

STATE OF NEW HAMPSHIRE
PUBLIC UTILITIES COMMISSION

September 19, 2007 - 9:13 a.m.
21 South Fruit Street
Concord, New Hampshire

DAY XI

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

Sandy Deno, Clerk

APPEARANCES

Representing the City of Nashua, NH:
Robert Upton, II, Esq.
Justin C. Richardson, Esq.
Linda Regan, paralegal

Representing Pennichuck Water Works, Pennichuck
East Utilities & Pittsfield Aqueduct Co.:
Steven V. Camerino, Esq.
Sarah B. Knowlton, Esq.

Court Reporter:
Pamela Carle, CCR, RPR
New Hampshire CCR No. 98

1 APPEARANCES (Continued)

2 Representing Anheuser-Busch:
3 John T. Alexander, Esq.4 Representing the Town of Milford:
5 Bryan Gould, Esq.6 Representing the Town of Merrimack:
7 Edmund Boutin, Esq.8 Representing PUC staff:
9 Marcia A.B. Thunberg, Esq.10 Representing Residential Ratepayers:
11 Office of Consumer Advocate
12 Stephen Eckberg13 Representing Merrimack Valley Regional Water
14 District:
15 Stephen Judge, Esq.

16 John Gustin, pro se

17 Barbara Pressley, pro se

18

19

20

21

22

23

24

25

26

27

1

2

I N D E X

3 WITNESS: GARY DANIELS

4 EXAMINATION: PAGE
DIRECT

5 By Mr. Gould 6

CROSS

6 By Ms. Thunberg 8

By Mr. Camerino 11

7 By Mr. Upton 14

8

9 WITNESS: DANIEL McCRAY

10 EXAMINATION: PAGE

DIRECT

11 By Mr. Boutin 28/70

CROSS

12 By Ms. Thunberg 30

By Mr. Gustin 35

By Mr. Camerino 37

13 By Mr. Upton 48

14 WITNESS: JOHN MILLS

15 EXAMINATION: PAGE

DIRECT

16 By Mr. Alexander 74

CROSS

17 By Mr. Richardson 77

18 WITNESS: BARBARA PRESSLEY

19 EXAMINATION: PAGE

DIRECT

20 By Mr. Upton 82

CROSS

21 By Mr. Upton 87

22

23

1 WITNESS: MICHAEL SCANLON

2 EXAMINATION:	PAGE
3 By Mr. Sullivan	97/150
4 By Mr. Judge	98
5 By Ms. Thunberg	100
6 By Mr. Camerino	113/156

6

7

8 EXHIBITS

9 EXHIBIT NO.	DESCRIPTION	PAGE
10 4008	Substituted testimony	77

11

12

13

14

15

16

17

18

19

20

21

22

23

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

2 CHAIRMAN GETZ: Good morning. We're
3 back on the record in docket DW 04-048, and I
4 believe the first witness today is Mr. Daniels on
5 behalf of the town of Milford.

6 And before we do that, let's just
7 quickly go around the room and take appearances.

8 MR. UPTON: Rob Upton, Upton and
9 Hatfield, along with Justin Richardson and Linda
10 Regan. We represent the city of Nashua.

11 CHAIRMAN GETZ: Good morning.

12 MR. ALEXANDER: John Alexander with
13 Ransmeier & Spellman on behalf of Anheuser-Busch.
14 With me today are John Mills and Robert Merlo from
15 the company.

16 CHAIRMAN GETZ: Good morning.

17 MR. BOUTIN: Ed Boutin. I'm with the
18 town of Merrimack, and with me today is a member
19 of the council, David McCray.

20 CHAIRMAN GETZ: Good morning.

21 MR. JUDGE: Steve Judge from Wadleigh,
22 Starr & Peters representing Merrimack Valley
23 Regional Water District.

1 CHAIRMAN GETZ: Good morning.

2 MR. GUSTIN: Good morning, John Gustin,
3 intervenor.

4 CHAIRMAN GETZ: Good morning.

5 MS. PRESSLEY: Good morning, Barbara
6 Pressley, intervenor.

7 MR. ECKBERG: Good morning, Steve
8 Eckberg on behalf of the office of consumer
9 advocate.

10 CHAIRMAN GETZ: Good morning.

11 MS. THUNBERG: Good morning. Marcia
12 Thunberg on behalf of staff, and with me today is
13 Mark Naylor and Doug Brogan.

14 CHAIRMAN GETZ: Good morning.

15 MR. CAMERINO: Good morning,
16 commissioners, Steve Camerino and Sarah Knowlton
17 on behalf of Pennichuck Water Works, and with us
18 today is Donald Ware, president of Pennichuck
19 Water Works.

20 CHAIRMAN GETZ: Good morning.

21 MR. GOULD: Good morning. Bryan Gould,
22 Brown, Olson & Gould here in Concord on behalf of
23 the town of Milford, and in the witness chair is

1 Gary Daniels, the chairman of the board of
2 selectmen.

3 CHAIRMAN GETZ: Good morning. Pam, can
4 you swear in the witness.

5 (Gary Daniels, sworn)

6 DIRECT EXAMINATION

7 BY MR. GOULD:

8 Q. Will you state your name, please?

9 A. Gary Daniels.

10 Q. And do you hold any elective positions
11 in the town of Milford?

12 A. I am state representative in the town
13 of Milford as well as selectman.

14 Q. And have you filed prefiled testimony
15 in this case?

16 A. I have.

17 Q. And have you -- are you also familiar
18 with the prefiled testimony filed by the director
19 of public works in Milford?

20 A. Yes, I am.

21 Q. And that would be Mr. Ruoff's
22 testimony?

23 A. That's correct.

1 MR. GOULD: And I understand,
2 commissioners, that has been marked as 4001 and
3 4002 for ID.

4 Q. Do you adopt the testimony that you
5 prefiled with this commission?

6 A. I do.

7 Q. And do you affirm the testimony that
8 Mr. Ruoff filed with the commission?

9 A. Yes, I do.

10 MR. GOULD: I'd like to move to strike
11 the ID from prefiled testimony.

12 THE COURT: We'll deal with striking
13 identifications and admitting as evidence at the
14 end of the proceeding.

15 MR. GOULD: That's what I get for not
16 being here all along, Mr. Chairman, I'm sorry
17 about that. So I tender the witness for
18 cross-examination.

19 THE COURT: Thank you. And as I
20 understand it, Mr. Daniel's testimony, the town of
21 Milford -- town of Milford is considered a party
22 opposing the petition, so we will begin with
23 opportunity for cross-examination by

1 Mr. Alexander.

2 MR. ALEXANDER: I have no questions.

3 CHAIRMAN GETZ: And Mr. Boutin.

4 MR. BOUTIN: None.

5 CHAIRMAN GETZ: Mr. Eckberg, questions
6 for the witness?

7 MR. ECKBERG: No questions, thank you.

8 CHAIRMAN GETZ: Ms. Thunberg.

9 CROSS-EXAMINATION

10 BY MS. THUNBERG:

11 Q. Good morning.

12 A. Good morning.

13 Q. I just have a few questions for you,
14 and this pertains to your testimony, not to
15 Mr. Ruoff's testimony.

16 I'd like to -- do you have a copy of
17 your testimony before you?

18 A. I do not have one in front of me.

19 MR. GOULD: I have an extra copy.

20 THE WITNESS: Thank you.

21 Q. Mr. Daniels, I'd like to draw your
22 attention to page 1 of your testimony and the
23 third answering paragraph, and the statement that

1 Milford is trying to negotiate a water supply
2 agreement with Nashua.

3 Can you tell me if that is still
4 presently the case?

5 A. We are open to discussions with Nashua.
6 We have met with representatives of Nashua once
7 within the last probably year and a half.

8 Q. Have those negotiations produced an
9 agreement?

10 A. It has not.

11 Q. Now, on page 2, paragraph 3 of your
12 testimony. Do you see where it says Nashua
13 proposes to acquire Pennichuck's assets for later
14 transfer to the Merrimack Valley Regional Water
15 District, do you see that?

16 A. Yes.

17 Q. Are you aware that the district holding
18 Pennichuck's assets is not an element of this
19 proceeding?

20 A. Yes.

21 Q. And if the district is not vying for
22 Pennichuck Water Works's assets in this
23 proceeding, does this change your testimony at

1 all?

2 A. That is only one reason of the six
3 reasons that I gave, so the other -- the other
4 reasons would still be valid.

5 The indication here that was given was
6 the reasons given by the board back in January of
7 last year why -- why we opposed the taking.

