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STATE OF NEW HAMPSHIRE

PUBLIC UTILITIES COMMISSION

May 13, 2020 - 9:08 a.m.
[Remote Hearing conducted via Webex]

RE: DW 19-084
PENNICHUCK WATER WORKS, INC.:
Request for Change in Rates.
(Hearing regarding Temporary Rates)

PRESENT: Chairwoman Dianne Martin, Presiding
Cmsr. Kathryn M. Bailey
Cmsr. Michael S. Giaimo

Doreen Borden, Clerk
Eric Wind, PUC Remote Hearing Host

APPEARANCES: **Reptg. Pennichuck Water Works, Inc.:**
Marcia A. Brown, Esq. *(NH Brown Law)*

Reptg. the City of Nashua:
Steven Bolton, Esq.

Reptg. Residential Ratepayers:
Christa Shute, Esq.
Office of Consumer Advocate

Reptg. PUC Staff:
Christopher Tuomala, Esq.
Jayson Laflamme, Asst. Dir./Gas & Water

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

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 DONALD L. WARE
 JAYSON P. LAFLAMME

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1	Testimony of Larry D. Goodhue-Permanent Rates	<i>premarked</i>
2	Testimony of Donald L. Ware-Permanent Rates w/attachments	<i>premarked</i>
3	Notice to Customers of Rate Proceeding	<i>premarked</i>
4	Puc 1604 Rate Case Schedules, Public Version with Non-Officer Personal Compensation Data Redacted	<i>premarked</i>
5	Joint Temporary Rate Testimony of Larry Goodhue and Donald Ware, w/attachments	<i>premarked</i>
6	2018 Pennichuck Water Works, Inc. NHPUC Annual Report	<i>premarked</i>
7	2019 Pennichuck Water Works, Inc. NHPUC Annual Report	<i>premarked</i>
8	Temporary Rate Settlement Agreement	<i>premarked</i>

P R O C E E D I N G

1
2 CHAIRWOMAN MARTIN: Okay. If
3 everyone's ready, let's get started. And we'll
4 do the best we can today.

5 We're here this morning in Docket DW
6 19-084, which is the Pennichuck Water Works,
7 Inc., Request for Change in Rates. Because we're
8 doing this remotely, I have to make some required
9 findings, so I'll walk through that first.

10 As Chairwoman of the Public Utilities
11 Commission, I find that due to the State of
12 Emergency declared by the Governor as a result of
13 the COVID-19 pandemic and in accordance with the
14 Governor's Emergency Order Number 12 pursuant to
15 Executive Order 2020-04, this public body is
16 authorized to meet electronically.

17 Please note that there is no physical
18 location to observe and listen contemporaneously
19 to this hearing, which was authorized pursuant to
20 the Governor's Emergency Order. However, in
21 accordance with the Emergency Order, I am
22 confirming that we are utilizing Webex for this
23 electronic hearing. All members of the
24 Commission have the ability to communicate

1 contemporaneously during the hearing through this
2 platform, and the public has access to
3 contemporaneously listen and, if necessary,
4 participate.

5 We previously gave notice to the public
6 of the necessary information for accessing the
7 hearing within the Order of Notice. If anybody
8 has a problem during this hearing, please call
9 (603)271-2431. In the event the public is unable
10 to access the hearing, the hearing will be
11 adjourned and rescheduled.

12 Okay. I know you went through some
13 ground rules with Attorney Wind, but I just want
14 to run through the most important ones again.
15 Please make sure to mute yourself if you're not
16 talking. Put your hand up to be recognized by
17 me, if you need to speak, and then unmute, and
18 remute when you're done. If you need to make an
19 objection, however, you can just speak out, so
20 that we don't get too far ahead of you.

21 Speak slowly, and leave time for others
22 to consider what you said before responding. We
23 have Steve, our court reporter, here today, and
24 it's helpful if we remember to talk as slowly as

1 possible.

2 If you need a recess, please let me
3 know. Any party who takes a recess should make
4 sure to mute yourself and turn off your video.

5 Let's start by taking a roll call
6 attendance of the Commission, and then we'll take
7 appearances. When each Commissioner states their
8 presence, please also state where you are
9 located. And, if anyone else is with you, please
10 identify them.

11 I am Dianne Martin, the Chairwoman at
12 the Public Utilities Commission. I'm located in
13 my home, in Deerfield, New Hampshire. And I am
14 alone in the room that I'm in.

15 Commissioner Bailey.

16 CMSR. BAILEY: I'm Commissioner Kathryn
17 Bailey. I'm at my home, in Bow, New Hampshire.
18 And I'm alone in the room that I'm in.

19 Good morning, everyone.

20 CHAIRWOMAN MARTIN: Commissioner
21 Giaimo.

22 CMSR. GIAIMO: Good morning. Michael
23 Giaimo, PUC Commissioner. I am at the PUC
24 Offices. In my office alone, with no one

1 present.

2 CHAIRWOMAN MARTIN: Okay. Commissioner
3 Giaimo, it sounds like you might have a little
4 static, but we'll just wait it out.

5 All right. Let's take appearances,
6 too, starting with Attorney Brown.

7 MS. BROWN: Good morning, Commissioners
8 and Madam Chair. My name is Marcia Brown, with
9 NH Brown Law, and I'm representing Pennichuck
10 Water Works. And with me today, as witnesses, is
11 Larry Goodhue, who is the Chief Executive Officer
12 of Pennichuck, and Don Ware, who's the Chief
13 Operating Officer of Pennichuck.

14 And also attending this hearing today,
15 but as attendees only, is Carol Ann Howe, who is
16 Pennichuck's Assistant Treasurer and Director of
17 Regulatory Affairs and Business Services; and Jay
18 Kerrigan, who is Pennichuck's Regulatory and
19 Treasury -- Treasury Financial Analyst; and
20 George Torres, who is Pennichuck's Corporate
21 Controller and Treasurer and Chief Accounting
22 Officer.

23 Thank you.

24 CHAIRWOMAN MARTIN: Okay. Thank you.

1 Welcome, everyone. Attorney Bolton.

2 MR. BOLTON: I'm Steven Bolton, for the
3 City of Nashua.

4 CHAIRWOMAN MARTIN: Thank you.
5 Attorney Shute.

6 MS. SHUTE: Thank you, Chairwoman
7 Martin and Commissioners. My name is Christa
8 Shute. I'm the Staff Attorney for the Office of
9 the Consumer Advocate, on behalf of residential
10 ratepayers.

11 And I do not have anyone else from the
12 office with me. I am located in my home, in
13 Concord, New Hampshire.

14 CHAIRWOMAN MARTIN: Thank you. Mr.
15 Tuomala.

16 MR. TUOMALA: Good morning, Madam
17 Chairwoman and Commissioners. Christopher
18 Tuomala, Staff Attorney for the New Hampshire
19 Public Utilities Commission. With me today I
20 have Jayson Laflamme, Assistant Director of the
21 Gas and Water Division here at the New Hampshire
22 Public Utilities Commission.

23 Thank you.

24 CHAIRWOMAN MARTIN: Thank you. Do we

1 have any members of the public present, Mr. Wind?

2 MR. WIND: I do not believe so. But
3 everybody who is in the attendee room is on a
4 computer, so they can use the Q&A function to let
5 me know if they need to be recognized.

6 CHAIRWOMAN MARTIN: Okay. Excellent.
7 Thank you.

8 All right. For exhibits, I have
9 Exhibits 1 through 8, which were prefiled and
10 premarked for identification.

11 And, if that's the only preliminary
12 matter, I understand we have Attorney Clark -- --
13 I mean, Attorney Brown, sorry, that we will start
14 with you, opening with a request.

15 MS. BROWN: Thank you, Madam Chair.
16 And I'm glad to know that the Commissioners do
17 have the list of exhibits in front of them.
18 Because, by agreement, that represents the
19 universe of exhibits that we intend to present
20 today.

21 As a preliminary matter, you'll note
22 that Exhibit 8 is the Temporary Rate Settlement.
23 That came in on Monday. I want to point out that
24 Administrative Rule 203.20(e) requests that

1 settlement agreements be filed five days before
2 hearing. Obviously, we did not make that
3 deadline.

4 However, Paragraph (f) of that rule
5 allows for late-filed stipulations or
6 settlements, as long as the Commission finds that
7 "acceptance promotes the orderly and efficient
8 conduct of the proceeding, and it will not impair
9 the rights of any party to this proceeding."

10 And to those elements, I would like to
11 state that parties were still adding terms,
12 considering terms, and improving upon the
13 settlement as of Friday afternoon, which meant
14 filing the document before the 4:30 close of
15 business was difficult.

16 I'd like to also note that all
17 parties to this proceeding had a hand in this
18 document. So, they did not have any impairment
19 of their rights. They were aware of this
20 docket -- document.

21 So, we believe that the facts present
22 themselves that having a settlement agreement to
23 streamline the presentation today promotes the
24 orderly and efficient conduct of the proceeding,

1 and that acceptance of the agreement will not
2 impair the rights of any party in this
3 proceeding.

4 So, we respectfully request the
5 Commissioners' consideration, and ask that you
6 rule that you will accept this Exhibit 8.

7 Thank you.

8 CHAIRWOMAN MARTIN: Thank you. Does
9 anyone else want to be heard on that? Is there
10 any objection?

11 *[Atty. Shute and Atty. Tuomala*
12 *indicating in the negative.]*

13 CHAIRWOMAN MARTIN: Okay. Based upon
14 the representations that were made, we'll accept
15 that filing and make those required findings.

16 Anything else, before we move to the
17 witnesses?

18 *[No indication given.]*

19 CHAIRWOMAN MARTIN: All right. Then,
20 why don't we have the panel of witnesses sworn
21 in.

22 (Whereupon **Larry D. Goodhue,**
23 **Donald L. Ware,** and **Jayson P. Laflamme**
24 were duly sworn by the Court Reporter.)

[WITNESS PANEL: Goodhue|Ware|Laflamme]

1 CHAIRWOMAN MARTIN: Okay. Attorney
2 Brown.

3 MS. BROWN: I didn't see Jayson.
4 *[Mr. Patnaude indicating that Mr.*
5 *Laflamme is all set.]*

6 MS. BROWN: Okay. All right. As long
7 as the stenographer recorded everyone being sworn
8 in, great. I will start.

9 Thank you. I'd like to direct the
10 questioning to panel members Mr. Goodhue and Mr.
11 Ware. And I would like to also ask my witnesses,
12 if you have all of the Exhibits 1 through 8 at
13 the ready before you?

14 WITNESS GOODHUE: This is Larry
15 Goodhue. I'm Chief Executive Officer of
16 Pennichuck Water Works. I'm here in my office in
17 my home, in Bedford, New Hampshire. I am alone
18 in this room. And I do have all of the exhibits
19 presented in this case with me and at my
20 disposal.

21 MS. BROWN: Great. And Mr. Ware?

22 WITNESS WARE: Yes. This is Mr. Ware,
23 the Chief Operating Officer of Pennichuck Water
24 Works. I am also at my home. I am alone. And I

[WITNESS PANEL: Goodhue|Ware|Laflamme]

1 have all the exhibits that you referenced at my
2 availability.

3 MS. BROWN: Okay. And thank you for
4 the technicality of already responding to my
5 question of what your position is, and thank you
6 for very much for answering that.

7 **LARRY D. GOODHUE, SWORN**

8 **DONALD L. WARE, SWORN**

9 **JAYSON P. LAFLAMME, SWORN**

10 **DIRECT EXAMINATION**

11 BY MS. BROWN:

12 Q I would like to start with Mr. Goodhue. Do you
13 hold any other positions for affiliates of
14 Pennichuck Water Works?

15 A (Goodhue) Thank you, Attorney Brown. I am the
16 Chief Executive Officer and Chief Financial
17 Officer for Pennichuck Water Works, as well as
18 its sister subsidiaries of Pennichuck East
19 Utilities, Incorporated; Pittsfield Aqueduct
20 Company, Incorporated; Pennichuck Water Service
21 Company, the Southwood Corporation; and as well
22 as the parent corporation for all of those
23 subsidiaries, Pennichuck Corporation.

24 Q Thank you, Mr. Goodhue. Now, is your time spent

[WITNESS PANEL: Goodhue|Ware|Laflamme]

1 on Pennichuck and these other affiliates governed
2 by any intercompany management fee agreement or
3 allocation agreement?

4 A (Goodhue) We do have the 2006 Cost Allocation
5 Agreement, which was filed with the Commission in
6 an earlier docket. And it does govern the
7 transference of certain costs between the
8 entities on a monthly basis based on that
9 agreement.

10 Q Okay. Thank you. Mr. Goodhue, just to follow up
11 on that, do you have Exhibit 2 in front of you?
12 And Exhibit 2 is Mr. Ware's testimony.

13 A (Goodhue) I'm sorry, I was on mute. I do have
14 Exhibit 2 available to me. And, yes, I do
15 recognize it as Mr. Ware's testimony.

16 Q Okay. Could I have you just turn to Page 17 of
17 34 for a moment?

18 A (Goodhue) I'm doing that. Bear with me.

19 Q Yup.

20 A (Goodhue) In Mr. Ware's testimony, Page 17?

21 Q Yes, Page 17 of 34. And if you glance down to
22 Line 4, there's reference to a "2006 Cost
23 Allocation Agreement". Was that the agreement
24 you were just referring to?

[WITNESS PANEL: Goodhue|Ware|Laflamme]

1 A (Goodhue) It is.

2 Q Okay. Thank you for that verification.

3 Mr. Ware, do you also hold positions
4 with Pennichuck's affiliates, Pennichuck Water
5 Works' affiliates?

6 A (Ware) Yes, I do. I am the Chief Operating
7 Officer of the sister subsidiaries, Pennichuck
8 East Utilities; Pennichuck Water Service Company;
9 and the Southwood Corporation; as well as being
10 the Chief Operating Officer of the parent,
11 Pennichuck Corporation.

12 Q Okay. Thank you. And is, similar to Mr.
13 Goodhue, is your time and expense subject to the
14 2006 Cost Allocation Agreement in your varying
15 roles among the affiliates?

16 A (Ware) Yes, it is.

17 MS. BROWN: Okay. Thank you. Attorney
18 Tuomala, that's all I had for the initial
19 introduction of the witnesses for Pennichuck.

20 MR. TUOMALA: Thank you, Attorney
21 Brown. Staff would like to call Jayson Laflamme
22 as a witness. Good morning, Mr. Laflamme.

23 BY MR. TUOMALA:

24 Q Could you please state your full name for the

[WITNESS PANEL: Goodhue|Ware|Laflamme]

1 record?

2 A (Laflamme) Jayson Laflamme.

3 Q And whom are you employed by?

4 A (Laflamme) I'm employed by the New Hampshire
5 Public Utilities Commission.

6 Q And what is your position at the Public Utilities
7 Commission?

8 A (Laflamme) I'm the Assistant Director of the Gas
9 and Water Division.

10 Q And what are your responsibilities as Assistant
11 Director of the Gas and Water Division?

12 A (Laflamme) I directly supervise the Water Staff
13 of the Commission, and primarily oversee the
14 course of examination for water and wastewater
15 dockets that are filed with the Commission. I
16 also directly examine select dockets that come
17 before the Commission, such as the one being
18 presented this morning.

19 Q Have you previously testified before here at the
20 Commission?

21 A (Laflamme) Yes.

22 MR. TUOMALA: That's all I have. Thank
23 you, Mr. Laflamme.

24 MS. BROWN: Okay. I would like to pick

[WITNESS PANEL: Goodhue|Ware|Laflamme]

1 up with the substantive direct of Mr. Goodhue and
2 Ware.

3 BY MS. BROWN:

4 Q And, Mr. Goodhue, did you prepare or are you
5 familiar with the rate schedules that were filed
6 to implement Pennichuck's general rate increase
7 in this docket?

8 A (Goodhue) I am familiar and was involved, yes.

9 Q Okay. And, Mr. Ware, the same question to you.
10 Did you prepare or are you familiar with the
11 schedules filed to implement the general rate
12 increase in this docket?

13 A (Ware) Yes. I am familiar with the schedules,
14 and I did prepare the schedules that are shown in
15 Exhibit 2.

16 Q Okay. Thank you. The attachments to your
17 testimony, is that what you're referring to?

18 A (Ware) Yes.

19 Q Okay. Thank you. If I could have you direct
20 your attention to what's been premarked as
21 "Exhibit 4", it's the 1604 rate case schedules?

22 A (Ware) Yes.

23 Q And are these the schedules that you either
24 prepared or had prepared at your direction?

[WITNESS PANEL: Goodhue|Ware|Laflamme]

1 A (Ware) Yes. I worked with the staff at
2 Pennichuck Water Works, and together we prepared
3 the 1604.06 and the 1604.08 schedules that are
4 included in my testimony.

