

STATE OF NEW HAMPSHIRE  
PUBLIC UTILITIES COMMISSION

September 10, 2007 - 1:14 p.m.           DAY VI  
21 South Fruit Street  
(Afternoon Session)  
Concord, New Hampshire

RE: DW 04-048  
CITY OF NASHUA, NEW HAMPSHIRE:  
Petition for valuation pursuant to RSA 38:9

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

Connie Fillion, Clerk  
Jeannette McArthur, Clerk

APPEARANCES

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Linda Regan, paralegal

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East Utilities & Pittsfield Aqueduct Co.:  
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4 Representing the Town of Milford:  
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6 Representing the Town of Merrimack:  
7 Edmund Boutin, Esq.

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10 Representing Residential Ratepayers:  
11 Office of Consumer Advocate  
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I N D E X

WITNESS PANEL:           GEORGE E. SANSOUCY  
                                  GLENN C. WALKER

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EXHIBITS

EXHIBIT NO.	DESCRIPTION	PAGE
Intervenor 4007	Chart	5

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

2 (Afternoon session)

3 CHAIRMAN GETZ: Good afternoon. We're  
4 back on the record on docket DW 04-048, turning to  
5 completing the examination of Mr. Sansoucy and  
6 Mr. Walker.

7 My notes indicated we're at the  
8 examination by Mr. Boutin, is that correct? Is  
9 there anything that we need to address before  
10 Mr. Boutin starts?

11 MR. BOUTIN: I do have one housekeeping  
12 matter.

13 CHAIRMAN GETZ: Well, then, please  
14 proceed, and we'll hear what your issue is.

15 MR. BOUTIN: I had made -- in  
16 cross-examination of the Veolia witnesses I had  
17 made reference to the chalk on the board over  
18 there, and I understand they're easily reproduced,  
19 and I would like to have that reproduced just so  
20 it's preserved, because I referred to it several  
21 times, and marked as the next subsequent  
22 intervenor exhibit.

23 CHAIRMAN GETZ: We will do that. I

1 thought I saw -- has that already been copied?

2 MS. KNOWLTON: It was copied, but it  
3 was not marked.

4 CHAIRMAN GETZ: Let's mark it as the  
5 next intervenor exhibit, which -- let's see.

6 (Discussion off the record.)

7 CHAIRMAN GETZ: We'll go back on the  
8 record. The next, I guess, intervenor witness  
9 identification number for testimony is 4007, and  
10 that will be assigned to the -- I don't know how  
11 to describe this. This is your --

12 MR. BOUTIN: It is an exhibit that I  
13 referred to in the examination of Veolia  
14 witnesses, and it is taken from a chart prepared  
15 by Mr. Camerino in his examination. The first  
16 column is base fee, and the next columns are RRRM,  
17 transition, capital projects, and supplemental.

18 CHAIRMAN GETZ: Thank you. Okay,  
19 proceed.

20 (Intervenor Exhibit 4007 marked)

21 CROSS-EXAMINATION

22 BY MR. BOUTIN:

23 Q. Mr. Sansoucy --

1                   CHAIRMAN GETZ: I'm sorry, excuse me.  
2           Just for the record let me note you're still under  
3           oath from the first day of testimony.

4                   MR. SANSOUCY: Yes, your Honor.

5                   MR. WALKER: Yes, your Honor

6           BY MR. BOUTIN:

7           Q.       Taking you back to the FERC consent  
8           decree -- one of your favorite subjects, I'm  
9           sure -- one of the things that wasn't discussed  
10          with the commission, you were placed on probation  
11          for 18 months by FERC, weren't you?

12          A.       (By Mr. Sansoucy) I think so, yes.

13          Q.       And at the end of that 18 months you  
14          were required to certify that everything you had  
15          done complied with the law in the intervening  
16          time, is that right?

17          A.       (By Mr. Sansoucy) I think so, yes.

18          Q.       And did you do so?

19          A.       (By Mr. Sansoucy) My recollection is  
20          yes.

21          Q.       Now, you were also required as part of  
22          the order to certify all of the documents that you  
23          had put on file at FERC for any party prior to the

1 date of the consent order, is that correct?

2 A. (By Mr. Sansoucy) I don't remember  
3 that.

4 MR. BOUTIN: Let's pull up  
5 Exhibit 3201, please, page 7, paragraph 7.

6 Q. Would you take a moment to look at  
7 that. So this pertained to all of the other  
8 documents you'd filed with FERC, is that right?

9 A. (By Mr. Sansoucy) No.

10 Q. No? What does it pertain to, in your  
11 understanding?

12 A. (By Mr. Sansoucy) Well, I haven't read  
13 this in over 20 years, but within 30 days after the  
14 commission issues an order approving this  
15 stipulation and consent, Sansoucy shall execute and  
16 file with the commission a declaration in the form  
17 attached hereto as B in which he declares under  
18 penalty of perjury that to the best of his  
19 knowledge all documents he has prepared or reviewed  
20 for submission to the commissioner or staff, with  
21 the exception of 87A-8 and A of Cumberland's  
22 exemption application in the letter of July 18th  
23 referred to above -- I think this refers to

1 Cumberland's documents.

2 Q. Well, as I understand it, it refers to  
3 everything but the Cumberland's documents.

4 A. (By Mr. Sansoucy) My understanding is  
5 in reading it after -- since 1985, it was  
6 Cumberland's documents with the exception of.

7 Q. Now, you had also filed with the FERC  
8 the documents on behalf of several plants that  
9 you -- or several facilities that you had an  
10 ownership interest in, is that right?

11 A. (By Mr. Sansoucy) When you say I filed  
12 with FERC, I filed many things with FERC, and we  
13 did have an ownership interest in a number of  
14 plants.

15 Q. Does this paragraph apply to those  
16 filings?

17 A. (By Mr. Sansoucy) I don't remember.

18 Q. Let's go on to -- during your  
19 deposition and at other times you have expressed  
20 the opinion that the PUC staff is biased against  
21 Nashua. Do you still stand by that accusation?

22 A. (By Mr. Sansoucy) I was very clear in  
23 my deposition; it's not as you characterized it. I

1 have said the PUC is biased against municipal  
2 ownership, not against the city of Nashua.

3 Q. Why don't we go to -- see if I can find  
4 the exhibit here -- Exhibit 3198A.

5 MR. BOUTIN: At the second paragraph,  
6 please highlight the first two lines.

7 Q. You accused them of not performing any  
8 independent analysis, is that correct?

9 A. (By Mr. Sansoucy) Yes, I did.

10 Q. Do you still believe they didn't  
11 perform an independent analysis?

12 A. (By Mr. Sansoucy) Yes, I do.

13 Q. Now, I asked you in your  
14 deposition about the procedures for the  
15 commission. Would you agree with me that the  
16 analysis that is required by the staff is to look  
17 at the prefiled testimony and the data requests  
18 filed by the parties, including the staff's own?

19 A. (By Mr. Sansoucy) That's one of the  
20 things they're required to do.

21 Q. And there are hundreds of those data  
22 requests?

23 A. (By Mr. Sansoucy) Yes.

1 Q. And there are thousands of pages of  
2 documents?

3 A. (By Mr. Sansoucy) Yes.

4 Q. Do you feel that the commission staff  
5 failed to examine those documents properly?

6 A. (By Mr. Sansoucy) I don't know if they  
7 examined them or not.

8 Q. Well, based on the data requests that  
9 they propounded, do you think they were propounded  
10 in ignorance?

11 A. (By Mr. Sansoucy) I do not know if they  
12 examined all the documents or not.

13 Q. Go to page 2 of that exhibit, please.

14 MR. BOUTIN: First line, please  
15 highlight it.

16 Q. This is a presentation you made before  
17 the water committee on June 29th, '06, as was the  
18 previous page?

19 A. (By Mr. Sansoucy) Yes.

20 Q. Do you recall making the statements you  
21 did?

22 A. (By Mr. Sansoucy) Yes, I do.

23 Q. That indicates that you accused the

1 staff of very serious bias against the city. Do  
2 you still hold that opinion?

3 A. (By Mr. Sansoucy) I think you need to  
4 read the whole thing. I have always maintained in  
5 this proceeding that they have been biased against  
6 public ownership of the plant.

7 Q. Well, that's not what this sentence  
8 says, though, does it?

9 A. (By Mr. Sansoucy) Yes, it does. The  
10 last six words, seven words of the sentence are  
11 clear.

12 Q. Well, if that's all you said, I'd agree  
13 with you, but you also said a very serious bias  
14 against the city.

15 A. (By Mr. Sansoucy) And against public  
16 ownership of the plant, which has always been my  
17 intent.

18 Q. Go to the next page, please. In the  
19 third full paragraph under George Sansoucy, the  
20 first five lines beginning with there is an  
21 institutional bias.

22 A. (By Mr. Sansoucy) Your question, sir?

23 Q. Do you still hold that there is an

1 institutional bias by the staff against the city?

2 A. (By Mr. Sansoucy) I still hold there's  
3 an institutional bias by the staff against public  
4 ownership of these companies.

5 MR. BOUTIN: Pull up Exhibit 3197,  
6 please. Go to the second page -- I'm sorry, go  
7 to -- it's page 10 of that meeting minute, and  
8 there's a large number -- it's 3197004 on the  
9 bottom. Thank you.

10 Q. Before we begin with that, I want to  
11 direct some questions to Mr. Walker, please.

12 BY MR. RICHARDSON:

13 Q. Now, you work for George Sansoucy, PE  
14 LLC, is that right?

15 A. (By Mr. Walker) That's correct.

16 Q. And that's a New Hampshire limited  
17 liability company?

18 A. (By Mr. Walker) It's my understanding,  
19 yes.

20 Q. Are you a principal of that company?

21 A. (By Mr. Walker) I am not.

22 Q. So that you are strictly an employee?

23 A. (By Mr. Walker) Correct.

1 Q. Now, in March -- I believe it was March  
2 19th of 2000 there was a contract entered into  
3 between George Sansoucy, LLC -- PE LLC and the  
4 city of Nashua, do you recall that?

5 A. (By Mr. Walker) I believe that's been  
6 subject to testimony in this proceeding.

7 Q. Is that the only --

8 MR. BOUTIN: Again, Mr. Chairman, I'd  
9 like to have on the record whatever the  
10 conversation is.

11 CHAIRMAN GETZ: Yeah, I think we tried  
12 to go over this before, Mr. Sansoucy. If he's  
13 directing a question to Mr. Walker, then you're  
14 not in a position to coach him, or whatever it is  
15 you're trying to communicate to him; let's keep it  
16 between the attorney and the witness he's trying  
17 to address.

18 MR. SANSOUCY: I think the  
19 representation of the contract was wrong. My  
20 recollection was it was not 2000.

21 CHAIRMAN GETZ: Well, but he's  
22 addressing a question to Mr. Walker. If  
23 Mr. Walker -- let's see where it goes, and keep

1 that in mind. Could you also turn that -- yeah,  
2 that would be great. Thank you.

3 MR. BOUTIN: Why don't we call up  
4 Exhibit 3036, please. And let's go to the next  
5 page.

6 BY MR. BOUTIN:

7 Q. Is this the contract that you  
8 understood I was referring to?

9 A. (By Mr. Walker) That's what I was  
10 responding to. That's the subject of my testimony  
11 in this proceeding, yes.

12 Q. And you can see from the previous page  
13 we had on the screen that that was March 2004, was  
14 it?

15 A. (By Mr. Walker) I believe that to be  
16 correct, yes.

17 Q. Now, is that the only contract under  
18 which you provide services to the city of Nashua?

19 A. (By Mr. Walker) That's something I  
20 could not answer.

21 Q. As far as you know, is it the only  
22 contract that was used to provide services to the  
23 city of Nashua?

1           A.       (By Mr. Walker) I could answer that  
2       it's one of the contracts that is used to provide  
3       services to the city of Nashua.  Whether there's  
4       another, I'm unaware.

5           Q.       Was there a separate appraisal contract  
6       which you signed as the appraiser?

7           A.       (By Mr. Walker) I don't believe so, no.

8       BY MR. RICHARDSON:

9           Q.       Mr. Sansoucy, is this the contract  
10       under which you provided the services you provided  
11       to the city of Nashua?

12          A.       (By Mr. Sansoucy) Would you be kind  
13       enough to go back a page to 001 so I could see the  
14       cover sheet?  This is a contract to provide  
15       services to the city, and I believe this is the  
16       first contract that was amended.

17                    It is after the initial 2000 and --  
18       this is '04 -- I think a 2003 either contract or  
19       letter engagement prior to this?

20          Q.       With George Sansoucy --

21          A.       (By Mr. Sansoucy) For the -- for the  
22       Risso work.

23          Q.       All right.  Was there any other

1 contract after this?

2 A. (By Mr. Sansoucy) There's the amendment  
3 to this contract, yes.

4 Q. And what did that amendment deal with?

5 A. (By Mr. Sansoucy) That amendment dealt  
6 with the commission ruling that it would be not a  
7 taking of three companies, but of just Pennichuck  
8 Water Works.

9 Q. And what did the amendment do?

10 A. (By Mr. Sansoucy) It completely changed  
11 the scope of the contract to address the commission  
12 ruling.

13 Q. So other than limiting the scope of the  
14 contract to the Pennichuck Water Works assets, did  
15 it address any other significant issue?

16 A. (By Mr. Sansoucy) No, it pretty much  
17 addressed the scope change.

18 Q. And the services to be provided were of  
19 the same type?

20 A. (By Mr. Sansoucy) Similar.

21 Q. Now, going to the next page, please.

22 BY MR. BOUTIN:

23 Q. Mr. Walker, did you discuss the

1 contents of this contract with Mr. Sansoucy prior  
2 to the engagement?