8 Q. With respect to page 2, the very first
9 paragraph, the third line, I'd like to just draw
10 your attention to. We now understand that Nashua
11 plans to have an out-of-state company manage the
12 water system, do you see that --

13 A. Yes.

14 Q. -- statement? Is it your understanding
15 that the out-of-state operator and overseer are
16 Veolia and Beck, is that your understanding?

17 A. It was our understanding that it was
18 not going to be local.

19 Q. Okay, you don't have an understanding
20 of who is -- who the out-of-state operators or --

21 A. That's correct.

22 Q. -- entities are?

23 A. That's correct.

1 MS. THUNBERG: Thank you. I have no
2 further questions.

3 CHAIRMAN GETZ: Thank you. And then
4 Ms. Pressley?

5 MS. PRESSLEY: Thank you, no questions.

6 CHAIRMAN GETZ: Mr. Upton. I'm sorry.
7 Mr. Camerino.

8 MR. CAMERINO: Otherwise Mr. Upton may
9 ask even more question.

10 CHAIRMAN GETZ: Mr. Camerino.

11 CROSS-EXAMINATION

12 BY MR. CAMERINO:

13 Q. Good morning, Mr. Daniels. My name is
14 Steve Camerino, I represent Pennichuck Water
15 Works.

16 You mentioned that there have been some
17 discussions between the town of Milford and city
18 of Nashua about whether you can reach agreement on
19 a supply agreement. And my question to you is,
20 you gave many other reasons besides the agreement
21 itself as to why you oppose the city's takeover of
22 Pennichuck Water Works.

23 I take it that even if Nashua were

1 willing to simply assume the existing agreement,
2 that you would still have all the other
3 concerns --

4 CHAIRMAN GETZ: Actually, excuse me,
5 Mr. Camerino. I'm so used to dealing with the
6 company and the city's witnesses. When would be
7 the appropriate time for questions from Mr. Upton?

8 MR. CAMERINO: My understanding -- and
9 I maybe should have pulled the letter out yet
10 again, but my understanding is with regard to
11 intervenors, that if an intervenor is supporting a
12 particular party, that party would question before
13 the party that's opposed.

14 So, similarly, there's some intervenors
15 that support Nashua, and we would follow an order
16 similar to this where Nashua would question those
17 witnesses before we would. But I have to say I
18 did not read that letter yet again.

19 CHAIRMAN GETZ: So, then, Mr. Upton
20 should be having an opportunity --

21 MR. UPTON: Well, I think I would
22 follow Mr. Camerino in that scheme.

23 MR. CAMERINO: Because my cross would

1 be considered friendly cross.

2 CHAIRMAN GETZ: Yup. Okay, I think I
3 am re-acclimated.

4 MR. CAMERINO: You may be actually
5 reading what we said to you. Whatever you would
6 like.

7 CHAIRMAN GETZ: Well, no, friendly
8 cross should precede the other variety.

9 BY MR. CAMERINO:

10 Q. So my question, Mr. Daniels, is if you
11 assume for a moment that Nashua said we'll take on
12 that contract as is, I'm assuming from the fact
13 that you had other objections to Nashua's purchase
14 of Pennichuck Water Works that you would still
15 oppose the acquisition, is that a fair assumption?

16 A. That is true. The issue referenced is
17 only one of many concerns that we -- the board had.

18 Q. And you're here representing the people
19 of Milford today, is that correct?

20 A. I'm representing the board of
21 selectmen, yes.

22 Q. And the people of Milford have never
23 taken a vote to have the assets of Pennichuck

1 Water Works acquired?

2 A. That is correct.

3 Q. And would it be fair to say that you
4 would not consider it an expression of the public
5 interest of the people of Milford that the people
6 of Nashua or their aldermen took a vote?

7 A. That does not express the -- the vote
8 of the people of Milford, that's correct.

9 Q. The contract between the city of
10 Milford -- the town of Milford and Pennichuck
11 Water Works, if you know, was that a contract that
12 was subject to review by this commission and
13 subject to PUC approval?

14 A. I -- I don't know.

15 MR. CAMERINO: Thank you. That's all I
16 have.

17 CHAIRMAN GETZ: Now Mr. Upton.

18 MR. UPTON: Thank you.

19 CHAIRMAN GETZ: Mr. Judge, do you have
20 any questions?

21 MR. JUDGE: No questions. I think
22 that's the right order.

23 CROSS-EXAMINATION

1 BY MR. UPTON:

2 Q. Good morning, Mr. Daniels.

3 A. Good morning.

4 Q. Was I one of the guys that came down to
5 talk to you, do you remember?

6 A. Mr. Sansoucy was there. I don't recall
7 who the other person was.

8 Q. I would have thought I would have stuck
9 out more than Mr. Sansoucy, but.

10 Your testimony expresses concern about
11 losing the benefits that Milford receives under
12 the wholesale water special contract with
13 Pennichuck, is that correct?

14 A. Yes.

15 Q. And I think we're all focusing on the
16 same paragraph. In your testimony you said
17 although Milford is trying to negotiate a water
18 supply agreement with Nashua, no agreement has yet
19 been reached and it's unclear whether the parties
20 will ever reach agreement, or if they do whether
21 Nashua will agree to terms that are as favorable
22 to Milford as the terms in its current agreement
23 with Pennichuck.

1 Did you receive from your attorney a
2 copy of an e-mail that I directed to him in early
3 August -- late July, early August?

4 A. I do not recall.

5 Q. Let me show you. Do you recall
6 receiving a copy of that?

7 A. I do believe I recall seeing this, yes.

8 Q. You can hang onto it. With the
9 exception of the part about me hitting a moose,
10 that e-mail is largely a continuing effort on the
11 part of Nashua to try to find a solution to the
12 concerns that Milford has raised, isn't it?

13 A. I would -- I would say that anything
14 that keeps the line of communication open is an
15 effort.

16 Q. And if I could look at it for just a
17 second. Some of the things that were discussed --

18 MR. CAMERINO: Mr. Chairman, I guess I
19 have an objection to this line of questioning
20 because it appears to relate to settlement
21 discussions between Milford and Nashua which are
22 not a part of public record here, have not been a
23 matter of discovery, and we have in front of the

1 commission a specific proposal, and if Nashua
2 wants to engage in settlement discussions with
3 parties to see if they can get them to support
4 their position, that's fine, but now to come in
5 and present those failed negotiations as
6 substantive evidence in this commission it seems
7 inappropriate.

8 CHAIRMAN GETZ: Response, Mr. Upton?

9 MR. UPTON: These are not settlement
10 negotiations. These are efforts to try to find
11 terms and conditions that the city could agree to
12 and have the commission impose that would -- on it
13 that would meet Milford's concerns. I mean, I can
14 do it this way or I can do it another way. I'm
15 happy to do it either way.

16 CHAIRMAN GETZ: What is the other way?

17 MR. UPTON: The other way is I'm going
18 to present him with the conditions -- I mean the
19 commitments that Nashua has already made in its
20 testimony.

21 CHAIRMAN GETZ: And to inquire whether
22 those would be conditions agreeable --

23 MR. UPTON: Alleviate his concerns.

1 CHAIRMAN GETZ: -- to the witness?

2 MR. UPTON: Yes. And I'd also say,
3 Mr. Camerino asked about the settlement
4 discussions, as did Ms. Thunberg.

5 MR. CAMERINO: The only question --

6 CHAIRMAN GETZ: Well, I don't think
7 that opens the door as to what the substance of
8 settlement discussions are.

9 MR. UPTON: All right.

10 THE COURT: If you have particular
11 questions about conditions that might be
12 acceptable to the witness, then -- that are part
13 of the -- a part of the record and not
14 hypothetical, then proceed in that manner.

15 MR. UPTON: All right.

16 BY MR. UPTON:

17 Q. Mr. Daniels, if Nashua has committed in
18 its testimony and agreed to a condition of
19 approval by the commission that it will provide
20 service in accordance with the rates, terms and
21 conditions of all existing wholesale contracts,
22 including the contract with Milford and the
23 renewal thereof, or if required for bonding

1 purposes Nashua will create a wholesale tariff for
2 Milford that incorporates the rates and provisions
3 of the existing wholesale contract, would that
4 alleviate your concern that Milford will not get
5 the benefit of the special contract it has
6 negotiated with Pennichuck?

7 A. I am one member of a board, and I
8 cannot unilaterally make that decision. That would
9 be a decision that would have to come before the
10 board. As of this time, I have no knowledge that
11 it ever has.

12 Q. Okay, and if I added that Nashua has
13 committed in its testimony and agreed to a
14 condition of approval by the commission that it
15 will be subject to PUC jurisdiction for any
16 complaint that the rates, terms and conditions for
17 wholesale service under any of the wholesale
18 contracts are unjust or unreasonable, would that
19 alleviate your concern that Nashua would treat
20 Milford differently under the wholesale contract
21 than PWW would?

