I believe it was in the nature of  
13       somewhere around 10 or so percent. I don't  
14       have the numbers right in front of me.

15   A.   (Brouillard) That is actually correct.

16   Q.   And, as we go along, feel free, either of you,  
17       to answer, even if I direct the question at the  
18       other, in the interest of time. Mr. Mullen,  
19       has the Commission, in your experience, ever  
20       based rates on a budgeted amount?

21   A.   (Mullen) No.

22   Q.   Mr. Brouillard, do you have any comments on  
23       Mr. Dudley's -- Staff's testimony, and I know  
24       you've got some prepared remarks, and I urge

[WITNESS PANEL: Mullen~Brouillard]

1       you to summarize them as best you can, to keep  
2       this moving. So, you have a few points that  
3       you'd like to make in regard -- first,  
4       regarding Staff's statements that this was a  
5       "aggressive posture" for a small utility to  
6       take", this budgeting.

7   A.   (Brouillard) Yes. I'll keep my points brief.  
8       It should be known that the multiyear capital  
9       plan that the Company puts together is well in  
10      advance of the construction year, in order to  
11      adequately plan and schedule the necessary  
12      fiscal material and labor resources. And, in  
13      part, the key to a successful capital plan is  
14      to ensure that we have adequate flexibility to  
15      respond to unplanned requirements, in areas  
16      such as new service requests, municipal  
17      requests to relocate our facilities, damage to  
18      or failure of our equipment or reliability  
19      issues.

20           The plan is established following a  
21      comprehensive exercise involving  
22      representatives from our Engineering, our  
23      Operations, Finance, and Facilities groups,  
24      with added expertise provided by a power

[WITNESS PANEL: Mullen~Brouillard]

1 systems planning engineer, who is dedicated to  
2 optimizing the performance of the New Hampshire  
3 delivery system.

4 Q. Did the Company make any representations during  
5 your acquisition related to its budget, capital  
6 expenditures?

7 A. (Brouillard) Yes. As part of the acquisition,  
8 the Company committed to increasing the  
9 investment in the New Hampshire delivery system  
10 infrastructure, in order to better serve its  
11 customers in New Hampshire. The Company is  
12 delivering on its promise to do so as quickly  
13 and efficiently as possible.

14 A number of projects, including the second  
15 supply line to Enfield and the new Michael  
16 Avenue Substation in Charlestown, were  
17 identified by National Grid prior to the  
18 acquisition, but were not initiated until  
19 Liberty began the development and  
20 implementation of its own capital plan.

21 Q. And you disclosed this information in data  
22 responses, is that correct?

23 A. (Brouillard) That is correct.

24 Q. And I believe that was 2-4. And has the



1 Company's work on these capital projects had an  
2 impact on reliability?

3 A. (Brouillard) Yes. It's had a very positive  
4 impact on reliability over the past several  
5 years. We have improved our reliability  
6 performance, not only through the support by  
7 the Commission of the Company's REP and veg.  
8 management plans, but also through reliability  
9 initiatives that the Company has identified and  
10 undertaken itself, and also asset replacement  
11 initiatives that have helped to manage the  
12 Company's forward performance risk.

13 Q. One of the data responses, and I believe it's  
14 yours, lists four reasons for -- that explain  
15 many of the budget variances. And could you  
16 briefly describe those four basic reasons --  
17 or, causes?

18 A. (Brouillard) The four basic causes of those  
19 variances are, when budgeting occurred at a  
20 corporate level, but expenditures were pushed  
21 down to the local level. And that is also very  
22 similar to where we budget for individual line  
23 items, but expenditures would occur in what we  
24 call "blanket projects", which are, you know,

[WITNESS PANEL: Mullen~Brouillard]

1 collections of very repetitive projects using  
2 similar material and construction techniques.  
3 So, you have a situation where the budget is  
4 held in one portion of the plan, and the  
5 expenditures are occurring in another project.  
6 Again, this is exemplified by the IT project.

7 We also had carryover expenditures, where  
8 we have budgeted in one year, and, due to  
9 delays in permitting, licensing, outage  
10 coordination with our transmission service  
11 provider or the ISO, or construction conditions  
12 that we encounter, we are forced to delay the  
13 execution of that project from one budget year  
14 to another.

15 So, it can be very deceiving when one  
16 looks at a year-by-year budget versus actual  
17 variance report. The line items can look like  
18 significant variances, where the correct way to  
19 look at the larger, multiyear projects is over  
20 a span of time and over multiple budget years.

21 We also undertook significant facilities  
22 rehabilitation projects in conjunction with  
23 meeting our commitment to the New Hampshire  
24 service territory. We went into building --

[WITNESS PANEL: Mullen~Brouillard]

1 Q. What do you mean by "facilities overhaul"?

2 What are we doing?

3 A. (Brouillard) We went in and essentially  
4 refurbished our facilities to make them --  
5 really, bring them up to current construction  
6 and current utilization codes for both our  
7 customer walk-in centers and as places where  
8 our employees can work in a positive work  
9 environment, whether they're office employees  
10 or physical workers in the field. So, we went  
11 into some buildings --

12 Q. How long had it been since those buildings had  
13 been renovated?

14 A. (Brouillard) In some cases, almost 35 years.  
15 In the case of Lebanon, that was exactly the  
16 case. I had actually begun with the Company  
17 when that building was last renovated  
18 significantly.