3 A. (By Mr. Walker) I don't recall. I  
4 mean, I clearly was aware we were working for city  
5 of Nashua -- proposing to work for the city of  
6 Nashua, I should say, with respect to the contract,  
7 I don't recall.

8 Q. And was it clear to you that you were  
9 going to be providing engineering and valuation  
10 reports, business plans, consulting engineering,  
11 and testimony relating to the water utility?

12 A. (By Mr. Walker) That I was or the firm  
13 was?

14 Q. That the firm was.

15 A. (By Mr. Walker) That's my  
16 understanding, that the firm would be providing a  
17 series of functions for Nashua, yes.

18 Q. Go on to the next page, please. Were  
19 you aware that the firm was going to provide --

20 MR. BOUTIN: And highlight, please,  
21 2.1.1-A1, an initial inventory of assets within  
22 and outside the city of Nashua.

23 A. (By Mr. Walker) With respect to this

1 specific clause, I can't recall. I mean, that  
2 would be something you'd have to do, but.

3 Q. Well, you -- if we scroll down to  
4 number 4, A-4, you're going to provide an initial  
5 evaluation of appraisal for the plant and property  
6 within and outside the city of Nashua to be  
7 acquired by Pennichuck Water Works. You  
8 understood that to be a scope of the work?

9 A. (By Mr. Walker) I understood we would  
10 be preparing a fair market appraisal for the  
11 commission to consider, yes.

12 Q. Well, you know, that's kind of curious,  
13 because you characterize it here as fair market  
14 appraisal, but in No. 4 it's an initial valuation  
15 appraisal adequate for the public interest  
16 finding.

17 Now, it seems to me that's somewhat  
18 more limited than providing a fair market value  
19 appraisal as an appraiser ordinarily would use  
20 those words, isn't it?

21 A. (By Mr. Walker) Yeah, any time you use  
22 the word an initial valuation appraisal it would  
23 probably be something different than what we

1 provided the commission.

2 Q. Now, this is an aside, but as I  
3 remember there are three types of appraisals that  
4 appraisers do; there's a summary appraisal, which  
5 is kind of a middle ground, there's a special  
6 purpose, a restricted appraisal, which is the  
7 least demanding, and then I forget what the top  
8 tier appraisal is called, is it comprehensive?

9 A. (By Mr. Walker) Complete appraisal.

10 Q. Complete appraisal. Now, no area in  
11 any of the contracts that I've seen has there ever  
12 been described the type of appraisal, as you have  
13 used the term, that -- what type of appraisal you  
14 were doing, whether it was comprehensive, summary  
15 or limited?

16 A. (By Mr. Walker) That's correct. And  
17 just to be clear, counselor, those provisions have  
18 been taken out of USPAP. Those were historic  
19 references in USPAP.

20 Q. What is the current USPAP terminology  
21 for the type of appraisal that would be consistent  
22 with a complete or comprehensive appraisal?

23 A. (By Mr. Walker) Well, again, that would

1 be up to the intended users. What USPAP has done  
2 is to allow for a broader range of services to be  
3 provided by appraisers. They have eliminated that  
4 terminology that we just referred to, restricted  
5 use, limited scope, and self-contained appraisal  
6 work, and they have gone to a scope section where  
7 it's up to the appraiser to provide a scope of  
8 services to be performed, and the object is to  
9 convey what you're doing as to not be misleading to  
10 the intended user of the appraisal product.

11 Q. Who is the intended user of this  
12 appraisal we're talking about?

13 A. (By Mr. Walker) It states -- the  
14 intended user would be the city of Nashua in its  
15 testimony before the commission.

16 Q. So at all times you considered the city  
17 and not the commission to be the intended user,  
18 even though the commission is, in fact, the  
19 ultimate user, is that right?

20 A. (By Mr. Walker) That is correct, and,  
21 again, as long as it's not misleading to either  
22 party, I believe Nashua was always intent in filing  
23 this with the commission.

1                   So any time you have litigation, your  
2                   client or your user would be the party who you're  
3                   working for, and it would be presented to the fact  
4                   finder; in this case it's the commission, in other  
5                   litigation it might be the Superior Court.

6                   Q.       I want to flip to the next page for a  
7                   moment. Looking down at the bottom paragraph B.  
8                   The first line begins a series of other steps to  
9                   be taken by George Sansoucy, PE LLC. And if I go  
10                  to the next page, No. 4 --

11                  MR. BOUTIN: If you could highlight  
12                  that, Daniel.

13                  Q.       -- prepare the detailed valuation  
14                  appraisal for the plant and property adequate for  
15                  the final valuation hearings outside the city of  
16                  Nashua to be acquired -- oops, I'm sorry, that's  
17                  not the one.

18                  It's 3 -- to be acquired from  
19                  Pennichuck Water Works, the same terminology  
20                  otherwise.

21                  Now, here we talk about a detailed  
22                  valuation appraisal adequate for the final  
23                  valuation hearings. Now, does that define a --

1       what would formerly have been called a complete  
2       appraisal or does it define something less?

3           A.       (By Mr. Walker) I would say that that  
4       would be referring to the final, complete  
5       appraisal.

6           Q.       Now, adequate for final valuation  
7       hearing, that appears to be a limitation of scope,  
8       would you agree with me?

9           A.       (By Mr. Walker) I think it's -- I think  
10       it's more clarifying language than limitation on  
11       the scope.

12          Q.       Well, what you were doing, clearly, had  
13       no other purpose than to convince the commission  
14       of a particular valuation for your client Nashua,  
15       is that right?

16          A.       (By Mr. Walker) No, we were providing  
17       an opinion of market value based on the conditions  
18       set forth in that appraisal that could be used by  
19       the commission; sets forth the fair market value of  
20       Pennichuck.

21                   And if I could, counselor, one thing,  
22       I've given appraisal process is sort of like a  
23       funnel in that a lot of times you can provide

1 initial or summary appraisals, then provide ranges  
2 or opinions of value along the way to your client  
3 that may not be as refined as the final project,  
4 and so the more information you have going into the  
5 funnel, hopefully the more refined and adequate the  
6 appraisal at the end.

7 Q. Well, as a matter of fact, that funnel  
8 is something that you really have to assiduously  
9 both feed and understand, isn't that so, so that  
10 the -- this massive information going in is  
11 essentially filtered down through the funnel so  
12 that you've applied all of your training and  
13 skills as an appraiser to evaluate it and  
14 determine its accuracy?

15 A. (By Mr. Walker) That's one thing. The  
16 other thing you have to keep in mind is sometimes  
17 appraisals are performed just based on public  
18 information as opposed to other information. So  
19 the other thing I view the funnel to do is limit  
20 the scope or create assumptions that you're using  
21 prior to finalizing your valuation.

22 Q. As a matter of fact, if you have an  
23 extraordinary assumption or any hypothetical

1 information or an assumption, you have to disclose  
2 it, isn't that so?

3 A. (By Mr. Walker) Typically, yes.

4 Q. Now, for instance, when Mr. Conner was  
5 cross-examining Mr. Sansoucy on the cost method  
6 and he identified that there were gaps in this  
7 appendix D which was the list of the inventory of  
8 assets?

9 A. (By Mr. Walker) Correct.

10 Q. And then elicited testimony that there  
11 was no comparison which would have trued up the  
12 information on Exhibit D with the thousands of  
13 feet of pipe that were, in fact, part of the  
14 records of the company, do you remember that  
15 testimony?

16 A. (By Mr. Walker) I do recall the  
17 testimony.

18 Q. Do you recall going through that  
19 appendix D in making your evaluation?

20 A. (By Mr. Walker) I do recall considering  
21 the information that was used in appendix D, and at  
22 page 37 of the appraisal report we identified that  
23 there was some limitations with those documents.

1           Q.       And, as a matter of fact, that was  
2       where you were using a -- a technique to  
3       essentially trend original costs, isn't that  
4       right?

5           A.       (By Mr. Walker) That's -- that is what  
6       we did, yes.

7           Q.       And that is an accepted method under  
8       certain limited circumstances, isn't that so?

9           A.       (By Mr. Walker) It's certainly an  
10      accepted method. I guess with respect to certain  
11      limited situations, we'd leave that open.

12          Q.       In fact, those cases which Mr. Conner  
13      referred the commission to in New York really took  
14      to task the appraisers, including yourself, over  
15      the quality of information that was used to  
16      develop costs in other appraisals methods, isn't  
17      that so?

18          A.       (By Mr. Walker) Again, I haven't read  
19      those decisions in a while, but my recollection is  
20      the cost approach in those proceedings was within  
21      10 percent in all the years, whether one uses  
22      trended or another method.

23          Q.       And they took greater issue with the

1 income and sales approaches, didn't they?

2 A. (By Mr. Walker) In New York, based on  
3 the case law of the state of New York, I think  
4 that's probably correct.

5 Q. Well, if the commission were to read  
6 those opinions, the judge didn't seem to rely on  
7 case law at all, he relied on the fact that the  
8 methodology was inadequate, things weren't  
9 checked, things weren't reconciled. Isn't that  
10 what his opinions -- both opinions dealt with?

11 A. (By Mr. Walker) Again, if you'd like to  
12 point out sections of the decision, I'll be  
13 happy --

14 Q. Well, I'll leave it to the commission  
15 who's going to read it, and I'm sure they're going  
16 to ask their counsel to read it, but they were  
17 shocking in terms of their analysis.

18 MR. UPTON: I object to the  
19 characterization.

20 MR. BOUTIN: Withdrawn.

21 MR. UPTON: Thank you.

22 BY MR. BOUTIN:

23 Q. Now, Mr. Walker, we may get back to

1       that a little later, but let's talk a moment about  
2       this appendix D.  If the information is  
3       information on costs, things that you're trending,  
4       is not complete, adequate, or is otherwise  
5       unreliable, that sends you to another method to  
6       determine costs, doesn't it?

7             A.       (By Mr. Walker) Not necessarily.

8             Q.       Well, isn't it true that if you cannot  
9       properly trend original costs then you've got to  
10       do a replacement cost net -- replacement cost new  
11       less depreciation method?

12            A.       (By Mr. Walker) I'm not aware of any --  
13       you know, I'm not aware of any information.  It  
14       would depend upon the magnitude of the problems  
15       with the original cost data.  Certainly at some  
16       point that would make sense.

17            Q.       So were you aware --

18                    MR. BOUTIN:  I'm going to refer to  
19       Sansoucy deposition 8, which appears to be one of  
20       the batches of his work papers, and there's a  
21       letter dated November 15, 2005 from Sarah Knowlton  
22       to Justin Richardson.  If you could put that on  
23       the Elmo.

1           Q.       Take a moment to read that, if you  
2       please.

3                   MR. BOUTIN:   And, Daniel, when he gives  
4       the high sign, would you move to the second page?

5                   MR. UPTON:   I have no objection to this  
6       exhibit or to the use of this letter, but I just  
7       want to remind the commission that this whole area  
8       was the subject of a number of motions and  
9       ultimately a decision by the commission on the use  
10      of the continuing property records and whether the  
11      continuing property records maintained by the  
12      company were adequate.

13                  CHAIRMAN GETZ:   The decision in a  
14      separate proceeding?

15                  MR. UPTON:   No, in this proceeding.

16                  CHAIRMAN GETZ:   In this proceeding?  
17      Give me the cite.   I'm trying to test my memory  
18      here.

19                  MR. UPTON:   I don't remember.   There  
20      are pleadings that relate to this.

21                  MS. KNOWLTON:   I would just note that  
22      the question there was whether that docket  
23      involving consideration of the chart of

1 accounts -- the question was should be  
2 consolidated with this eminent domain case, and  
3 that's what the commission said was, no, we'll  
4 have two separate proceedings, and so they weren't  
5 joined together. So that was the extent of the  
6 relation to this docket, if any.

7 MR. BOUTIN: Can you put up the second  
8 page, Daniel? Thank you.

9 A. (By Mr. Walker) Yes, I've read that  
10 letter.

11 Q. Go back to the first page, would you?  
12 I'm concerned with the last paragraph. The  
13 paragraph beginning on page 1 and then going over  
14 to page 2 appears to be a very direct statement  
15 that the records are inadequate without  
16 significant analysis and additional information  
17 for you to determine what it is that the original  
18 costs were, isn't that so?

19 A. (By Mr. Walker) Well, again, sir, I  
20 have seen this letter before and we did take that  
21 under advisement, which is why at page 37 we  
22 identified that there were some issues with these  
23 continuing property records.

1 Q. But you went ahead anyway and based  
2 whatever decision you made on costs on the trended  
3 original cost method, is that right?

4 A. (By Mr. Walker) With respect to the  
5 cost new, that is correct, sir.

6 Q. And you never did a sticks and bricks  
7 analysis, is that right?

8 A. (By Mr. Walker) In this -- excuse me,  
9 I'm going to defer to Mr. Sansoucy. In this  
10 appraisal I don't believe we did. Certainly we had  
11 done --

12 Q. Well, hold on a minute. Before you  
13 defer, you're the appraiser. So I want to know  
14 whether you did or whether anybody under your  
15 direction or control did it under your direction?

16 A. (By Mr. Walker) With respect to this  
17 appraisal?

18 Q. Yes.

19 A. (By Mr. Walker) No.

20 Q. Now, if I look at the USPAP  
21 standards -- and I trust I'm going to cite you to  
22 a current one -- I'll read it, but we may have to  
23 put it up on the board. USPAP standard rule 4-1.

1                   MR. BOUTIN: Can you put that on the  
2 screen? Do you have your book? I have it.

3                   I'll withdraw that question.

4           Q.       Do you view your use of that  
5 information with its deficiencies as being  
6 consistent with your obligation -- your ethical  
7 obligation as an appraiser?