22 A. Once again, sir, that is a decision for
23 the -- for the board of selectmen, not one member

1 of it.

2 Q. Now, you've also expressed concern that
3 Milford can't expect the same level of commitment
4 under the contract from Nashua as you do from PWW,
5 is that true?

6 A. I believe that is stated in the
7 testimony, yes.

8 Q. Don't Milford and Nashua have mutual
9 aid compacts or agreements for police and fire
10 protection?

11 A. I do not know.

12 Q. Do you know whether Nashua and Milford
13 are members of the Souhegan Mutual Aid District?

14 A. I do not know.

15 Q. Do you know if they are members of the
16 regional planning commission?

17 A. Yes.

18 Q. Has Nashua ever failed to meet any of
19 its obligations under any arrangement with Milford
20 that it has that you're aware of?

21 A. Not that I'm aware of, but I also want
22 to reiterate that we're speculating on what a --
23 what a contract might be, and negotiations have not

1 taken place to determine the terms of that
2 contract.

3 Q. Are you aware that Nashua has a
4 revolving loan fund administered by its department
5 of economic development that is targeted for
6 permanent working capital and fixed asset
7 financing for start-up and existing businesses in
8 the greater Nashua area, including not just
9 Amherst -- Nashua, but Amherst, Brookline, Hollis,
10 Hudson, Litchfield, Lyndeborough, Merrimack,
11 Mont Vernon, Pelham, and Wilton?

12 MR. CAMERINO: Objection.

13 MR. UPTON: I'm just asking if he's
14 aware of the fund.

15 MR. CAMERINO: You could read the New
16 York Times this morning into the record and ask
17 him if he's read it, and at that point you're
18 testifying.

19 CHAIRMAN GETZ: Is this question
20 related to proposals or conditions that the city
21 has agreed to as --

22 MR. UPTON: No. He's testified that
23 he's concerned about whether Nashua would honor

1 commitments and would do the kinds of things in
2 Milford that it does for the citizens of Nashua,
3 and I'm just exploring whether he's aware of this
4 revolving fund, which appears to apply not only to
5 Nashua but to Milford as well. I think it's
6 proper.

7 CHAIRMAN GETZ: I'll allow the
8 question.

9 A. I wasn't quite sure of the relevance of
10 the question. We may be involved in -- in efforts
11 with other towns for many different things.
12 However, the -- the issue of water, where Milford
13 has its own water system, is a unique thing in
14 itself, and I see separate from other things.

15 Again, it's -- it's the protection of
16 Milford's water system that the selectmen are
17 concerned about.

18 Q. Finally I want to talk with you -- so
19 the answer is you're not aware of that revolving
20 loan fund?

21 A. I may have heard of it before, but I
22 don't know the details of it or characteristics of
23 it.

1 Q. Is a city that provides a revolving
2 loan fund for businesses that locate outside of
3 the city including other towns, does that sound
4 like the kind of a city that thinks only of its
5 own economic interest?

6 MR. CAMERINO: Mr. Chairman, I object
7 again. We attempted during the discovery phase of
8 this proceeding to ask questions of Nashua about
9 their delivery of municipal services and other
10 aspects of their operation of their municipality,
11 and the ruling from the commission was that the
12 only matters with regard to the city of Nashua in
13 its operations that we could ask about related to
14 their billing information functions and that all
15 other aspects were not relevant to this
16 proceeding.

17 We have been denied that discovery, and
18 now Mr. Upton wants to talk about the services and
19 operations of the city.

20 MR. UPTON: This is not a service and
21 an operation of the city, this is a revolving loan
22 fund that it makes available to businesses in the
23 region.

1 MR. GOULD: If I may be heard on this,
2 Mr. Chairman. He's asking this witness to draw a
3 conclusion about the character of a city that
4 offers a program with which he's unfamiliar, and
5 really is not probative of anything. I object.

6 CHAIRMAN GETZ: Well, I think the line
7 of questioning is relevant, but I think Mr. Gould
8 speaks more directly to the last question of
9 drawing -- asking the witness to draw a conclusion
10 about the state of mind or the quality of the
11 conduct of the city of Nashua, and I'm not going
12 to allow the question.

13 MR. UPTON: Okay.

14 BY MR. UPTON:

15 Q. Mr. Daniels, you express concern that
16 Nashua has hired an out-of-state company to
17 operate the water system, correct?

18 A. We were concerned that Nashua at least
19 was considering that.

20 Q. Well, you know, don't you, that the
21 operating company is going to operate from Nashua
22 and not someplace else?

23 A. Our understanding, going back to the

1 time of the water district meetings, was that the
2 ownership of it would be local.

3 Q. And isn't that -- that's what's really
4 important, is local ownership?

5 A. We -- we were concerned that -- and my
6 understanding -- my understanding was that there
7 was talk about going to someone outside of the
8 state for the owning, and I'm not sure if it's the
9 owning and operation of it, but it ran contrary to
10 what we originally were told was going to happen.

11 Q. Well, if Nashua owns the water source
12 and owns the treatment facilities and owns the
13 pipes, isn't that pretty good protection even if
14 it's an out-of-state operator?

15 A. That was -- that was a concern of the
16 board when we voiced our concerns in written
17 testimony.

18 MR. UPTON: I have nothing more.

19 COMMISSIONER BELOW: Good morning,
20 Mr. Daniels.

21 THE WITNESS: Good morning.

22 COMMISSIONER BELOW: The town of
23 Milford operates its own municipal water facility.

1 THE WITNESS: Correct.

2 COMMISSIONER BELOW: Has it always been
3 municipally operated or has it ever been privately
4 owned?

5 THE WITNESS: I believe it has been
6 always -- as far as I can remember, and I've been
7 in town for 40 some-odd years, I believe it has
8 always been municipally owned, and we use
9 Pennichuck as a backup water supply.

10 COMMISSIONER BELOW: What portion of
11 the town does it serve? Roughly more than half of
12 the population?

13 THE WITNESS: No. No, I believe that
14 there is a set number in Mr. Ruoff's testimony.

15 COMMISSIONER BELOW: I think it says
16 3,200 customers --

17 THE WITNESS: That's -- yes.

18 COMMISSIONER BELOW: -- counts, but
19 that would be more residents?

20 THE WITNESS: I would say not half the
21 town.

22 COMMISSIONER BELOW: How big is
23 Milford?

1 THE WITNESS: 15,000 people.

2 COMMISSIONER BELOW: Has the town ever
3 considered selling the municipal water system to
4 an investor utility --

5 THE WITNESS: Not to my knowledge, no.

6 COMMISSIONER BELOW: Thank you.

7 CHAIRMAN GETZ: Redirect, Mr. Gould?

8 MR. GOULD: Done, Mr. Chairman. Thank
9 you.

10 CHAIRMAN GETZ: Did I skip anyone?

11 MR. BOUTIN: I thought you said Boutin,
12 that's why I was getting up.

13 CHAIRMAN GETZ: Okay, then that's all
14 for the witness. Thank you, Mr. Daniels, you're
15 excused.

16 I would suggest as for order of
17 witnesses let's as a block deal with the witnesses
18 opposed to the petition. So I would turn next
19 either to Mr. Sullivan -- or, Mr. Boutin,
20 Mr. Alexander, who's prepared to go next?

21 MR. BOUTIN: Why don't we keep it in
22 municipal order, that will be easier. I call
23 David McCray. Excuse me, I have to step out just

1 for a second here. I don't think we swore the
2 last witness.

3 CHAIRMAN GETZ: Yes.

4 MR. BOUTIN: I just wanted to catch him
5 before he went in case we didn't.

6 Go up the ramp and take a seat. I'll
7 move this so I don't get in Mr. Upton's way.

8 Remain standing, please. Would you swear the
9 witness, please?

10 (Daniel W. McCray, sworn)

11 DIRECT EXAMINATION

12 BY MR. BOUTIN:

13 Q. State your name for the record?

14 A. David W. McCray.

15 Q. Mr. McCray, at the time this case
16 commenced the chairman of the board of selectmen
17 at the time was Richard Hinch, and he submitted
18 testimony in this case. Have you had a chance to
19 review that testimony?

20 A. Yes, I have.

21 Q. That testimony is marked in this case
22 as Exhibit 4003, and it was submitted on the 12th
23 of January, 2006. Having read that testimony, do

1 you adopt it?