5 Q Okay. Mr. Laflamme, do you have Exhibit 4 in
6 front of you?

7 A (Laflamme) Yes.

8 Q And did you rely on these schedules to formulate
9 Staff's position on temporary rates?

10 A (Laflamme) Yes.

11 Q Okay. Thank you. I'd like to next authenticate
12 the testimonies that are Exhibits 1 and 2. And,
13 Mr. Goodhue, do you have Exhibit 1, your
14 testimony, in front of you?

15 A (Goodhue) I do.

16 Q And did you prepare this testimony in support of
17 permanent rates?

18 A (Goodhue) Yes, I did.

19 Q And, Mr. Ware, do you have Exhibit 2 in front of
20 you, which is your testimony for permanent rates?
21 Do you have that in front of you?

22 A (Ware) Yes, I do.

23 Q And did you prepare this testimony in support of
24 permanent rates?

{DW 19-084} [RE: Temporary Rates] {05-13-20}

[WITNESS PANEL: Goodhue|Ware|Laflamme]

1 A (Ware) Yes, I did.

2 Q Back to Mr. Goodhue. With respect to Exhibit 1,
3 is this testimony true and accurate to the best
4 of your knowledge?

5 A (Goodhue) Yes, it is.

6 Q And, if you were asked these questions in this
7 testimony, would you adopt these questions for
8 purposes of today's hearing?

9 A (Goodhue) Yes, I would.

10 Q Mr. Ware, do you have Exhibit 2 in front of you?

11 A (Ware) Yes, I do.

12 Q And, to the best of your knowledge, is this
13 testimony true and accurate?

14 A (Ware) Yes, it is.

15 Q And would you adopt this testimony as yours today
16 for purposes of today's hearing?

17 A (Ware) Yes, I will.

18 MS. BROWN: And I would like to note
19 for the record that Exhibits 1 and 2 were filed
20 with the Company's general rate filing back on
21 July 1st.

22 BY MS. BROWN:

23 Q Now, Mr. Goodhue, I'd like to ask you about
24 Exhibit 1. Could you please turn to Page 18 of

[WITNESS PANEL: Goodhue|Ware|Laflamme]

1 31?

2 A (Goodhue) Yes.

3 Q And, on Line 12, you note that Pennichuck --
4 Pennichuck's "necessary and prudent operating
5 expenses...have grown in magnitude." Do you see
6 that?

7 A (Goodhue) I do.

8 Q Is that still the case?

9 A (Goodhue) Yes, it is. The expenses have grown in
10 magnitude since the time of the preparation of
11 this testimony, under nominal values and/or as
12 rates values change on the underlying expenses.

13 Q Okay. Thank you. Mr. Ware, I would like to draw
14 your attention to Page 4 of Exhibit 2, if you
15 could go there. And this is Page 4 of 34.

16 A (Ware) Okay.

17 Q Now, on Pages 4 through it looks like 9, under
18 the "Summary of Need for the Rate Increase",
19 these pages spell out why Pennichuck needs rate
20 relief, is that correct?

21 A (Ware) Yes.

22 Q And are these reasons that were provided in this
23 testimony still correct or inaccurate?

24 A (Ware) Yes, they are still correct as stated.

[WITNESS PANEL: Goodhue|Ware|Laflamme]

1 Q Okay. Do you have an opinion on whether
2 Pennichuck's operating revenues are insufficient
3 to meet required expenditures under Pennichuck's
4 current ratemaking methodology?

5 A (Ware) Yes, I do. The current ratemaking
6 methodology breaks our revenues to cover expenses
7 into a number of different buckets. Part of our
8 revenues go to pay the City Bond Fixed -- the
9 annual payment to the City to pay for the bonds
10 that they sold to purchase the Company's stock.
11 Those revenues have been sufficient to cover the
12 expenses, because those expenses have not changed
13 since our last test year of 2015 that was pro
14 formed to 2016.

15 Our operating expenses, part of the
16 revenues go to cover operating expenses. That is
17 the area where we are falling far short of the
18 required revenues. The expenses that the
19 revenues were formed around were 2016 pro forma
20 expenses; it's now 2020. Over those four years,
21 we've seen increases in property taxes at the
22 millage rate. We have seen increases in
23 operating expenses for staff, and increases in
24 staff due to changes in workload. So, there's

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[WITNESS PANEL: Goodhue|Ware|Laflamme]

1 been significant increases there. Unfortunately,
2 that's where the shortfall comes in this case,
3 and it is significant.

4 The last components deal with the
5 revenues necessary to pay the principal and
6 interest on our debt. And, because of what we
7 have is a QCPAC process, that's the Qualified
8 Capital Project costs, those are adjusted
9 annually so that the revenues that we're
10 currently collecting are sufficient to pay for
11 the principal and interest. So, the shortfall in
12 this case, and it is significant, is the fact
13 that we have revenues based on 2016 pro forma
14 expenses that are being used or attempting to
15 cover the expenses that are now occurring in, you
16 know, 2020.

17 Q Thank you for that summary, Mr. Ware. Do you
18 have Exhibit 6, which has been premarked for
19 identification, it is the 2018 Pennichuck Annual
20 Report, in front of you?

21 A (Ware) I do. I do.

22 Q Okay. Can I have you go to Page 26 of that
23 document? That's the exhibit page, 26.

24 A (Ware) Yes.

[WITNESS PANEL: Goodhue|Ware|Laflamme]

1 Q And, for the Annual Report, it's Page 19,
2 "Statement of Income". Do you see that?

3 A (Ware) I have it before me, yes.

4 Q Okay. Now, are you familiar with this 2018
5 Annual Report?

6 A (Ware) Yes, I am.

7 Q Okay. And was it prepared by you or under your
8 direction?

9 A (Ware) Yes, it was.

10 Q Okay. The Statement of Income, does this
11 statement alone demonstrate to the Commission
12 that Pennichuck's operating revenues are
13 insufficient to meet its expenses?

14 A (Ware) No, it does not. This Statement of Income
15 is formulated around an investor-owned utility
16 that has a return on equity and depreciation
17 expense in its revenue requirements. This does
18 not reflect the way we collect rates and the way
19 we pay for expenses. So, you cannot map this
20 Statement of Income to what our current cash
21 position is. That is done, which we will get to
22 later, in the temporary rate agreement.

23 Q Thank you for that. Thank you for that
24 explanation, Mr. Ware. I'd like to also have you

[WITNESS PANEL: Goodhue|Ware|Laflamme]

1 turn to Exhibit 7, which is the 2019 Pennichuck
2 Water Works Annual Report. Do you have that in
3 front of you?

4 A (Ware) Yes, I do.

5 Q And your explanation on the Statement of Income,
6 does that also apply to this Annual Report?

7 A (Ware) Yes, it does.

8 Q But, together, do these -- are these Annual
9 Reports helpful in demonstrating that there is a
10 deficiency?

11 A (Ware) Yes. I think it's important to note
12 that one of the missing elements really points
13 to the fact is the deficiency, is the fact
14 that we have an expense, which is a payment to
15 the City, in Pennichuck Water Works of about
16 7.9 million [7.7 million?] that isn't reflected
17 as an expense on the Statement of Incomes. And,
18 as a result, you miss a major component of our
19 operating expense here.

20 So, again, the real issue here is, if
21 we assume, as I discussed, that our revenues are
22 sufficient to cover the payment to the City,
23 because of the mechanism in our current
24 ratemaking, our revenues are sufficient to meet

[WITNESS PANEL: Goodhue|Ware|Laflamme]

1 our principal and interest needs because of the
2 mechanism associated with the QCPAC. And you
3 focus on what's happened to operating expenses,
4 taxes other than income, and amortization
5 expense, from the test year of 2018, again, and
6 through '19 -- and through '19 you will see
7 there's, you know, significant increases in
8 those, where, again, our revenues that have been
9 flat year over year, the portion associated with
10 servicing those have not changed. And that has
11 caused us to run, from a cash book perspective,
12 to a significant deficit.

13 Q Thank you. Mr. Goodhue, do you have Exhibit 5 in
14 front of you, this is the temporary rate
15 testimony that's been premarked?

16 A (Goodhue) Yes. Bear with me a moment and I will
17 open that up.

18 Q Okay. And, while Mr. Goodhue is doing that, Mr.
19 Ware, I will be asking you questions about
20 Exhibit 5 as well.

21 A (Ware) I have it before me.

22 A (Goodhue) I do have it in front of me. Yes.

23 Q Okay. Thank you. Mr. Goodhue, did you prepare
24 this testimony, Exhibit 5?

[WITNESS PANEL: Goodhue|Ware|Laflamme]

1 A (Goodhue) I did.

2 Q Mr. Ware, did you also prepare this testimony?

3 A (Ware) Yes, I did.

4 Q And, Mr. Goodhue, is this testimony true and
5 accurate to the best of your knowledge?

6 A (Goodhue) Yes. Yes, it is.

7 Q Thank you. And, Mr. Ware, same question to you.
8 Is this testimony still true and accurate to the
9 best of your knowledge?

10 A (Ware) Yes, it is.

11 Q Okay. Mr. Ware, I'd like to continue with you.
12 With respect to this testimony, on Pages looks
13 like 3, 4, and 5, covers the analysis of revenue
14 deficiency. I know you've just explained the
15 deficiency that Pennichuck faces. Is there
16 anything else you wish to add from these pages
17 for the record today?

18 A (Ware) No. I believe that they are comprehensive
19 and cover the current revenue deficiency that we
20 have and why it exists.

21 Q Okay. Mr. Goodhue, I'd like to turn to you. And
22 ask, was there any other measures, in response to
23 the pandemic, that have impacted the operations
24 of Pennichuck?

[WITNESS PANEL: Goodhue|Ware|Laflamme]

1 A (Goodhue) Thank you. Yes. The Company has
2 emergency action and emergency response plans in
3 place.

4 I'm sorry, I was on mute. Can you hear
5 me now?

6 Q Yes.

7 A (Goodhue) I'm sorry. Yes. I will go through
8 that.

9 The Company has emergency action and
10 emergency response plans in place. Included in
11 those plans and protocols are pandemic response
12 plans, which the Company actually put in place
13 preceding some of the actions that the Governor
14 put in place with his Emergency Orders for
15 companies and especially essential entities such
16 as utilities within the state.

17 Part of that was really making sure
18 that our workforce could operate fully to the
19 service of our customers during this entire
20 pandemic response. Part of that was making sure
21 that people that could work remotely from home,
22 in a manner similar to what we are doing in this
23 hearing, was able to be accomplished, depending
24 on their roles, if that would be accomplishable.

[WITNESS PANEL: Goodhue|Ware|Laflamme]

1 We have a number of members of our
2 staff that are field staff that serve our
3 customers on an outward looking basis, and, as
4 such, we had to adjust certain activities and
5 define "essential" versus "non-essential"
6 activities in a phased-in approach during this
7 time. Part of that is in response to the
8 Emergency Orders that the Governor has actually
9 put in place during this pandemic response,
10 including, but not limited to, the Governor's
11 Emergency Orders as it pertains to the Company's
12 ability to serve shut-off notices for delinquency
13 of payments to customers. We have been, under
14 that Emergency Order, not allowed to do that
15 during this time of pendency of that order, and
16 we have to continue to provide water to those
17 customers relative to that Order.

18 One of the other things that we did
19 that is a bit above, I'm going to say, our
20 normal operating procedures, is making sure that
21 all of our adequacy of treatment chemicals,
22 supplies, PPE, any essential materials that are
23 needed to completely fulfill our needs in
24 responsibility to our customers, we're refilling

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[WITNESS PANEL: Goodhue|Ware|Laflamme]

1 all of these essential supplies in a more
2 proactive level of response than would be normal.

3 You know, we always are monitoring the
4 efficacy levels of our treatment chemicals and
5 our PPE, everything that is needed to procure and
6 maintain that which we need to be able to do what
7 we need to do for our customers.

8 But, with regard to treatment chemicals
9 specifically, we wanted to make sure that we
10 always had as much forward-looking supplies in
11 place relative to our ability to treat water in
12 compliance with regulations. As such, when our
13 tanks are completely full, we are able to have,
14 based on normal consumption levels, anywhere
15 between 30 and 60 days of forward-looking supply
16 of those chemicals. What we had done, because of
17 concerns relative to supply chain impediments
18 that may or may not occur relative to the
19 availability of those supplies, we went into a
20 very proactive mode, making sure that, as soon as
21 any of those supplies drew down to an EOQ level,
22 that allowed us to replace and refill those tanks
23 and all those supplies that are needed, that
24 those orders were in place on that list on an

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1 enhanced periodic basis, to make sure that we
2 always had that forward-looking supply to
3 properly treat our water, and to treat our water
4 and to service our customers in a safe and
5 compliant manner with the regulations, and, in an
6 abundance of caution, our employees and our
7 customers.

8 Q Thank you, Mr. Goodhue. Now, those activities
9 that you just described, these are over and above
10 what was the activities that were contemplated in
11 your approved revenue requirement, is that
12 correct?

13 A (Goodhue) That is correct. So, for instance,
14 with the treatment supplies, if you're refilling
15 those tanks on a more frequent basis, the cash
16 flow needs on an ongoing basis is now at a level
17 that is above what was contemplated in that.

18 Q Okay. Thank you. Mr. Goodhue, do you have the
19 Settlement Agreement in front of you?

20 A (Goodhue) That is Exhibit 8?

21 Q Yes. Exhibit 8. Sorry for not referencing it.

22 A (Goodhue) I do have it. Let me open it up. I
23 apologize, one moment.

24 Q Okay. And, Mr. Ware, do you also have the

[WITNESS PANEL: Goodhue|Ware|Laflamme]

1 Settlement Agreement, Exhibit 8, in front of you?

2 A (Ware) Yes, I do.

3 Q Okay. And, while Mr. Goodhue is opening that up,
4 did you participate in the preparation of this
5 Settlement Agreement?

6 A (Ware) Yes, I did.

7 Q Are you familiar with the terms?

8 A (Ware) Yes, I am.

9 Q Mr. Goodhue, do you have the document in front of
10 you?

11 A (Goodhue) I do.

12 Q Okay. And did you participate in the preparation
13 of this Agreement?

14 A (Goodhue) Yes, I did.

15 Q And are you familiar with the terms of this
16 Agreement?

17 A (Goodhue) I am.

18 Q And, Mr. Goodhue, are you aware of any changes or
19 corrections that need to be made to this
20 document?

21 A (Goodhue) I am not aware of any changes or
22 correction that are required to that document.

23 Q Okay. Mr. Ware, same question to you. Do you
24 have any changes or corrections that ought to be

[WITNESS PANEL: Goodhue|Ware|Laflamme]

1 made to this document?

2 A (Ware) I am not aware of any changes or
3 corrections that need to be made to that
4 document.

5 Q Okay. And, Mr. Ware, if I can just continue with
6 you. Can I have you turn to Page 4 of 7, under
7 the heading "Terms of Settlement"?

8 A (Ware) Yes.

9 Q And can you please explain the first term, what
10 the Settling Parties are looking for, in terms of
11 setting current rates -- or, setting temporary
12 rates?

13 A (Ware) Yes. What we have requested and what we
14 have agreed upon is that we would set temporary
15 rates at current rates. Meaning that, during the
16 pendency of the remainder of this case, customers
17 will still be paying the current rates that were
18 tariffed and approved in DW 16-084 [16-806?].
19 But what setting temporary rates at current rates
20 does is it sets a place marker for a point in
21 time that, once the case is completed and
22 approved, that we will be able to go back and
23 then collect the rates, the difference in rates,
24 between the current rates and the final permanent

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[WITNESS PANEL: Goodhue|Ware|Laflamme]

1 rates that are established as a result of this
2 case.

3 Q Thank you very much. Mr. Ware, to also follow up
4 with you, if you could turn to Page 5 of 7, --

5 A (Ware) Yes.

6 Q -- Paragraph letter "B". And I just want you to
7 confirm for the record that the rates that
8 Pennichuck is seeking is for service rendered on
9 or after March 16? Do you see that?

10 A (Ware) Yes. And that is correct.

11 Q Okay. And what is the significance of March 16?
12 Was that the date of filing of temporary rate
13 tariffs?

14 A (Ware) Yes. That is when we filed the temporary
15 rate tariffs.

16 Q Okay. And, Mr. Ware, in your Exhibit 5, the
17 temporary rate testimony, I believe you listed
18 the notices?

19 A (Ware) Yes.

20 Q And I would just like to get those in the record,
21 and I believe they appear on Pages 5 and 6 of 7.
22 Could you for the record please list the notices
23 to customers that Pennichuck undertook for this
24 rate case?

[WITNESS PANEL: Goodhue|Ware|Laflamme]

1 A (Ware) Bear with me here while I find those.
2 Okay. Yes. So, the notices that had been filed
3 in total associated with the 19-084 case, is that
4 what you're looking for, as well as the notices
5 associated with this temporary rate hearing?