19 Q. And how does this translate into budget  
20 variances? What's the issue?

21 A. (Brouillard) An example of that would be, you  
22 know, we encountered asbestos in the ceiling  
23 works of the Lebanon building. We also  
24 encountered what amounts to a false foundation

[WITNESS PANEL: Mullen~Brouillard]

1 in the floor of the building. Both were  
2 construction conditions that we had to remedy,  
3 which caused additional costs to those two  
4 projects, as examples.

5 Q. And have you -- can you point to us to some of  
6 the larger budget variances that Staff has  
7 identified and explain why they should not be  
8 included -- they should not be deducted as  
9 Staff has recommended, how about a few good  
10 examples that you can point us to?

11 A. (Brouillard) Yes, I can. We've already  
12 discussed the IT project, where the budget was  
13 held at a corporate level, but costs were  
14 incurred at the local level. And, starting  
15 from Staff's number of 12.3 million, I'll keep  
16 a running tally here, or Mr. Sheehan could help  
17 me, the IT project was approximately  
18 \$6.2 million of gross expenditures, which I  
19 would -- which I would exclude from Staff's  
20 analysis.

21 Q. Let me stop you there. He had said -- Staff  
22 initially said "4 million", and it's now "6  
23 million", because of the depreciation?

24 A. (Brouillard) That's the gross number, not

[WITNESS PANEL: Mullen~Brouillard]

1 including depreciation. But, to be consistent  
2 with Staff's number, we should be using the  
3 gross number, not the depreciated value.

4 Q. Because the 12 is a gross number?

5 A. (Brouillard) It's a gross number, that's  
6 correct.

7 Q. So, 6 million should come out, and Staff agrees  
8 with that, correct?

9 A. (Brouillard) That's my understanding.

10 Q. And what else can you point us to?

11 A. (Brouillard) The Bare Conductor Replacement  
12 Program, which is part of REP, which was  
13 already approved by the Commission as part of  
14 an -- as the order in DE 15-087, that was  
15 approximately \$1 million.

16 Q. So, Staff recommended removing from our rate  
17 base capital expenditures the Commission  
18 already approved?

19 A. (Brouillard) That is correct.

20 Q. And the reason it was in their box was because  
21 it was higher than the Company had budgeted?

22 A. (Brouillard) That's correct.

23 Q. And whatever issues there were over that  
24 variance presumably were addressed through are

1 REP hearing process?

2 A. (Brouillard) That is indeed correct.

3 Q. Another --

4 A. (Brouillard) The Enfield project, that was a  
5 carryover from one year to another, due to, as  
6 I had mentioned previously in my example,  
7 permitting, licensing, outage coordination,  
8 construction conditions, that was approximately  
9 \$1 million.

10 Q. What was the Enfield project?

11 A. (Brouillard) That was the installation of a  
12 second supply line from Lebanon to Enfield. It  
13 was a result of an investigation many years  
14 old, that was actually brought forth during  
15 National Grid's ownership, and it was a  
16 subject, I believe, of, you know, of  
17 discussions with Staff. And, at the time,  
18 National Grid agreed to reinforce the supply  
19 from Lebanon to Enfield. That work was,  
20 although identified, was not undertaken until  
21 Liberty assumed ownership of the Company.

22 Q. And the variance arises out of what?

23 A. (Brouillard) The variance arises out of  
24 conditions that we encountered during

[WITNESS PANEL: Mullen~Brouillard]

1 construction, which amounted to a carryover of  
2 the project from one calendar year -- one  
3 fiscal year to another. Hence, we had budget  
4 held in prior years, and expenditures were  
5 incurred in the following year, due to the  
6 delay in the project.

7 Q. Any other examples like this?

8 A. (Brouillard) Yes, there are. We just talked  
9 about buildings and renovation of buildings,  
10 and the encountering of unknown conditions.  
11 That amounted to \$1.2 million.

12 Q. And, again, that's the variance was --

13 A. (Brouillard) That's the variance, that's  
14 correct. New business, new business  
15 residential, that is where we are -- we're  
16 mandated to provide service to our customers if  
17 they fall within the requirements of the  
18 tariff. That amounts to about \$300,000.  
19 There's, you know, little choice in that  
20 matter.

21 Blanket projects, I mentioned earlier, are  
22 a collection of up to hundreds of smaller jobs  
23 that utilize similar construction and  
24 materials. We budget for these projects as

[WITNESS PANEL: Mullen~Brouillard]

1 groups. And we're required to respond to such  
2 elements as damage to our facilities, an  
3 example would be a pole hit, failure of  
4 equipment of our facilities during storms.  
5 We're required to restore the system back to  
6 its normal operating configuration and  
7 condition.

8 We're also required to respond to  
9 reliability issues that may come up during the  
10 course of the year. This is part of our  
11 commitment to be local and responsive to the  
12 communities that we operate in and to the  
13 customers that we serve. This is a -- is a  
14 significant departure from the past philosophy  
15 of the organization prior to the acquisition by  
16 Liberty. And, hence, underscores the reason  
17 for the Company's commitment to additional  
18 expenditures in the areas of damage failure,  
19 reliability, asset replacement.