2 A. Yes, I do, and it was the testimony of
3 the board at that time.

4 Q. At that time you were a member of the
5 board, is that correct?

6 A. That's correct, I was.

7 Q. And do you remain the only cross-over
8 member of the board?

9 A. That is correct.

10 MR. BOUTIN: I submit the witness for
11 examination.

12 CHAIRMAN GETZ: Thank you. I think
13 we'll try and follow the same order we did last
14 time, which was intervenors opposing the petition,
15 intervenors with no position, staff, intervenors
16 supporting the petition, the Pennichuck Water
17 Works, and the city.

18 So that would turn to Mr. Gould -- who
19 is not here -- and Mr. Alexander, questions?

20 MR. ALEXANDER: No questions, thank
21 you.

22 CHAIRMAN GETZ: And Mr. Eckberg?

23 MR. ECKBERG: No questions. Thank you,

1 Mr. Chairman.

2 CHAIRMAN GETZ: Ms. Thunberg.

3 CROSS-EXAMINATION

4 BY MS. THUNBERG:

5 Q. Good morning, Mr. McCray.

6 A. Hi.

7 Q. I'm going to ask you a few questions
8 about the testimony that was originally filed by
9 Mr. Hinch. I assume you're generally familiar
10 with it?

11 A. I'm very familiar, and the testimony
12 that Mr. Hinch had given was voted on completely,
13 every bit of it, by the selectmen. He was our --
14 basically our spokesperson, as I have been
15 designated by the town council to be the
16 spokesperson here today.

17 Q. The first question is that Mr. Hinch
18 had testified related to preservation of terms and
19 conditions of contracts with the customers, do you
20 remember the general -- that general issue in the
21 testimony?

22 A. Yes, I do. I'm very familiar with it.

23 Q. And is it fair to say that Merrimack is

1 concerned that the Anheuser-Busch contract terms
2 be preserved?

3 A. Very concerned. Merrimack --
4 Anheuser-Busch is our largest taxpayer. It's a
5 major concern to us that they stay here and they
6 stay happy.

7 Q. Now, if Nashua were to say that it
8 would provide service to Anheuser-Busch under a
9 mutually acceptable contract, would that allay
10 your concern -- excuse me, Merrimack's concern?

11 A. I would say it would tend not to unless
12 it was a contract to infinity. We plan on being
13 here a long, long time, and all contracts are
14 subject to renewability.

15 So as long as -- the current situation,
16 we always have the PUC to come back to again. So,
17 yes, unless the contract went on forever I would
18 still have the same concerns, because our thinking
19 is long range, not just the next ten years.

20 Q. Okay. I think I know your answer to
21 the next question, but I will ask it anyway.
22 Would Merrimack's concern be allayed if the
23 commission were to condition the city of Nashua

1 adopt the existing Anheuser-Busch contract?

2 A. Again, as I stated earlier, any -- we
3 would have issues unless the contract was to be
4 forever, because, again, our concerns are not with
5 ten years, our concerns are forever.

6 Q. I'd like to move on to the issue of the
7 emergency connection to the Merrimack Village
8 District.

9 A. Yes.

10 Q. And can you just briefly for the record
11 describe what service is provided under that --
12 the contract with Pennichuck Water Works and the
13 Merrimack Village District?

14 A. Yes.

15 Q. To the extent you know.

16 A. I can give it to you to the extent I
17 know. It has been very much of a positive
18 relationship, and I think the best way to put it is
19 1993 Merrimack suffered an issue of -- of huge
20 importance where we had a contaminated well.

21 Pennichuck stepped in. We did not have
22 a connection at that time. They engineered the
23 connection and was able to -- to provide water.

1 In today's day and age, especially in
2 the age we live in, contaminated water supply is on
3 our mind every day. So, yes, it is a major concern
4 to the people of Merrimack and the town council.

5 Q. Now, does the Merrimack Village
6 District actually maintain a portion of the
7 interconnection?

8 A. I am not -- the answer is I am not sure
9 exactly what the agreement is between the two, so I
10 feel it would be inappropriate for me to speak. I
11 believe they both work together on it, but I do not
12 know that specifically.

13 Q. Subject to check, would you agree that
14 the Merrimack Village District contract with
15 Pennichuck is for a term of 15 years?

16 A. To my -- I believe that to be correct.
17 That is my belief. I have not -- never seen the
18 contract, and I have not discussed it within the
19 last two years.

20 Q. Do you have an opinion as to whether
21 the Merrimack Village District contract can be
22 assigned to an entity like Nashua?

23 A. I think I'm going to need clarification

1 of the question. Do you mean if the MVD was to
2 sell?

3 Q. Do you know if Nashua could just step
4 in the shoes of Pennichuck Water Works and just
5 assume this contract midterm and not wait until it
6 expires?

7 A. I am not -- I do not know the honest
8 answer to that.

9 MS. THUNBERG: Thank you. The staff
10 has no further questions.

11 THE WITNESS: Thank you very much.

12 CHAIRMAN GETZ: And Ms. Pressley?

13 MS. PRESSLEY: No questions, thank you.

14 MR. GUSTIN: John Gustin, intervenor.

15 One question.

16 CHAIRMAN GETZ: Have you been

17 admitted as a --

18 MR. GUSTIN: Yes. Last week Claire
19 McHugh introduced me as being an alternate for
20 her.

21 CHAIRMAN GETZ: Oh, right, you're
22 representing Ms. McHugh.

23 MR. GUSTIN: Correct.

1 CHAIRMAN GETZ: Why don't you come up
2 here, just to make sure you can be heard.

3 MR. GUSTIN: Just one quick question.

4 CROSS-EXAMINATION

5 BY MR. GUSTIN:

6 Q. Good morning.

7 A. Good morning, sir.

8 Q. With regards to PWW and the idea that
9 in perpetuity that this contract with
10 Anheuser-Busch would be maintained, with the idea
11 of PWW selling, is your expectation that that also
12 be in perpetuity with any backfilling corporation?

13 A. Could you restate the question -- in
14 fact, I won't ask you to restate. I'll tell you, I
15 don't expect any contract to ever be in perpetuity.
16 What I expect is that as long as the PUC is
17 involved they allow us to have a place to voice our
18 complaints. If they are not there for certain
19 issues, then that's where -- the only way I would
20 be allayed.

21 So I'm not naive enough to think that
22 contracts are in perpetuity, but the question is
23 would it allay my fear, and the answer is, no, but

1 I'm not naive enough to think such a contract would
2 ever exist.

3 Q. Okay, so your fear would not be allayed
4 with -- you'd never be granted in perpetuity with
5 any contract, is that correct?

6 A. That's correct.

7 Q. So the idea of Nashua with PUC
8 oversight really would not allay your fears any
9 more than PWW does today with the possibility of
10 selling to another corporation, is that correct?
11 Your fears would be continuously allayed -- I mean
12 not be allayed?

13 A. The answer is I don't have fears today
14 with PWW being involved, as long as, A -- the two
15 things is, A, we have this board who has some
16 oversight, and, B, there has been a working
17 relationship for 31 years between PWW and
18 Anheuser-Busch, there's been a very positive
19 relationship, and the history itself gives me a
20 feeling of comfort, as it does the town council.

21 MR. GUSTIN: Thank you very much.

22 CHAIRMAN GETZ: Mr. Judge?

23 MR. JUDGE: No questions.

1 CHAIRMAN GETZ: And Mr. Camerino?

2 CROSS-EXAMINATION

3 BY MR. CAMERINO:

4 Q. Good morning, Mr. McCray.

5 A. Good morning, sir.

6 Q. Steve Camerino representing Pennichuck
7 Water Works. There was some testimony on earlier
8 days by representatives of the city of Nashua
9 about their view of the importance of acquiring
10 watershed land, and you're familiar with the fact,
11 are you not, that much of the Pennichuck Brook
12 watershed is in the town of Merrimack?

13 A. Yes, I am.

14 Q. And if Nashua owned the water utility,
15 would you have concerns if they sought to exercise
16 the power of eminent domain to stop development in
17 the town of Nashua -- excuse me, in the town of
18 Merrimack in order to, in their minds, protect the
19 watershed?

20 A. At the time they would access --

21 MR. UPTON: Before he answers, I
22 object. The town has never -- the city has never
23 said it's going to do that.

1 MR. CAMERINO: First of all, they don't
2 need to; if they have the power to do that, they
3 may. Second of all, we did ask questions of
4 Ms. Hersh about whether she would seek to use the
5 power of eminent domain if they couldn't acquire
6 the property rights voluntarily, and I believe she
7 said that would be a consideration.

8 But whether or not she said it, the
9 legal power is there, and my question is how would
10 the town of Merrimack feel if that power were
11 exercised.

12 CHAIRMAN GETZ: And this is relevant to
13 his testimony because you're exploring concerns
14 that the town of Merrimack might have?