6 Q Correct. I am trying to get into the record a
7 succinct list of the notices that have gone out.

8 A (Ware) Okay.

9 Q Thank you.

10 A (Ware) All right. So, this rate case started
11 with an Intent to File a Rate Case on May 14th,
12 2019. And then, it was followed with thirty days
13 notice of the rate increase associated with the
14 filing of its tariffs on July 1, 2019, with an
15 effective date of August 1, 2019. That notice
16 was published in the newspaper, as well as sent
17 out to each one of our customers.

18 In July, the Commission suspended our
19 current rates -- or, suspended our request for
20 permanent rates, and we published that order in
21 The Telegraph on August 4, 2019. We also sent a
22 direct mailing to each one of our customers,
23 which we began the mailing or we completed the
24 mailing on August 9th. And, allowing for

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1 delivery through the mail, it is our belief that
2 customers were notified of the current rate
3 proceedings and what we were requesting, and of
4 the Commission's suspension order on or before
5 August 15th, 2019. And we also posted the
6 Commission's suspension order and notice of our
7 rate increase and rate filing on our website on
8 August 12th, 2019.

9 Q Thank you, Mr. Ware. Can I have you turn to
10 Exhibit 3, which has been premarked, it's the
11 notice to customers of rate proceeding? Do you
12 have that in front of you?

13 A (Ware) Give me one minute please. Yes, I have it
14 before me.

15 Q Okay. And, when you mentioned just now that a
16 direct mailing -- that Pennichuck conducted a
17 direct mailing, did you use this customer notice
18 as part of that? If you could explain?

19 A (Ware) Yes. Yes, we did. So, we sent an
20 individual copy of this notice, of this exhibit,
21 to each one of our customers via U.S. Mail.

22 Q I'm sorry, you broke up a bit. Via what?

23 A (Ware) U.S. Mail.

24 Q Okay. Thank you very much. Now, Mr. Ware, as

[WITNESS PANEL: Goodhue|Ware|Laflamme]

1 part of the temporary rate proceeding, did you --
2 did Pennichuck provide additional notices to
3 customers?

4 A (Ware) Yes, we did.

5 Q Could you please summarize that for the record?

6 A (Ware) Yes. So, we, on April 14th, published the
7 Commission's April 14th order on our website. On
8 April 14th, we also poted -- posted, excuse me,
9 the Commission's April 14th order on our Facebook
10 page. And, between April 15th and 16th, we
11 mailed the notice of the Commission's order
12 relative to temporary rates in this hearing to
13 all of our customers individually.

14 Q How many customers did you have to notice?

15 A (Ware) We noticed a little over 26,000 customers.

16 Q And Pennichuck printed and sent those notices out
17 within two days?

18 A (Ware) Yes.

19 Q Now, Mr. Ware, I'd like to stick with you, on the
20 question of did Pennichuck file a cost of service
21 study with its rate case?

22 A (Ware) Yes, we did.

23 Q And did that cost of service make recommendations
24 on changes to customer classes?

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[WITNESS PANEL: Goodhue|Ware|Laflamme]

1 A (Ware) Yes, it did.

2 Q And what are the customer classes that Pennichuck
3 has under its tariff?

4 A (Ware) So, we have, basically, four general
5 classes of customers. We have what are referred
6 to as "General-Metered" customers. Those are
7 customers, whether they're residential,
8 commercial, industrial or municipal that have a
9 meter, and they have a fixed charge and
10 volumetric charge. That's one class of
11 customers.

12 We have a non-metered group. And, when
13 I say we have a "non-metered group", there are
14 actually no non-metered customers. But we
15 preserve that in the event that somehow there was
16 a need for one.

17 We have our Municipal Fire charges,
18 which are associated with the provision of fire
19 services to municipalities through the fire
20 hydrants. And we have our Private Fire customers
21 that are associated with companies or individuals
22 that have unmetered sprinkler systems for
23 purposes of fire protection in the building.

24 And, lastly, we have special contracts

[WITNESS PANEL: Goodhue|Ware|Laflamme]

1 with a number of different municipalities and
2 businesses that have -- that is a group of
3 customers.

4 Q Thank you. So, with respect to all of those
5 customer classes, and the cost of service study
6 recommended changes, are the Settling Parties
7 recommending any of that flow through to the
8 temporary rate proposal?

9 A (Ware) No. We will hold the current, you know,
10 for temporary rates, since they're at current
11 rates, there will be no impact to the -- what
12 customers are paying until the permanent rate
13 case is completed, and the final alignment of how
14 we collect revenues from the various classes of
15 customers is determined.

16 Q Thank you. And you previously testified that the
17 purpose of the temporary -- setting existing as
18 temporary was to allow a reconciliation. Do you
19 remember that testimony moments ago?

20 A (Ware) Yes, I do.

21 Q And, given that there's no implementation of the
22 cost of the service study on it, how does that,
23 if it does, complicate the reconciliation between
24 temporary and permanent rates for customers?

[WITNESS PANEL: Goodhue|Ware|Laflamme]

1 A (Ware) It will change -- we will have to
2 determine the reconciliation on the final
3 increase that is recommended for each customer
4 class. And, you know, historically, when there's
5 not a cost of service study, if you ask for, as
6 we did in this case, and were granted an
7 across-the-board 11.91 percent increase, every
8 customer would have gotten 11.91 percent, and the
9 calculation relative to what we call
10 "recoupment", the difference between permanent
11 rates and existing rates or current rates, is
12 applied uniformly.

13 In the case of a cost of service, where
14 overall we have requested 11.91 percent, how we
15 collect that revenues may vary across customer
16 classes. So, each customer class, once it's
17 determined what share of the 11.91 percent that
18 they would get, is then computed separately, in
19 order to effect or calculate what we call, again,
20 is the "recoupment", the difference between
21 permanent rates and temporary rates, back to the
22 date that temporary rates are granted at current
23 rates.

24 Q Okay. Thank you. Before I have Mr. Goodhue and

[WITNESS PANEL: Goodhue|Ware|Laflamme]

1 Mr. Ware conclude, Mr. Ware, one of your
2 colleagues at the table with me caught a
3 miscitation. So, I just would like to clarify
4 that at this moment for the record.

5 You had mentioned the CBFRR as -- is
6 that -- what's the balance of that? Is that
7 around 7 million?

8 A (Ware) So, that's the annual revenues we're
9 supposed to collect from that out of rates. So,
10 that's what we're looking at. And they may be
11 thinking about the underlying Rate Stabilization
12 Fund, which is a different thing. But, if we're
13 looking at our revenues, again, our revenues that
14 we bring in each month, each year, currently are
15 disbursed in percentages based on the 16-804 or
16 -806 rate case, where a certain percentage of the
17 revenues that we bring in go to pay that, the
18 City, and that's what we call the "City Bond
19 Fixed Revenue Requirement".

20 If, in any month, we collect more
21 revenues than the required payment to the City,
22 the excess revenues go down into a Rate
23 Stabilization Fund that underlies those revenues.
24 If, during any one month, we don't collect

[WITNESS PANEL: Goodhue|Ware|Laflamme]

1 sufficient revenues to cover the payment to the
2 City, we pull the difference out of the Rate
3 Stabilization Fund so that we can make our annual
4 payment to the City.

5 Q Thank you. And I would just correct for the
6 record, or the last rate case docket number is
7 16-806. I know it gets confusing when you've got
8 multiple numbers over the years. But I just want
9 to put that out there for the record, the last
10 rate case that Pennichuck filed was DW 16-806.

11 So, in conclusion, Mr. Goodhue, can I
12 turn to you, and ask whether the temporary rates
13 proposed in this Settlement are just and
14 reasonable in your opinion?

15 A (Goodhue) They are. And could I speak briefly to
16 the one question you just asked Mr. Ware?

17 Q Okay.

18 A (Goodhue) And one of the things that he noted
19 was, relative to the CBFRR, just to correct the
20 record, he indicated that being "\$7.9 million" a
21 year, it's approximately \$7.7 million per year.
22 Just so that the record is properly reflected
23 relative to that revenue requirement on the
24 16-806 case.

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[WITNESS PANEL: Goodhue|Ware|Laflamme]

1 Q I appreciate you correcting that. Thank you very
2 much, Mr. Goodhue, for chiming in.

3 A (Goodhue) Now, to answer your question, do I have
4 an opinion -- or, could you rephrase your
5 question to me please?

6 Q Sure. Do you have an opinion as to whether the
7 temporary rates that are proposed in the
8 Settlement Agreement are just and reasonable and
9 would be consistent with the public interest?

10 A (Goodhue) Yes. I do believe that they are and
11 would be.

12 Q Okay. And, Mr. Ware, I have the same question to
13 you. Do you believe that the temporary rates
14 that are proposed in the Settlement Agreement
15 would result in just and reasonable rates that
16 are consistent with the public interest?

17 A (Ware) Yes. I believe that the temporary rates,
18 as proposed, are just and reasonable and
19 consistent with the public interest.

20 MS. BROWN: Okay. And, Attorney
21 Tuomala, that was the extent of the substantive
22 direct. So, I hand the presentation over to you.

23 MR. TUOMALA: Thank you, Attorney
24 Brown. I have several questions for Jayson

[WITNESS PANEL: Goodhue|Ware|Laflamme]

1 Laflamme, directed mostly at Exhibit 8, the
2 Settlement Agreement.

3 BY MR. TUOMALA:

4 Q So, Mr. Laflamme, first of all, could you please
5 describe your involvement in this docket?

6 A (Laflamme) Yes. I examined the Company's rate
7 filing, in conjunction with the books and records
8 previously on file at the Commission regarding
9 PWW. I participated in the discovery process,
10 that is formulating data requests, reviewing the
11 Company's responses. I participated in tech
12 sessions and settlement conferences, leading up
13 to the Settlement Agreement that is being
14 presented today.

15 I would also say that, with regard to
16 PWW's current ratemaking structure, that has been
17 a -- that has been a process, an evolutionary
18 process, based on previous -- previous rate cases
19 that have come before the Commission, and
20 specifically DW 11-026, DW 13-130, DW 16-806,
21 which all three I materially participated in.

22 Q And I would like to turn your attention to the
23 Temporary Rate Settlement Agreement that was
24 previously referred to by Attorney Brown, Exhibit

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[WITNESS PANEL: Goodhue|Ware|Laflamme]

1 8 again. Do you have that exhibit in front of
2 you, Mr. Laflamme?

3 A (Laflamme) Yes, I do.

4 Q And can you identify the document for the record?

5 A (Laflamme) Yes. It's the Settlement Agreement
6 that was filed with the Commission on May 11th.

7 Q And did you -- excuse me, sorry.

8 A (Laflamme) And it's being presented to the
9 Commissioners this morning.

10 Q Thank you, Mr. Laflamme. I apologize for
11 interrupting you. Did you assist in the
12 preparation of this document?

13 A (Laflamme) Yes, I did.

14 Q Do you wish to make any corrections or revisions
15 to Exhibit Number 8 at this time?

16 A (Laflamme) No.

17 Q And is the information contained in Exhibit
18 Number 8 true and accurate to the best of your
19 knowledge?

20 A (Laflamme) Yes, it is.

21 Q Okay. I would like to turn your attention
22 specifically to the figures provided on Page 3,
23 Bates Page 003 of the Settlement Agreement, which
24 support the Company's need for temporary rates at

{DW 19-084} [RE: Temporary Rates] {05-13-20}

[WITNESS PANEL: Goodhue|Ware|Laflamme]

1 current rates. Can you speak to those figures
2 please?

3 A (Laflamme) Yes. I believe that Mr. Ware alluded
4 to this in his testimony. But the purpose of
5 this table is to show that, even though the
6 Company recognized net earnings during test year
7 2018 of \$459,068, it is still significantly
8 under-earning with regard to the ratemaking
9 mechanism that it is currently operating under,
10 which was approved by the Commission in DW
11 16-806. And it shows -- it shows that the
12 Company has a revenue deficiency under that
13 ratemaking mechanism of \$890,466.

14 Q And that figure, the amounts contained in that
15 table, would you say they're primarily based on
16 PWW's 2018 Annual Report filed with the
17 Commission, which was presented as Exhibit Number
18 6, and their original rate case filing as of last
19 year, July 1st?

20 A (Laflamme) Yes. The figures presented in that
21 table are primarily based on the Company's 2018
22 Annual Report filed with the Commission, and
23 specifically Page F-2 of the 2018 Annual Report,
24 which I believe is located on Page 19. And those

[WITNESS PANEL: Goodhue|Ware|Laflamme]

1 numbers have been corroborated against the
2 Company's rate filing that was filed last July
3 1st.

4 Q Okay. And, so, I just want to backtrack briefly
5 for one moment. After examining those figures,
6 what did you conclude?

7 A (Laflamme) I concluded that the Company is
8 entitled to temporary rates at, minimally, at its
9 current rates. And then, further, the table
10 assists in correcting the record with regard to
11 the basis for the Company's need for temporary
12 rates.

13 Q And why would you say that's important?

14 A (Laflamme) As mentioned in prior testimony, and
15 indicated in the footnote, which starts on Page 2
16 of the Settlement Agreement, the Company's
17 ratemaking structure is unique. It is not based
18 on net operating income of the Company, which is
19 the case with other investor-owned utilities
20 regulated by this Commission. Rather, the
21 Company's ratemaking structure is based on a cash
22 flow model, for the purpose of enabling the
23 Company to meet its operating requirements, as
24 well as its debt service obligations. Therefore,

[WITNESS PANEL: Goodhue|Ware|Laflamme]

1 cash flow, more than net earnings, is of the
2 utmost importance to the Company regarding its
3 continued viability.

4 Also, you know, with regard to the
5 record, the Company's temporary rate filing filed
6 on 03/16/20 indicated that it recognized net
7 earnings of -- negative net earnings of \$30,861
8 in 2018. However, that figure is incorrect. The
9 Company actually recognized net income, for
10 accounting purposes during 2018, of \$459,068.
11 However, those net earnings are not the basis for
12 the authorization of temporary rates in this
13 proceeding. Rather, it is the cash flow of the
14 Company that is -- that is most important in the
15 determination of whether the Company needs
16 temporary rates.

17 And, as this table shows, the
18 ratemaking mechanism, which is based on a cash
19 flow model, approved in DW 16-806, shows a
20 revenue deficiency of \$890,466.

21 Q Thank you. Could you briefly describe where you
22 derived the figures contained in that table on
23 Bates Page 003 of the Settlement Agreement?

24 A (Laflamme) Yes. The first column of figures,

[WITNESS PANEL: Goodhue|Ware|Laflamme]

1 which is entitled "Computation of 2018 Net
2 Income", that was chiefly derived from the
3 Company's 2018 Annual Report, as I indicated
4 earlier. That would be on Schedule F-2, Page 19
5 of its Annual Report, and those figures were
6 corroborated against the Company's original rate
7 filing.

8 The next column of numbers entitled
9 "Elimination of items not included in DW 16-806
10 Ratemaking Mechanism", those items -- those
11 eliminating items were based on the Settlement
12 Agreement that was approved by the Commission in
13 DW 16-806. The figures in that column represent
14 accounting entries or what may be called "paper
15 entries", that are used to derive the net income
16 for the Company in its Annual Report. While they
17 are, you know, legitimate entries, they are not
18 necessarily tied to the Company's annual cash
19 flow.

20 So, therefore, those -- there are
21 certain items that have been eliminated in order
22 to bring the income statement of the Company to
23 its 16-806 ratemaking methodology, which is, as I
24 indicated, based on a cash flow model. And, so,

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[WITNESS PANEL: Goodhue|Ware|Laflamme]

1 the numbers -- the numbers that are left in the
2 right-most column are most closely tied to the
3 Company's annual cash flow.

4 Q And, if I can direct your attention to the entry
5 of the "City Bond Fixed Revenue Requirement",
6 where did you derive those figures from?

7 A (Laflamme) That figure is found -- you can find
8 that figure in Exhibit 4, on Bates Page 008. It
9 was also approved by the Commission in the last
10 rate proceedings, DW 16-806.

11 Q And, if I could direct your attention to the
12 "Debt Service" entry in that table for 2018, how
13 did you derive that figure?

14 A (Laflamme) Yes. That's from Bates Page 063 of
15 Exhibit 4, and they represent the actual
16 principal payments of the Company made during
17 2018 of \$2,629,308, as well as its actual
18 interest payments of 3,658,577. Combined, that
19 amount is \$6,287,000 -- \$6,287,885, which
20 represents the Company's actual debt service
21 requirement during test year 2018.

22 Q Okay. And, so, again, for the record, in your
23 examination, and, obviously, the Settlement
24 Agreement has been gone over by all the parties,

[WITNESS PANEL: Goodhue|Ware|Laflamme]

1 but you would say that PWW's revenue deficiency,
2 at the time of filing, is -- the correct amount
3 is 890 -- negative \$890,000 -- \$890,466?