8           A.       (By Mr. Walker) Absolutely.

9           Q.       And why is that?

10          A.       (By Mr. Walker) Pardon me?

11          Q.       Why is that?

12          A.       (By Mr. Walker) Well, when you look at  
13 an appraisal, first of all, you have to understand  
14 that there's three approaches used; there's the  
15 cost approach, the sales comparison approach, and  
16 income capitalization approach.

17                   We developed the cost approach in this  
18 instance. But as I've testified previously, it is  
19 probably not the best method of estimating this  
20 type of property in the marketplace, nor do we tend  
21 to use the cost approach. We focus more on the  
22 income capitalization and sales comparison approach  
23 because that's what people in the marketplace rely

1 on when they buy and sell this type of property.

2 And, in addition to that, we had  
3 excellent sales data for this system in the fact  
4 that we had an auction one year prior to the  
5 appraisal date where the winning bidder was  
6 \$106 million, approximately, for the whole system;  
7 we're appraising a piece of that.

8 We had great data in the other  
9 approaches, and that's not to say you don't  
10 consider all three approaches, but the overwhelming  
11 majority of the data supported our conclusion.

12 Q. And I think you had 26 or 28 examples  
13 of the comparable sales, and you whittled that  
14 down to nine, and then as we heard your testimony  
15 the other day, it appears that of that nine, many  
16 of them were acquisitions of far greater  
17 properties than the one that you were making a  
18 comparison to.

19 And what it seems to me -- or what I'd  
20 like to know is, if you placed such great weight  
21 on a comparable sale, how can you do it if the  
22 comparables aren't truly comparable?

23 A. (By Mr. Walker) Well, first of all,

1 commissioner, we placed weight on both the sales  
2 approach and income capitalization approach -- I'm  
3 sorry, attorney.

4 Q. I was fine with the promotion.

5 A. (By Mr. Walker) Let me start, first of  
6 all, we placed weight on both the sales comparison  
7 and capitalization approaches.

8 Secondly, when we look at the ratios of  
9 sales price to cash flow, or EBITDA, that's really  
10 what drives people in the marketplace. People  
11 aren't buying this piece of property because they  
12 like the layout of the pipe or the color of the  
13 treatment plant, they're buying this type of  
14 property based on the cash flow it's going to  
15 generate for them relative to what they pay for it.

16 And in this instance, not only do we  
17 have those transactions you talked about in  
18 addition to the income capitalization approach we  
19 performed, but in 2002 we had the whole Pennichuck  
20 Water Works being offered for sale with active  
21 bidders giving us indications as to what the whole  
22 system was worth, of which this was a significant  
23 piece.

1                   So when you take that into  
2                   consideration, I think that provides, you know,  
3                   clearly indication as to why one should use the  
4                   sales comparison approach.

5                   MR. BOUTIN: Let's bring up  
6                   Exhibit 3197, page 004. Now, down to the last  
7                   paragraph, first line --

8                   CHAIRMAN GETZ: Are you addressing  
9                   Mr. Walker still?

10                  MR. BOUTIN: No, I'm sorry, I'm  
11                  addressing Daniel. No, 3197, 004, just highlight  
12                  it.

13                  MR. CONNER: I trust you'd get a yes or  
14                  no answer, your Honor.

15                  Q.       This is a budget review meeting dated  
16                  March 16, 2004, as you see above, about three days  
17                  before you entered into a contract with Nashua for  
18                  all these services.

19                  Did you at the time have a hard number  
20                  that Nashua could publicly advance?

21                  A.       (By Mr. Walker) No, at that time we had  
22                  not finished our appraisal.

23                  Q.       Had you begun an appraisal?

1           A.       (By Mr. Walker) Not the appraisal  
2 submitted before the commission. We may have done  
3 some analyses, we may have looked at some  
4 transactions, but it was not set forth as it is  
5 before the commission today.

6           Q.       Well, had you formed an opinion of  
7 value at that time?

8           A.       (By Mr. Walker) Generally we understood  
9 the market at that time and we understood the  
10 approaches we were going to use, the methods we  
11 were going to use, and generally the information.

12                       Again, as I said, appraisal is a  
13 function of a funnel, and based on public  
14 information you can determine certain ranges and  
15 certain opinions of the property, but certainly as  
16 you do more analysis, get more data from the  
17 company, do additional research, those opinions  
18 will change.

19           Q.       Well, let's see what end of the funnel  
20 we're working from here. Go down to the last  
21 line, the last sentence of that paragraph, bottom  
22 paragraph. Mr. Sansoucy is saying I will be  
23 reviewing and developing no net harm consensus

1 with the city of Nashua, and if they don't like  
2 it, they'd better get to the table now, not later.

3 Do you take the they in that sentence  
4 to be Pennichuck?

5 A. (By Mr. Walker) Just give me a second  
6 to read this. They, it would make sense -- again,  
7 I didn't make this statement, and it may be better  
8 to ask Mr. Sansoucy, but it would make sense that  
9 they would be Pennichuck in the context of this  
10 paragraph.

11 Q. Well, Mr. Sansoucy, does the word they  
12 refer to Pennichuck in that sentence?

13 A. (By Mr. Sansoucy) Yes, sir.

14 Q. Mr. Walker, did you discuss what  
15 Mr. Sansoucy was going to present to the budget  
16 committee that night prior to that meeting with  
17 Mr. Sansoucy?

18 A. (By Mr. Walker) Not specifically. I  
19 don't believe so, no.

20 Q. Well, not specifically. Did you  
21 discuss the subject matter of that meeting?

22 A. (By Mr. Walker) Again, Mr. Sansoucy and  
23 I had several -- you know, hundreds, maybe

1 thousands of conversations over Nashua, value of  
2 water systems with respect to what he was going to  
3 say. There I don't recall what he may have relied  
4 upon from our conversation to incorporate into his  
5 presentation at the budget hearing.

6 Q. Well, to the extent you had those  
7 conversations, as your employer, you, of course,  
8 pay a great deal of attention to him, right?

9 A. (By Mr. Walker) I would --

10 Q. I take that as a yes?

11 A. (By Mr. Walker) I'm trying -- let's  
12 assume he took them under advisement.

13 MR. BOUTIN: Let's go to the next page,  
14 please. Let's go down to the bottom paragraph.  
15 No, that doesn't look right. I want to go to page  
16 14 of those minutes. 189, the next page. Down at  
17 the bottom paragraph.

18 Q. I'll represent to you this is again  
19 Mr. Sansoucy talking before the budget committee.

20 A. (By Mr. Walker) I see this paragraph.

21 Q. Now, he's talking directly about  
22 valuation analysis. Does that refresh your  
23 recollection as to whether before that meeting you

1 and Mr. Sansoucy had talked about valuation of the  
2 company?

3 A. (By Mr. Walker) No.

4 Q. Okay, he indicates he's going to have  
5 to present a value. The next thing he says is  
6 value generates rates. Do you agree with that  
7 statement?

8 A. (By Mr. Walker) I agree that one of the  
9 components of rates would be that, yes.

10 Q. Well, his statement is a little  
11 stronger than that, value generates rates. Were  
12 you conscious of that advice to the town when you  
13 were doing your appraisal?

14 A. (By Mr. Walker) Certainly we understood  
15 that our value and ultimately the commission's  
16 ruling on a value would be an input into what  
17 future rates would be.

18 Q. And then if you go down to the sixth  
19 line of that paragraph he states the test of  
20 value -- the ultimate test of value is no net  
21 harm.

22 Were you aware of that as the company's  
23 position when you were doing your appraisal?

1           A.       (By Mr. Walker) No -- as the company's  
2           position when we were doing the appraisal.  What we  
3           were doing is finding fair market value.

4           Q.       What relevance does no net harm have to  
5           an appraisal to find fair market value?

6           A.       (By Mr. Walker) Well, in the general  
7           context -- and, again, if you have specific  
8           questions you can ask Mr. Sansoucy -- in the  
9           general context when one looks at the sale of  
10          properties such as the Pennichuck system, there is  
11          an understanding that the new acquirer can  
12          arbitrarily raise rates.

13                    The rate regulating process acts as a  
14          proxy, if you will, in competitive market -- for  
15          competitive market forces.  And so you are always  
16          cognizant of the fact that there is a certain level  
17          at which you would need to raise rates and thus,  
18          you know, you couldn't justify purchase prices in  
19          the market that would exceed that.

20          Q.       And since the commission is setting the  
21          purchase price as opposed to a market negotiation,  
22          the concept of no net harm is directly relevant,  
23          in your company's mind, to the commission's

1 determination of value, isn't that so?

2 A. (By Mr. Walker) Not directly, but it  
3 is -- it is something that you have to consider.

4 Q. Well, what is the cart and what is the  
5 horse between no net harm and the commission's  
6 role in valuation?

7 A. (By Mr. Walker) Well, I guess if I can  
8 just use an example, counselor. I mean, certainly  
9 if we were to arbitrarily say that next year  
10 Pennichuck was to get a 50 percent rate increase,  
11 every -- no input -- no change to rate base, no  
12 change to operating expenses, but just because of a  
13 transaction there was going to be a 50 percent rate  
14 increase, I think that would be inconsistent with  
15 the regulatory format and inconsistent with market  
16 expectations.

17 Typically when one looks at the buying  
18 and selling of these systems, there is an  
19 expectation that the rates are going to be  
20 reflective of the last rate order, and/or if the  
21 rates are going to change they're going to be a  
22 function of new investment in the system as opposed  
23 to the purchase price.

1           Q.       So what I just heard you say in simple  
2 terms is that you can't justify a value for  
3 appraisal purposes that's going to result in an  
4 increase in rates for the acquirer, is that right?

5           A.       (By Mr. Walker) I wouldn't say that's  
6 an absolute, but I would say that's one of the  
7 things when we look at the revenue stream we are  
8 cognizant of the -- we cannot artificially inflate  
9 that revenue stream, that it is a function of the  
10 rate setting process.

11          Q.       Look at the last sentence of that page.

12          A.       (By Mr. Walker) I see the last  
13 sentence.

14          Q.       I'm again talking about the cart and  
15 the horse. Mr. Sansoucy is promising that based  
16 on his understanding that value generates rates  
17 and that the test of value is no net harm, he is  
18 promising we will be going in with no rate  
19 increase as a standard of transfer of the value,  
20 meaning that's what we'll appraise it at. Isn't  
21 that what this sentence says?

22          A.       (By Mr. Walker) I would disagree with  
23 that. I would look at the statement above that,

1 sentence above that that says we pay fair market  
2 value for the assets, but we don't overpay for  
3 those assets so there is a rate increase. It goes  
4 back --

5 Q. He describes -- I'm sorry for  
6 interrupting you -- he describes what overpaying  
7 means in the following sentence based on his prior  
8 assumptions, doesn't he?

9 A. (By Mr. Walker) No, I think he's, in a  
10 single sentence, trying to articulate what I've  
11 been trying to articulate, which is value is a  
12 function of rates, especially under the income  
13 approach it's almost a direct function of rates,  
14 and that you can't arbitrarily assume those rates  
15 are going to increase due to a sale or due to  
16 anyone's sale.

17 Q. But in order to -- in coming up with a  
18 value and to meet this promise, you have to come  
19 up with a value that results in no rate increases  
20 for the acquirer, isn't that so?

21 A. (By Mr. Walker) Again, I don't know  
22 that it's no rate increases.

23 Q. Let's go back to cost approach for a

1 minute?

2 MR. BOUTIN: Go to page 15 of that  
3 exhibit.

4 Q. They were talking about cost approach,  
5 and I want you to read the second paragraph.

6 A. (By Mr. Walker) I've read that  
7 sentence.

8 Q. First of all, Mr. Sansoucy is  
9 describing the RCNLD as a method of -- as the  
10 method of determining cost, isn't it?

11 A. (By Mr. Walker) He's referring to a  
12 replacement cost.

13 Q. Replacement cost new, right?

14 A. (By Mr. Walker) Correct.

15 Q. That's a generally accepted term of art  
16 in the appraisal field?

17 A. (By Mr. Walker) Replacement cost new,  
18 yes.

19 Q. And isn't he also predicting and  
20 promising that you're going to ignore the cost  
21 approach because it results in too high a number?

22 A. (By Mr. Walker) I think what he's  
23 articulating is, what I've been trying to say,

1       which is the cost of replacing a system like this  
2       becomes somewhat irrelevant in the marketplace  
3       because of limitations on earnings that are a  
4       result of the rate making process, and the --

5             Q.       Well, your --

6             A.       (By Mr. Walker) Excuse me, counselor.

7       And when you apply economic depreciation to the  
8       rate of replacement cost through the use of sales  
9       comparison and income capitalization approach, your  
10      cost approach is going to approximate those two  
11      approaches.  If it doesn't do that, you probably  
12      haven't done your job well.

13            Q.       Well, I certainly agree with you there,  
14      except I think we start from a different premise.  
15      Mr. Sansoucy's statement is that 150 million that  
16      a cost approach would generate is a ludicrous  
17      number, can't afford it -- meaning that the rates  
18      wouldn't support it, isn't that right?

19            A.       (By Mr. Walker) I would interpret that  
20      to mean that, that's correct.

21            Q.       So, again, where is the cart and where  
22      is the horse?  You promise not to use the cost  
23      approach because it's not affordable.  Are you

1 backing into your valuation as promised in the  
2 previous paragraph on the basis of what rates you  
3 want to obtain as opposed to what the market value  
4 really is?

5 MR. UPTON: This question has been  
6 asked and answered about five times now. You  
7 know, he has said consistently that that isn't  
8 what he did. They didn't back into it, they did a  
9 fair market value analysis.