20 Q. And, again, these blankets represent hundreds  
21 of projects, is that correct?

22 A. (Brouillard) That's correct. And, in some  
23 cases, I should also point out that the  
24 expenditures in the blankets were budgeted for



[WITNESS PANEL: Mullen~Brouillard]

1 in other line items of the budget. So, again,  
2 one has to take the entire capital plan and has  
3 to undertake a very comprehensive review of all  
4 line items before drawing any conclusions on an  
5 individual line item.

6 Q. And the budget variance that Staff included to  
7 reduce was what number?

8 A. (Brouillard) The budget variance was  
9 \$4.3 million.

10 Q. And you're saying that this 4.3 million were  
11 many, many projects, and, in fact, some of  
12 the -- I'll strike that. And it's your  
13 testimony that this number, the "4.3 million"  
14 over budget, were actually projects that the  
15 Company did that we're required to do?

16 A. (Brouillard) That is correct.

17 Q. Any others?

18 A. (Brouillard) No.

19 Q. And, if we do this rough math, we can  
20 eliminate, in effect, all of the total variance  
21 that Staff wanted to reduce from our capital  
22 number for purpose of temporary rates?

23 A. (Brouillard) Yes. Through the explanations and  
24 the reasons that I've just given, that is

1 correct.

2 Q. You understand, Mr. Brouillard, that part of  
3 the rest of this rate case is going to be the  
4 Company's burden to prove that all of these  
5 numbers are prudently incurred, resulted in  
6 equipment being used in service, correct?

7 A. (Brouillard) Yes. I would expect no less.

8 Q. And, in fact, your testimony and your filing in  
9 this case and the Company's filing is affirming  
10 to that?

11 A. (Brouillard) Correct.

12 Q. And do you have any problems defending the  
13 numbers that we put in this rate case of the  
14 capital expenditures we made?

15 A. (Brouillard) No, I do not.

16 Q. Mr. Mullen, on the cash flow, I think we've  
17 covered most of it by now. I asked Staff what  
18 role this issue played in ratemaking, and Mr.  
19 Dudley said "none". Do you agree with that?

20 A. (Mullen) Yes.

21 Q. And whether the cash flow is done poorly or  
22 done well, it will not affect what temporary  
23 rates the Commission should order in this case?

24 A. (Mullen) That is correct.

1 Q. Turning to capital structure, again, I think  
2 we've covered most of this. In your  
3 experience, Mr. Mullen, what is -- what does  
4 the Commission typically do, and we take Mr.  
5 Kreis's statements that it's "not required to  
6 do", but typically does with regard to capital  
7 structure when they're considering temporary  
8 rates?

9 A. (Mullen) It typically uses the last allowed  
10 capital structure and cost components, although  
11 the debt would typically be updated, based on  
12 what's on the books and records at the end of  
13 the test year.

14 Q. And why is that? Why does the Commission, in  
15 your opinion, typically do that?

16 A. (Mullen) Because the amounts previously  
17 determined had been subject to some scrutiny.

18 Q. And is there time to do such scrutiny at a  
19 temporary rate proceeding?

20 A. (Mullen) No. Not in-depth, by any means.

21 Q. Staff's testimony made some comments about the  
22 older debt that the Company has for those life  
23 insurance companies was at a relatively high  
24 rate. Can you explain why -- how could the

[WITNESS PANEL: Mullen~Brouillard]

1 Company change those, if they could?

2 A. (Mullen) In order for the Company to pay those  
3 off, there are prepayment penalties associated  
4 with those. This has been explored in prior  
5 proceedings. And the amount to prepay those  
6 would end up costing customers more.

7 Q. And these are, those outside debt, as well as  
8 the intercompany debt, are all financings that  
9 have been approved by the Commission directly,  
10 correct?

11 A. (Mullen) That's correct. Some of these go back  
12 to the 1990s.

13 Q. Were you able to compare Liberty's proposed  
14 cost of debt with Unitil's proposed cost of  
15 debt?

16 A. (Mullen) Yes.

17 Q. And what did you find?

18 A. (Mullen) Liberty's overall weighted cost of  
19 debt is 5.88 percent. Unitil's, per its rate  
20 case filing in 16-384, is 7.15 percent.

21 Q. And are you aware if there was any attempt to  
22 change Unitil's cost of debt for purposes of  
23 temporary rates?

24 A. (Mullen) I did not see any similar testimony in

[WITNESS PANEL: Mullen~Brouillard]

1 Unitil's proceeding.

2 MR. SHEEHAN: That's all I have.

3 Thank you, gentlemen.

4 CHAIRMAN HONIGBERG: Mr. Below, do  
5 you have any questions?

6 MR. BELOW: No questions.

7 CHAIRMAN HONIGBERG: Mr. Kreis?

8 MR. KREIS: I have no questions, Mr.  
9 Chairman.

10 CHAIRMAN HONIGBERG: Mr. Dexter?

11 MR. DEXTER: I do have a few  
12 questions.

13 **REBUTTAL CROSS-EXAMINATION**

14 BY MR. DEXTER:

15 Q. Mr. Mullen, is it your understanding, did you  
16 read Staff's testimony as suggesting that --  
17 let me strike that. Do you find a suggestion  
18 in Staff's testimony that Liberty "refinance  
19 the older debt"? Do you find that in the  
20 testimony anywhere?