4 A (Laflamme) Yes.

5 Q And, in your opinion, this revenue deficiency for
6 PWW, in light of their ratemaking mechanism,
7 that's the determining factor to show that they
8 need temporary rates?

9 A (Laflamme) Yes. Because, as stated previously,
10 cash flow, more than net earnings, is the key to
11 PWW's continued viability as an operating
12 utility. Cash flow enables the Company to
13 operate and to have access to its sole financing
14 source, which are the debt markets, to obtain the
15 financing that it needs to make infrastructure
16 improvements to its water system.

17 Without sufficient cash flow, the
18 Company would be severely hampered in its ability
19 to obtain sufficient debt under favorable
20 financing terms, the impact of which would be
21 ultimately borne by PWW's ratepayers.

22 Q So, in your opinion, would you say a company,
23 such as PWW, with, again, we keep referring to
24 it, it's unique ratemaking structure, in a

[WITNESS PANEL: Goodhue|Ware|Laflamme]

1 company such as that is showing a revenue
2 deficiency, then you would say temporary rates
3 should be approved?

4 A (Laflamme) Well, certainly, a cash flow
5 deficiency, such as the one that PWW was showing,
6 would be a key factor. But, hypothetically
7 speaking, with regard to future rate cases, there
8 would probably other -- there would probably be
9 other factors that would need to be considered as
10 well.

11 Q And I just want to clear up for the record. You
12 are testifying that PWW, based on these, the
13 negative -- the revenue deficiency, is entitled
14 to temporary rates, however, you're basing that
15 off of the magnitude of almost \$1 million in
16 negative revenue?

17 A (Laflamme) Yes.

18 Q So, to clarify for the record, you're saying
19 that, just because a company, such as PWW,
20 exhibits a revenue deficiency, you need to
21 consider the magnitude in approving or
22 recommending approval of temporary rates. And
23 you say, in this case, the \$890,000 rises to that
24 level?

[WITNESS PANEL: Goodhue|Ware|Laflamme]

1 A (Laflamme) Yes.

2 Q And, Jayson, in your opinion -- excuse me, Mr.
3 Laflamme, in your opinion, would you say the
4 resulting recoupment of these temporary rates at
5 current rates will produce just and reasonable
6 rates for its customers?

7 A (Laflamme) Yes. Staff believes that the Company
8 has demonstrated a need for immediate rate
9 relief, to increase its cash flow for ongoing
10 operations, and to attract favorable debt
11 financing. The Company, however, has decided to
12 forgo an immediate rate increase, and instead
13 wait for the reconciliation of temporary rates to
14 permanent rates, per RSA 378:29, after final
15 rates have been set and approved by the
16 Commission.

17 Staff believes that the Settlement
18 meets the Company's clear need for rate relief,
19 with a recoupment, but avoids an immediate
20 increase in rates to customers, and avoids
21 further debt incursion at a higher cost to
22 ratepayers.

23 The guarantee of temporary rates -- of
24 a temporary rate recoupment also would appear to

[WITNESS PANEL: Goodhue|Ware|Laflamme]

1 strengthen the Company's financial position for
2 when it needs to go to the debt markets for a
3 financing. In turn, this would appear to
4 strengthen the Company's ability to raise debt --
5 the debt financing that it needs to effectively
6 operate and add infrastructure under favorable
7 financing terms, to the ultimate benefit of its
8 customers.

9 Q And, once again, just to sum it up for the
10 record, do you, as Staff, recommend that the
11 Commission approve the Settlement Agreement for
12 temporary rates at current rates?

13 A (Laflamme) Yes.

14 Q And that approval -- then that approval, excuse
15 me, will set just and reasonable rates for its
16 customers?

17 A (Laflamme) Yes.

18 Q Is there anything you wanted to highlight or
19 discuss regarding the Temporary Settlement Rate
20 -- Temporary Rate Settlement Agreement?

21 A (Laflamme) Yes. There is one further item
22 contained in the Settlement Agreement. And
23 that's that the parties have agreed that, if the
24 Company finds itself in a similar under-earnings

[WITNESS PANEL: Goodhue|Ware|Laflamme]

1 position in subsequent rate case filings, that
2 they will file for temporary rates in conjunction
3 with their full rate case filing.

4 Q And are you referring to Paragraph D of Section
5 III, it's Bates Page 005, of the Exhibit 8?

6 A (Laflamme) That is correct.

7 MR. TUOMALA: Thank you, Mr. Laflamme.
8 I have no further questions.

9 CHAIRWOMAN MARTIN: Okay.

10 MS. BROWN: I have one more follow-up
11 on direct, if I could, --

12 CHAIRWOMAN MARTIN: Sure.

13 MS. BROWN: -- to clarify the record.

14 CHAIRWOMAN MARTIN: Go ahead, Attorney
15 Brown.

16 MS. BROWN: Thank you.

17 BY MS. BROWN:

18 Q Mr. Laflamme, on Exhibit 8, Page 5, Paragraph D,
19 you had stated that the filing of the temporary
20 rates would be "in conjunction" with the filing
21 of the permanent?

22 I just want to clarify, because I
23 didn't see "in conjunction" there. And I just
24 wanted your testimony to be accurate.

[WITNESS PANEL: Goodhue|Ware|Laflamme]

1 A (Laflamme) Well, specifically, Paragraph D says
2 "The Settling Parties further agree that if the
3 Company will file" -- "that the Company will file
4 for temporary rates in all future rate cases if
5 PWW's annual report indicates that the Company is
6 in the same or a similar revenue deficiency
7 situation as it experienced at the filing of the
8 instant rate case." Staff --

9 Q That clarifies it.

10 A (Laflamme) Staff would anticipate that that
11 filing would be in conjunction with its permanent
12 rate filing.

13 MS. BROWN: Thank you. I have no
14 further questions for the panel.

15 CHAIRWOMAN MARTIN: Okay. Attorney
16 Shute and Attorney Bolton, I see Ms. Shute has
17 her arm up, it looks like you have questions?

18 MS. SHUTE: I would. I just have a
19 couple of questions for one of the witnesses.

20 CHAIRWOMAN MARTIN: Okay. Attorney
21 Bolton, do you have questions?

22 MR. BOLTON: No questions.

23 CHAIRWOMAN MARTIN: Okay. Attorney
24 Shute, you can go ahead.

[WITNESS PANEL: Goodhue|Ware|Laflamme]

1 MS. SHUTE: Thank you.

2 **CROSS-EXAMINATION**

3 BY MS. SHUTE:

4 Q Mr. Goodhue, Exhibit 1 provides your testimony
5 for the permanent rates. And, on Page 26 in
6 your -- Bates Page 026 in the testimony, I
7 believe it discusses whether or not you're
8 seeking temporary rates at the time of filing.
9 Could you confirm that you made a decision not to
10 collect temporary rates at the time of filing?

11 A (Goodhue) I'm turning to that page. You said it
12 was "Page 26", ma'am?

13 MS. BROWN: Yes. Attorney Shute, I'm
14 having difficulty locating it on Page Bates 026.
15 If you have a line item?

16 BY MS. SHUTE:

17 Q So, it's Bates Page 026, Line Item 10. "Will PWW
18 be seeking a temporary rate increase?"

19 A (Goodhue) I'm turning to that page. You said
20 "Bates 026"?

21 Q Yes, which is Page 27 of the exhibit.

22 A (Goodhue) Bear with me. Page 27 of the exhibit.

23 MS. BROWN: I'm not finding it, I'm
24 sorry.

[WITNESS PANEL: Goodhue|Ware|Laflamme]

1 **BY THE WITNESS:**

2 A (Goodhue) And can you reference the line on that
3 page that you're attempting to question?

4 BY MS. SHUTE:

5 Q It's Line Item Number 10. "Will PWW be seeking a
6 temporary rate increase?"

7 MS. BROWN: You said "Bates 026"? What
8 page, up in the top header?

9 MS. SHUTE: Sorry. I'm sorry. It's
10 Bates Page 045.

11 WITNESS GOODHUE: Forty-five. Okay.

12 MS. SHUTE: It's "26 of 31" in the
13 testimony.

14 MS. BROWN: Thank you.

15 MS. SHUTE: Yes. My apologies.

16 MS. BROWN: Thank you.

17 WITNESS GOODHUE: Okay. We're all
18 doing the best we can in our virtual environment.

19 MS. SHUTE: Yes.

20 MS. BROWN: Yes.

21 **BY THE WITNESS:**

22 A (Goodhue) Okay. So, in my initial testimony, I
23 did indicate that we would not be seeking
24 temporary rates, partially because of that we had

[WITNESS PANEL: Goodhue|Ware|Laflamme]

1 a QCPAC filing in process. And, you know,
2 relative to what we understood the status to be
3 at that time. During the pendency of this case,
4 it was understood that, you know, in looking at
5 the overall structure in the discussion of the
6 elements of the case, that the Company felt that
7 that initial opinion on my part was to be
8 altered, in that we would be introducing a
9 request for temporary rates at current rates.

10 BY MS. SHUTE:

11 Q And could you -- and what was your understanding
12 at the time that you -- that you filed your
13 permanent rates, in regards to when recoupment
14 would go into effect?

15 A (Goodhue) And that is based on my own personal
16 understanding, which has now been clarified
17 through this process, was that my understanding
18 at that time was that, as a part of the permanent
19 rate proceeding, we would have the ability for
20 that reconciliation of our permanent rates back
21 to the noticed date relative to the permanent
22 rate filing, for the differential between the new
23 permanent rates and our current rates.

24 So, a clear understanding, now

[WITNESS PANEL: Goodhue|Ware|Laflamme]

1 understood by me, and as is clarified, as Mr.
2 Laflamme referenced, in Section D to the
3 Temporary Rate Settlement, relative to the
4 understanding of, when a permanent filing is
5 filed, that also at that time we have to preserve
6 our rights relative to temporary rates, even at
7 current rates, regardless of what we are looking
8 for in that manner.

9 Q Thank you. And, so, the primary purpose of
10 filing the temporary rates at this time is to
11 establish the effective date, so that you can --
12 so that you can recoup permanent rates back to
13 the effective date established for temporary
14 rates?

15 A (Goodhue) That is correct. Thank you.

16 Q And you -- there was some time spent regards to
17 the pandemic. And I understand that there are
18 additional costs as a result of it. There may
19 also be revenues that are not collected as a
20 result of it.

21 Do you think that the effect of the
22 pandemic may result on any kind of proceeding in
23 front of the Commission in the next year or two
24 or do you concede -- or, do you agree that, given

[WITNESS PANEL: Goodhue|Ware|Laflamme]

1 that we don't know the extent to which this
2 crisis will last, that that is a possibility?

3 A (Goodhue) At this juncture, that is really
4 indeterminate. As I mentioned in my discussion,
5 there are a number of things that we must do in
6 compliance with the Governor's Emergency Order.
7 One that is very important is the Emergency Order
8 that basically limits our ability to act upon
9 customer accounts that is deficient in their
10 payment of their current bills. In that we are
11 not able to issue shutoff notices and/or proceed
12 in accordance with the rules and regulations
13 relative to that. And, in those cases where a
14 customer may be in, I'm going to say, in a
15 delinquency, you know, we have been obligated,
16 under his Emergency Order, to work with them to
17 establish a payment plan arrangement no less than
18 six months out relative to repayment of those
19 funds.

20 The clarification of that order clearly
21 indicates a lot of this is based on
22 uncertainties, is what is the Governor's next
23 order going to define coming out of this process,
24 and how do you encapsulate those amounts? That a

[WITNESS PANEL: Goodhue|Ware|Laflamme]

1 customer who's in delinquency can remain current
2 on their current bill, and have that delinquent
3 sum just kind of, I'm going to say, packaged up
4 as an amount that is settled for, or do they have
5 a roll out?

6 We also don't know at this juncture the
7 impact on our commercial and industrial
8 customers. We're not seeing a great deal of
9 impact right now. But, you know, I don't know
10 that any of us know how many restaurants or
11 merchants or hotels are going to have their
12 businesses permanently impaired. Currently,
13 we're not seeing drastic changes to those
14 numbers. But, again, we, you know, I'm going to
15 say that the vision through our windshield on
16 that is not real clear.

17 Q Completely understood.

18 A (Goodhue) We don't have a clear understanding
19 right now, but we reserve our rights should that
20 need to be done. One of the key things that
21 we've done is we've taken all measures we
22 possibly can, to make sure that we're operating
23 in accordance with what our obligations are, and
24 to make sure that we're reserving cash or

[WITNESS PANEL: Goodhue|Ware|Laflamme]

1 accessing opportunities, to make sure that we
2 continue to function for our customers in
3 continuity and in compliancy with those orders.

4 Q Yes. Thank you very much. The last question I
5 have is in regards to the notices that were sent.
6 Attorney Brown brought to your attention three,
7 and I apologize, this may have been -- I'm not
8 sure if it was for you or Mr. Ware. But, in any
9 event, Exhibit 3 was the notice to customers of
10 the rate proceeding that was provided to
11 customers back in 2019.

12 And is it correct that, in addition to
13 this notice, that the order from the -- from the
14 Commission at that time suspending permanent
15 rates was also provided as notice to the
16 customers?

17 A (Goodhue) I'd ask Mr. Ware to address that,
18 because he was the direct testimony on that.

19 A (Ware) Yes. So, notice that was sent to the
20 customers is the one that is in the exhibit,
21 which laid out the requested rates and the
22 various percentages across the board to the
23 customers, to make people aware of the hearing
24 there. And I don't --

[WITNESS PANEL: Goodhue|Ware|Laflamme]

1 CHAIRWOMAN MARTIN: Mr. Ware, can you
2 stop for a minute please? Our court reporter is
3 having some trouble.

4 *[Brief off-the-record discussion*
5 *ensued.]*

6 CHAIRWOMAN MARTIN: Okay. Mr. Ware,
7 are you able to repeat that? I apologize. It
8 happens in this process.

9 WITNESS WARE: Yes. Understood. Is
10 this better, Steve?

11 MR. PATNAUDE: Yes.

12 **BY THE WITNESS:**

13 A (Ware) Yes. So, we sent individual notices back
14 in August of 2019 to each of our customers, as
15 shown in Exhibit 3 that was part of this rate
16 case filing.

17 BY MS. SHUTE:

18 Q Okay. And then, a copy of the order was
19 published in a newspaper?

20 A (Ware) That is correct.

21 Q Okay. And that order contained the statement
22 that you would not be seeking temporary rates?

23 A (Ware) That is correct.

24 MS. SHUTE: Those are all the questions

[WITNESS PANEL: Goodhue|Ware|Laflamme]

1 that I have for the witnesses. Thank you.

2 CHAIRWOMAN MARTIN: Okay. Thank you.

3 Commissioner Bailey.

4 CMSR. BAILEY: Good morning. I think
5 my questions are for Mr. Ware.

6 BY CMSR. BAILEY:

7 Q You said, in your direct testimony, that
8 operating expenses increased for staff due to
9 changes in workload?

10 A (Ware) Correct.

11 Q What kind of changes in workload increased
12 operating expenses?

13 A (Ware) All right. There are a number of direct
14 areas. So, first of all, in our transmission and
15 distribution area, the City, as well as
16 surrounding communities, have greatly increased
17 their paving. They were way behind on their
18 paving schedules. And, so, they have laid out a
19 ten-year schedule that essentially involves
20 substantially more pavement than they have done
21 in the past.

22 To keep up with that, we've done two
23 things. We added a number of subcontractors to
24 help us raise gates, gate boxes, and get them in

[WITNESS PANEL: Goodhue|Ware|Laflamme]

1 order. We acquired three additional staff to
2 check gate boxes, to check the operation of gates
3 also with the paving program, because you cannot
4 open the street afterwards. We are replacing
5 services that were installed in the 1950s, after
6 the war years, that are galvanized and are
7 susceptible to leakage. So, that program with
8 the City, and the community of Amherst, and some
9 of other communities that we serve, have greatly
10 increased their paving to correct the current
11 activity -- the under-paving activities that have
12 gone on in the past created a big impact. So,
13 that was three additional employees, plus the use
14 of two subcontractors, in order to keep up with
15 the paving projects, to make sure that all our
16 gates are accessible on newly paved streets, and
17 that services that susceptible to leaks are taken
18 care of.

19 Additionally, we've been implementing a
20 Asset Management GIS Program. The management of
21 that program required the addition of two staff,
22 in order to ensure that that was going to work
23 properly.

24 Those are probably the two biggest, you

[WITNESS PANEL: Goodhue|Ware|Laflamme]

1 know, from a staffing perspective, the two
2 biggest impacts that we have experienced.

3 Q And in what year were those employees added?

4 A (Ware) The employees, I do not have the
5 information right in front of me. But I believe
6 that most of the employees associated with the
7 paving were added in 2018, as well as the GIS
8 were added in either '17 or '18.