15 MR. CAMERINO: That the town of
16 Merrimack might have and does have about ownership
17 by Nashua.

18 MR. UPTON: I don't think that's in his
19 testimony.

20 MR. CAMERINO: I don't know that he has
21 specifically talked about that in his testimony,
22 but we have not limited cross-examination to
23 what's in the testimony. It seems to me the

1 parties are allowed to bring out points that are
2 relevant to the determination of this commission
3 and they're not confined by what a witness chooses
4 to say in their direct examination.

5 CHAIRMAN GETZ: I'm going to allow the
6 question.

7 MR. UPTON: That's not the subject of
8 friendly cross-examination, nor should it be. He
9 should not be allowed to explore outside of the
10 direct testimony, otherwise -- otherwise he's
11 getting -- he's allowed -- he's just taking the
12 witness wherever the witness wants to go.

13 MR. CAMERINO: Well, Ms. Knowlton just
14 reminded me this witness did testify on this. He
15 specifically said Pennichuck Brook forms a portion
16 of Merrimack's border with Nashua and part of the
17 watershed, and PWW's supply is located in
18 Merrimack.

19 But I do -- because we may have this
20 with other witnesses, I want to say that the fact
21 that one party has the good fortune that an
22 intervenor may support them, does not deprive that
23 party of the right to bring out relevant facts on

1 the record.

2 And we did not participate in any way
3 in the preparation of Mr. McCray's testimony. I
4 don't think my cross-examination should suddenly
5 be limited.

6 CHAIRMAN GETZ: The line of inquiry is
7 relevant, we're going to allow it. One of the
8 major concerns I have about so-called friendly
9 cross is trying to reintroduce direct testimony
10 into the record. That doesn't seem to be part of
11 the inquiry here, so I'm going to allow this, but
12 to the extent that it becomes repetitive or
13 cumulative or unnecessarily hypothetical, then
14 we'll curtail the inquiry.

15 MR. CAMERINO: Thank you, Mr. Chairman,
16 and I'm trying to be mindful of that, not to have
17 Mr. McCray simply repeat things that he's said.

18 BY MR. CAMERINO:

19 Q. So my question is, Mr. McCray, is if
20 the city of Nashua were to decide that it did not
21 want development to occur in parts of the
22 watershed that are located in the town of
23 Merrimack and sought to exercise the power of

1 eminent domain to take that land, what concerns
2 does the town of Merrimack have about that?

3 A. This is an area during the last three
4 years that has come up on several occasions, and it
5 is a major concern to us now, and one of the
6 reasons we have taken such an active role. The
7 answer is it would be a huge concern to us.

8 One of the last areas of town we have
9 that's commercially developed is the southern
10 portion where we get our water supply from
11 Pennichuck. And, also, the real world is we are
12 competitors with Nashua on bringing business to
13 town. It has been going on the last few years.

14 We have recently acquired some
15 companies that were in Nashua that moved to
16 Merrimack, and the idea that they would take some
17 of our last viable land to be commercially
18 developed by eminent domain would be a huge concern
19 to us, and something that all council members have
20 expressed major concerns with. So we would have a
21 problem with that.

22 Q. Now, I want to ask you about a source
23 of some confusion in this docket, but you may have

1 heard some questioning of Mr. Daniels, and there's
2 been questioning on other days about how parties
3 feel about Nashua's stated willingness in this
4 proceeding to subject itself to PUC jurisdiction;
5 you may have heard these questions.

6 I want to put up on your screen, if you
7 look at your monitor you'll see Exhibit 3084, and
8 if you'll just read that to yourself. That's a
9 response from Alderman McCarthy on behalf of the
10 city which says -- and I'll just read the
11 response -- since Nashua does not plan to have
12 different rates inside and outside the city, it
13 will not be subject to New Hampshire Public
14 Utilities Commission regulation in the ordinary
15 course of events. Do you see that, sir?

16 A. Yes, I do.

17 Q. And now I'm going to show you his
18 response to -- I'm going to show you Exhibit 3158,
19 which is a response to an Anheuser-Busch data
20 request. And if you just -- I'll represent to you
21 that this was from Anheuser-Busch, and so the
22 contract referred to is the Anheuser-Busch
23 contract, not somebody else's, and just read that

1 to yourself.

2 A. Yes.

3 Q. And you see there again that they're
4 saying that Nashua doesn't anticipate being
5 subject to commission regulation?

6 A. Yes.

7 Q. Is your concern -- in your testimony
8 you state a concern about whether Nashua will
9 honor the existing special contract with
10 Anheuser-Busch. Is it these statements and
11 similar statements previously by Nashua that cause
12 you to doubt whether they're serious about
13 honoring their contract?

14 A. I'm not sure that it's appropriate for
15 me to read in how serious I think anybody is about
16 honor, I don't think it's appropriate. But I can
17 answer as to facts, and the facts are that it is a
18 concern that they would not have to.

19 Anheuser-Busch is the biggest taxpayer
20 and the second largest job supplier in the town.
21 They were on public record six years ago, public
22 statement by Anheuser-Busch at that time that we
23 were one of the smallest breweries, if not

1 smallest, and if economic climate changes
2 throughout the country and the world, it would
3 be -- it would certainly be considered one of the
4 first breweries to be closed.

5 My concern is if all of a sudden costs
6 did not make it economically viable, it would be
7 closed down. What that would do to Merrimack would
8 be a very grave consequence.

9 Q. Now, when that brewery was built, there
10 was no water service to that location, was there?

11 A. No, there was not.

12 Q. So Pennichuck had to actually extend
13 its system out to that facility so the facility
14 could be built?

15 A. To my knowledge, that is correct.

16 Q. Do you have concerns if there were a
17 similar situation today, a major industrial
18 employer is considering coming to Merrimack rather
19 than Nashua, do you have concerns about whether
20 Nashua would be willing to extend the system so
21 that the business could locate in Merrimack?

22 A. I have major concerns. Again, dealing
23 with the individuals in Nashua, I have a positive

1 relationship with them, but the real world is when
2 it comes to attracting business it is a competitive
3 environment, and we do what we have to do to bring
4 business to town.

5 And if they were in position to affect
6 that, it would be a concern. It would certainly be
7 a concern that they were able to control whether or
8 not how we competed for that for the same large
9 corporate client coming to town, for lack of a
10 better word.

11 Q. Are there community water systems in
12 Merrimack that are not served by Pennichuck at the
13 moment?

14 A. To my knowledge there are still several
15 from the old days of cluster development in the
16 town. My last discussions were -- this were
17 several years ago -- I do know that Pennichuck
18 has -- has a division where they've actually been
19 buying them up. So I am not sure what the status
20 is in the town of Merrimack for systems, but I do
21 know there used to be several.

22 Q. Do you have similar concerns to the one
23 we just discussed about Anheuser-Busch as to if

1 those systems needed to be taken over by a utility
2 because of quality of -- water supply problems
3 whether Nashua would be willing to extend the
4 existing system to serve developments in
5 Merrimack?

6 A. Yeah, I'm concerned about that, and I'm
7 also even more concerned with the MVD. If the MVD
8 was to have an issue, that serves a large part of
9 our town. Again, we had a problem back in 1993.
10 If Pennichuck had not stepped forward, the results
11 would have been very grave.

12 Q. Just to be clear, the MVD is the
13 Merrimack Village District?

14 A. Village District. I apologize.

15 Q. One last question, the same question I
16 asked Mr. Daniels. You know there was a vote of
17 the public in Nashua as well as a vote of the
18 aldermen. Do you as a representative of Merrimack
19 feel that the votes that occurred in Nashua are in
20 any way representative of what the people of the
21 town of Merrimack think is in their public
22 interest?

23 A. No. In fact, I actually believe it to

1 be the opposite. I base that on the fact that,
2 again, I served on the board and the council for
3 six years, and this has -- has hit -- has taken a
4 large part in the press for the past three years.
5 And when I speak to people, they voice major
6 concerns.

7 And the fact is, their concerns aren't
8 as much with the 300 residents; Anheuser-Busch is a
9 huge concern to Merrimack. It's a huge concern
10 every day. I don't -- I'm not going to compare us
11 to the Berlin mills, but I am going to tell you if
12 anything ever happened to Fidelity or Merrimack,
13 the tax rate and other issues in this town would be
14 felt for years to come. So every day we say
15 prayers for Anheuser-Busch and Fidelity. It's
16 important to us.

17 MR. CAMERINO: Thank you very much.
18 That's all I have.

19 CHAIRMAN GETZ: Mr. Upton.

20 THE WITNESS: Excuse me, Mr. Upton --
21 or Mr. Chairman. I have a back condition from a
22 bad fall several years ago. Would it be possible
23 to stretch for a minute?