21 A. (Mullen) It's an implication given the -- it's  
22 an implication that the costs are outside an  
23 area of reasonableness, as Mr. Dudley, on Bates  
24 13, Lines 4 through 6 talks about them being

[WITNESS PANEL: Mullen~Brouillard]

1 "priced above current market rates of  
2 between" -- and it says "between 7.3 and  
3 7.94 percent". And the reference footnote,  
4 which is on the following page, then mentions  
5 the "current 10-year U.S. Treasury and the  
6 Prime Rate". So, the implication is that, if  
7 you went out to replace that, you might be able  
8 to get it cheaper.

9 Q. But there's no statement that Liberty's -- that  
10 Staff suggests that Liberty refinance, is that  
11 true?

12 A. (Mullen) As I said, Staff implies it.

13 Q. It's kind of a "yes" or "no" question. Is  
14 there a statement?

15 A. (Mullen) There is no statement.

16 Q. With regard to the capital expenditure budget  
17 variances, we've been talking roughly about  
18 \$31 million in plant additions, would you agree  
19 with that?

20 A. (Brouillard) The tables depict \$31 million in  
21 CWIP.

22 Q. And those haven't been closed to plant?

23 A. (Mullen) Excuse me. Could I just clarify? Are  
24 you talking about the total amount of spending

1 in 2014?

2 Q. Well, 2014 and 2015. The figures that we've  
3 been talking about that are attached to  
4 Mr. Dudley's testimony, my -- I'm sorry, I  
5 should have said "42 million". There's roughly  
6 31 million for 2014 and 11 million for 2015, is  
7 that true?

8 A. (Brouillard) Are you referring to the tables  
9 that are attached to Staff's testimony or are  
10 you referring to the overall recovery request?

11 Q. The tables that are attached to Staff's  
12 testimony. Let me give you a more specific  
13 reference. So, I'm looking at Bates 021 in  
14 Staff's testimony. And, again, I think we've  
15 established there's \$31 million in plant  
16 expenditures for 2014, is that correct?

17 A. (Brouillard) Those are -- those are actual  
18 expenditures that the Company incurred in those  
19 projects.

20 Q. Correct. And the budgeted amount for those  
21 corresponding projects was 18,453,000, would  
22 you agree?

23 A. (Brouillard) That is correct.

24 Q. Would you agree that that's roughly a

[WITNESS PANEL: Mullen~Brouillard]

1 60 percent variance?

2 A. (Brouillard) On a total basis, yes.

3 Q. Yes. Would you, in your experience, is a  
4 60 percent budget variance on a total basis for  
5 a company in a given year, is that typical?

6 A. (Brouillard) I wouldn't want to draw a  
7 conclusion on that until I had -- until I had  
8 examined the overall capital plan. So, to draw  
9 a broad conclusion on something really --  
10 really is not appropriate.

11 Q. So, you don't know whether it's typical, based  
12 on your experience?

13 A. (Brouillard) Again, based on my experience, if  
14 I saw something, then I would then begin to do  
15 a more detailed analysis, whatever -- whatever  
16 it was.

17 Q. So, it would raise questions in your mind, a  
18 60 percent cost overrun -- budget variance?

19 A. (Brouillard) To the extent that it would tell  
20 me I wanted more detail, yes.

21 MR. DEXTER: Okay. I don't have  
22 anything further.

23 CHAIRMAN HONIGBERG: Commissioner  
24 Scott.



[WITNESS PANEL: Mullen~Brouillard]

1 CMSR. SCOTT: It's getting late, so,  
2 I hesitate to ask, but I will.

3 BY CMSR. SCOTT:

4 Q. The discussion with Mr. Sheehan, I think you  
5 did a good job of outlining why the projects  
6 happened that had overruns. How does Staff  
7 know, how does the Commission know that the  
8 variances are appropriate? There's -- I think  
9 it's understood, for good reason, that, you  
10 know, capital investments earn a return. So, a  
11 skeptic would say "well, of course, you'll want  
12 to have that higher than" -- "the higher the  
13 better", perhaps. So, where is it that we'd be  
14 able to see that the cost discipline that is  
15 expected is embedded in those projects?

16 A. (Brouillard) It would be my understanding that  
17 that would be -- that would be part of the, you  
18 know, the prudence review and the detailed  
19 review that we would conduct as part of the  
20 permanent rate exchange of information.

21 Q. So, don't let me put words in your mouth, but,  
22 obviously, the Staff has flagged, they see some  
23 outliers that give them concern. And your  
24 suggestion is "this is not the place to vet

1       that"?

2       A.     (Brouillard) That is correct. And I would  
3             certainly expect, if Staff had any questions  
4             regarding the prudence of the projects or any  
5             related matters, we would be -- we would be  
6             asked through the appropriate data requests and  
7             technical session dialogue to, you know, fully  
8             explain, you know, what the nature and the  
9             reasons behind those expenditures were, as well  
10            as the benefits to customers.