9 Q Okay. If you look at the income statements that
10 you pointed us to in Exhibit 6 and Exhibit 7, it
11 looks like the operating expenses increased by
12 almost \$3 million, from to 2017 to 2018.

13 A (Ware) Yes.

14 Q But only by \$8,000 between 2018 to 2019. Am I
15 reading this correctly?

16 A (Ware) Let me get to those two PUC Report pages.
17 So, in 2018 shows operating expenses on Line 3,
18 and operating as going, in 2018, up by 1.6
19 million, from 2. -- 12.3 million to 13.9 million.
20 And then, in 2019, it had showed operating
21 expenses increasing about a million dollars, from
22 13 million, to close to \$14,900,000, again, on
23 Line 3, under "Operating & Maintenance Expenses".
24 So, over those two year periods, about

[WITNESS PANEL: Goodhue|Ware|Laflamme]

1 a total of \$2.5 million increase.

2 Q And, if you look at Exhibit 6, and this is on
3 Bates Page 026 just for the record, Line 10 shows
4 that your total operating expenses increased by
5 about \$3 million, from 2017 to 2018, correct?
6 Rounded up?

7 A (Ware) Hold on one minute please while I pull up
8 that exhibit. And which exhibit was that,
9 Commissioner?

10 Q Exhibit 6.

11 A (Ware) Okay.

12 Q Bates Page 026.

13 A (Ware) Bates Page 026. Okay. And this is in the
14 2018 Annual Report?

15 Q Yes.

16 A (Ware) And which line are you referring to
17 please?

18 Q Line 10.

19 A (Ware) Line 10, "Total Operating Expenses", yes.

20 Q Okay. And so, you just went through the number,
21 the difference on Line 3, which is 1.6 million?

22 A (Ware) Correct. So, a couple things to -- our
23 revenue requirement does not include depreciation
24 expense and it does not include income taxes.

[WITNESS PANEL: Goodhue|Ware|Laflamme]

1 Those are taxes at the subsidiary level. At the
2 parent level, the only taxes that we currently
3 pay are the New Hampshire, I believe it's the
4 Business Enterprise Tax. Mr. Goodhue can correct
5 me if it's -- but I believe it's the "Business
6 Enterprise Tax".

7 So, Pennichuck Water Works, during the
8 test year 2018, for instance, only paid cash
9 taxes, its share of the corporate taxes, I
10 believe at about \$134,000. So, again, this is
11 the difference between this income statement and
12 how we operate.

13 So, if you're looking at \$1.2 million
14 of those expenses that it shows an increase, are
15 not things that we charge our customers. We do
16 not collect depreciation expense. We do not
17 collect, you know, income taxes at the level
18 shown on this form. We do not collect book
19 income taxes. We collect the actual cash income
20 taxes. And, again, currently, the Company is set
21 up not to have, at the corporate level,
22 significant earnings. And, as a result, we still
23 have net operating losses at the corporate level,
24 so we're not paying Federal Income Tax or the

{DW 19-084} [RE: Temporary Rates] {05-13-20}

[WITNESS PANEL: Goodhue|Ware|Laflamme]

1 state Business Profits Tax, but we do pay the
2 state Business Enterprise Tax.

3 Q Okay. Thank you. Mr. Goodhue, did you have
4 something to add?

5 A (Goodhue) Yes, Commissioner Bailey. I think one
6 of the important items to understand is what has
7 happened with income taxes, when you look at
8 those two reports.

9 When you look at the 2018 Annual
10 Report, and comparing it to the previous year,
11 which is 2017, the Tax Cut & Jobs Act at the
12 federal government was passed in November of
13 2017. And what you're really seeing there is the
14 market impact of that Act. One of the key
15 considerations there was, in the Tax Cut & Jobs
16 Act, that CIAC would no longer be excluded from
17 taxable income for water utilities in the
18 country.

19 The Company did provide -- open a
20 docket, and did get approval from the Commission
21 relative to our ability to gross up CIAC for the
22 impact of income taxes. So, we are collecting
23 cash from developers as they contribute property,
24 in conformity with that now expanded authority,

{DW 19-084} [RE: Temporary Rates] {05-13-20}

[WITNESS PANEL: Goodhue|Ware|Laflamme]

1 in response to what the Tax Cut and Jobs Act
2 incurred upon the Company.

3 I think that's an important item,
4 because in those numbers is that tax on CIAC,
5 which, again, is not part of our revenue
6 calculations, as Mr. Ware stated, but is also
7 part of what we're now able to collect and put
8 aside relative to cash that could satisfy tax
9 obligations relative to those incurred taxes on
10 CIAC.

11 And also to confirm for Mr. Ware, he is
12 correct, it is the New Hampshire Business
13 Enterprise Tax, which is the only tax currently
14 that we are having a cash impact on the operation
15 relative to any type of state or federal income
16 taxes.

17 Q Okay. Thank you. Mr. Laflamme, under the cash
18 flow model for this Company, they have to collect
19 all the expenses that they incur. Is that your
20 testimony?

21 A (Laflamme) Yes.

22 Q And what happens if they incur expenses that
23 aren't just and reasonable?

24 A (Laflamme) In what? In what context?

[WITNESS PANEL: Goodhue|Ware|Laflamme]

1 Q Hypothetically. Hypothetically. And I'm not
2 suggesting that this happened. I'm just trying
3 to figure out the cash flow model and the
4 implications of it. But say they added ten new
5 employees, and you didn't think that -- or, we
6 determined that they didn't need to add ten new
7 employees. But they incurred those expenses.
8 Their operating expenses increased legitimate --
9 not legitimately, but they had those expenses,
10 they paid those employees. And then, we later
11 determine that that wasn't a reasonable decision.
12 What happens?

13 A (Laflamme) Then, our recommendation would be --
14 Staff's recommendation would be that they would
15 not -- that that would -- the salaries of those
16 ten employees would not -- would not go into the
17 revenue requirement.

18 Q And, Mr. Ware, what would happen, once those
19 expenses are incurred, and there's no other way
20 to get money except through this cash flow
21 regulated company, how would you make up the
22 difference for those let's call them
23 "unreasonable expenses"?

24 A (Ware) So, I think two things we'd want to look

[WITNESS PANEL: Goodhue|Ware|Laflamme]

1 at. So, there is a component of our revenues,
2 which are known as the "non-material operating
3 expense revenues", things like conferences and
4 meetings and those things, that, you know, do not
5 have any coverage. And, so, if we over expend
6 what was allotted in the last rate case, about
7 \$600,000 that was approved as being prudent, and
8 we spent a million, we would have no place to go
9 for that 400,000. There are no bank accounts.
10 We can't access the cash under -- from the
11 material operating expense revenues.

12 Now, employees are considered "material
13 operating expenses". We file an annual report
14 that shows, you know, what those expenses are.
15 We're audited for those. And so, certainly, you
16 know, and I'm not sure the process really, you
17 know, gets into this, but, if Staff were to raise
18 a concern with material -- what are deemed
19 "material operating expenses", and say "gee, we
20 don't think those are legitimate", at that stage
21 we would give strong consideration to, first of
22 all, we'd have a discussion with Staff, but, if
23 they convinced us that they were not legitimate,
24 then we would have to eliminate those expenses.

{DW 19-084} [RE: Temporary Rates] {05-13-20}

[WITNESS PANEL: Goodhue|Ware|Laflamme]

1 You know, rate cases are the times that
2 it happens. Between rate cases, the mechanism is
3 set up to recover the revenues or to cover the
4 expenses. But, as we all know, the revenues are
5 based on a test year, where you're looking at the
6 prudence of the staffing levels at that stage.

7 Outside of that, increases go up. And
8 if we just arbitrarily added ten additional
9 employees, one, that would be problematic, in
10 that the revenues wouldn't cover the expenses.
11 And we would have to be, you know, using
12 short-term debt.

13 It is a difficult model, because there
14 is no profit where you can eliminate that. You
15 know, the cash expenses have been incurred, and
16 they need to be paid for. And the time that you
17 really need to deal with that is at a rate case.
18 And, again, if Staff said "you know, we think
19 your expenses are too high", and they prove their
20 point, then those expenses would be eliminated
21 going forward.

22 I'm not sure how we look backward in
23 this model. And that's always been one of the
24 challenges as we have worked through this, in

[WITNESS PANEL: Goodhue|Ware|Laflamme]

1 that there is no profit built into the model as
2 it's currently structured.

3 A (Goodhue) Commissioner Bailey, this is
4 Mr. Goodhue. If I could add to that please?

5 Q Okay.

6 A (Goodhue) One of the other things that works to
7 the benefit of our customers, and in response to
8 your question is, the only backstop we have to
9 working capital is the parent company's working
10 capital line of credit within external banks,
11 commercial banks. That debt instrument has a
12 annual thirty day clean-out. So, if we incurred
13 operating expenses that were imprudent or above
14 allowed levels, and did not have cash to pay for
15 those, we would not be able to meet the
16 obligation cleaning out that line of credit on an
17 annual basis. We would be in default. We would
18 lose that line of credit. And, as such, that's a
19 pretty strict penalty that forces us to make sure
20 that the expenses that we incur are prudent, are
21 covered by our allowed revenue level, and such
22 that we can be in compliance with our debt
23 instruments, as well as the rate structure that
24 is approved by the Commission.

[WITNESS PANEL: Goodhue|Ware|Laflamme]

1 So, that is another lever that is in
2 place in our structure. Because we are debt
3 only, and we have to meet the financial covenants
4 of that debt instrument, as well as our bond
5 instrument, which is another lever that forces
6 our operating expenses to be in line with our
7 allowed revenues, not in excess of our allowed
8 revenues.

9 Q Okay. When you -- when your expenses increase
10 above the amount that was last authorized, and
11 the revenue that you collect during the year
12 doesn't cover the expenses that you've incurred,
13 where does the difference come from?

14 A (Goodhue) There is a Rate Stabilization Fund that
15 is allowed to backstop the cash. But that
16 doesn't cure the problem relative to the
17 covenants that I spoke about. Because the
18 covenants are based on financial performance, not
19 just cash. So, you've got both of those levers
20 happening. So, if you had operating expenses
21 that were increasing above levels that were
22 allowed and supported by revenues, we would be in
23 violation of those covenants, and we couldn't
24 access that money either. So, that's --

[WITNESS PANEL: Goodhue|Ware|Laflamme]

1 Q Isn't that where you're at?

2 A (Goodhue) I'm sorry?

3 Q Isn't that where you're at?

4 A (Goodhue) No, we're not. Because, you know,
5 we're still in compliancy with our covenants, but
6 we are cash deficient, because our Rate
7 Stabilization Funds have been going down for
8 actual prudent expenses relative to our rate
9 structure.

10 Q Okay. Mr. Ware -- thank you. Mr. Ware, can you
11 tell me what the current balance is in the Rate
12 Stabilization Fund?

13 A (Ware) Okay. As of 12/31/2019, and this is a
14 regulatory balance, and Staff and ourselves
15 actually have a data request that we're
16 responding to right now, and because the
17 regulatory calculation is different than the
18 cash, why is that? Because the regulatory
19 calculation of revenues includes unbilled
20 revenues, includes uncollected revenues, it
21 includes -- and the expenses include accruals and
22 those sorts of things.

23 So, the regulatory issue, and I'm going
24 to pull up the current schedule, so, if you'll

[WITNESS PANEL: Goodhue|Ware|Laflamme]

1 bear with me please, it will take me about a
2 minute, I can tell you where we are relative,
3 from a regulatory perspective, where we are on
4 various balances as -- the three RSF accounts as
5 of December 31st, and please bear with me.
6 Connecting remotely, it takes a little more time.
7 Almost there.

8 Q Okay.

9 A (Ware) All right. So, this --

10 CHAIRWOMAN MARTIN: Ms. Shute, it seems
11 that -- I apologize for interrupting. I just
12 want to see if Attorney Shute is having trouble
13 with her video or if it is turned off. Can you
14 see her?

15 CMSR. BAILEY: I can't see her or
16 Commissioner Giaimo at the moment.

17 CHAIRWOMAN MARTIN: Okay. Can we just
18 pause for a moment please.

19 WITNESS WARE: Yes.

20 *[Short pause and a brief off-the-record*
21 *discussion ensued.]*

22 CHAIRWOMAN MARTIN: Okay. Let's go
23 back on the record.

24 **CONTINUED BY THE WITNESS:**

[WITNESS PANEL: Goodhue|Ware|Laflamme]

1 A (Ware) Okay. I have the schedule. It's actually
2 part of the 1604.06 schedule. And it's Schedule
3 1, Attachment A, Page 3. Perhaps, and without
4 going through, I guess I might ask Attorney
5 Brown, or to go to my testimony and pull out what
6 Bates page that is on.

7 But this revenue, what I'm going to be
8 talking about, the 12/31/2019 balance, which, at
9 the time of the filing, we had the balances as of
10 12/31/2018. This is a response to a Staff data
11 request.

12 Q Mr. Ware?

13 A (Ware) Yes.

14 Q Can you tell me what exhibit you're in?

15 A (Ware) So, you asked for the current balance,
16 which is not in any of the exhibits. I can give
17 you the balance --

18 Q Oh. Okay. I thought you said -- I thought you
19 said it was in the 1604 document, and that's an
20 exhibit, but I don't know what number that is.

21 A (Ware) All right. So, again, I'll ask Attorney
22 Brown which exhibit it is.

23 CHAIRWOMAN MARTIN: I apologize for
24 interrupting again. Mr. Goodhue needs to step

[WITNESS PANEL: Goodhue|Ware|Laflamme]

1 away for a minute. And, since we're in the
2 middle of questioning by the Commissioner, I
3 think we should pause for that.

4 *[Short pause and brief off-the-record*
5 *discussion ensued.]*

6 CHAIRWOMAN MARTIN: Okay. Back on the
7 record please.

8 **CONTINUED BY THE WITNESS:**

9 A (Ware) So, Commissioner Bailey, if you go to
10 Exhibit 4, Bates Page Number 129, which is what I
11 was referring to from the 1604.06 schedules,
12 you'll see a calculation of the RSF account
13 balance as of 12/31/2018, and the total of the
14 three RSF accounts at that time was the
15 2,199,352. The balances that were recommended,
16 as part of DW 16-806 to be maintained, was
17 3,920,000. So, about a \$1.7 million shortfall of
18 where the balances were supposed to be.

19 What I was referring to is, in the
20 round of data requests, which is not part of this
21 exhibit, so I'm not sure we should be talking
22 about it, was that during -- the Staff asked that
23 we calculate the current balances as of
24 12/31/2019. And there's been significant erosion

[WITNESS PANEL: Goodhue|Ware|Laflamme]

1 to the point that those balances in total, as
2 they exist now, are almost a million dollars in a
3 negative. So, the total balances, as of
4 12/31/2019, are about 960 -- negative \$964,000.

5 Q And how much of that do you think is unbilled and
6 uncollectibles?

7 A (Ware) So, I can't speak to the -- you know, to
8 the difference between that balance and the cash
9 balance, because we have bank accounts that, you
10 know, show each one of these accounts. So, for
11 instance, the PWW RSF account that underlies the
12 material operating expenses is at \$2,500. The
13 regulatory balance is at minus \$2,796,000. We
14 can't go negative on a cash account. So, the
15 difference is our borrowing from our corporate
16 line of credit has made that cash difference up.

17 The RSF account, under the City Bond
18 Fixed Revenue Requirement, is 1,015,000. So,
19 that is above the required 16-806 balance.

20 And the balance on the DSRR Rate
21 Stabilization Fund is 816,000 as of 12/31/2019,
22 versus 390,000.

23 There appears to be, and, again, it
24 varies from year to year, the difference in

[WITNESS PANEL: Goodhue|Ware|Laflamme]

1 between the regulatory balances and the cash
2 balances is part of what we're reconciling for
3 Staff in this last round of data requests that
4 are due next Tuesday.

5 But, you know, again, we're really
6 focused here on temporary rates as of 12/31/2018.
7 You know, we were already about \$1.7 million
8 below the allowed and imprest values of its RSF
9 accounts, because of the withdrawal on them,
10 because the 2018 expenses exceeded the 2018
11 revenues allocated for those expenses.

12 Q Okay. That's helpful. Thank you. Can you just
13 help me find the page in Exhibit 4 that you were
14 looking at? Because I'm on Bates Page 129, and I
15 don't see it.

16 A (Ware) All right. So, I'm on Exhibit 4. And let
17 me just make sure my eyes are good here.

18 MS. BROWN: May I jump in, Don?

19 WITNESS WARE: Yes. Please.

20 MS. BROWN: With respect to Exhibit 4,
21 there are multiple page numbers, because of prior
22 headers and footers. On the filed July 1, 2019
23 filing, it has -- it's at Bates Page 129. For
24 Exhibit 4, if you go to the middle of the page,

[WITNESS PANEL: Goodhue|Ware|Laflamme]

1 it's Page 9. The top of the document should
2 reference in the center "RSF Balance
3 Calculations". I believe that's the schedule,
4 Don?