1 CHAIRMAN GETZ: Sure.

2 THE WITNESS: Thank you very much.

3 CHAIRMAN GETZ: Off the record for a
4 second.

5 (Discussion off the record.)

6 CHAIRMAN GETZ: Okay, we're back on the
7 record. Mr. Upton.

8 MR. UPTON: Thank you.

9 CROSS-EXAMINATION

10 BY MR. UPTON:

11 Q. Mr. McCray, your testimony says that
12 Merrimack receives -- in a couple of places says
13 Merrimack receives good quality service at a
14 reasonable price from Pennichuck Water Works, is
15 that right?

16 A. I believe that is correct, yes. That's
17 certainly my feelings.

18 Q. Are you aware that a study of 2004
19 rates by the Department of Environmental Services
20 concluded that Pennichuck Water Works has the
21 highest rates in New Hampshire of any system
22 serving more than 25,000 people?

23 A. I believe I was a study -- I was made

1 aware of a study similar to that. I'm not sure
2 that I knew the source.

3 Q. Are you aware that that study showed
4 that in the three years prior to 2004 Pennichuck
5 Water Works' rates increased 53.8 percent, and in
6 the ten years prior to 2004 increased a hundred
7 percent?

8 A. I don't remember the percentages, but I
9 do remember at the beginning of the new century
10 there had been -- there had certainly been
11 significant rate increases, yes, sir.

12 Q. Are you aware that according to the
13 study that Pennichuck Water Works' average rate
14 was \$360 per year based on using 275 gallons a
15 day, while Manchester Water Works' average rate
16 was only \$215?

17 A. I don't remember the exact amount, so,
18 no, sir, I'm not going to say I remember that. I
19 don't remember the specifics.

20 Q. Are you aware that just since this case
21 has commenced that Pennichuck Water Works' rates
22 have increased by about 45 percent?

23 A. Yes, I certainly knew they had gone up

1 there. And on that, Mr. Upton, if at any time as
2 I'm answering your question I am out of line,
3 please let me know. I have been known to be
4 long-winded.

5 Q. No, you're fine.

6 A. Beyond that, the overall feel -- my
7 feelings and the feelings of council there's a big
8 belief in if it looks like a duck, walks like a
9 duck, and quacks like a duck, it's a duck.

10 And overwhelming the feelings of the
11 customers of Merrimack and the town itself has been
12 that Pennichuck has treated us right. That's where
13 I say they've been a good supplier, not based on
14 statistics over the last few years.

15 Q. But you don't deny those statistics
16 that I just read to you?

17 A. I don't deny them, because I know there
18 have been increases. I don't deny them.

19 Q. Now, the Merrimack Village District
20 currently doesn't rely on Pennichuck for any water
21 or service, does it?

22 A. The answer is, I don't know, sir. You
23 say that, I'll take it. I thought they had some

1 land lease going on with water wheeling, I thought
2 it was going both ways, but I'm not positive.

3 Q. Well, there was once an emergency
4 interconnect, wasn't there?

5 A. Yes, I believe -- yes.

6 Q. And in that same agreement that it
7 granted Merrimack Village District an emergency
8 interconnect, Pennichuck received an interconnect
9 to provide service in Bedford, didn't it?

10 A. I don't know.

11 Q. I think you filed that as part of this
12 testimony a copy of those agreements. If it's in
13 those agreements, would you say that that was
14 likely so?

15 A. Absolutely -- on that, Mr. Upton, one
16 thing I promise as I testify here today, my memory
17 is not perfect, and over two or three years
18 certainly I don't retain every fact. But I'm not
19 going to question anything that was testified upon.

20 MR. BOUTIN: I don't think there were
21 any exhibits that testified to that.

22 Q. Let me show you and see if you
23 recognize these.

1 MR. CAMERINO: Are these an exhibit --

2 A. Mr. Upton, I'd also like to stress, I'm
3 not questioning it. You asked if I remembered it,
4 and I didn't. I'm not questioning it; I don't
5 remember it.

6 Q. You don't remember whether Merrimack
7 Village District no longer has an emergency
8 interconnect?

9 A. No, that was your question, it was
10 about Bedford.

11 Q. Does Merrimack Village District any
12 longer have an emergency interconnect with
13 Pennichuck?

14 A. To my knowledge, they do.

15 Q. Let me show you a modified agreement
16 for water supply between Pennichuck Water Works
17 and Merrimack Village District dated May 17, 2004,
18 and I refer you to the second whereas. Would you
19 read that for me?

20 A. Whereas MVD no longer desires an
21 emergency water supply interconnection with
22 Pennichuck at the locations described in Exhibit B
23 hereto on --

1 Q. I don't need any more.

2 A. Okay. Yes, sir.

3 Q. Does that indicate to you that there's
4 no longer an emergency interconnect?

5 A. Mr. Upton, to read three sentences in
6 the middle of context of several other things, no,
7 I do not feel that makes me comfortable. I feel --
8 I feel if you would allow me to read the whole
9 thing, I would --

10 Q. I would be more than happy to allow you
11 to read the whole thing.

12 A. Thank you, Mr. Upton.

13 MR. CAMERINO: Mr. Chairman, this
14 witness has indicated he doesn't have familiarity
15 with this. There are witnesses in this proceeding
16 who do, and now we risk of getting misinformation
17 because the witness is being asked something he
18 doesn't know about.

19 MR. UPTON: I point out to the
20 commission that this is Exhibit 4006 that I've
21 shown him, and he testified that he thought that
22 there was still an emergency interconnect, and I
23 think I'm entitled to show him the document and if

1 that's still his understanding after he reads the
2 document.

3 MR. CAMERINO: And the witness says he
4 doesn't know, and so if he then answers
5 incorrectly there's no opportunity to put a
6 witness up who does know and correct the record.

7 MR. BOUTIN: All I would say is this
8 witness is not a commissioner of the water
9 district. So the concern that the town has that
10 relates to the town council having a water
11 district in its midst and looking after its
12 interest, but he would not have any knowledge of
13 the interior workings of the district, so the
14 questions are really unfair to ask him.

15 CHAIRMAN GETZ: Mr. Upton, I would say
16 this. I mean, to the extent that you show him
17 this agreement that indicates -- this sentence
18 that indicates that the case may be other than he
19 believes it to be, I think you can go that far.
20 But asking him whether based on this sentence that
21 is the truth of the situation, I think goes beyond
22 what he's capable of testifying to.

23 MR. UPTON: He has testified in his

1 direct about the Merrimack Village District. He
2 has testified --

3 CHAIRMAN GETZ: But, Mr. Upton --

4 MR. UPTON: -- in friendly cross about
5 the Merrimack Village District and about the
6 importance of the interconnect.

7 CHAIRMAN GETZ: Mr. Upton, are you
8 finished?

9 MR. UPTON: I am.

10 CHAIRMAN GETZ: And what I've said is
11 you can use this document to impeach the witness,
12 to show that the facts may be other than he
13 believes them to be. And he's read the sentence.
14 If you go beyond that to ask him what is the truth
15 of the situation, then he has no basis for making
16 that conclusion.

17 MR. UPTON: I'm fine with that. I
18 didn't understand --

19 CHAIRMAN GETZ: The second time around
20 maybe it worked. Further inquiry?

21 BY MR. UPTON:

22 Q. Have you read that?

23 A. Yes, I've had time to read it.

1 Q. And does that indicate to you that the
2 interconnect no longer exists?

3 A. Based on that, I would have to say the
4 interconnect that I was familiar with I would say
5 does not exist, based on that.

6 Q. Thank you.

7 MR. CAMERINO: We're having a little
8 bit of confusion. That document that Mr. Upton
9 put up on the screen, does that have an exhibit
10 number?

11 MR. UPTON: 4006.

12 MR. CAMERINO: Six?

13 MR. UPTON: Yes. That's my
14 understanding, Steve.

15 BY MR. UPTON:

16 Q. Does Merrimack have mutual aid
17 contracts with Nashua for fire protection and
18 police protection?

19 A. Yes, we do. I'm not sure about police,
20 but there is certainly an understanding there.

21 Q. Both communities are part of the
22 Souhegan Mutual Aid District?

23 A. To my knowledge, yes, sir.

1 Q. And is it fair to say that the public
2 works departments of both communities cooperate on
3 such issues as floods, emergency management,
4 sharing equipment, busted sewer lines?

5 A. Not completely. There's -- there's a
6 little rancor there sometimes. Overall, I would
7 say when it comes to emergency issues there is
8 total cooperation. When it comes to certain areas,
9 the -- the departments -- we have had some issues
10 with Merrimack over the years involving our shared
11 bridges and other areas.