11     Q.     Okay. And going back to the statute, 378:27,  
12             Mr. Mullen and I went back and forth earlier  
13             about that, you know, you do certain things,  
14             unless there appears to be reasonable ground  
15             for questioning of the figures in the report,  
16             in such reports. So, again, are Staff's  
17             concerns unreasonable at this time?

18     A.     (Mullen) I think they are, because I think they  
19             are very broad brush. They can't point to  
20             anything specifically. You know, you start  
21             with the books and records of the company.  
22             And, you know, if you look at a line on the  
23             books and records and say "well, gee, that  
24             doesn't seem to make sense at all", okay, and

[WITNESS PANEL: Mullen~Brouillard]

1       you got reason to question that. I understand  
2       that, based on looking at some budget  
3       variances, they have some question. But, I  
4       mean, you could really go through every line of  
5       the case. And that's what the permanent part  
6       of the proceeding is for. If you look on the  
7       books and records for purposes of temporary  
8       rates, there are typically not too many  
9       adjustments to the books and records for  
10      purposes of temporary rates, because everybody  
11      knows it's the starting point and it's a pretty  
12      abbreviated procedure.

13             So, you know, you could look at -- you  
14      could look at the cash balance and say "I have  
15      a question about it." It's on the books and  
16      records of the Company, but it's not factored  
17      into temporary rates. I mean, you can take  
18      this down a whole road. But, I think, for  
19      purposes of capital investments, the  
20      appropriate thing to do, since there's a lot  
21      that goes into them, is to do the analysis.  
22      And, at the end of -- assume, for purposes of  
23      argument, that a good portion of what Staff is  
24      suggesting here needs to come out. Well, if we

[WITNESS PANEL: Mullen~Brouillard]

1 ended up setting temporary rates too high, we  
2 would have to give that back to customers with  
3 interest. The Company certainly doesn't want  
4 to be in a position where that is, and it has  
5 full confidence in its books and records.

6 Q. So -- and I apologize for belaboring. So, the  
7 Company goes through a process of budgeting for  
8 a project, which I have to assume is your best  
9 guess with the information at the time on what  
10 a project will cost, the project comes in  
11 considerably more than that. What I'm  
12 struggling with is, is why wouldn't that be  
13 appropriate to exclude that from the temporary  
14 rate? I'm not suggesting it's unprudent,  
15 but --

16 A. (Mullen) Well, I think what the Company  
17 attempted to do was provide some explanations  
18 for some of the various line items. Staff, it  
19 appears, kind of just put those explanations  
20 aside and said "we don't have enough  
21 information." But I think, as we've explained,  
22 there are multiple types of items that can come  
23 up during the year that cause variances. So, I  
24 think that any such adjustment should at least

[WITNESS PANEL: Mullen~Brouillard]

1 take a -- at least a brief look at looking at  
2 the various categories, rather than taking a  
3 broad brush approach to things.

4 CMSR. SCOTT: Thank you. That's all  
5 I have.

6 CHAIRMAN HONIGBERG: Commissioner  
7 Bailey?

8 CMSR. BAILEY: No questions.

9 BY CHAIRMAN HONIGBERG:

10 Q. I want to follow up on something Mr. Dexter was  
11 asking you about, Mr. Mullen, having to do with  
12 the cost of debt. I understand you see an  
13 implication in Staff's testimony about  
14 refinancing. I want you to assume with me for  
15 a moment that really what they are asking or  
16 suggesting is that there should be a different  
17 debt/equity ratio, more debt/less equity, and  
18 that new debt should be incurred. If new debt  
19 were incurred, would you expect it to be  
20 incurred at a rate in the 7 to 8 range, like  
21 the old debt, or the 3 to 4 range, or just  
22 under 5, of the newer debt?

23 A. (Mullen) I would expect it would probably be  
24 closer to the newer debt than the older debt.

1 Exactly where that might turn out would depend  
2 on lots of things.

3 CHAIRMAN HONIGBERG: Understood.  
4 Understood. I just wanted to see if we  
5 could -- understanding that that's not what you  
6 saw in the testimony, just you were willing to  
7 play the "assume" game with me, I appreciate  
8 that. I don't have any other questions.

9 Mr. Sheehan, do you have any further  
10 questions for your witnesses?

11 MR. SHEEHAN: I do not. Thank you.

12 CHAIRMAN HONIGBERG: All right.  
13 Gentlemen, you can return to your seats.

14 There are no other witnesses,  
15 correct?

16 MR. SHEEHAN: Correct.

17 MR. DEXTER: Correct.

18 CHAIRMAN HONIGBERG: All right. We  
19 have exhibits -- I guess we have parts of  
20 Exhibit 2, Exhibit 4, 5, 6, 7, and 8 that have  
21 been used and referred to in this proceeding.

22 Putting aside Exhibit 2 for a moment,  
23 I assume there's no objection to striking ID on  
24 4, 5, 6, 7, and 8, correct?

1 MR. DEXTER: No objection.

2 MR. KREIS: No objection.

3 CHAIRMAN HONIGBERG: All right. How  
4 are we dealing with Exhibit 2 at this point?

5 MR. SHEEHAN: I can make a  
6 suggestion. I don't think we went outside the  
7 bounds of the temporary rate testimony and  
8 attachments.