5 WITNESS WARE: Yes, it is. My
6 apologies. I was looking at the Bates number on
7 the right-hand side, not the reference number in
8 the exhibit, which is Page 9.

9 So, hopefully, Commissioner Bailey, you
10 can find that at this stage?

11 CMSR. BAILEY: No. I have 161 pdf
12 pages. Can somebody tell me what pdf page it's
13 on?

14 MS. BROWN: Nine.

15 WITNESS WARE: Page 9.

16 CMSR. BAILEY: Okay.

17 BY CMSR. BAILEY:

18 Q This says "Pro Forma Adjustments to Rate Base RSF
19 Balance Calculations". Right?

20 A (Ware) Yes. That is the one.

21 Q Okay.

22 A (Ware) So, if you look under Paragraph A, it
23 shows the RSF balances as of 12/31/2017, --

24 Q Yes.

[WITNESS PANEL: Goodhue|Ware|Laflamme]

1 A (Ware) -- "4,953,107". Then, it shows the 2018
2 revenues that were part of the test year,
3 totaling "\$31,134,712". Then, it shows the
4 expenses in each one of those -- underlying each
5 one of those, totaling to "33,888,467". And, if
6 you take the balance at 12/31/17, add the
7 revenues, subtract the expenses, that gives you
8 the 12/31/2018 RSF balances at the end of the
9 test year. And to the far right are the balances
10 that were approved in DW 16-806, the target
11 levels that were to be established as part of
12 each rate case.

13 CMSR. BAILEY: Okay. I see it now.
14 Thank you very much. That's all I had.

15 CHAIRWOMAN MARTIN: Commissioner
16 Giaimo.

17 CMSR. GIAIMO: Thank you. I only have
18 a few questions, and they will be to Mr. Goodhue
19 and Mr. Ware. As an indication as to when I'm
20 done, I do have one question for Mr. Laflamme.
21 So, when I get to that, you'll know there's no
22 more.

23 BY CMSR. GIAIMO:

24 Q On Exhibit 4 -- or, I'm sorry, Exhibit 3, that's

[WITNESS PANEL: Goodhue|Ware|Laflamme]

1 what I believe was referred -- I believe was said
2 was that 26,000 of these bill notices went out,
3 and they were included in as a bill insert, is
4 that correct?

5 A (Ware) No. They were mailed -- okay. So, let me
6 clarify. Which mailing are we talking about?
7 The August mailing of 2019 associated with the
8 rate filing or the one associated with the
9 temporary rate hearing that we're in now?

10 Q Well, let's do both. Let's start with the
11 August, which looks like it was something that
12 was produced and inserted as a bill adder?

13 A (Ware) Yes.

14 Q Okay.

15 A (Ware) That is correct. We, during the July
16 bills of each of the four billing cycles, we put
17 that rate filing announcement in. So that went
18 out over a period of a month.

19 Q Okay.

20 A (Ware) As opposed to this filing or this
21 notification that we did in April, where we
22 pushed them out as an individual mailing
23 exclusive of the bills, they all went out as
24 quickly as possible.

[WITNESS PANEL: Goodhue|Ware|Laflamme]

1 Q Okay. So, with respect to Exhibit 3, which is
2 from last summer, there was no additional cost to
3 the Company, other than the production of -- the
4 printing costs associated with production of the
5 notice?

6 A (Ware) That is correct.

7 Q Okay. However, the April 2020 notice, that was
8 different. That was an independent one-off,
9 correct?

10 A (Ware) Correct.

11 Q Okay. Can a customer opt out of paper billing?
12 And, if that's the case, how would they receive
13 notice from last summer?

14 A (Ware) So, in their electronic bill that goes,
15 there also were bill references, and includes a
16 pdf on their electronic bill. So, if you open
17 your bill, it's a pdf of the bill that gets sent
18 out, and that includes a pdf of any insert. So,
19 any inserts, if you opt out of paper, show up in
20 your electronic bill format or pdf that you would
21 look at on your -- electronically on your
22 computer.

23 Q Thank you, Mr. Ware. For the April 2020 notice,
24 was it all mailed, or was it actually the

[WITNESS PANEL: Goodhue|Ware|Laflamme]

1 electronic was supplemented -- supplemented the
2 mailing?

3 A (Ware) No. It was -- they were all mailed. I
4 cannot speak to whether they also posted them,
5 you know, anybody who was just electronic is
6 electronic, but everybody got a U.S. Mail notice
7 in April.

8 Q Okay. Thank you. Advancing two exhibits, to
9 Exhibit 5, Attorney Brown asked a question about
10 the impact of COVID-19. And, Mr. Goodhue, you
11 went into some great detail explaining some of
12 the operations, the operations and detailed
13 actions and responses that the Company had. And
14 then, I thought I heard you talk to Attorney
15 Shute a little bit about kind of the financial
16 impact that COVID-19 could have.

17 I'm wondering, if you were to rewrite
18 your -- the joint testimony that is Exhibit 5, if
19 that was rewritten today, would it have a
20 different tenor?

21 A (Goodhue) Thank you, Commissioner Giaimo. Would
22 it have a different tenor? I think we put in
23 words relative to what we know, but also words
24 relative to uncertainties that we don't know.

[WITNESS PANEL: Goodhue|Ware|Laflamme]

1 You know, unfortunately, you know, we
2 all, I think, would love to have the answers to
3 what is happening, how long this is going to
4 last, how soon we might return to normal, what
5 the impact might be on our customers. And there
6 is just so much uncertainty around that.

7 And I think that what is really
8 important for the Commission to understand is
9 that we take our responsibility as a regulated
10 utility quite seriously. And one of the things
11 that we focus on is making sure that we can meet
12 the essential needs of our customers relative to
13 this. What comes with that is a degree of
14 uncertainty.

15 So, if I was to, I guess, craft
16 additional language into that testimony relative
17 to that, it would be of that tenor. It wouldn't
18 be anything of specificity or anything that I
19 could truly quantify at this point in time,
20 because I don't think we have those answers. But
21 I think we would put some potential additional
22 wording with regard to that uncertainty, but also
23 with regard to our need to meet our
24 responsibilities to our customers.

{DW 19-084} [RE: Temporary Rates] {05-13-20}

[WITNESS PANEL: Goodhue|Ware|Laflamme]

1 Q Okay. Thank you. I'm on Page 3 of, again, of
2 Exhibit 5, and I'm paraphrasing here, but -- so,
3 the revenue requirement is, was in the second
4 answer on the page, the revenue requirement was
5 36 and a half million, but the actual revenue was
6 32 million, for a deficiency of about 4 million.
7 Do I have that right?

8 A (Ware) That is correct.

9 Q Okay. So, scratching a little deeper, moving to
10 the next page, you explain the various factors
11 that make up that \$4 million. And what I see
12 here is about, on Line 1 of Page 4, it says "The
13 debt service on capital expenditures made in 2017
14 and '18 account for 4.06 of the almost 12 percent
15 increase."

16 So, that's a quarter of the total -- of
17 the total increase is associated with debt
18 service, is that right?

19 A (Ware) Yes. Well, a little less than three
20 percent of the rate increase. Now, that being
21 said, we're already collecting that in the QCPAC.
22 So, if nothing else were to change, the actual
23 bill for the customers would go up 11.91, if that
24 was what was granted, minus the 4.06 percent.

[WITNESS PANEL: Goodhue|Ware|Laflamme]

1 So, the actual increase would be 7.85 percent,
2 because they're already paying the QCPAC.
3 They're already paying the capital side, the
4 debts service and retirement.

5 Q Okay. All right. And that number for Pennichuck
6 would be higher than other traditional utilities,
7 based on your unique situation?

8 A (Ware) Well, so, the debt service and retirement,
9 we're 100 percent debt, where a typical utility
10 might be 50/50, an IOU. So, we have more debt.
11 But what you're missing is is that our debt
12 averages -- it's slightly now over 5 percent, I
13 believe, cumulatively, where, you know, it would
14 be about the same on the debt side.

15 But, on the equity side, you know, post
16 tax, it would be whatever, nine and a half
17 percent, you know, back when we were an IOU, it
18 was 9.75. When you gross it up for taxes, pretax
19 it was over 16 percent. So, that's one of the
20 big savings for the customers of being at 100
21 percent debt financed is the equity rate of
22 return.

23 Q Okay. Thank you for that. Then, in the
24 testimony, you go on to discuss some of the

[WITNESS PANEL: Goodhue|Ware|Laflamme]

1 increases associated with the transmission and
2 distribution system, and you talk about various
3 regulatory requirements.

4 I'm wondering if you might take a
5 moment to expand on these regulatory
6 requirements. Are they DES-related, Department
7 of Environmental Services-related? Are they in
8 any way related to anything the Commission does?
9 And are they -- to what extent are any of them
10 trade association suggestions, more than
11 regulatory requirements?

12 A (Ware) So, it's a combination of things. So, for
13 instance, in the area of regulatory requirements,
14 you know, and we're talking specifically, this is
15 relative to distribution and transmission, but
16 also in the area of water quality. We've had
17 standards change since 2016. The arsenic
18 standard is being changed. We have been through
19 significant monitoring associated with PFAS
20 fluorinated compounds. So, monitoring for those,
21 which has required us to change our carbon out
22 more frequently at the plant. We used to change
23 the carbon, at a total of about one and a half
24 million dollars, based on the current change-out,

{DW 19-084} [RE: Temporary Rates] {05-13-20}

[WITNESS PANEL: Goodhue|Ware|Laflamme]

1 about every seven years. That's looking like it
2 could be an annual change-out, in order to ensure
3 compliance with the recommended PFAS standards
4 that are currently in suspension, as you're
5 aware, that DES set a four-part standard, and the
6 standard for PFAS was set at I believe it was 12
7 or 11, and, you know, too many numbers rolling
8 around in my head these days, but parts per
9 trillion. And as a result, we need to polish our
10 water, which can, you know, depends up our source
11 of supply how much we have to polish it, and
12 that's what the carbon is for. And we're
13 looking, and have been for the last two years, at
14 how quickly the PFAS breaks through a fresh bed
15 of carbon. And, again, we might need an annual
16 change-out. So, instead of \$200,000 a year, you
17 could be looking at a million and a half. And,
18 to that tune, over the last year and a half, we
19 changed out all our carbon to ensure that we
20 would be in compliance with the standards that
21 DES had proposed, and actually implemented,
22 before they were suspended due to the current
23 court action. So, that's a regulatory one, and
24 that's a big one.

{DW 19-084} [RE: Temporary Rates] {05-13-20}

[WITNESS PANEL: Goodhue|Ware|Laflamme]

1 So, we also, you know, the DES -- or,
2 excuse me, both the DES, you know, and the PUC
3 have recommendations on meter testing. And, so,
4 to keep up with that meter testing, you know,
5 you've got to go in and test your smaller meters.
6 Three-quarters and five-eighths inch are every
7 ten years. And then, you go -- they get more --
8 they increase the regularity, one-inch is every
9 four years, and so on and so forth, six-inch
10 every year. So, that's a regulatory requirement
11 that we get in and test those meters.

12 Now, that expense, for the last number
13 of years, was not an expense until 2019, because
14 the labor associated with that testing regime was
15 being capitalized. And why was that? There was
16 a regulatory requirement that said "if you had
17 meters with a lead content", you know, brass used
18 to have a lead content through 2002 at about
19 eight percent lead. And then, the EPA and the
20 state said "You've got to change all your meters
21 out. We have to change them out, you don't have
22 to change them out all at once. You don't have
23 to change all 26,000 meters. But, when you go
24 and do your periodic tests, change the meter out

{DW 19-084} [RE: Temporary Rates] {05-13-20}

[WITNESS PANEL: Goodhue|Ware|Laflamme]

1 and put in the new meters." So, meters tested
2 every ten years. We've seen the smaller meters
3 last literally 40 years and still test well. So,
4 the good news is is that you're not having to --
5 every ten years, you're replacing only a very few
6 meters.

7 Unfortunately, in this case, over a
8 period from starting in around 2012 through the
9 middle of or through the middle or end of 2018 or
10 early 2019, every meter that we took out, the
11 brass exceeded the allowable lead content. And,
12 so, we had to dispose of it and put a new meter
13 in. Well, when we put a new meter in, the labor
14 was capitalized, rather than expensed. Now,
15 we're at a place where all the labor associated
16 with those tests each year, since they're all now
17 lead-free brass, is being expensed, because
18 you're not buying or putting in a new meter.
19 You're taking it out, taking it back, testing it.
20 Ninety-nine (99) percent of them are testing
21 fine. They get put on the shelf and get put into
22 the next place that the meter is being pulled for
23 testing. So, that's a big change in our
24 operating expense, and that is regulatory-driven.

{DW 19-084} [RE: Temporary Rates] {05-13-20}

[WITNESS PANEL: Goodhue|Ware|Laflamme]

1 We are, you know, it's good operating practice,
2 but also, you know, it's written into the DES and
3 Ten-State Standards.

4 Supposed to check our gate valves for
5 operability and for access, on a schedule from
6 anywhere from once every one year to once every
7 five years, depending upon the normal
8 requirements. Well, that got turned on its head,
9 when the City started paving forty miles' worth
10 of streets in a the year, where they had only
11 been paving three or four miles. And, so, you
12 know, we can't let -- we had to check gates that
13 weren't on the schedule to be checked for quite
14 some time, to make sure that, when they were done
15 paving, that we didn't have a gate that we
16 couldn't access, because the gate box was tipped
17 over, it was filled with dirt, the operating nut
18 on top of the gate was rounded, so you couldn't
19 operate the gate. And, so, that was a big
20 increase in cost.

21 And, lastly, one of the focuses, and
22 this is a recommendation, is this targeting the
23 amount of non-revenue water. Water that is being
24 lost because -- primarily because of leakage.

{DW 19-084} [RE: Temporary Rates] {05-13-20}

[WITNESS PANEL: Goodhue|Ware|Laflamme]

1 And, so, as your infrastructure ages, you start
2 getting leakage. You know, and it's typically
3 small amounts. A big leak you always find, a
4 hundred-gallon-a-minute pops up through the --
5 through the ground. A hundred --
6 10-gallon-a-minute leaks or 5-gallon-a-minute
7 leaks, a lot of those don't surface in our area,
8 because we have gravely soils. And, so, in an
9 effort, starting, you know, back, again, in
10 2016-17, to really start to look for leaks every
11 time we do different types of work. So, if we're
12 working on a hydrant, we listen on a hydrant,
13 we're listening for a leak. If we work on a
14 gate, we listen on the gate, we're listening for
15 a leak. If we go into a home, or we're checking
16 the curb-stop to a home, we're listening to see
17 if we hear any leakage. And no surprise, when
18 you start listening hard, you start finding and
19 hearing these small leaks.

20 As a result, you know, again,
21 additional effort, not in listening, because
22 we're combining that with our normal duties, you
23 know, it may add a minute or two, but in terms of
24 repair work. When you uncover a

{DW 19-084} [RE: Temporary Rates] {05-13-20}

[WITNESS PANEL: Goodhue|Ware|Laflamme]

1 5-gallon-a-minute leak, you don't leave it go,
2 you fix it. And, you know, so, maintenance of
3 mains, maintenance of services have gone up a
4 lot. But the benefit is is that the unaccounted
5 for water is now very close to the levels that --
6 so, 15 percent was the target level. The
7 industry is now saying 10 percent is the ideal
8 level.

9 We're, you know, again, following a
10 process and evaluating and seeing whether there's
11 any real benefit to the customer, in terms of
12 reduced production costs, to get down below ten
13 percent. You know, what does it cost you to
14 produce the water? How much does it cost you to
15 fix the leak? And do you cover the expense of
16 fixing the leak in the elimination of the expense
17 of producing the water?

18 That pretty much covers the points.

19 Q Yes. Thank you for answering the question. It's
20 good to have a better background with respect to
21 EPA and DES requirements. And part of the reason
22 of my question was -- part of the reason I asked
23 the question was to see if any of these
24 requirements were -- if the Company felt that any

[WITNESS PANEL: Goodhue|Ware|Laflamme]

1 of the requirements were unnecessary. But,
2 certainly, based on what you were talking about,
3 it sounds like the Company thinks those
4 requirements make sense, and there's no reason to
5 question those requirements?

6 A (Ware) That would be correct. We believe that,
7 you know, that the water proposed -- first of
8 all, from a water quality perspective, we're not
9 water quality scientists, and we have to depend
10 upon the regulatory agencies, with the
11 immunologists and, you know, the various people
12 who can speak to what's necessary to protect
13 human health. We're going to comply with those.

14 From an operating perspective, the
15 recommendations out there, whether it's testing
16 meters or test -- or checking gates and
17 services, all seem to be in line with what are
18 appropriate.