10 MR. BOUTIN: I seem to be stumbling  
11 across various points --

12 MR. UPTON: I would agree with that.

13 MR. BOUTIN: I'm sure you would --  
14 various points in Mr. Sansoucy's testimony that  
15 bear upon the activities of his employee appraiser  
16 in terms of what they, in fact, did do in coming  
17 up with this valuation, and I think the commission  
18 ought to be focused on it.

19 CHAIRMAN GETZ: Well, I think it's a  
20 relevant line of inquiry to address this to this  
21 witness, but I have to agree with Mr. Upton that I  
22 believe that the witness has already disagreed  
23 with your characterization a couple of times.

1                   I would just -- I would move on to  
2           whatever your next topic is.

3                   MR. BOUTIN: Well, I'm going to finish  
4           on this topic, but probably in a different vein.

5           BY MR. BOUTIN:

6           Q.       You do discuss the cost approach two  
7           paragraphs down, the paragraph starting with the  
8           cost approaches used, and there you talk about --

9                   MR. UPTON: I assume you mean  
10          Mr. Sansoucy talked about?

11                  MR. BOUTIN: No. I'll withdraw the  
12          question and wait until he's finished.

13          Q.       Have you read the paragraph?

14          A.       (By Mr. Walker) I have read the  
15          paragraph.

16          Q.       Mr. Sansoucy talks about the cost  
17          method would be used to allocate value based on  
18          the actual pipe. Do you see that?

19          A.       (By Mr. Walker) I see the statement.

20          Q.       And you also know that the input you  
21          received from Mr. Sansoucy on appendix D,  
22          especially in view of Ms. Howland's letter dated  
23          November 15th, 2005, is somewhat unreliable on

1 what the actual pipe is?

2 A. (By Mr. Walker) Well, excuse me,  
3 counselor, we've got two pretty dramatic dates  
4 there. I've got a budget review here that we're in  
5 March of '04, and then you said that letter was  
6 dated '05, I believe, end of '05, and I'm not sure  
7 how the two --

8 Q. Well, if this statement is true, if in  
9 fact the cost approach is used to allocate value  
10 based on actual pipe, then it's relevant for  
11 whenever you're going to do the valuation, isn't  
12 that right? Either you agree or disagree with  
13 that.

14 A. (By Mr. Walker) Do I disagree about  
15 using the cost approach to allocate value?

16 Q. Yes.

17 A. (By Mr. Walker) We typically use cost  
18 approaches for that purpose amongst property,  
19 amongst classes, amongst systems; it's not  
20 unreasonable. But, counselor, in that instance we  
21 have applied economic obsolescence to that number,  
22 which I think everyone in this proceeding,  
23 including the appraiser for Pennichuck, Mr. Reilly,

1       that there is substantial economic obsolescence in  
2       the system.  And I believe Mr. Reilly in one of his  
3       exhibits set forth approximately 80 percent  
4       economic obsolescence.

5                       MR. BOUTIN:  Let's go to  
6       Exhibit 31971A.  That's another set of minutes on  
7       March 16, '04.  I believe that one set had  
8       information that was at the time nonpublic and one  
9       had public, is the only reason I can imagine why  
10      the exhibits are different.  Page 16.

11             Q.       Again we're talking --

12                     MR. BOUTIN:  I'm sorry, if you go down  
13      to the last paragraph of that page and bring it  
14      up.

15             Q.       Now, this is --

16             A.       (By Mr. Walker) I read the paragraph.

17             Q.       This is the same meeting where  
18      Mr. Sansoucy made his valuation promise, and if I  
19      go down to --

20                     MR. UPTON:  I object to that  
21      characterization.  It was not a promise.

22                     CHAIRMAN GETZ:  Do you have a response,  
23      Mr. Boutin?

1                   MR. BOUTIN: I could call it a  
2 prediction. I think that's a fair enough  
3 characterization of it. Mr. Sansoucy's prediction  
4 on valuation.

5                   And if I go down to one, two, three,  
6 four, five, six, seven, eight -- the eighth line  
7 and highlight beginning at the average sale to the  
8 end of the line at the bottom of the page.

9                   Q.       Now, this is three days before you  
10 signed a contract to deliver an appraisal, and at  
11 the time Mr. Sansoucy is expressing an opinion  
12 that there will be an \$81 million value for the  
13 company, or for the Pennichuck Water Works assets,  
14 do you see that?

15                  A.       (By Mr. Walker) For the three  
16 companies.

17                  Q.       Three companies?

18                  A.       (By Mr. Walker) For three companies,  
19 yes.

20                  Q.       Now, had you at that point in time  
21 provided him with any appraisal information,  
22 compilation?

23                  A.       (By Mr. Walker) Certainly he references

1       them here. I mean, we have transactions in the  
2       marketplace. What he is doing is he is going  
3       through and taking public information and setting  
4       forth the range of value based on that information.

5           Q.       Now on the next page, the top  
6       paragraph, again, before he's even signed the  
7       contract Mr. Sansoucy is telling him that an  
8       income approach -- income approach would yield  
9       \$81 million purchase price, is that right? Look  
10      at the last sentence of the first paragraph.

11          A.       (By Mr. Walker) Again, yes, he's saying  
12      81 million for the three companies that appear,  
13      Pennichuck Water Works, Pennichuck East, and  
14      Pittsfield Aqueduct.

15          Q.       And what was your appraisal a year  
16      later?

17          A.       (By Mr. Walker) 85 -- 85 for the  
18      Pennichuck Water Works system.

19          Q.       And I assume in that appraisal you  
20      recognized the appreciation of assets since that  
21      time or the addition of assets?

22          A.       (By Mr. Walker) Again, with respect to  
23      this I'm not sure you could make the comparison,

1 but we did the analysis set forth in our appraisal.

2 Q. Now, the services that you are  
3 providing to the city of Nashua, which I think we  
4 agree are engineering valuation reports, business  
5 plans, consulting engineering and testimony  
6 relating to the purchase of the water utility from  
7 the March 19th contract, do you agree with me that  
8 George Sansoucy, PE LLC is operating as an  
9 advocate for the town of -- city of Nashua?

10 A. (By Mr. Walker) No.

11 Q. Why not?

12 A. (By Mr. Walker) What George E.  
13 Sansoucy, PE LLC is doing is providing various  
14 functions to the city of Nashua. We may advocate  
15 for that work product, we may advocate for our  
16 analyses, but what the city does with that is their  
17 business.

18 Mr. Upton -- the Upton firm is an  
19 advocate for the city, the aldermen may be an  
20 advocate for the city. What we're doing is  
21 providing information to those people.

22 Q. Now, I believe that you -- it was  
23 introduced into evidence, an advisory opinion to

1 USPAP, A021.

2 MR. BOUTIN: Am I accurate on that? I  
3 don't know the exhibit number.

4 MR. CONNER: Their exhibit number is  
5 1097, but it's missing some pages.

6 Q. Well, if I look at that ethical  
7 standard, I have a hard time understanding the  
8 difference between a valuation service and an  
9 appraisal. Do you have an understanding of the  
10 difference between a valuation service and  
11 appraisal?

12 A. (By Mr. Walker) Yes, I do.

13 Q. Well, tell me what they are.

14 A. (By Mr. Walker) When you perform an  
15 appraisal you're acting -- well, first of all, in  
16 all of these things you do not mislead your client.  
17 You have to set forth what you're doing for your  
18 client or that you're performing with respect to  
19 the work in your report or in your files.

20 An appraisal is done as an appraiser  
21 acting impartially and following USPAP. Valuation  
22 of services are a much broader category that may  
23 include appraisal services or they may include

1 other services such as market analysis, litigation  
2 support, other consulting, et cetera. So there's a  
3 distinction between valuation services and  
4 appraisal practices.

5 Q. Well, you have been here for the  
6 testimony that Mr. Sansoucy gave about all the  
7 things that he was doing, isn't that so?

8 A. (By Mr. Walker) I've been here, yes.

9 Q. And all of those things are being  
10 performed under the contract that George Sansoucy  
11 PE, your employer, has with the city of Nashua,  
12 isn't that right?

13 A. (By Mr. Walker) I believe that to be  
14 correct, yes.

15 Q. Do you see those services as crossing  
16 the line from appraisal to other valuation  
17 services?

18 A. (By Mr. Walker) I see that within that  
19 contract there are several things that we are  
20 performing. The appraisal itself, the preparation  
21 of the appraisal itself clearly falls within  
22 appraisal practice.

23 In addition to that, we are providing

1 consulting services and engineering services that,  
2 in my opinion, fall outside the scope of USPAP  
3 because they are not valuation related, they're  
4 economics related, they're engineering related, and  
5 they would not even be subject to USPAP.

6 Q. Based on the testimony you've heard, do  
7 you agree that George Sansoucy, PE LLC has  
8 performed advocacy services?

9 A. (By Mr. Walker) No, we have not  
10 provided advocacy services such as lit -- such as  
11 acting as an attorney.

12 Q. Well, you haven't acted as an attorney,  
13 but you prepared data responses and data requests,  
14 didn't you, your firm?

15 A. (By Mr. Walker) That's correct.

16 Q. Did you hear that testimony? You've  
17 prepared testimony for yourselves and others,  
18 isn't that part of your testimony?

19 A. (By Mr. Walker) Again, I don't know  
20 that we've prepared testimony for others. We may  
21 have provided documentation in support of others'  
22 testimony.

23 Q. You don't recall Mr. Sansoucy saying

1 that he had drafted testimony for others?

2 A. (By Mr. Walker) If he said that, I may  
3 not have been present, counselor. I apologize.

4 Q. Had he said that, assume for the moment  
5 he said that, would that then be advocacy  
6 services?

7 A. (By Mr. Walker) Again, it would depend  
8 on the service that he was providing and how he was  
9 providing it.

10 Q. Well, let's go to your value opinion  
11 21.

12 MR. BOUTIN: And I don't know if we can  
13 put anything on the --

14 MR. CONNER: It's on there. First page  
15 is on there.

16 MR. BOUTIN: It's on there? All right,  
17 go to page 188.

18 MR. CONNER: It's not there.

19 MR. BOUTIN: Page 188 isn't part of the  
20 exhibit. All right, I want to put on 188. Top  
21 paragraph there.

22 BY MR. BOUTIN:

23 Q. If valuation service is premised on

1       advocacy or compensation arrangements that are  
2       contrary to the ethics rule, the individual acting  
3       as an appraiser cannot perform the valuation  
4       service.

5                     Do you understand that to mean that if  
6       your firm is acting as an advocate it cannot act  
7       as an appraiser under these standards?

8             A.       (By Mr. Walker) Again, I hate to  
9       interpret that that -- I'm not sure that's true,  
10      but certainly with respect to the appraisal  
11      practice and preparation of the appraisal, you are  
12      correct, but within valuation services, USPAP don't  
13      apply. And so I think you have to look at it on a  
14      case-by-case basis, counselor.

15                    MR. BOUTIN: I'm going to ask to see if  
16      you can put up 190, please. Is that part of the  
17      exhibit? Does anyone know if 190 is part of the  
18      exhibit?

19                    MR. CONNER: It's not.

20                    MR. BOUTIN: It's not.

21                    MR. CONNER: They didn't include these  
22      pages in their exhibit.

23                    MR. BOUTIN: I would ask at the

1 conclusion of today's testimony we get a complete  
2 copy, it's only a few more pages long, of that A  
3 021 to mark as an exhibit.

4 CHAIRMAN GETZ: This is part of the  
5 USPAP?

6 MR. BOUTIN: Yes.

7 MR. UPTON: Yes. Somehow those pages  
8 got left off when the exhibit got transferred into  
9 electronic form.

10 CHAIRMAN GETZ: So the intention was to  
11 have --

12 MR. UPTON: To have the whole in it,  
13 yes, and it is not all there.

14 CHAIRMAN GETZ: And there's no  
15 objection to have the entire --

16 MR. UPTON: Not at all. Not at all.  
17 In fact, I'm going to use some portions of it  
18 myself.

19 CHAIRMAN GETZ: Okay, well, let's take  
20 care of the ministerial matter and get the full  
21 document in.

22 MR. BOUTIN: I'll leave it up to  
23 Mr. Upton, Mr. Camerino, and you can decide how to

1 mark it.

2 Q. Now, there's a section here entitled  
3 litigation services at the bottom of the page 190,  
4 do you see it?

5 A. (By Mr. Walker) I do.

6 Q. You have read that paragraph under it?

7 A. (By Mr. Walker) I have.

8 MR. BOUTIN: Let's put up 191 now.

9 Q. I'll ask you just to -- are you  
10 familiar with that?

11 A. (By Mr. Walker) I am.

12 Q. Would you agree that given the services  
13 that your firm has provided in this case and that  
14 have been testified to in this case that you're  
15 performing litigation services?

16 A. (By Mr. Walker) With respect to  
17 testifying in this proceeding, we're providing  
18 litigation services, sure.

19 Q. And/or providing DR, data requests or  
20 data responses, testimony, if, in fact, I'm  
21 accurate and that happened, that's all litigation  
22 services, isn't it?

23 A. (By Mr. Walker) It's providing support

1 for our appraisal, that's correct.

2 Q. Well, is there any other litigation  
3 service?

4 A. (By Mr. Walker) Well, I think what  
5 you're referring to is litigation services as  
6 advocates for Nashua, and I don't believe that  
7 we're advocates for Nashua.

8 Q. I see.

9 A. (By Mr. Walker) What we are advocating  
10 is our work and our work product, and we are  
11 supplying support for that work product.

12 Q. Let's go to the last two indented  
13 paragraphs on page 191, beginning with on the  
14 other hand.

15 A. (By Mr. Walker) I see that paragraph.

16 Q. And the last sentence, Marie, was the  
17 example, may provide litigation services by either  
18 acting as an appraiser or acting as an advocate  
19 for the client's cause. However, she must not  
20 perform both roles in the same case.