9 CHAIRMAN HONIGBERG: We were close  
10 there for a minute.

11 MR. SHEEHAN: We tried. The Company  
12 would be willing, to avoid massive headaches in  
13 the Clerk's office, we could simply file a copy  
14 of those 50 pages, whatever it is, and that  
15 will be the replacement Exhibit 2, or 1,  
16 whatever number it is.

17 CHAIRMAN HONIGBERG: I think it's 2.  
18 Others agree with that approach? Mr. Dexter.

19 MR. DEXTER: I'm not sure I  
20 understand that approach. Could you repeat  
21 that please?

22 So, in other words, instead of the  
23 entire binder, you would submit just the  
24 section on temporary rates?

1 MR. SHEEHAN: That's the suggestion.

2 MR. DEXTER: Staff doesn't object to  
3 that.

4 MR. KREIS: Nor does the OCA.

5 MR. BELOW: No objection.

6 CHAIRMAN HONIGBERG: All right.

7 Then, that's what we'll have you do.

8 (Marking of **Exhibit 2 revised** to  
9 consist only of the Direct  
10 Testimony of Steven E. Mullen  
11 and Howard S. Gorman Regarding  
12 Temporary Rate Increase.)

13 MR. SHEEHAN: And the other piece of  
14 that is it probably renders Exhibits 1 and 3  
15 irrelevant.

16 CHAIRMAN HONIGBERG: I believe you're  
17 right. They were always irrelevant for this  
18 proceeding. But we've got those numbers,  
19 they're there, I don't think we're going to  
20 mess with them at this point.

21 MR. SHEEHAN: Fair enough.

22 CHAIRMAN HONIGBERG: I believe the  
23 last thing we need to do is allow you all to  
24 sum up.



1                   Mr. Below, would you like to go  
2                   first?

3                   MR. BELOW:   Sure.   The City doesn't  
4                   have a strong opinion on temporary rates,  
5                   largely because they're subject to full  
6                   reconciliation.

7                   I would say that my own review of the  
8                   testimony and record, I have to conclude that  
9                   it does not seem likely that permanent rates  
10                  will be significantly less than temporary  
11                  rates, which goes to the reasonableness of the  
12                  books and records on first impression.   And,  
13                  therefore, I have to conclude there's no  
14                  particular harm to the Company's requested  
15                  temporary rates.

16                  That's all.   Thank you.

17                  CHAIRMAN HONIGBERG:   Mr. Kreis.

18                  MR. KREIS:   Thank you, Mr. Chairman.  
19                  I'd like to begin by thanking the Staff for its  
20                  hard work.   There's been a lot of discussion  
21                  here about the lack of adequate time to conduct  
22                  an investigation.   And I just want to make sure  
23                  that the Commission is aware that the technical  
24                  session and the deadline for Mr. Dudley's

1 testimony were six days apart. So, there was a  
2 lot of frantic work that Staff obviously had to  
3 undertake in order to get to the point where it  
4 could file its prefiled testimony.

5 And I guess I would just note that,  
6 in every other temporary rate proceeding with  
7 which I'm familiar in the recent history of the  
8 Commission, the parties usually reach some kind  
9 of an agreement. And we had every reason to  
10 hope and expect that that would happen, up to  
11 and including the date of the technical session  
12 and settlement conference. And the fact that  
13 we were not able to reach agreement put us all  
14 in a very different place than we thought we  
15 were going to be with just six days.

16 With regard to the merits, I think it  
17 would be useful for the Commission to compare  
18 what the Company is seeking here for temporary  
19 rates to the kind of temporary rate relief they  
20 sought in the last rate case. In that case,  
21 the Company sought a permanent distribution  
22 revenue increase of \$14.2 million, and asked  
23 for 9.2 million of that in temporary rates.  
24 That's about 65 percent of the permanent rate

1 request they filed back then in 2013.

2 Ultimately, the Company got a temporary revenue  
3 increase of 6.5 million, which is about 46 --  
4 48 percent of the originally requested  
5 permanent rates, and about 67 percent of the  
6 revenue requirement ultimately awarded for  
7 permanent rate purposes.

8 I want to focus on that 48 percent  
9 delta between the temporary rates granted two  
10 years ago and the permanent rate request that  
11 was pending then. Because it does not compare  
12 favorably to what Liberty is seeking here, a  
13 permanent rate increase of 5.33 million and a  
14 temporary rate increase of 3.18 million.  
15 That's 60 percent of the requested permanent  
16 rate increase, as forthrightly indicated at  
17 Page 4 of the Mullen/Gorman testimony.

18 If you look at the way the Commission  
19 has tended to view temporary rate requests in  
20 recent years, the 48 percent from that last  
21 rate case is a bit of an outlier, accounted  
22 for, presumably, by the fact that we had a  
23 company that was then in dire straits, actually  
24 losing money.

1           The comparable figures, what  
2           percentage of its permanent rate request did a  
3           utility get in temporary rates in other recent  
4           rate cases are quite a bit more modest. Lakes  
5           Region Water Company, Docket 15-209, 25  
6           percent; Abenaki Water Company, Docket 15-199,  
7           33 percent; EnergyNorth Natural Gas d/b/a  
8           Liberty Utilities, Docket 14-180, 37 percent.