19 Q Okay. And, lastly, on this issue, before we
20 leave Exhibit 5, on the same page, Page 5, I'm
21 just hoping you might be able to help me better
22 understand what is meant by what appears to be
23 the first "c", the first Paragraph "c", not the
24 "c" that follows "d", but before "d"?

[WITNESS PANEL: Goodhue|Ware|Laflamme]

1 A (Ware) All right. Just bear with me while I find
2 that please. And this is in the temporary rate?

3 Q This is Exhibit 5, the temporary rate testimony.

4 A (Ware) Okay. And which page please?

5 Q Page 5, the first "c", that reads "Increases to
6 engineering expense created by the addition of
7 two full time staff" --

8 A (Ware) Yes.

9 Q -- "to manage, maintain and continually update
10 the Company's Asset Management Program." And I
11 think my first question is, is the engineering
12 expense a consultant expense?

13 A (Ware) No. That is full-time staff in order to
14 take all the information that we, first of all,
15 pick up in the field and make sure it's accurate
16 on the plans, and to maintain the operability of
17 the GIS asset management, which we use heavily in
18 the field, whether it's for Dig Safes for
19 repairs, for checking gate services, or
20 information on them, because everything that's
21 carried electronically in the field is maintained
22 in a GIS platform, where the assets are all
23 reviewable through the GIS platform back to the
24 Asset Management Program.

{DW 19-084} [RE: Temporary Rates] {05-13-20}

[WITNESS PANEL: Goodhue|Ware|Laflamme]

1 Q Okay. The two full-time staffers, are they
2 engineers?

3 A (Ware) No. One -- they actually both have GIS
4 backgrounds. And, so, in our arena today, that's
5 a big background, they're, you know, a big thing
6 that people look at is GIS specialists.

7 Q Okay. Thank you, Mr. Ware. I appreciate your
8 responses.

9 A (Ware) You're welcome.

10 Q And, Mr. Laflamme, I'm in the Settlement, so
11 that's Exhibit 8, Page 3. So, I just want to
12 make sure I heard you correctly, Mr. Laflamme.
13 You said that the most important number on this
14 page is the 890,000, because it's, and I'm
15 paraphrasing you and I want to make sure I'm
16 paraphrasing it right, it's the determining
17 factor that justifies, at a minimum, continuing
18 the current rates. Is that right? Do I have
19 that right?

20 A (Laflamme) Yes. Yes.

21 Q And you also mention that the temp. rates and the
22 future reconciliation that would be associated
23 with permanent rates, that those will improve the
24 Company's position in the debt market. I just

[WITNESS PANEL: Goodhue|Ware|Laflamme]

1 want to make sure that I understand that
2 correctly. Is that right?

3 A (Laflamme) It would seem to, you know, based on,
4 you know, we've had a number of data requests and
5 responses from the Company. And, so, based on
6 what -- how the Company has responded to previous
7 Staff data requests, it would appear to, it would
8 appear to have an improvement, but nothing is --
9 but nothing is guaranteed.

10 Q And the fact that it did improve the financial
11 situation, those would flow back to the
12 ratepayers in lower debt costs?

13 A (Laflamme) Yes. That's our belief and our hope.

14 CMSR. GIAIMO: Thank you, Mr. Laflamme.
15 Madam Chair, that's all the questions I have.

16 CHAIRWOMAN MARTIN: Okay. Thank you.
17 Mr. Tuomala and Ms. Brown, do you have any
18 redirect?

19 MS. BROWN: Attorney Tuomala, I have
20 some slight redirect. Didn't know if you wanted
21 to start or I can go?

22 MR. TUOMALA: Madam Chair, Attorney
23 Brown, I do not have any redirect. So, I defer
24 to Attorney Brown.

[WITNESS PANEL: Goodhue|Ware|Laflamme]

1 MS. BROWN: Okay. If you don't mind me
2 asking a question of your client -- of your
3 witness?

4 MR. TUOMALA: Not at all.

5 **REDIRECT EXAMINATION**

6 BY MS. BROWN:

7 Q Mr. Laflamme, do you recall the questioning by
8 Commissioner Bailey of the Statement of Income
9 and taxes, on Line 9 and 8? And I'm looking at
10 Exhibits, for the record, 6 and 7, the Annual
11 Reports.

12 A (Laflamme) Yes. I have the 2018 Annual Report in
13 front of me.

14 Q Okay. And this is a general question. But just
15 to prompt you, when Commissioner Bailey and Mr.
16 Ware were discussing the tax -- how the taxes are
17 reported on these schedules, I know the question
18 was directed to Mr. Ware, but I thought it would
19 be important to add if Staff had any perspective
20 to add on that explanation, that I would give you
21 that opportunity to elaborate.

22 So, if you have nothing to add, then
23 that's it. But that's the nub of the question.

24 A (Laflamme) With, you know, specifically, with

[WITNESS PANEL: Goodhue|Ware|Laflamme]

1 regard to, I'm not certain -- and this has to do
2 with the income tax expense?

3 Q And how it was reported on these schedules, and
4 Mr. Ware's explanation of how it was -- how they
5 actually pay, you know, cash, taxes. And I just
6 thought, with that discussion, it was fairly
7 lengthy, if you had anything to add, that I would
8 give you an opportunity to?

9 A (Laflamme) I don't have anything to add to that.

10 Q Okay. Okay. Thank you. Now, with respect to
11 the questioning from Commissioner Giaimo and Mr.
12 Ware, you were asked about the Asset Management
13 plans. And can you please explain whether they
14 are required by DES? Are you on mute?

15 A (Goodhue) Mr. Ware is on mute currently, Attorney
16 Brown.

17 A (Ware) Okay.

18 Q Yes. Thank you.

19 A (Ware) Well, when we say they're "required",
20 they're certainly encouraged, and you cannot
21 access SRF funds unless you have a full-fledged
22 asset management. During the Sanitary Surveys
23 completed every three years, it is always stated
24 that, if you do not have an Asset Management GIS

[WITNESS PANEL: Goodhue|Ware|Laflamme]

1 Program, that you are required to have one. I've
2 never seen it in the regulations. But the
3 Sanitary Survey citation, as well as the linking
4 of the SRF drinking water and ground water trust
5 fund loan money, which is very attractive money,
6 less expensive than the market-driven sale of
7 funds, you cannot access those unless you have a
8 full-fledged and functioning GIS and asset
9 management programs in place.

10 Q Thank you. And I know Mr. Goodhue is the expert
11 on rating agencies. Did you have anything to add
12 to Mr. Ware's response on how the Asset
13 Management plans are used?

14 A (Goodhue) Yes, I do. I will tell you that I am
15 probably the primary person from the Company that
16 speaks with the rating agencies whenever we do a
17 bond issuance and they issue a rating for that
18 issuance, and to all of our outstanding debt.

19 And, with Standard & Poor's, is the
20 rating agency that we use, and one of the
21 questions that they do focus in on is whether the
22 Company has an asset management system in place.
23 They look at that as a part of their overall
24 evaluation of financial risk for an issuer in the

[WITNESS PANEL: Goodhue|Ware|Laflamme]

1 marketplace. They want to make sure that, you
2 know, the solvency of the financial structure of
3 a company, their ability to repay a debt
4 instrument, their ability to assess whether
5 projects are required, are prudently budgeted,
6 and prudently expended, are based on clear,
7 concise bases. And, as such, asset management is
8 one of the key contributing factors they look at
9 relative to that part of their overall assessment
10 of a company's bond rating.

11 MS. BROWN: Thank you. I don't know
12 that Mr. -- or, Commissioner Giaimo expected to
13 have that much of an embellishment, but I wanted
14 to at least give a full perspective that, when we
15 have in the testimony a reference to "engineering
16 expense" in the Asset Management plan, that
17 there's a whole lot behind that.

18 Attorney Tuomala, those were the only
19 redirects that I thought of. Do you still not
20 have any?

21 MR. TUOMALA: I have nothing further to
22 add. Thank you.

23 MS. BROWN: Thank you. That ends at
24 least the Company's redirect.

1 CHAIRWOMAN MARTIN: All right. Thank
2 you. My understanding is that we will go to oral
3 argument next.

4 Before doing that, if there's no
5 objections, based on the agreement, we'll strike
6 the ID on Exhibits 1 through 8 and admit those as
7 full.

8 I see Mr. Tuomala shaking his head. Is
9 that a "yes" or a "no"?

10 MR. TUOMALA: I'm sorry, Madam
11 Chairwoman. I was -- it was a "yes", I agree.
12 No objections, I agree.

13 CHAIRWOMAN MARTIN: Okay. That was my
14 assumption. So, we will admit those as full
15 exhibits. And we will move to the arguments.

16 Attorney Brown, were you planning to
17 open with the legal argument?

18 MS. BROWN: I can.

19 CHAIRWOMAN MARTIN: Great.

20 MS. BROWN: And I would like to discuss
21 a point that came up in -- in my closing, discuss
22 a point that Jayson Laflamme had mentioned in his
23 direct, about in the motion that Pennichuck had
24 filed for temporary rates, and misquoting the

1 negative earnings. I just want to state for the
2 record, I own that mistake. It is an obvious
3 mistake. And I apologize for any confusion that
4 I caused the Commission and the parties on that.

5 With respect to the term of the
6 Settlement Agreement where Pennichuck agrees to
7 file for temporary rates, I just want to put
8 Pennichuck's perspective on that, is that we do
9 not consider this term to negate any authority
10 that the Commission has, that any other parties
11 have under RSA 378:27 to request temporary rates
12 on their own. And I just wanted to make that
13 clarification.

14 And, obviously, today, Staff and the
15 parties are asking the Commission to implement
16 temporary rates under its authority under RSA
17 378:27, and the reconciliation that's offered
18 under 378:29. This proceeding started in July of
19 2019, when the Company filed its tariffs to
20 implement their rate increase effective thirty
21 days later, on August 1st. And the Commission
22 opened this proceeding to commence an
23 investigation. And I mention that, because it's
24 important to know who has triggered the

1 confiscatory rate issue.

2 When a commission suspends the rate,
3 knowing that the books and records on file with
4 the Commission show that a utility is
5 under-earning or, in this case, does not have
6 sufficient revenues to meet its expenses, then it
7 triggers the constitutional, you know, state and
8 federal issue of takings of personal property.

9 However, in RSA 378:27, in New
10 Hampshire, there's a statutory mechanism to
11 address confiscatory rates. And so, there's kind
12 of a toggle between not allowing rates to go into
13 effect, not allowing a utility to recover these
14 unbilled revenues, puts -- heads down the path of
15 confiscatory rates and takings of property in
16 violation of the Constitutions, versus the other
17 end of the seesaw is allowing recoupment or, in
18 this case, what we're asking for is temporary
19 rates, and recoupment through that temporary rate
20 mechanism.

21 So, here you've heard testimony through
22 Mr. Goodhue and Mr. Ware that the Company's
23 revenues are not keeping pace with the expenses.
24 You have that testimony to bolster what is

1 already on the record, you know, constitutes the
2 books and records on file with the Commission,
3 and that being the 2018 and 2019 Annual Reports
4 that have been marked as Exhibits 6 and 7.

5 So, we submit that there is ample
6 evidence to show that there's a deficiency, and
7 that there's ample evidence in the record to show
8 the deficiency. And we haven't had any parties
9 in this hearing questioning the legitimacy of
10 those documents.

11 Now, with respect to the effective
12 date, Pennichuck understands OCA's concern. And,
13 on direct examination -- or, cross-examination
14 Attorney Shute had pointed to testimony forgoing
15 asking for temporary rates at the outset of this
16 rate proceeding. We understand that now the
17 Company is asking for temporary rates, that that
18 could cause a disconnect among customers. And to
19 that point, it was purposeful that, when seeking
20 temporary rates, Pennichuck sought to implement
21 those temporary rates effective March 16th, which
22 is the date it filed those tariffs.

23 Now, under the 1980 *Appeal of*
24 *Pennichuck* case, which the Commission is

1 intimately aware of, because it cites it so
2 regularly, the earliest date on which a
3 commission can order temporary rates to take
4 effect is the date on which the utility files its
5 underlying request for a change in permanent
6 rates. So, while the Company did not ask for
7 rates effective July 1, 2019, or the effective
8 date of the tariffs, August 1, 2019, it complied
9 with the spirit of that, in light of the OCA's
10 concern about notice to customers, and chose to
11 use its filing date of March 16. So, Pennichuck
12 would submit that, legally, the Commission is
13 well within its authority statutowise,
14 precedentwise, to award temporary rates effective
15 service-rendered March 16.

16 Now, I'd also like to touch upon the
17 practical effective notice that Witness Donald
18 Ware had testified to today. With all of the
19 notice that was done in the underlying proceeding
20 for permanent rates, it was quite extensive. The
21 notice that was done for temporary rates was
22 equally as extensive, and, to that point, you
23 know, over 20 -- about 26,000 paper notices were
24 sent out. And I would like to just note that

1 paper notices were sent, because the Company is
2 not set up to cover all of its customers with an
3 electronic means of disseminating notice.

4 So, Pennichuck firmly believes that,
5 with the statutes and legal authorities, the
6 Commission can grant temporary rates as
7 requested, and that the issue of customer notice
8 has been amply addressed through the multiple
9 notices that have been provided to the customers.

10 So, with that, the Company respectfully
11 requests that the Commission approve the proposed
12 terms of the Settlement Agreement, including the
13 term of service rendered on or after March 16,
14 2020. The Company believes that this will result
15 in just and reasonable rates, and that the rates
16 will be consistent with the public interest.

17 Thank you very much.

18 CHAIRWOMAN MARTIN: Thank you.
19 Attorney Bolton, are you going to argue on this?

20 MR. BOLTON: Thank you. No.

21 CHAIRWOMAN MARTIN: Okay. Thank you.
22 Ms. Shute.

23 MS. SHUTE: Thank you, Chairwoman
24 Martin and Commissioners. And thank you for

1 hearing the OCA's arguments in regard to the
2 effective date for temporary rates.

3 We do support the application for
4 temporary rates. We simply are looking for a
5 different effective date.

6 While we understand the concerns of the
7 Company, we don't feel that they justify an
8 exception by the Commission that could be used in
9 the future to justify similar vagaries. The
10 Commission essentially has a choice, to either
11 follow the statutory scheme prescribed by the
12 General Court and the methods promulgated by the
13 PUC rules, or to exercise its plenary power. And
14 we are simply urging the Commission to establish
15 the effective date of the temporary rates using
16 the existing statutory and regulatory guidelines.
17 We don't contest that the Commission has the
18 plenary power, in regard to changes in rates, to
19 grant an exception. We just don't see a
20 compelling reason to provide such an exception in
21 this situation.

22 The Company made a choice not to
23 request temporary rates when it filed for
24 permanent rates, though it was aware of its

1 ongoing cash flow deficits. The Company has now
2 chosen to file such rates. As I said, we support
3 that request, and recommend the effective date
4 that corresponds with the notice that was
5 provided to ratepayers on April 15th of 2020.

6 So, with your leave, I'll just identify
7 and provide the following: One, the statutory
8 and regulatory scheme that I was referring to;
9 two, I'd like to differentiate the existing
10 exceptions that have occurred, such as in Docket
11 17-136, and also how the 1980 holding from the
12 *Appeal of Pennichuck* needs to be put in context;
13 and, lastly, to address the constitutional
14 argument for confiscatory rates and why we
15 believe that's misguided and misplaced in the
16 ownership circumstance at hand.

17 The statutes and the rules are in place
18 for guidance and fairness to both ratepayers and
19 shareholders, and using the plenary powers to
20 grant exceptions to these should be reserved for
21 exceptional circumstances that are not foreseen
22 or anticipated by either the General Court or the
23 Commission.

24 So, in -- I'd reference a 2001 *Appeal*

1 of the Office of the Consumer Advocate to the
2 Supreme Court, and acknowledging that residential
3 utility customers don't have a vested property
4 interest in the settling -- in the setting of
5 utility rates absent statutory mandate. However,
6 as that case identify, and that's 148 New
7 Hampshire 134, the General Court specifically
8 included due process rights in 378:7, in fixing
9 of rates, and in 378:27, in fixing of temporary
10 rates. "The Commission may, after reasonable
11 notice and hearing...immediately fix, determine,
12 and prescribe for the duration of said proceeding
13 reasonable temporary rates."

14 Further, and I think perhaps most
15 importantly, 378:3, on change, provides the
16 Commission -- though 378:3 also provides the
17 Commission discretion to otherwise order, it
18 specifically states that "no change shall be made
19 in any rate...except after thirty days notice to
20 the Commission and such notice to the public as
21 the Commission shall direct." This statute
22 allows the Commission to direct when the change
23 in the rate can occur, based on the notice to the
24 public that the Commission requires.