21 A. (By Mr. Walker) I see that.

22 Q. And based on what you know of the  
23 services provided by George Sansoucy, PE LLC,

1 haven't you, in fact, provided both litigation  
2 services as an appraiser and litigation services  
3 as an advocate?

4 A. (By Mr. Walker) With respect to the  
5 appraisal, we had provided them as -- under USPAP  
6 as appraisers acting impartially and not as  
7 advocating for Nashua but advocating for our work  
8 product.

9 With respect to other services, they're  
10 beyond the scope of valuation service, they're  
11 engineering and consulting services that would not  
12 be subject to USPAP.

13 Q. Would you agree with me that appraisal  
14 function is a very important function in any  
15 transfer of property?

16 A. (By Mr. Walker) I guess you'd have to  
17 clarify that, counsel.

18 Q. Well, if a piece of property is being  
19 transferred and if an appraisal is acquired, would  
20 it be fair to say that the reliability and  
21 trustworthiness of the appraiser is of paramount  
22 importance?

23 A. (By Mr. Walker) Fair enough, yes.

1 Q. And would you also agree with me that  
2 the USPAP standards actually require the utmost  
3 objectivity in performing the appraisal services?

4 A. (By Mr. Walker) That's right,  
5 objectivity and representing exactly what you're  
6 doing.

7 Q. And in this case you're denying  
8 providing advocacy services and basing your own  
9 opinion of why you think the commission ought to  
10 rely on you based on that understanding, isn't  
11 that right?

12 A. (By Mr. Walker) I'm sorry, I didn't get  
13 that question, counselor.

14 Q. Well, your understanding of being here  
15 and acting ethically is that you're not an  
16 advocate?

17 A. (By Mr. Walker) I'm advocating for my  
18 appraisal, sir.

19 Q. And George Sansoucy, PE LLC is  
20 restricting its activity in this case, as I  
21 understand you to say, then, only to advocating  
22 for the appraisal and nothing else?

23 A. (By Mr. Walker) No. What I said with

1       respect to appraisal practice what we have done is  
2       we have set forth the appraisal.  George Sansoucy  
3       does other things other than provide appraisal  
4       services, just as other large consulting firms such  
5       as PA Consulting, Navigant Consulting, Black and  
6       Veatch Consulting, all of those entities have  
7       appraisal divisions as well as providing other  
8       regulatory and economic roles.

9           Q.       Excuse me, I understand that there may  
10       be two divisions of the company.  I understand  
11       that a client may hire one of those divisions to  
12       do an appraisal, or another client may hire the  
13       other division to act as an advocate or an  
14       engineer, but we're talking about the same party  
15       doing both here.  Does that ring any ethical bell  
16       with you?

17          A.       (By Mr. Walker) Again, I don't see the  
18       same party.  I think it's been very clear that  
19       Mr. Sansoucy has set forth the consulting and  
20       regulatory rate PAP in this proceeding, and I've  
21       set the appraisal.

22          Q.       All under the same contract?

23          A.       (By Mr. Walker) That's correct.

1                   MR. BOUTIN: Let's go to Exhibit 3036.  
2 I have a couple of questions, and then I'll be  
3 done. Page 2? Oh, I'm sorry, Dan. Page 2,  
4 please. Oh, I'm sorry, the next page; 2 of 9.

5           Q.       2.1.1A-1. One of the things you were  
6 asked to do is prepare an initial inventory of  
7 assets within and without the city of Nashua  
8 adequate for an initial public interest finding.  
9 Do you see that?

10          A.       (By Mr. Walker) I do.

11          Q.       Is that a limitation in the scope of  
12 the work?

13          A.       (By Mr. Walker) Limitation in what  
14 scope of work?

15          Q.       Well, adequate for the initial public  
16 interest finding regarding the inventory. Is that  
17 a limitation of the scope of what it would take to  
18 do an initial inventory?

19          A.       (By Mr. Walker) It's the statement of  
20 what we're doing. I don't think it's a limitation  
21 on anything.

22          Q.       Let's go to the next page, please,  
23 bottom paragraph, B-1. Is it your position that

1 the inventory as reflected on -- I think it's  
2 appendix D of 1007B, which is the list of  
3 inventory items.

4 A. (By Mr. Walker) I see the statement.

5 Q. All right. Is it your position that  
6 that's the document that responds to paragraph B 1  
7 of the contract, prepare a detailed inventory and  
8 scope of assets?

9 A. (By Mr. Walker) I'm going to defer this  
10 question to Mr. Sansoucy as it relates to the  
11 development of a scope pursuant to the contract.

12 Q. Well, I'm, again, addressing you  
13 because you relied on it in doing your appraisal,  
14 didn't you?

15 A. (By Mr. Walker) We did.

16 Q. Was that inventory complete?

17 A. (By Mr. Walker) I believe it to be,  
18 yes.

19 Q. Was it performed to a standard that  
20 could insure to the PUC that, in fact, the  
21 inventory disclosed everything that they needed to  
22 know?

23 A. (By Mr. Walker) I believe so, yes.

1 Q. You still hold that position after  
2 listening to Mr. Sansoucy's cross-examination on  
3 that subject?

4 A. (By Mr. Walker) I didn't listen to  
5 Mr. Sansoucy's cross-examination on that subject.  
6 I don't know what you're referring to.

7 Q. Do you recall the cross-examination  
8 about the gaps in the information?

9 A. (By Mr. Walker) Oh, referring back to  
10 the CPRs?

11 Q. Yes.

12 A. (By Mr. Walker) I'm sorry, I wasn't  
13 making the connection there.

14 Q. Yes.

15 A. (By Mr. Walker) Yes. Yes.

16 MR. BOUTIN: No further questions.

17 CHAIRMAN GETZ: Mr. Alexander?

18 MR. ALEXANDER: No questions.

19 COMMISSIONER MORRISON: Mr. Sansoucy,  
20 we've discussed a lot of numbers today. Can you  
21 just for the record state your position on the  
22 valuation as far as dollars and figures, what is  
23 the right number from your company's position?

1                   MR. SANSOUCY: The correct number is  
2                   \$85 million for Pennichuck Water Works's portion  
3                   of the whole company plus a true up from 12/31/04  
4                   to the point of taking to adequately represent all  
5                   additional investments paid by the company.

6                   COMMISSIONER MORRISON: Thank you.

7                   COMMISSIONER BELOW: How would you  
8                   weigh the proportion of the valuation work that  
9                   your company has done on behalf of towns for tax  
10                  purposes versus other purposes?

11                  MR. SANSOUCY: Our valuation work  
12                  comprises in any given year between 50 and  
13                  70 percent of what we do in total, and in any  
14                  other given years all other forms of consulting,  
15                  non-valuation specific, will be anywhere from --  
16                  the balance, you know, 30 to 50 percent.

17                  COMMISSIONER BELOW: And is most of  
18                  that for municipalities for tax purposes or for  
19                  other purposes?

20                  MR. SANSOUCY: No, tax is obviously one  
21                  of the important areas, but it's for all different  
22                  forms of valuation, including eminent domain,  
23                  regulatory consulting, tax agreements, TIFF

1 agreements, TIFFs, bonds, et cetera.

2 COMMISSIONER BELOW: What do you  
3 understand the constitutional or statutory basis  
4 for valuation to be in New Hampshire?

5 MR. SANSOUCY: The case law -- the  
6 constitutional or statutory basis in New Hampshire  
7 is fair market value. The case law is five  
8 different methods of value in the state that  
9 should be considered, and at any given moment in  
10 time we do consider all five.

11 The three conventional methods of value  
12 that you see in USPAP, for example, cost approach,  
13 income approach, and market sales approach are the  
14 obvious three.

15 The state of New Hampshire also has  
16 case law where the original cost less depreciation  
17 is considered a very reliable -- a reasonable  
18 indicator of value in the right circumstances, and  
19 I can give you two examples of that; one is the  
20 Seabrook nuclear station originally, and the  
21 second is the Hydro Quebec line and the DC  
22 converter where those were historically valued for  
23 about 15 years in the state on original cost less

1 depreciation because of the way they were built.

2           The fourth method of value -- fifth --  
3 is what they call alternative facilities analysis,  
4 and this is a form of replacement value that is  
5 peculiar to utility property. And the best  
6 example in the state of New Hampshire is the  
7 Portland Oil Pipeline, the original crude oil  
8 pipeline that goes from Portland, Maine to  
9 Montreal but it goes through the north country of  
10 New Hampshire.

11           The first line of the Portland pipeline  
12 was built under the War Powers Act in the 1940s.  
13 It was a 12-inch crude oil pipeline that got the  
14 crude away from the ocean and to the refineries in  
15 Canada.

16           In the '50s a second line -- that was a  
17 12-inch line. A second line in the '50s was built  
18 that was a 18-inch line to expand the capacity,  
19 and then in the '60s a 24-inch line was built.

20           Under the alternative -- replacement or  
21 reproductions cost theory you would reproduce all  
22 three lines, and let's just say for the sake of  
23 discussion that's 3 billion a mile, when, in fact,

1 any buyer today would build the alternative  
2 pipeline which would be one pipeline of probably  
3 36 inch in diameter, and for the sake of  
4 discussion, \$1.5 million a mile would be the  
5 starting place of the replacement cost analysis  
6 less depreciation.

7 Now, that is a method that we actually  
8 use in many locations in the state very quietly.  
9 The twin -- the 1930 230,000 volt lines that come  
10 through the state from Morse station all the way  
11 to Massachusetts, the two -- the big, 230-volt  
12 lines, those we value on the alternative because  
13 they would be replaced at one large single  
14 transmission line less expensive than two separate  
15 outboard lines. So that's a fairly unique  
16 situation. We do that routinely in the state of  
17 New Hampshire.

18 So those are the five basic methods of  
19 value that we consider, and in any given time we  
20 consider those in any given appraisal.

21 COMMISSIONER MORRISON: Okay, that's  
22 all.

23 CHAIRMAN GETZ: I assume, Mr. Upton,

1 you have some redirect?

2 MR. UPTON: I do. Do you want to take  
3 a break now and come back to it, or do you want me  
4 to start right in?

5 CHAIRMAN GETZ: Do you have an estimate  
6 of how much time you're going to need for  
7 redirect?

8 MR. UPTON: I'm going to need probably  
9 anywhere from 30 minutes to an hour.

10 CHAIRMAN GETZ: And then is that the  
11 last thing we have to address today except for  
12 perhaps an argument about recross?

13 MR. UPTON: I believe so.

14 CHAIRMAN GETZ: Okay, let's take --  
15 let's come back at quarter of three. Thank you.

16 (Recess taken.)

17 CHAIRMAN GETZ: Let's resume the  
18 hearing of DW 04-048, and redirect from Mr. Upton.

19 REDIRECT EXAMINATION

20 BY MR. UPTON:

21 Q. Mr. Walker, I want to go right to USPAP  
22 and show you a chart on the USPAP advisory opinion  
23 21. Have you seen this?

1           A.       (By Mr. Walker) I have.

2           Q.       And would you describe that graph, what  
3 that means?

4           A.       (By Mr. Walker) Well, that's  
5 representing the various functions or services that  
6 you may provide with respect to valuation services.  
7 Other services would clearly fall outside of these  
8 graphs as engineering or consulting, but with  
9 respect to valuation services, these are the areas  
10 of practice.

11                   And what we have here is valuation  
12 services which you can't misrepresent what you do,  
13 but at the same time you don't have the same USPAP  
14 obligations you would have like the appraisal  
15 practice which is in the inner ring.

16                   So clearly the USPAP distinguishes  
17 various types of services and what you need to do  
18 to perform those services.

19           Q.       So in the inner ring when you perform  
20 your appraisal, you have to conform to USPAP?

21           A.       (By Mr. Walker) Correct.

22           Q.       And as you go away from that inner  
23 circle, there's less performance with USPAP

1 required?

2 A. (By Mr. Walker) That's correct. As  
3 long as people understand what you're doing, and  
4 you do not misrepresent it, you're in compliance  
5 with this. And obviously if you're not performing  
6 what I consider valuation services you're outside  
7 of the circle altogether, or off the chart, as one  
8 would say.

9 Q. And does the Sansoucy contract at 3036,  
10 Exhibit 3036, does that explain the various  
11 services in a way that doesn't misrepresent them,  
12 in your opinion?

13 A. (By Mr. Walker) In my opinion it does,  
14 yes.

15 Q. Do you think there's anybody here that  
16 doesn't understand the services that you and  
17 Mr. Sansoucy were going to perform?

18 A. (By Mr. Walker) I would find that hard  
19 to believe. I think it's been fairly spelled out.

20 Q. Now, Mr. Conner asked you at length  
21 during his cross-examination about whether  
22 Pennichuck Water Works' utility property was  
23 special purpose property, and he had you read from

1 the appraisal of real estate, do you recall that?

2 A. (By Mr. Walker) I do.

3 Q. I want to show you the definition of  
4 special purpose property that he referred to. Do  
5 you see it in that shaded box?

6 A. (By Mr. Walker) Yes.

7 Q. At the bottom?

8 A. (By Mr. Walker) Yes, I do. It's the  
9 last definition.

10 Q. And what does that say?

11 A. (By Mr. Walker) Special purpose  
12 property. A limited market property with a unique  
13 physical design, special construction materials, or  
14 a layout that restricts utility for the use of  
15 which it was built, also called special design  
16 property.

17 Q. By the way, what is the appraisal of  
18 real estate that we refer to when we use this?

19 A. (By Mr. Walker) It's a reference book  
20 published by the Appraisal Institute which is a  
21 nationally recognized affiliation dealing with  
22 appraisal issues and appraisal problems.