9           We'll throw out the data -- we'll  
10          throw out the anomalous result in Docket  
11          13-130, that's Pennichuck Water Company, where  
12          temporary rates were actually set at then  
13          current rates, zero percent for my analysis  
14          here.

15          I'd note that, although it has not  
16          yet been approved, Unitil just agreed to  
17          temporary electric distribution rates that  
18          represent 38.6 percent of the permanent rate  
19          increase that company is seeking.

20          I offer all of that on a sanity check  
21          basis, since the statute doesn't say "give the  
22          company temporary rates about as generously as  
23          you do in other rate cases." The statute, RSA  
24          378:27, does say that the Commission has a lot

1 of discretion, because the standard is what  
2 "the public interest requires". And I note the  
3 fact that the statute contains the word "may".  
4 It doesn't say "the commission shall" award  
5 temporary rates, it says "the Commission may"  
6 award temporary rates when "the public interest  
7 requires it." That is a different and much  
8 more loose standard than that which applies to  
9 permanent rates. The only caveat being that  
10 "temporary rates shall be sufficient to yield  
11 not less than a reasonable return on rate base  
12 ...unless there appears to be reasonable ground  
13 for questioning the figures in the reports on  
14 file with the commission".

15 Mr. Dudley's testimony has done a  
16 good job of demonstrating why there is indeed  
17 reasonable ground for questioning the figures,  
18 again, subject to further inquiry in the  
19 permanent rate case proceeding.

20 I want to focus on the "reasonable  
21 return" question, and suggest that it would be  
22 perfectly appropriate, by which I mean  
23 consistent with the "reasonable return"  
24 standard of *Hope* and *Bluefield* and its New

1 Hampshire counterparts, to leave the Company  
2 right where it says it is today, at roughly  
3 6 percent. That's not outrageously lower than  
4 the 8.31 percent requested by the Company's  
5 cost of capital witness, particularly when  
6 we're dealing with an imputed capital  
7 structure, that really ought to be 50/50, in  
8 the absence of any real evidence in the rate  
9 case to do otherwise.

10 If the law required the Commission to  
11 give the Company so much of its requested cost  
12 of capital at the temporary rate phase, then  
13 the statute would, at the very least, say  
14 something like "there's a rebuttable  
15 presumption that temporary rates should be set  
16 at the requested permanent rates."

17 As the advocate for residential  
18 ratepayers, we're keenly aware that permanent  
19 rates are reconcilable back to the date of  
20 filing, and thus a gaping delta between  
21 temporary rates and permanent rates would  
22 ultimately be painful to customers.

23 In essence, we're willing to bet that  
24 the permanent rates in this case will come out

1 a lot closer to current rates than requested  
2 rates, and we think the Company should -- we  
3 think the Commission, that is, should bet the  
4 same way.

5 CHAIRMAN HONIGBERG: Mr. Dexter.

6 MR. DEXTER: Thank you, Commissioner.  
7 Staff's position in this case is simple, and I  
8 think we laid it out, and I will sum it up  
9 briefly.

10 We're faced with a statute where  
11 we're to review temporary rates that are going  
12 to be based on the books and records of the  
13 Company and reports of the Company, unless  
14 there's reasonable doubt to question the  
15 figures in those reports. Staff conducted as  
16 robust a review as it could, given the  
17 procedural schedule. We asked a total of about  
18 12 data requests. One of the data requests was  
19 a follow-up to information that was submitted  
20 as part of the filing requirements in this  
21 case, which had to do with asking a company for  
22 its capital budget for the last two years.  
23 Staff simply asked for the variances that went  
24 along with those capital budgets, a perfectly

1 reasonable request.

2 The response indicated that there was  
3 30 percent -- 60 percent budget variances on  
4 those budgets that were submitted as part of  
5 the filing requirements. The \$30 million  
6 represents roughly 30 percent of the rate base  
7 proposed on -- used in calculating temporary  
8 rates. That, in Staff's mind, raised questions  
9 on the reports that were submitted to the  
10 Company.

11 With respect to the capital  
12 structure, the per books capital structure of  
13 the Company was not proposed by the Company in  
14 this case for use in setting temporary rates.  
15 A different capital structure was used. So,  
16 that's where the doubt comes in. The  
17 reasonable grounds for questioning the use of  
18 the figures, the figures in the books for  
19 capital structure, the Company itself didn't  
20 propose to use the per books capital structure.

21 Given that the per books capital  
22 structure was not going to be used, Staff used  
23 what Mr. Dudley called an "appropriate  
24 benchmark" that was made available by the



1       Company's own witness.

2               Finally, with regard to the cost of  
3       debt, I think Mr. Dudley covered it pretty  
4       clearly. That when a imputed capital structure  
5       is used, their cost has to be assigned to those  
6       various components. And, since the Company's  
7       actual cost of debt was significantly lower  
8       than either of the imputed -- since the  
9       Company's portion of debt was significantly --  
10      let me start again. When you use an imputed  
11      capital structure, and the Company's actual  
12      amount of debt is less than the imputed amount  
13      of debt, a cost has to be associated with that  
14      gap. And that's what Staff did in this case.  
15      They asked another data request that said "If  
16      the Company were to borrow, what would they  
17      do?" The Company replied that "We would borrow  
18      internally." So, Staff simply used the most  
19      recent intercompany debts as a proxy for the  
20      cost to apply to that imputed capital  
21      structure.