1 And the Commission has provided
2 direction in two ways regarding notice to the
3 public. The first is in issuing orders and the
4 second is in promulgating rules. So, in this
5 instance, the Commission, on April 13th, which
6 was less than one month after the Motion for
7 Temporary Rates filed on March 16th, ordered that
8 the Company "send notice to all its customers of
9 the proposed temporary rates no later than April
10 15th", and "notify all persons desiring to be
11 heard by publishing a copy of the order on its
12 website."

13 In addition, the Commission has
14 promulgated rules that provide transparency and
15 predictability to the Company in regards to the
16 Commission's orders. Specifically, Puc 1600
17 rules on tariffs and special contracts provide
18 guidance on notice to the public. 1604.03(a)
19 states "A utility shall notify the public of a
20 proposed rate change by publishing an order of
21 notice issued by the commission."

22 We'd also note that, even though the
23 request is set to -- is to set temporary rates at
24 current rates, this still constitutes a change as

1 provided for in 378:3, because those temporary
2 rates will establish the effective date for
3 recoupment under the permanent rates.

4 Consequently, this change should not be made,
5 except after notice to customers and publication
6 of this order on its website, as requested by the
7 Commission. And the Company accomplished these
8 methods of notice in accordance with 378:3 on
9 April 15th. Therefore, we believe that's the
10 effective date for the temporary rates.

11 We do agree that this same section
12 provides discretion to the Commission to
13 "otherwise orders", and, in fact, the Commission
14 has done so in its pending docket 17-165 for
15 Abenaki.

16 In 17-165, just as a quick background,
17 there was a January notice for suspending
18 permanent rates that referenced the likelihood of
19 temporary rates. Then, there was a filing of
20 temporary rates on January 18th, the same day
21 that that permanent rate suspension order was
22 noticed to customers. Then, in August, an
23 approval of a almost fifteen percent rate
24 increase was ordered with a notice of such, and a

1 settlement agreement established the effective
2 date for temporary rates as May 1st.

3 However, the docket in front of us can
4 be distinguished from 17-165 for several reasons.
5 First, in that docket, the Commission was not
6 determining the effective date, but approving a
7 date negotiated among the settling parties that
8 was part of an informal disposition by
9 stipulation that the Commission has the right to
10 approve, so long as it's not precluded by law.
11 Second, the first order, on January 5th, 2018, in
12 the Abenaki case, suspending the permanent rates,
13 specifically noted that the Company anticipated
14 seeking a temporary rate increase, which it, in
15 fact, did thirteen days later. Whereas, in this
16 docket, the first order specifically noted that
17 "PWW is not seeking temporary rates."

18 So, to recap, in Abenaki, the January
19 notice to customers indicated that Abenaki
20 anticipated seeking a temporary rate case, which
21 was filed in January, and the parties agreed to a
22 May effective date. In this case, the notice
23 specifically and unequivocally that went -- the
24 notice that went to customers specifically

1 unequivocally stated the Company declined to seek
2 temporary rates. And, furthermore, the parties
3 had not agreed to an effective date in this, but
4 seek the Commission's determination.

5 In addition, we feel compelled to
6 address the Company's analysis of the 1980 *Appeal*
7 *of Pennichuck Water Works* Supreme Court case,
8 which the Commission has also referenced, and
9 referenced in the docket that I was just
10 discussing on 17-165.

11 It's important to put in context the
12 holding that the earliest date on which the PUC
13 can order temporary rates to take effect is the
14 date on which the utility files its underlying
15 request for a change in its permanent rates. The
16 Supreme Court was specifically addressing, and
17 the following sentence in that holding reads "in
18 no event may temporary rates be made effective as
19 to services rendered before the date on which the
20 permanent rate request is filed." So, they can
21 establish that the effective date wasn't for
22 bills issued after that date, but for services
23 rendered after that date. So, this holding
24 should really be interpreted as a limitation on

1 the discretion of the Commission provided for in
2 378:3. It should not be interpreted as
3 determining when temporary rates should take
4 effect, since it did not address other relevant
5 statutory and constitutional issues, such as
6 notice.

7 In its reply to the OCA's objection to
8 a March 16th effective date, the Company raised
9 the constitutional issue of confiscatory rates,
10 and raised it again today. They also raised the
11 failure of the OCA to address that issue in our
12 objection.

13 So, we'd note that, first of all, that
14 issue was not raised in the Company's initial
15 March -- in its initial Motion for Temporary
16 Rates. But, second, the constitutional
17 confiscatory argument presumes investors seeking
18 a rate of return. But the ownership structure of
19 this company makes this argument nonsensical, as
20 it's 100 percent owned by a municipal, and it's
21 100 percent debt financed. So, there's no
22 property interest that is being taken. And, in
23 fact, it is because it is by necessity 100
24 percent debt financed and controlled -- and owned

1 by the municipal, that it's half a million
2 dollars in annual cash profits are actually
3 irrelevant for its \$13 million in -- in any
4 event, that its half a million dollars in annual
5 profits are irrelevant.

6 Three, the same case that the Company
7 tries to reply on in *Appeal of Pennichuck Water*
8 *Works* identifies that "There is no constitutional
9 requirement that mandates the PUC to correct
10 retrospectively past errors in judgment made by
11 the utility." And this is exactly that. It's an
12 error in judgment made by the utility to not seek
13 temporary rates at the time of its permanent rate
14 filing, and a misplaced belief that filing
15 temporary rates was not necessary for recoupment,
16 when the very plain language of the statute makes
17 this clear.

18 This same 1980 case referencing 378:29
19 states that the effective date of temporary rates
20 "fixes and determines the period during which the
21 rates allowed in the underlying permanent rate
22 proceeding may apply."

23 The Company's counsel has continued to
24 assert that the temporary rate mechanism is not

1 necessary for the establishment of the recoupment
2 date of permanent rates. And we encourage the
3 Commission to set the record straight that the
4 statute is specific and direct on this issue, so
5 that there is no mistake or confusion in future
6 filings that a temporary rate effective date
7 establishes the recoupment allowance of permanent
8 rates.

9 So, in conclusion, one, the statutory
10 scheme indicates that no change shall be made in
11 any rate, except after such notice to the public
12 as the Commission shall direct; two, the
13 Commission promulgated rules indicating that a
14 utility shall notify the public of a proposed
15 rate change by publishing an order of notice
16 issued by the Commission; three, the Commission
17 ordered the Company to provide such notice to its
18 customers by April 15th; and, four, the Company
19 complied with its order.

20 So, therefore, the OCA respectfully
21 submits that this change to rates, the effective
22 date of the temporary rates should be April 15th.

23 And, lastly, I'd just like to address
24 the COVID pandemic issue. We do not think that

1 the date of the temporary increase should be
2 confused with the issue of the COVID pandemic.
3 Because it could confuse any potential future
4 dockets on the COVID pandemic issue. So, we
5 believe that these issues should be separated.

6 And that is all I have. Thank you.

7 CHAIRWOMAN MARTIN: All right. Thank
8 you. Attorney Tuomala.

9 MR. TUOMALA: Thank you, Madam
10 Chairwoman and Commissioners. Hopefully, this is
11 briefer than I anticipated, since most of the
12 subject matter was already spoken to by both
13 attorneys.

14 But it's Staff's position that March
15 16th, 2020 should be the effective date for
16 temporary rates for service rendered, and that
17 the Commission is allowed to on three bases. The
18 Supreme Court precedent that's already been
19 spoken to by both attorneys, and I'll go into a
20 little bit about that; two, prior Commission
21 practice, which has also been partly spoken to by
22 Attorney Shute; and, third, that this was the
23 product of negotiations and compromise on the
24 part of Staff and PWW. Obviously, not all

1 parties agreed to that term in the Settlement,
2 but PWW, in conjunction with Staff, did agree
3 upon this date when they were discussing the
4 matter of temporary rates before filing.

5 So, first, to the matter of the Supreme
6 Court precedent, I do acknowledge the OCA's
7 concerns for the setting of the effective date of
8 March 16th. And I also do agree with the OCA's
9 interpretation of that precedent, in regards to
10 it being not an authority that you can or should
11 always approve the effective date back to the
12 date of the permanent rate filing. That is the
13 permissible amount. I want to be clear that
14 Staff would never recommend that, at this point,
15 those rates should be set effective July 1st.
16 Which, if you read the black letter law of the
17 Supreme Court precedent, you would be allowed to,
18 but I would in no way encourage that. I am
19 comfortable in the fact that March 16th is an
20 allowable date, and, again, because that Supreme
21 Court precedent, in black and white, says that
22 you have the authority to set it all the way back
23 to July 1st.

24 Two, the past Commission practice, that

1 I'm not going to go through everything in Docket
2 Number 17-165, which Attorney Shute had touched
3 upon, she is correct in the timeline. And she
4 also is correct that it was the product of a
5 settlement agreement. However, I just would note
6 that the timeline of that situation is that the
7 order was issued in -- excuse me for a moment --
8 on August 31st, with Commission notice not being
9 published until July 24th, but effective three
10 months earlier, to a May 1st effective date for
11 temporary rates. So, it was a full three months
12 after the effective date, from the time when
13 customers -- the order was published and customer
14 notice. So that it is anomalous, I do admit,
15 that, over the course of the last ten years,
16 typically, water dockets, the effective date is
17 set at the date of when customers receive notice.

18 However, I would argue that this
19 situation was similar to 17-165, because it did
20 contain the subject issue of temporary rates not
21 being filed concurrently with permanent rates.
22 And both of those dockets dealt with
23 irregularities, shall we say, because it's
24 typical of water dockets that a company would

1 file for temporary rates at the same time as
2 permanent rates. So, I just point to that
3 docket, 17-165, as recent past Commission
4 practice, where it set an effective date three
5 months before customers received notice.

6 The second Commission practice that I
7 was pointing to was the result of the Pennichuck
8 Appeal, when it was remanded back to the PUC. In
9 that case, the Supreme Court remanded to the PUC
10 to determine the effective date. They set the
11 boundaries in their precedent, but they didn't
12 determine what the correct effective date is.
13 They acknowledged that that is solely the PUC's
14 responsibility. And PWW came back and asked "all
15 right, we would like the effective date to be
16 service rendered on the date of filing", and in
17 that docket it was December 29th of 1978.

18 The Commission ultimately decided on
19 January 31st of 1979. And that is, however,
20 important, because temporary rates weren't filed
21 in that case until two weeks after the effective
22 date. The filing, not even notice, but the
23 Company did not file for temporary rates in that
24 case until February 12th. So, the Commission

1 effectually authorized temporary rates to be set
2 two weeks before they even filed for it.

3 Now, again, I know that that's a thirty
4 plus year precedent -- forty plus year precedent,
5 excuse me, of Commission practice, but I argue
6 that it's anomalous in nature such as this one,
7 where it wasn't filed concurrently with permanent
8 rates. And we have the issue before us where the
9 Company is making the issue, in proving its case,
10 that it needs temporary rates. And I think that,
11 with past Commission practice, you can rule that
12 the effective date is March 16th.

13 And the last point, as I've already
14 touched upon, is that this was a product of
15 agreement, too, in its discussions prior to PWW
16 filing for temporary rates, for Staff looking at
17 the past Commission practice, and seeing the
18 similarities between other dockets, which were
19 anomalous, supported PWW to file right away, and
20 discussion supported the effective date being the
21 date of filing. Even though it is an exception
22 to the typical practice, we feel that this docket
23 in itself, in the temporary rates, are an
24 exception to most water dockets.

1 And, to the OCA's argument, the
2 statutory requirements of 378:27, I feel that
3 those have been met as well, because the order
4 won't be issued until after this hearing, and due
5 notice had been provided for this hearing. The
6 customers received that notice, requesting their
7 intervention, if they so chose, and no members of
8 the public have exercised that right. So, I
9 believe that the requirements of 378:27 have been
10 met.

11 And that, in conclusion, you do have
12 the authority, and the rightful authority, to
13 order effective date March 16th, service
14 rendered, for temporary rates.

15 Thank you.

16 CHAIRWOMAN MARTIN: Thank you. I have,
17 before -- I see your hand, Attorney Brown, I
18 wanted to ask a follow-up or ask for a follow-up
19 from both Attorney Brown and Attorney Tuomala, on
20 argument side, to the extent you have a response.
21 I'm not hearing a dispute as to the legal
22 authority for the Commission to set the effective
23 date at either of the proposed dates.

24 What I'm wondering, based upon the

1 OCA's argument, is what is the reason in this
2 case that it should be set at the later dates?
3 If you could argue that point, I would appreciate
4 it. And then, Attorney Brown, you can add
5 anything else. All right.

6 Attorney Tuomala, do you want to start
7 with that?

8 MR. TUOMALA: Sure. And I just, if I
9 may, could you clarify your question? I just
10 want to make sure that I address it
11 appropriately. Are you asking what the argument
12 is for the earlier effective date, other than the
13 Commission has the authority to choose either?

14 CHAIRWOMAN MARTIN: Yes. I hear you
15 all are conceding, I think, that the authority
16 exists for either date. And if you could make
17 the argument for the date, the earlier date, that
18 would be appreciated.

19 MR. TUOMALA: From Staff's position, I
20 would point out to my third point, which was this
21 is the product of compromise between PWW and
22 Staff. And noting that -- that the longer that
23 PWW goes without this recoupment, the worse their
24 financial position will be. I believe, I do not

1 have I think it was PWW's objection in front of
2 me, and I don't -- I cannot verify a dollar
3 amount associated with that time. But I know
4 that it has been represented that the one-month
5 delay will produce a concrete and significant
6 financial impact on the Company. And, as Staff,
7 we're mindful of the balance between ratepayers
8 and the Company. And that's why we felt
9 comfortable on the earlier, because it would
10 provide the Company with those extra revenues,
11 that one month's extra revenue, which ultimately,
12 as all the testimony provided today, improves
13 their cash flow position, their stance in the
14 debt market, and ultimately ratepayers, at least
15 from Staff's understanding.

16 That is what we would pin why the
17 Commission should choose the March 16th over the
18 April 16th time.

19 CHAIRWOMAN MARTIN: Okay. Thank you.
20 Attorney Brown.

21 MS. BROWN: Yes. Thank you. And I,
22 with respect to OCA having argued that PennCorp
23 and Pennichuck may be municipal, and what's the
24 private, you know, what's the property interest

1 at stake here, I'd like to just note factually
2 that PennCorp. is, even though it's owned by a
3 municipality, is still a private entity with
4 private rights. So, these companies are still
5 private, with the private property rights that
6 are protected under the state and federal
7 Constitution.

8 With respect to the reasons why the
9 earlier date, you know, we could have -- I guess
10 it goes to the settlement point. We agreed not
11 to litigate that the reach back or
12 reconciliation, whether it needed to be under the
13 state temporary rate methodology or whether it
14 could be under the plenary authority to address
15 confiscatory at the, you know, state and federal
16 level, we weren't going to litigate that. But I
17 see how it's relevant to setting the effective
18 date.

19 With respect to the March 16th date,
20 again, as Attorney Tuomala had cited, it's
21 consistent with past precedent with using a
22 filing date. I would also like to note, with
23 respect to notice, that Pennichuck, under 378:6,
24 III, could have implemented, without additional

1 notice, through bonding, those very rates that it
2 sought to implement for August 1, 2019.

3 So, while there is case law
4 interpreting the statute, there are similar
5 statutes, such as the bonding statute, which
6 allow an implementation as of the date of the
7 filing of the tariffs. So, I think that also
8 supports the earlier March 16 date.

9 Confiscatory rates is an issue. If the
10 Company had to lose recovery of these unbilled
11 revenues for another month, then you're starting
12 to tip the scale toward confiscatory rates,
13 which, while if we are on the state side, and I
14 understand OCA and Staff believe that recovery
15 can only happen under the temporary rates, it
16 does touch the federal side of the argument that
17 these -- this inability to recover the revenues
18 would result in confiscatory rates and a taking
19 under the Fifth Amendment of the federal
20 Constitution. And it's well settled that state
21 statutes cannot supersede the federal
22 Constitution.

23 So, I think that's all of the other
24 arguments I can add. But, if we start getting

1 down the path of litigating the right to recoup
2 outside of temporary rates, that that would be
3 something that would have to be briefed. I know
4 that OCA had asked that the Commission settle
5 that issue. I don't think this particular
6 presentation today, or what has been filed in the
7 docket so far, is the best way, you know, best
8 record to be making that decision, and would ask
9 that the Commission restrict its findings to what
10 has been discussed in the Settlement request.

11 Thank you.

12 CHAIRWOMAN MARTIN: Okay. Thank you.
13 Do either of the other Commissioners have any
14 follow-up on that argument?

15 *[Cmsr. Bailey and Cmsr. Giaimo*
16 *indicating in the negative.]*

17 CHAIRWOMAN MARTIN: Okay. Thank you.
18 Then, I think we are ready to close the hearing.
19 We will take the matter under advisement. And
20 the hearing is adjourned. Thank you, everybody.

21 MS. BROWN: Thank you.

22 ***(Whereupon the hearing was adjourned***
23 ***at 12:07 p.m.)***