23 Q. Sometimes called the bible of appraisal

1 practice?

2 A. (By Mr. Walker) It's one of them, sure.

3 Q. Now, you agreed with the definition of  
4 special purpose property that Mr. Conner showed  
5 you and that you've just read on the screen,  
6 correct?

7 A. (By Mr. Walker) I do.

8 Q. Do you know why Mr. Conner wanted you  
9 to agree with his definition?

10 A. (By Mr. Walker) I'm assuming  
11 Mr. Connors (sic) was trying to imply that the cost  
12 approach must be or should be used for this type of  
13 property.

14 Q. Do you agree that this is special  
15 purpose property?

16 A. (By Mr. Walker) I do agree it's special  
17 purpose property.

18 Q. What does the appraisal of real estate  
19 say an appraiser should do for special purpose  
20 property? And I refer you to page 26 of the  
21 Appraisal of Real Estate.

22 A. (By Mr. Walker) Well, even though it  
23 may be special purpose property or special design

1 property, that doesn't mean that one disregards  
2 indication of the market value where available, and  
3 it actually instructs the appraiser to seek out any  
4 market evidence that it can with respect to that  
5 type of property.

6 Q. And that's at the end of that first  
7 full paragraph?

8 A. (By Mr. Walker) That is correct.

9 Q. If a market exists for a limited market  
10 property the appraiser must search diligently for  
11 whatever evidence of that market value is  
12 available?

13 A. (By Mr. Walker) That is correct.

14 Q. Is that what you did?

15 A. (By Mr. Walker) That is exactly what we  
16 did, and it is important to do that with this type  
17 of property to identify any economic obsolescence  
18 that there may be in the marketplace.

19 Q. What did you conclude from your search?

20 A. (By Mr. Walker) Well, as laid out in  
21 the appraisal report and testified to in this  
22 proceeding, we found market evidence of the  
23 transaction of water systems, and we utilized those

1 transactions as another measure of value both as a  
2 standalone -- you know, as a standalone approach  
3 and also to apply economic obsolescence to the cost  
4 approach.

5 Q. What does the appraisal of real estate  
6 say about the use of the sales or market approach  
7 even when there is a limited market? And I refer  
8 you to page 419. Specifically look at the  
9 paragraph beginning when the market is weak, and  
10 the last couple of sentences -- last sentence.

11 A. (By Mr. Walker) As you can see from the  
12 text, the appraisal of real estate indicates that  
13 you should go out and find additional information  
14 to support your valuation conclusion.

15 Q. And specifically to help support the  
16 findings of your other -- your other valuation  
17 methods?

18 A. (By Mr. Walker) That is correct.

19 Q. Did the analysis of the sales you  
20 located support the findings of your income  
21 approach, for example?

22 A. (By Mr. Walker) Yes. Yes, it did.

23 Q. Why don't you believe that the cost

1 approach should be used in this case for PWW's  
2 property?

3 A. (By Mr. Walker) Again, as was stated in  
4 the report and testified to, the existence of  
5 economic obsolescence in this type of property  
6 makes the cost approach unreliable.

7 In addition, when you look at the  
8 marketplace -- I testified to this previously --  
9 people are buying this type of property for its  
10 income producing potential, and that's measured  
11 either through transactions in the marketplace or  
12 income capitalization approach. They are not  
13 buying this property because of its layout or  
14 because of the color of the treatment plant, it is  
15 really a function of how much cash will this  
16 property produce.

17 Q. Did the Philadelphia sale have any  
18 impact on your conclusion about whether or not to  
19 use the cost approach?

20 A. (By Mr. Walker) It certainly did. As I  
21 stated, we had --

22 MR. CONNER: Objection, your Honor,  
23 that was not a sale. It mischaracterized this

1 transaction.

2 Q. Did the Philadelphia transaction --

3 MR. CONNER: Which Philadelphia?

4 Q. Did the auction that Pennichuck  
5 conducted that resulted in an offer from  
6 Philadelphia Suburban of 106 million have any  
7 impact on your --

8 CHAIRMAN GETZ: Well, let me step back.  
9 Is your point, Mr. Conner, that the sale was never  
10 consummated?

11 MR. CONNER: Well, yes, my point, your  
12 Honor, he's got -- in his nine transactions there  
13 are two Philadelphia transactions. I'm not sure  
14 which one he's referring to.

15 CHAIRMAN GETZ: Well, Mr. Upton,  
16 let's --

17 BY MR. UPTON:

18 Q. Which Philadelphia transaction are you  
19 referring to?

20 A. (By Mr. Walker) I presumed you were  
21 referring to what I consider to be the most  
22 important, and this is the offer by Philadelphia  
23 Suburban to purchase Pennichuck Water Works.

1 Q. Go ahead. Why is that important?

2 A. (By Mr. Walker) You have an offer to  
3 purchase this company that was a function of an  
4 auction for the whole company approximately two  
5 years prior to the valuation date that supports our  
6 value conclusion as of 12/31/04 of \$85 million.

7 Not only do we have the Philadelphia  
8 Suburban offer, but if you go to Exhibit GES 12,  
9 there were other parties that made competing offers  
10 for that system.

11 Q. GES 12 is a part of your --

12 A. (By Mr. Walker) It's confidential, and  
13 it's part of our May 22nd testimony.

14 Q. Why don't you describe what GES 12 --  
15 what information it contains, without setting  
16 forth the amounts or the names of the parties.

17 A. (By Mr. Walker) GES is a summary of  
18 nonbinding and binding proposals received by  
19 Pennichuck Corp. when it made itself available for  
20 sale in the marketplace. What we've done is we've  
21 summarized those transactions.

22 MR. CONNER: Your Honor --

23 A. Excuse me, those offers.



1 to try to rehabilitate his witness through a sale  
2 that I never covered on cross-examination.

3 MR. UPTON: I'm all done with it, in  
4 any event, but I think it's entirely appropriate.  
5 He -- Mr. Conner went into great length about  
6 special purpose property and why this was special  
7 purpose property, and what Mr. Walker is simply  
8 saying is that his analysis of the market sales,  
9 including this offer, give him support that  
10 it's -- that there is a market, No. 1, and, No. 2,  
11 that the -- there's such an incredible amount of  
12 economic depreciation that would have to be taken  
13 for the cost method that it's inappropriate to do  
14 it.

15 CHAIRMAN GETZ: Well, I'll allow it,  
16 but just note this generally as well,  
17 Mr. Conner -- and I think this objection was made  
18 a couple of times -- on redirect, and most of this  
19 inquiry today has been very focused redirect  
20 except for perhaps the question asking the witness  
21 about what he thought everybody else in this room  
22 might think about something -- putting that aside,  
23 if there is an issue raised on cross, then we're

1 going to let him follow up on it. But it doesn't  
2 have to be restricted exactly to other -- precise  
3 pieces of information that you raised on  
4 cross-examination.

5 MR. CONNER: And I'm not trying to be  
6 obstructionist, Mr. Chairman. That was just an  
7 area that we didn't cover, period, with respect  
8 to --

9 CHAIRMAN GETZ: That particular  
10 contract.

11 MR. CONNER: Yes.

12 CHAIRMAN GETZ: Please proceed,  
13 Mr. Upton.

14 MR. UPTON: Thank you.

15 BY MR. UPTON:

16 Q. During his cross-examination,  
17 Mr. Conners -- Conner did a number of mathematical  
18 adjustments that were designed to suggest that  
19 your income approach was the same as rate based,  
20 do you recall that?

21 A. (By Mr. Walker) I do recall those  
22 calculations.

23 Q. Were those adjustments that he made

1 proper, in your opinion?

2 A. (By Mr. Walker) No.

3 Q. Why not?

4 A. (By Mr. Walker) Well, for one thing,  
5 they result in a value that is inconsistent in the  
6 marketplace. Again, without harping on, you know,  
7 the sales comparison approach, people are paying  
8 far more than rate based for these facilities. And  
9 to use an example, the offer by Philadelphia  
10 Suburban and Pennichuck Water Works; they weren't  
11 buying the system for rate based, they were buying  
12 it for something in excess of rate based.

13 In addition, the way the regulatory  
14 formula works, those new capital additions would be  
15 the subject of new rate increases and new property  
16 additions. It would be something other than the  
17 property that was there as of the valuation date.

18 Q. He also asked you about the highest and  
19 best use difference between the 1995 report that  
20 you did and the current report, and I can only  
21 find the current report. That's 1007A.

22 The current report is at the bottom of  
23 the page, highest and best use as approved.

1           A.       (By Mr. Walker) I see that.

2           Q.       And what did you conclude was the  
3 highest and best use?

4           A.       (By Mr. Walker) We concluded that the  
5 highest and best use of this system is continued  
6 operation as a water system.

7           Q.       And what was the highest and best use  
8 in the 1995 report?

9           A.       (By Mr. Walker) My recollection is that  
10 was -- the highest and best use in that report was  
11 as a municipal water system.

12          Q.       Why was there a difference?

13          A.       (By Mr. Walker) I believe that the  
14 difference was that in this analysis we had  
15 analyzed both investor-owned transactions and  
16 transactions by municipal purchasers of systems and  
17 really found no difference.

18                    If we were to look at the graph in our  
19 appraisal, or the subsequent document, I can  
20 probably explain that.

21          Q.       Sure. That's in one of your exhibits,  
22 is that it?

23          A.       (By Mr. Walker) Well, what we have, at

1 page 49 --

2 Q. So it would be --

3 A. (By Mr. Walker) -- of the appraisal.

4 Q. Of the appraisal. Is that the chart  
5 you're referring to?

6 A. (By Mr. Walker) Yeah, this is the chart  
7 I'm referring to. And I'd just like to generally  
8 describe this chart. What this is is it's a  
9 scattered chart depicting the 28 transactions that  
10 we set forth in the appraisal, graphed in sale  
11 price to EBITDA in relation to their size as  
12 measured by gross revenue.

13 What the vertical lines on the graph  
14 represent are the various classes of sales that  
15 we've identified in the appraisal, A-1 being the  
16 largest sales as being measured by gross sales, A-4  
17 being the smallest sales as being measured by gross  
18 revenue.

19 And if you look at this transaction, we  
20 can -- I have -- you know, I can tell you which  
21 sales are municipal and which are investor owned.

22 Q. Sure. Have you plotted this chart  
23 shown with the municipal sales?

1           A.       (By Mr. Walker) I have.

2                   MR. CONNER: Your Honor, Mr. Chairman,  
3       this is why I had a difficult time in allowing  
4       Mr. Sansoucy and Mr. Walker to come back and  
5       testify several days after their initial  
6       examination.

7                   What we have here is a new exhibit that  
8       has not been produced to me, it's not in the  
9       report, and I don't think it's appropriate.  
10      There's another one he's going to get to in a few  
11      minutes that I'm also going to object about.

12                  So I think it is very inappropriate. I  
13      don't know when this was done, it was obviously  
14      done since they have testified, it's not in their  
15      reports, and we would move to bar its admission.

16                  MR. UPTON: It's not a new exhibit,  
17      it's the same exhibit that we were just looking  
18      at, all it does is it shows where the municipal  
19      sales are located on the chart, so that it shows  
20      what he says, that there's no impact on the market  
21      by municipal sales.

22                  CHAIRMAN GETZ: Let me get to the  
23      bottom of it's the same exhibit; where did this

1 piece of paper come from?

2 MR. UPTON: It is the same -- it is the  
3 same exhibit. The only difference is that on it  
4 Mr. Walker has charted in and specifically  
5 identified the -- the municipal sales.

6 CHAIRMAN GETZ: I'm still not sure if  
7 I'm following. So what's the difference --

8 MR. CONNER: This is in the report,  
9 your Honor.

10 CHAIRMAN GETZ: This is in the report.

11 MR. CONNER: This one is not. I'll  
12 show it. We can put it on and show it to you.

13 CHAIRMAN GETZ: So what you're saying  
14 then, Mr. Conner and Mr. Upton, is you took this  
15 previous exhibit and made some adjustments to it?

16 MR. UPTON: No adjustments, simply --  
17 simply identified which of those dots of municipal  
18 sales so it would be more meaningful to the  
19 commission to understand the analysis.

20 MR. CONNER: Mr. Chairman, my problem  
21 with this is that none of the dots on the page in  
22 his report were identified.

23 The purpose for us to depose these

1 people is for me to ask questions about all of  
2 this I want to ask, and now -- with all due  
3 respect to Mr. Walker and Mr. Upton -- how am I  
4 going to be able to say for sure that those are  
5 the municipal systems, because this is the first  
6 thing we've had from them on this.

7 CHAIRMAN GETZ: But I'm presuming that  
8 Mr. Walker could have looked at this exhibit,  
9 looked at the underlying exhibit -- not this  
10 adjusted exhibit -- and pointed out to us based on  
11 his work papers which each of these dots  
12 represented, which sale.

13 That being the case, I think it's --  
14 you know, we could go through it two ways. We  
15 could look at this exhibit, or he could put them  
16 out to us and we could take another half an hour  
17 to have him tell us which of these dots  
18 represented which transaction. I think that would  
19 be not an efficient use of our time.

20 MR. CONNER: Your Honor --

21 CHAIRMAN GETZ: I am sympathetic to the  
22 general notion that the passage of time has  
23 allowed more preparation for redirect, but I don't

1 find this -- that this exhibit's generally  
2 problematic.

3 So I'm going to allow the  
4 conversation -- the redirect about this topic, but  
5 I'm going to be very concerned about what these  
6 other documents that may be tried to be  
7 introduced.