12 So to say that everything has been
13 totally harmonious when it comes to public works
14 issues probably would not be correct. To say they
15 are harmonious when it comes to public safety would
16 be right on the money.

17 Q. Do you think that providing water
18 service is an issue of public safety?

19 A. That is certainly part of what it does,
20 no question.

21 Q. You heard me ask Mr. Daniels if he was
22 aware of the city of Nashua's revolving loan fund.
23 Are you aware of it?

1 A. Yes. I'm aware that we've never gotten
2 any money from them.

3 Q. Well, that was my next question. Have
4 any of the businesses in Nashua that you're aware
5 of received any of that money?

6 A. The businesses in Nashua I wouldn't
7 know about.

8 Q. I'm sorry, I meant the businesses of
9 Merrimack.

10 A. I am not aware of any of them receiving
11 any.

12 Q. Thank you. I assume you would agree --
13 I hope you will agree -- that Nashua gets benefits
14 from having Anheuser-Busch in Merrimack?

15 A. I guess the answer would be I would say
16 there are certainly Nashua employees that live --
17 that work in Merrimack, so that's certainly going
18 to be a benefit.

19 Q. Sure. And just like Nashua Corp., BAE
20 and Brookstone that are located in Merrimack, all
21 of these companies have people who live in Nashua
22 as well as Merrimack who are employees?

23 A. I'm sure that has to be true.

1 Q. And they purchase products from
2 businesses in both communities?

3 A. Yup.

4 Q. And they draw customers to that region
5 that spend money in both of those communities,
6 wouldn't you agree?

7 A. Yeah. I wasn't sure that was a
8 question, Mr. Upton.

9 Q. I'm sorry. So clearly Nashua benefits
10 from having those wonderful businesses that you
11 have in southern Merrimack in -- in Merrimack,
12 don't they?

13 A. I would say they have some benefit. To
14 think they have anywhere near the benefit of what
15 we retrieve from them, it would probably be
16 comparing apples to oranges, but there is certainly
17 some benefit. Good business is a benefit to all.

18 Q. Now, you've expressed concern in your
19 testimony about the service and rates that
20 Merrimack customers would receive from Nashua if
21 it owned the system, correct?

22 A. That is correct.

23 Q. And Mr. Camerino put up a 2005 answer

1 to a data request. I'd like to have you look at
2 what Nashua said in its testimony in 2006. Go
3 to -- I'm sorry.

4 A. I'd be happy to look at it. I believe
5 I'm very familiar with it, but I'd be happy to look
6 at it again.

7 MR. UPTON: I didn't say for the
8 record, but that's Exhibit 1014 starting at page
9 15.

10 A. Is there any way to make that a little
11 larger?

12 MR. UPTON: Yeah, I'm going to blow it
13 up for you.

14 A. Thank you.

15 Q. Because I need it, too. This is the
16 testimony, I'll represent to you, of the mayor and
17 Alderman McCarthy. We would also like to
18 highlight that Nashua has made significant
19 commitments that will benefit the public interest
20 and insure that the interest of customers located
21 outside the city of Nashua are protected and
22 treated fairly in all respects.

23 Nashua expects that the public

1 utilities commission in its discretion will make
2 these commitments into binding conditions on its
3 acquisition of the water system. The following
4 are examples of Nashua's commitment to treat
5 customers outside -- I'm sorry, go onto the next
6 page -- outside the city fairly.

7 The list is by no means exhaustive.
8 Nashua remains open, and then the commitments.
9 Nashua has committed to operate its water system
10 according to the terms of its water ordinance in a
11 manner that treats all customers equally.

12 Two. To the extent that Nashua serves
13 customers outside of its borders, it has agreed
14 and committed to the principle that the terms and
15 conditions of its service will continue to be
16 subject to the jurisdiction of the PUC.

17 Three. It has committed to provide
18 service to all satellite customers -- and that
19 would include Merrimack, wouldn't it?

20 A. Yes. Yes, sir.

21 Q. -- at core rates. And you understand
22 core rates to mean the same rates as they charge
23 the people in Nashua?

1 A. I'm very familiar with that, yes, sir.

2 Q. All right. If Nashua has made these
3 commitments, wouldn't they satisfy your concern
4 about the rates and service that the Merrimack
5 ratepayers will receive?

6 A. Absolutely not, Mr. Upton.

7 Q. Why not?

8 A. Thank you very much for the opportunity
9 to speak to that. This is some of my -- some of my
10 and the council's major concerns. The first thing
11 is the fact if -- scenario No. 1 is if Nashua
12 residents end up paying a very large amount, that
13 does not make the people in Merrimack feel any
14 better if we're paying a large amount, too. So the
15 fact that Nashua is paying a large amount and we're
16 paying a large amount doesn't help our citizens.

17 And my concern is if this truly ends up
18 being sold for what the real valuation is, I
19 believe that there will be immediately a major
20 increase to all -- not just Merrimack residents,
21 but to Nashua -- to begin recouping it.

22 Again, they are going to have to run
23 this like a business, which means once they buy

1 this, they're going to have payments to make, and
2 they are going to have to make sure that part of it
3 comes from the source.

4 So, again, to look at that and say,
5 well, as long as you pay the same as Nashua are you
6 comfortable, oh, heck no, because I think everyone
7 is going to see what I consider to possibly be a
8 doubling of the rates if this goes through. That's
9 just my first concern.

10 My second concern gets into the fact of
11 what I said before about perpetuity. Bernie
12 Streeter is a nice guy, the people in Nashua are
13 great people, but overall, according to the RSAs
14 they can increase it up to 15 percent if we don't
15 become core.

16 And a contract that is not in
17 perpetuity -- and I want to stress, I know one
18 don't exist -- that's a major concern. We in
19 Merrimack, as do all municipal people, we have an
20 obligation to look out one, two, 300 years.
21 Mankind is going to be here a long time, not ten
22 years.

23 So, no, none of it gives me any -- any

1 concerns. I think if this happens it will be major
2 increases to everyone. I'm very concerned about
3 Anheuser-Busch leaving town, and I think the
4 consequences could be grave for the people of
5 Merrimack.

6 Q. So you don't think that the PUC
7 exercising its jurisdiction under these conditions
8 has the ability to control any of the things you
9 spoke about?

10 A. The answer is I think they can control
11 some, possibly, but overall, as I look into the far
12 picture, I definitely have concerns.

13 Q. Now, you clearly have expressed concern
14 about the impact on Anheuser-Busch.

15 A. As one, yes. Absolutely.

16 Mr. Upton, can I assume every time
17 you're going to bring something up you're going to
18 blow it up?

19 Q. Absolutely.

20 A. Good. I appreciate that.

21 Q. This again is Mayor Streeter and
22 Alderman McCarthy. Nashua stands behind its
23 commitments to service both wholesale and retail

1 customers on an equal basis, and is fully willing
2 to accept appropriate conditions to that effect.

3 Do you see that?

4 A. Yes, I do.

5 Q. Does that indicate to you that Nashua
6 intends to fairly treat the wholesale contracts?

7 A. What it indicates to me is that on a
8 day in time when Mr. Streeter is the mayor he had a
9 commitment, but this is an elected force of
10 government, which means it's always going to be
11 rotating people. And, unfortunately, elected
12 people, they're always going to cater to the people
13 that elect them, and no one in Merrimack has a vote
14 in there.

15 So I am not questioning and impugning
16 the intentions, but time changes, and in the end
17 elected officials are going to do what makes Nashua
18 residents happy and re-elect them. So I do have
19 concerns, but I do not question the intentions of
20 Mr. Streeter or Mr. McCarthy, but, again, it's just
21 a day in time they made that statement.

22 Q. If Nashua has committed in its
23 testimony and agreed to a condition of approval by

1 the commission that it will provide service in
2 accordance with the rates, terms and conditions of
3 all the existing wholesale contracts, including
4 the Anheuser-Busch contract and the renewal
5 thereof, and if required to create a wholesale
6 tariff for Anheuser-Busch that incorporates the
7 rates and provisions of the existing wholesale
8 contract, wouldn't that alleviate your concern?

9 A. It wouldn't. Mr. Upton, I don't want
10 to beat a dead horse, but, again, I'm sitting here
11 looking out for the concerns of Merrimack residents
12 for the next hundred, 200 years, and the fact is
13 that I believe the current situation provides more
14 protection to the citizens of Merrimack than a new
15 situation, so it would not.

16 Q. And I gather it wouldn't make any
17 difference to you either if the wholesale
18 contracts and any complaints concerning the
19 wholesale contracts were subject to PUC
20 jurisdiction?