22              So, we tried as closely as we could  
23      to stick to the books and records of the  
24      Company. We believe that the limited data

1 requests that we were able to propound and  
2 answer raised immediate concern and reasonable  
3 doubt. The Company's witness himself just  
4 testified that, "when faced with a 60 percent  
5 budget variance, it would cause him to ask more  
6 questions." And that's what Staff did.

7 We understand temporary rates are  
8 reconciling. We understand this is not the  
9 appropriate forum for a prudence review. We  
10 understand that all these things will be looked  
11 at in the permanent rate case. Our job in this  
12 case was to take the statute as it was written  
13 and apply the facts of this case to the  
14 statute.

15 Thank you.

16 CHAIRMAN HONIGBERG: Mr. Sheehan.

17 MR. SHEEHAN: Thank you. First, we  
18 need to eliminate the talk of "60 percent".  
19 The budget was 30 million, the costs were 18.  
20 Staff -- I mean, yes, Staff acknowledged, with  
21 the IT costs, that 6 million should not have  
22 been removed. So, the difference is between 30  
23 and 24, \$6 million. That's the starting point.  
24 That's not 60 percent. So, we need to begin

1       there.

2               Second, a number of items. OCA made  
3       a "percentage" argument; that is simply  
4       irrelevant. Every case is different, every  
5       case is here for different reasons. And the  
6       Pennichuck is the best example. They were  
7       required, by their Settlement Agreement on the  
8       acquisition, to come in for a rate case at a  
9       certain time. Their books and records didn't  
10      support a rate increase. But they had to come  
11      in anyway. It's just an example of why you  
12      can't compare apples to oranges.

13              But, if you're going to do that, last  
14      week, Unitil signed an agreement for temporary  
15      rates that will give them 75 percent of the  
16      temporary rates they requested. They requested  
17      roughly three, the agreement is for two and a  
18      half. OCA signed that agreement. So, again,  
19      you can always turn these percentages and these  
20      numbers different ways. I think that's a total  
21      red herring.

22              Budget and budget variances are not  
23      relevant to setting rates. Yes, they can be  
24      part of an investigation. Yes, they can be

1       legitimate questions to be asked, to look into  
2       other things. But, if our budget is going to  
3       be used to set rates, and if the Commission  
4       were to adopt Staff's proposal, what do you  
5       think is going to happen to all utility  
6       budgets? They're going to adjust budgets to  
7       make sure they don't have these problems. And  
8       they will have all their budgets be nice and  
9       low, they would exceed -- or, nice and high I  
10      guess is the way it would go. Anyway, it would  
11      really be an incentive to subvert the budget  
12      process just for protecting themselves against  
13      such arguments in rate cases.

14               The concept that Staff went through  
15      is certainly reasonable. We look at those  
16      numbers, they're off, they look funny. Why did  
17      something say "zero" and then say "10 million",  
18      whatever they were? But that is not reasonable  
19      doubt. That's a reason to do some  
20      investigation, to find out if there's anything  
21      behind that. And, as we tried to show today,  
22      there's a lot of reasons behind these budget  
23      variances. We gave enough examples just here  
24      to eliminate the variances completely.

1           And, as Staff acknowledged, it was a  
2       proxy of sorts for prudence. We can't do a  
3       full prudence review, but we can at least look  
4       at these variances and say "okay, is there a  
5       prudence issue?" But when I think Commissioner  
6       Scott asked, "is there any evidence of any  
7       project being imprudent?" The answer was "No,  
8       we don't have that evidence", which is  
9       understandable. But that means they don't have  
10      just reason. They have some suspicion, they  
11      have some questions, but that does not meet the  
12      statutory requirement for enough of a reason to  
13      deny the rate request.

14           At bottom, the Company filed  
15      testimony and schedules under oath that says  
16      "Here are the costs we incur, here is the  
17      capital money we incurred", with people signing  
18      under oath that these are reasonable numbers.  
19      All the projects were done as best we could.  
20      The plant's in service. It should be  
21      considered for rates." And the response was  
22      "we have questions". But I argue they have no  
23      evidence or even halfway to evidence to say  
24      that, at the end of the day, those numbers will

1 not be accepted.

2 So, I submit that the Company has met  
3 its burden through its case in chief through  
4 its filings to support the temporary rate  
5 request. That Staff's testimony does not rise  
6 to the level of the statutory standard to  
7 question, because I think there needs to be  
8 something behind a mere question of a number  
9 that doesn't look right.

10 So, we ask that you approve the  
11 temporary rates as requested. And we  
12 respectfully ask, whatever decision you issue,  
13 comes in before June 29 or 30, so we can  
14 implement them for July 1 bills. Thank you.

15 CHAIRMAN HONIGBERG: All right.  
16 Thank you all very much. We will take this  
17 matter under advisement and issue an order as  
18 quickly as we can.

19 ***(Whereupon the hearing was***  
20 ***adjourned at 5:05 p.m.)***

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