8 MR. CONNER: Thank you, your Honor.

9 BY MR. UPTON:

10 Q. What does this chart show you about  
11 municipal sales?

12 A. (By Mr. Walker) The interpretation of  
13 this chart for municipal sales is that they are  
14 clustering in a pattern in the middle of the chart  
15 similar to investor owned sales.

16 If the hypothesis was true that a  
17 municipal system would pay more or had to pay more  
18 or does pay more, the expectation would be that the  
19 municipal or not-for-profit transactions would  
20 cluster at the top of this graph, and that the  
21 investor owned utilities would cluster at the  
22 bottom of this graph reflecting the prices they  
23 were willing to pay relative to each system.

1           Q.       Mr. Conner also asked you about  
2           municipal buyers in connection with your income  
3           approach suggesting that you used the wrong cost  
4           of capital figure. Why did you use the cost of  
5           capital rate that you used?

6           A.       (By Mr. Walker) Again, it's supported  
7           by this understanding of the market that  
8           municipalities don't necessarily pay what they can  
9           afford to pay, but they pay market value or they  
10          pay what they have to pay to buy the system.

11                   And, for example, if we were looking at  
12          a system that was put out to bid, like a lot of  
13          these systems are when they're made available in  
14          the marketplace, the winning bidder at the end of  
15          the day is the one that typically ends up acquiring  
16          the system.

17                   And so you don't have to pay what you  
18          can afford to pay, all you have to pay is enough to  
19          outbid the next highest bidder.

20          Q.       Mr. Conner asked both of you and went  
21          through a number of memos, e-mails and minutes of  
22          aldermanic meetings about loyalty to Nashua, do  
23          you recall that?

1           A.       (By Mr. Walker) I recall that.

2           Q.       What does it mean to you when you say  
3 you're local to a client?

4           A.       (By Mr. Walker) That just means that we  
5 are going to work for them prior to working for  
6 somebody else.

7           A.       (By Mr. Sansoucy) I would like to add  
8 to that where it's my company and my contract that  
9 it is no secret that I will not work adverse to a  
10 client's position, I will not work for somebody  
11 against an existing client.

12                   For example, I would not work for a  
13 public utility against the city of Nashua. Our  
14 loyalties are to our clients, past and present.

15           Q.       Well, let me ask you this, does loyalty  
16 to a client mean you'll do whatever a client  
17 wants?

18                   MR. CONNER: I'll object to the  
19 leading, your Honor. That's the only time I'll  
20 object to it.

21                   CHAIRMAN GETZ: Well, you're objecting  
22 to a leading question when the commission doesn't  
23 follow technical rules about that, so I'll

1       overrule the objection.

2                   MR. UPTON:  And I will try not to ask  
3       leading questions.  I am aware of that.

4           A.       (By Mr. Sansoucy) To answer your  
5       question, Mr. Upton, I think it's well known that I  
6       do not do -- I am not instructed what to do.  We do  
7       what is best, we provide fair market values, and we  
8       are not influenced accordingly, and we don't -- we  
9       have been told from time to time what people would  
10      like to see, and that's irrelevant.

11          Q.       In tax cases have you ever concluded  
12      values less than the assessed value placed on the  
13      property by your client?

14          A.       (By Mr. Sansoucy) Many, many times  
15      values are too high, and we point that out, and we  
16      do everything possible to assist the town or the  
17      city throughout the United States in coming to an  
18      amiable resolution considering the impact that  
19      would have; one of the best examples of that here  
20      in New Hampshire is Seabrook.

21                   And what happens, obviously, is these  
22      don't reach court.  So what reaches court are those  
23      few cases which are contested.

1           Q.       In this case, if you had concluded that  
2       the value of PWW's assets would have caused rates  
3       under city ownership to increase more than they  
4       would have under PWW, what would you have done?

5           A.       (By Mr. Sansoucy) In this case -- and  
6       it's in the essence of my statements to the board  
7       that we saw snippets of -- if the value of this  
8       property which generates rates in part and if all  
9       other costs related to Nashua's operation exceeded  
10      those costs which would otherwise have been charged  
11      in the future by Pennichuck, then we would be  
12      making the recommendation that this is likely not  
13      in the public interest and should not proceed  
14      further.

15          Q.       And, likewise, if this commission sets  
16      a value that causes rates under city ownership to  
17      be greater than they would be under Pennichuck  
18      ownership, what will you likely do?

19          A.       (By Mr. Sansoucy) We will likely advise  
20      the city that if the commission sets a value plus  
21      the costs related to the operation that creates  
22      rates greater than what Pennichuck is likely to  
23      provide, we would likely advise the city that it

1       should not proceed further with the taking.

2               Q.       Have you ever been asked by  
3       municipalities to assist in condemnation of  
4       utilities where you have advised against it?

5               A.       (By Mr. Sansoucy) Yes, we have.

6               Q.       Can you give me an example?

7               A.       (By Mr. Sansoucy) Certainly. Here in  
8       the state of New Hampshire we have been asked by a  
9       number of New Hampshire communities whether or not  
10       they should proceed with an eminent domain taking  
11       of certain hydroelectric plants owned by certain  
12       regulated electric companies here in the state, and  
13       we have strongly urged that they do not proceed  
14       with an electric taking.

15               And we have been asked by, in  
16       particular some years back the city of Claremont,  
17       whether or not they should take poles and wires by  
18       eminent domain at the time of the situation with  
19       Connecticut Valley, and we advised that they should  
20       not, a better solution would likely come with an  
21       outright sale to public service.

22               Q.       Mr. Camerino, in his cross-examination  
23       of you, Mr. Sansoucy, asked about unplanned

1 maintenance and used your GES 4 -- Exhibit GES 4  
2 from your January 12, 2006 testimony, and I think  
3 that's Exhibit 1007C. Do you recall that?

4 A. (By Mr. Sansoucy) Yes, sir.

5 Q. And did you update Exhibit GES 4 for  
6 the November 2006 testimony?

7 A. (By Mr. Sansoucy) Yes, it is. It's  
8 updated 11/14/06.

9 MR. UPTON: I want to make sure that I,  
10 in front of the commission, thank Daniel for  
11 helping all of us on this. We'd be lost without  
12 his technical assistance.

13 MR. CONNER: And he's from my firm.

14 MR. UPTON: So I want to thank  
15 Mr. Conner, as well.

16 MR. CONNER: That's okay, you don't  
17 have to go that far.

18 MR. UPTON: No, I do. I feel like I  
19 do.

20 BY MR. UPTON:

21 Q. Can you explain what the differences  
22 are between the 2006 testimony -- I'm sorry, the  
23 November 2006 and the January 2006 testimony are?

1           A.       (By Mr. Sansoucy) You want to go  
2 through the entire exhibit?

3           Q.       Not the entire thing, but go through  
4 where there are significant changes and please  
5 explain why.

6           A.       (By Mr. Sansoucy) Certainly. The top  
7 exhibit is the initial filing January 12, 2006  
8 based on the information available at that time and  
9 the rate cases to date.

10                   The revised exhibit revises the  
11 testimony based on a current -- based on current  
12 information through 11/1/06, and based on what we  
13 learned through the discovery process.

14                   The difference is -- the significant  
15 difference is the line 2 are the taxes that we have  
16 agreed to have increased to 1,497,000. Line item 3  
17 is oversight. In the first exhibit line item 3 is  
18 315,000.

19           Q.       And what does that represent?

20           A.       (By Mr. Sansoucy) That represents the  
21 oversight contract with Beck.

22           Q.       And that increased. Why did it  
23 increase?

1           A.       (By Mr. Sansoucy) That increased  
2       because the -- a number of -- of conditions that  
3       have been made by the city to the staff that we  
4       will remain regulated as to service, regulated as  
5       to rates for the wholesale contracts, and we will  
6       keep a full set of regulatory books in the city of  
7       Nashua, similar to the rate based carryover, and a  
8       set of books transparent for the Public Utilities  
9       Commission to view at any time.

10                       For that purpose I have increased  
11       oversight \$400,000 to account for the entire  
12       accounting and additional customer service needs  
13       related to the keeping of a complete set of  
14       regulatory books, and for future rate cases or  
15       lightly regulated rate cases, depreciation studies,  
16       et cetera; so that's an increase there.

17           Q.       Purchased water has doubled. Why did  
18       that double?

19           A.       (By Mr. Sansoucy) Purchased water has  
20       doubled because it was incorrectly reported on the  
21       company's 12/31/04 annual report. We flushed that  
22       out in the discovery process and corrected it  
23       accordingly.

1 Q. Customer service doubled, why was that?

2 A. (By Mr. Sansoucy) Customer service  
3 doubled to account for -- to more accurately  
4 account for all the mailings and the hard costs  
5 associated with the additional customer service  
6 that Carol Anderson agreed to perform within the  
7 city, such as envelope stuffing, et cetera.

8 Q. Unplanned maintenance has increased,  
9 can you explain that?

10 A. (By Mr. Sansoucy) Yes. The unplanned  
11 maintenance is now directly related to the final  
12 estimate prepared by Veolia of \$585,000 per year,  
13 and that's one half of 585 that we believe will be  
14 expensed as opposed to one half on an average year  
15 will be capitalized.

16 Q. And so where is the additional 290 in  
17 this analysis?

18 A. (By Mr. Sansoucy) The additional 290 is  
19 found in line 13 which is in the bond reserves that  
20 have to be used for operations, maintenance,  
21 repair, restoration and improvements and  
22 expansions, and it is in the 3,061,000.

23 Q. And you do that because Pennichuck

1 capitalizes that level of unplanned maintenance?

2 A. (By Mr. Sansoucy) Pennichuck  
3 capitalizes a significant amount of maintenance.  
4 Pennichuck essentially has -- almost all of its  
5 maintenance is unplanned maintenance, it has very  
6 little planned maintenance.

7 The Veolia contract is reversed from  
8 Pennichuck operations, where the Veolia is  
9 predominantly planned maintenance, very little  
10 unplanned maintenance that's not capital, it's the  
11 reverse situation, but the money is found in the  
12 categories.

13 Q. Utility is increased significantly?

14 A. (By Mr. Sansoucy) Yes. This line item,  
15 the company misreported the electric and utility  
16 bills in its 12/31/04 annual report, that got  
17 flushed out in discovery and the proper and correct  
18 amount is now shown in line 10 of my exhibit of  
19 11/14/06.

20 Q. Did the revisions that you made to GES  
21 Exhibit 4 have any significant impact on your  
22 overall revenue requirements analysis?

23 A. (By Mr. Sansoucy) No. The revenue

1 requirements for city of Nashua has increased, but  
2 it -- but it also reflects the fact that many of  
3 these line items are direct pass-through expenses  
4 by Pennichuck, and Pennichuck's own revenue  
5 requirements has increased also.

6 Q. Mr. Camerino also asked you a number of  
7 questions about the capital spending that you --  
8 that you had planned for the system under Nashua's  
9 ownership. How much was the level of capital  
10 spending that you had each year?

11 A. (By Mr. Sansoucy) I -- we are spending  
12 \$6 million a year in capital that is directly  
13 analogous to Pennichuck's, plus \$3 million of bond  
14 reserves for a present dollar amount of \$9 million  
15 per year as compared to Pennichuck 6 million per  
16 year, indexed for inflation.

17 Q. So the 6 million just compares with  
18 what Pennichuck does?

19 A. (By Mr. Sansoucy) Right. In order  
20 for -- in my belief, in order to compare for public  
21 interest equal rates and equal costs to the  
22 customer, we -- I set up a rate path for the city  
23 of Nashua which mirrors the capital expense -- the

1 annual ongoing capital expense of Pennichuck,  
2 \$6 million per year, in addition to the treatment  
3 plant, et cetera.

4 So that's the first 6 million, to  
5 mirror their capital expenditures. And that's the  
6 high side of what they capitalize into rate base as  
7 opposed to CIAC.

8 In addition to that, the city of Nashua  
9 will be spending an additional 3 million on top of  
10 the 6 within this rate path of its bond reserves  
11 for emergency repairs, the RRRM and the unplanned  
12 maintenance portions and the capital expenses  
13 related to the Veolia contract.

14 Q. How can you budget more capital for  
15 Nashua and still project rates that would be less  
16 than those charged by PWW?

17 A. (By Mr. Sansoucy) One of the most  
18 important elements of the cost structure of the  
19 city of Nashua is its lower cost of capital.

20 Nashua's cost of capital will be  
21 taxable and nontaxable revenue bonds for  
22 100 percent of its total future capital. It will  
23 have no income tax component related to that. It

1 will have, in essence, a similar depreciation  
2 component which is a bond reserve, but it is  
3 required to be fully reinvested.

4 MR. CAMERINO: Objection, Mr. Chairman.  
5 I let him go a little ways, but I didn't ask him a  
6 single question about cost of capital. If you  
7 recall, I took him through GE 4 and just asked him  
8 every single line.

9 Mr. Upton just did that and gave him a  
10 chance to explain, and now he's going through  
11 things that nobody asked him that.

12 CHAIRMAN GETZ: It sounds like we're  
13 revisiting his direct.

14 MR. UPTON: I'm done with it, but he  
15 asked him a great number of questions about his  
16 bond for future capital expenditures.

17 MR. CAMERINO: And if you recall, they  
18 are which, where are they in this chart, what is  
19 in it. That was all it was.

20 CHAIRMAN GETZ: I think the beginning  
21 of the question was a fair implication to follow  
22 up on, and I think the first sentence took care of  
23 the answers. So let's move on.

1                   MR. UPTON: Okay. I'm done with the  
2 area anyway.

3 BY MR. UPTON:

4           Q.       Back to Mr. Walker. Mr. Conner asked  
5 you about your valuation of the real estate.

6           A.       (By Mr. Walker) Yes.

7           Q.       Do you recall that?

8           A.       (By Mr. Walker) Yes.

9           Q.       Under which valuation method is the  
10 separate valuation of the real estate relevant?

11          A.       (By Mr. Walker) Cost approach.

12          Q.       And you don't rely on cost, we know  
13 that.

14          A.       (By Mr. Walker) Correct.

15          Q.       Is the value of the real estate  
16 included in the market and income approach?

17          A.       (By Mr. Walker) Yes, it is.

18          Q.       How so?

19          A.       (By Mr. Walker) The value of all the  
20 assets of PWW are incorporated in the value income  
21 approach and the sales comparison approach.

22                   MR. UPTON: This is the last topic I'm  
23 going to have this afternoon.

1           Q.       Mr. Conner pointed out some  
2       inconsistencies in your sales analysis. Do you  
3       remember that?

4           A.       (By Mr. Walker) I do.

5           Q.       And one was the number of customers in  
6       the Citizens transaction?

7           A.       (By Mr. Walker) Correct.

8           Q.       Did that have any impact on the ratios  
9       you developed?

10          A.       (By Mr. Walker) It had an impact on the  
11       ratios we developed, but not the ones we relied  
12       upon in the report, and none of the ratios we  
13       relied upon were a function of customers.

14          Q.       And the other sale that he looked at  
15       with you was the Kelda sale, in which you've used  
16       information post closing?

17          A.       (By Mr. Walker) Correct.

18          Q.       Did you attempt to review -- did you  
19       review your work papers on that sale?

20          A.       (By Mr. Walker) I did.

21          Q.       Had you developed the correct EBITDA?

22          A.       (By Mr. Walker) We had not.

23          Q.       Did you -- in your work papers, were

1 you able to locate the correct EBITDA?

2 A. (By Mr. Walker) Yes, we were able to  
3 locate the income statement for year end 1998.

4 MR. CONNER: This is where we have an  
5 objection, Mr. Chairman. May I pull up the --  
6 this is the stipulation that we agreed to after  
7 lunch on the second day of the hearing.

8 Daniel, if you could highlight what I  
9 say in here, what I start with. Well, just -- can  
10 you make it larger? That's fine.

11 I said, Mr. Chairman, we're not  
12 switching attorneys, but I did want to go ahead  
13 and announce that we've reached an agreement with  
14 respect to order of witnesses in the completion of  
15 Mr. Sansoucy and Mr. Walker's testimony.

16 They will be recalled Monday afternoon  
17 with the understanding and agreement with  
18 Mr. Upton that Mr. Walker will be limited in his  
19 review to documents Exhibits 3064, which is his  
20 deposition Exhibit 1, and Exhibit 3252, which are  
21 his sales work papers, document Nos. N 219593  
22 through N 22271. Thank you.

23 You asked Mr. Upton, all set with that,

1 Mr. Upton? He said yes. The documents that I was  
2 just handed, your Honor, right before this  
3 started, are not within that range. I have no way  
4 to go back and determine if those are in his work  
5 papers or if they're not.

6 MR. UPTON: Let me say what the witness  
7 will say, your Honor, he will say --

8 CHAIRMAN GETZ: Well, let me step back  
9 to -- he's expressing an agreement that you  
10 reached and now he's arguing that this line of  
11 inquiry is outside the agreement.

12 MR. UPTON: What we don't know is  
13 whether that Exhibit 3252 represents the full  
14 range of his -- of his work papers. He's going to  
15 say that he went back, and in his work papers was  
16 the document that allowed him to determine what  
17 the correct EBITDA was.

18 He has that, and he has other documents  
19 in his work papers that are not a part of 3252.  
20 So we don't know -- I'm not suggesting that Joe  
21 incorrectly copied it, but we don't know whether  
22 all of the documents that were in his work papers  
23 were fully copied by them as a part of that

1 exhibit. They appear not to have been. And in  
2 his work papers is the document that he referred  
3 to.

4 MR. CONNER: Your Honor, we were very  
5 clear in our identifying the documents. I sent  
6 them via e-mail and also a CD with these documents  
7 to Mr. Richardson the Thursday before the trial  
8 started. They were out of his work papers.

9 And I said -- he objected to that  
10 initially, and I said, Justin, they're your  
11 documents. But they didn't number their documents  
12 when they produced them; we had to number them  
13 ourselves.

14 My problem is, your Honor, I left this  
15 courtroom on Tuesday with the understanding the  
16 only thing I had to look at to prepare for this  
17 redirect are these two binders here, and those are  
18 the work papers that were identified to us in  
19 depositions as Mr. Walker's work papers.

20 I didn't take the four boxes that he  
21 has looked through. If I had known that he was  
22 going to do that, then I would have stayed up here  
23 and I would have looked through those boxes again

1 myself. I didn't have that opportunity.

2 We had no warning about this until just  
3 ten minutes before the proceeding started. No  
4 warning.

5 CHAIRMAN GETZ: Let's rewind back to  
6 the underlying question. To make sure I  
7 understand the relevance of this line of inquiry  
8 as proper redirect.

9 MR. UPTON: I was going to ask him had  
10 he reviewed his work papers on sales to see if he  
11 had the document that correctly identified the  
12 EBITDA that should have been used. We don't  
13 question and we don't challenge that it was an  
14 incorrect EBITDA in his analysis.

15 CHAIRMAN GETZ: So you're trying to  
16 find out what the correct EBITDA is.

17 MR. UPTON: Right.

18 CHAIRMAN GETZ: And you, Mr. Conner,  
19 are saying he can only provide that information if  
20 it's within the documents that were discussed from  
21 the other day?

22 MR. CONNER: I'm saying that, but I'm  
23 also saying, your Honor, that what he's done in

1       this proceeding, they filed an appraisal on  
2       January the 12th, if I'm not mistaken, 2006.  
3       There was reply testimony.

4                     In my reply testimony we went through  
5       these sales. They could have determined through  
6       our own experts -- my own experts' analysis of  
7       sales where these errors were. They didn't  
8       have -- they didn't do it.

9                     Then they filed updated testimony where  
10       they updated their appraisal. They testified that  
11       this appraisal is fine, there's nothing wrong with  
12       it, and they had an opportunity all that period of  
13       time to go back through their own work papers and  
14       see where the problems were.

15                    What he's done now, they've prepared a  
16       new exhibit -- and this is what I was afraid of --  
17       they've prepared a new exhibit that has a  
18       re-analysis of two sales that we questioned them  
19       on, and that's what he's going to try to  
20       introduce.

21                    CHAIRMAN GETZ: Well, Mr. Upton, is  
22       that the intent is to bring in another piece of  
23       testimony?

1                   MR. UPTON: I was going to show what  
2 the correct figures were and then ask him what the  
3 impact was of the correct figures, and I was also  
4 going to ask what the impact was if the Kelda sale  
5 was not considered in his analysis at all.

6                   I'm not trying to -- I mean, I think  
7 the proof is ultimately in the pudding, and it's a  
8 question that Mr. Conner never asked. He never  
9 got to what is the impact of all of this.

10                  CHAIRMAN GETZ: Well, certainly I think  
11 you can inquire to that point. I think,  
12 unfortunately, to the extent you agreed not to  
13 introduce something the other day, I'm not going  
14 to allow introduction of evidence outside of the  
15 scope of the documents the two of you agreed to on  
16 the record.

17                  But I think it's certainly fair for you  
18 to ask the witness, similar as you just did to the  
19 question about the number of customers, does the  
20 difference or the error have any effect on his  
21 overall recommendation.

22                  So I'd say let's just get to the --  
23 let's just get to the end point, and we'll try to

1       abide by this agreement that the two of you came  
2       to the other day.

3                       MR. UPTON: I feel a little bit like we  
4       received that exhibit literally moments before  
5       this trial started. I have not been through that  
6       exhibit. I didn't know what was in it.  
7       Mr. Walker didn't know what was in it.

8                       So even though I agreed to those  
9       numbers, I'm -- I'm feeling a little bit like I  
10      got set up.

11                      MR. CONNER: Your Honor, I won't  
12      respond to that, because that's not the truth.

13                      CHAIRMAN GETZ: Was it wishful thinking  
14      on my part that you said this was the last line of  
15      inquiry?

16                      MR. UPTON: This is the last line of  
17      inquiry. It's more than wishful thinking on both  
18      of our parts.

19      BY MR. UPTON:

20                      Q.       If you just excluded the Kelda sale  
21      altogether from your sales analysis, what impact  
22      would that have on your final ratio?

23                      A.       (By Mr. Walker) In my opinion it would

1 have no impact on the final ratio selected. It  
2 would change the median to approximately 12.63 and  
3 the mean to 13.3.

4 MR. CONNER: Objection. Mr. Chairman,  
5 again, that's bringing in the financial  
6 information that they went back through and did  
7 based on this other report.

8 MR. UPTON: No, he excluded the Kelda  
9 sale. He excluded it.

10 CHAIRMAN GETZ: It appears to me that  
11 that was a calculation he could do with --

12 MR. CONNER: Okay. Withdraw the  
13 objection.

14 BY MR. UPTON:

15 Q. What was the mean before you excluded  
16 it?

17 A. (By Mr. Walker) I'm sorry, I should  
18 have done it that way. The mean prior to excluding  
19 Kelda was 12.96. If you exclude the Kelda  
20 transaction it's 13.36.

21 Q. And what impact does that have on your  
22 analysis?

23 A. (By Mr. Walker) It would still be a

1 ratio of 13, which is the one we selected.

2 Q. By the way, was the sales method the  
3 only one you relied on?

4 A. (By Mr. Walker) No. In addition we  
5 relied on the income capitalization approach.

6 Q. And your income analysis supported your  
7 sales method, correct?

8 A. (By Mr. Walker) That is correct.

9 Q. And vice versa?

10 A. (By Mr. Walker) Correct.

11 MR. UPTON: I have nothing further.

12 CHAIRMAN GETZ: Is there going to be  
13 interest in recross?

14 MR. CONNER: Well, since with your  
15 ruling, your Honor, not much. I have just a  
16 couple of things I want to go back to, and I think  
17 20 minutes that will be it. And specifically,  
18 what he raised.

19 MR. UPTON: If it's new he can do it,  
20 not if it's not new.

21 CHAIRMAN GETZ: I want to hear what the  
22 argument is about why you need a recross, why you  
23 think recross is proper.

1                   MR. CONNER: Well, in this instance I  
2                   want to clarify the record because he asked  
3                   Mr. Walker to read the second paragraph of page  
4                   419 of the appraisal of real estate, and he didn't  
5                   read it. And I'd like for the record it to be  
6                   read in.

7                   CHAIRMAN GETZ: Let's do that piece.  
8                   But we're going to do this piece by piece, because  
9                   recross is discretionary. I don't see any harm to  
10                  completing the record on this point.

11                  REXCROSS-EXAMINATION

12                  BY MR. CONNER:

13                  Q.        Mr. Walker, if you'll take a look at  
14                  the Elmo, and I think this is page 419 of the  
15                  Appraisal of Real Estate. I believe that's the  
16                  12th edition. This is the page that Mr. Upton  
17                  directed you to earlier, correct?

18                  A.        (By Mr. Walker) Correct.

19                  Q.        And this is when he was talking about  
20                  how you should appraise special purpose property,  
21                  correct, and what methods to utilize?

22                  A.        (By Mr. Walker) Correct.

23                  Q.        If you would, read the second

1 paragraph?

2 A. (By Mr. Walker) Okay. When the market  
3 is weak and few market transactions are available,  
4 the applicability of the sales comparison approach  
5 may be limited, for example, the sales comparison  
6 approach is usually not applied to special purpose  
7 properties because few similar properties may be  
8 sold in a given market even when it is  
9 geographically broad. For valuing special purpose  
10 properties, the cost approach may be more  
11 appropriate and reliable.

12 Nevertheless, sales and offers for  
13 properties in the same general categories may be  
14 analyzed to establish broad limits for the property  
15 being appraised, which may help support the  
16 findings of the other value approaches applied.

17 MR. UPTON: And I believe I did ask him  
18 to read that sentence, so I don't think this  
19 line --

20 MR. CONNER: He didn't read it all.  
21 That's all I have.

22 MR. UPTON: Then I withdraw my  
23 objection.

1                   CHAIRMAN GETZ:  Then anything else for  
2  these witnesses?

3                   I take it there are no further  
4  questions, so we're going to excuse the panel.  
5  Thank you, gentlemen.

6                   I guess we have one -- well, there's  
7  two things on my mind at the moment.  My  
8  understanding is we're going to start with  
9  Mr. Ware at nine o'clock tomorrow morning, is that  
10 the plan?

11                  MR. UPTON:  That's the current plan.

12                  CHAIRMAN GETZ:  And the other is there  
13 is a left over issue about whether you're going to  
14 seek recross of the Veolia witnesses.

15                  MR. CAMERINO:  We will not.

16                  CHAIRMAN GETZ:  Is there something  
17 else, Mr. Conner?

18                  MR. CONNER:  No, sir.

19                  CHAIRMAN GETZ:  All right, then, we  
20 will recess the hearing for today and resume  
21 tomorrow morning at nine o'clock with the  
22 beginning of the company's case.  Thank you.

23                  (The deposition was concluded at 3:46 p.m.)

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CERTIFICATE

I, Pamela J. Carle, Certified Court Reporter and Notary Public of the State of New Hampshire, do hereby certify that the foregoing is a true and accurate transcript of my stenographic notes of the hearing Re: DW 04-048, taken at the place and on the date hereinbefore set forth.

I further certify that I am neither attorney nor counsel for, nor related to or employed by any of the parties to the action in which this proceeding was taken, and further that I am not a relative or employee of any attorney or counsel employed in this case nor am I financially interested in this action.

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