21 A. I want to -- I want to stress one
22 thing, because I don't want my testimony to be
23 misunderstood by the members of the panel or anyone

1 sitting here. When you ask the question does it
2 allay your fears, to me you're asking me an all or
3 nothing question, does it allay my fears, and the
4 answer is no.

5 Does it give me some comfort; yes, any
6 protection the PUC can give us is always going to
7 be a little more comfort, but it does not allay all
8 the fears that I would have. So that's what I'm
9 saying, I believe the current situation is a lot
10 more positive to the citizens of Merrimack than the
11 situation that would move forward. I'm not saying
12 it wouldn't be a little better, but overall I would
13 have major concerns.

14 Q. And you're right -- that's it.

15 MS. THUNBERG: Mr. Chairman, can I have
16 clarification of Attorney Upton's last question,
17 when he referred to wholesale contracts, was that
18 just the Anheuser-Busch or did that include
19 municipal?

20 MR. UPTON: All wholesale contracts,
21 including whatever wholesale contract exists. The
22 question of this witness was Anheuser-Busch.

23 THE WITNESS: Mr. Upton, I want to

1 thank you very much, you were a gentleman.

2 MR. UPTON: Thank you, Mr. McCray, you
3 also.

4 COMMISSIONER BELOW: The Merrimack
5 Village District, is its primary purpose to run
6 the public water system in a portion of the town
7 of Merrimack or does it do other functions?

8 THE WITNESS: The answer is its primary
9 purpose is to provide a safe water supply to a
10 section of the town of Merrimack.

11 COMMISSIONER BELOW: And what portion
12 of that -- of the town of Merrimack is that?

13 THE WITNESS: It kind of cuts out a
14 cylindrical area, I would need a map to
15 appropriately show it to you. But if I had to
16 guess, I would say that -- and I really want to
17 stress, as Mr. Upton showed earlier, being a
18 commissioner I probably cause myself more trouble
19 talking about it than I ask for -- but if I had to
20 guess, I'd say 60 percent. Again, I'm not a
21 commissioner, I probably shouldn't even be
22 speaking to that.

23 COMMISSIONER BELOW: And do you know if

1 that's always been a public water system?

2 THE WITNESS: To my -- the answer is I
3 don't know going back 100, 200 years. So, again,
4 I shouldn't get myself in trouble.

5 COMMISSIONER BELOW: Thank you.

6 CHAIRMAN GETZ: Mr. Boutin, redirect?

7 MR. BOUTIN: Yes, I do have some
8 redirect, but I would like some indulgence for a
9 few minutes to take a look at that exhibit that
10 was flashed on the screen about the
11 interconnection, because it will form whether or
12 not I have extensive redirect.

13 CHAIRMAN GETZ: You need --

14 MR. BOUTIN: Five minutes, or do you
15 want to take a break now? That's fine; whatever.

16 CHAIRMAN GETZ: Let's just take a very
17 brief recess. Ms. Pressley, do you have
18 something?

19 MS. PRESSLEY: I would like to ask a
20 question, if it's appropriate. Based on what I've
21 heard.

22 CHAIRMAN GETZ: Well, let's take the
23 recess, and we'll be back in five minutes.

1 (Recess taken.)

2 CHAIRMAN GETZ: Okay, we're back on the
3 record with the examination of Mr. McCray.

4 Before we go to redirect, Ms. Pressley,
5 you had your opportunity for cross-examination, I
6 recall, and you said you had no cross. Now the
7 cross-examination has been completed so we're
8 going to turn to redirect, so we will not provide
9 a second opportunity for questioning of this
10 witness.

11 REDIRECT-EXAMINATION

12 BY MR. BOUTIN:

13 Q. Mr. McCray, I'm going to just ask you a
14 question about the interconnect. I want you to
15 give me your understanding of the present
16 situation involving whether Merrimack Water
17 District is somehow connected with Pennichuck so
18 as to be protected?

19 A. My understanding is -- just as a quick
20 background, is after the attacks of 9/11 water
21 supply has become, obviously, a very major issue,
22 and at that time we were assured we were all set.

23 And every year when we go through this

1 issue one of the concerns that we have is that if
2 there is a problem with the MVD are we all set, and
3 I was reassured as recently as two to three weeks
4 ago that Pennichuck would be up and running
5 immediately if they so chose to.

6 So the answer is my understanding was
7 that we are still set up to have -- to immediately
8 have Pennichuck supply us with water. It appears
9 from what Mr. Upton showed me I was incorrect in
10 assuming that the same emergency hookup that we had
11 used in '90s was still being used, and I apologize
12 for that.

13 But the answer is I have been assured
14 that if there is an issue with our water supply we
15 have the proper connections in place for Pennichuck
16 to immediately be wheeling water to us.

17 Q. Now, I'm going to ask you a question
18 about the exhibit you were shown. Apparently
19 Nashua has a water ordinance. Have you ever heard
20 of Nashua's water ordinance?

21 A. I -- Mr. Boutin, I read ordinances all
22 the time from different towns, even MVD. I do not
23 specifically recall specifics of Nashua's ordinance

1 or whether, in fact, they even have one.

2 Q. Are you or the board -- the council
3 now, they changed form of government right in the
4 middle of this case -- have you or the council
5 ever been asked to attend a meeting in Nashua
6 about the formation of a water ordinance to govern
7 the water district?

8 MR. UPTON: I object. This is beyond
9 the scope of my cross-examination and it's not
10 proper redirect. I didn't ask about that.

11 MR. BOUTIN: You sure did ask about the
12 water ordinance, and he, in fact, flashed on the
13 board that there was a water ordinance that was
14 going to be in place and did that give him
15 comfort.

16 MR. UPTON: But I didn't talk about any
17 meetings or anything like that.

18 CHAIRMAN GETZ: Well, my recollection
19 is the door has been opened with respect to the
20 ordinance, and I'm going to allow redirect about
21 what Mr. McCray has any knowledge about the
22 ordinance.

23 BY MR. BOUTIN:

1 Q. Mr. McCray, have you ever been asked or
2 has council been asked to appear at any of these
3 meetings about the water ordinance?

4 A. I have not been, to the best of my
5 knowledge.

6 Q. Has Nashua ever sent you a copy of the
7 draft ordinance?

8 A. They have not.

9 Q. Have you ever been notified that there
10 is a water ordinance in place?

11 A. No, I have not.

12 MR. UPTON: This is really improper.
13 We sent it to their lawyer because they were
14 represented at the time it was completed. It's
15 unfair to say we never sent a copy.

16 MR. BOUTIN: Which lawyer did you send
17 it to?

18 MR. UPTON: To you.

19 MR. BOUTIN: How, e-mail?

20 MR. UPTON: To you. It was supplied to
21 you as a part of this case.

22 MR. BOUTIN: It may have been an
23 exhibit in this case, I don't deny it, but I

1 certainly was never consulted about it in terms of
2 asking my client to go to any meeting in Nashua to
3 learn about it.

4 CHAIRMAN GETZ: Okay, well, we have the
5 representations of the attorneys with respect to
6 the ordinance, and we also have the testimony of
7 the witness that he has no knowledge of the
8 ordinance. Is there anything further?

9 MR. BOUTIN: No.

10 CHAIRMAN GETZ: Okay, then, that
11 completes the examination of Mr. McCray. Thank
12 you.

13 THE WITNESS: Thank you very much,
14 Mr. Chairman.

15 CHAIRMAN GETZ: Mr. Alexander.

16 MR. ALEXANDER: I call John Mills.

17 (John Mills, sworn)

18 DIRECT EXAMINATION

19 BY MR. ALEXANDER:

20 Q. Would you please state your name and
21 position?

22 A. John Mills, plant manager,
23 Anheuser-Busch, Merrimack brewery.

1 Q. And are you aware that Anheuser-Busch
2 filed testimony at Exhibit 4004 in this case?

3 A. I am.

4 Q. And that was filed by Dennis Nesbit?

5 A. Yes.

6 Q. And was he your predecessor?

7 A. Yes.

8 Q. There were two exhibits to that
9 testimony, is that right?

10 A. Yes.

11 Q. And first was the special -- the third
12 special contract between Pennichuck Water Works
13 and Anheuser-Busch?

14 A. Correct.

15 Q. And the second exhibit was a copy of
16 this commission's order approving that contract?

17 A. Correct.

18 Q. And that order is dated March 4th,
19 2005?

20 A. Yes.

21 Q. And the contract is dated October 5,
22 2004?

23 A. Yes.

1 Q. To the best of your knowledge, are
2 those accurate copies of those documents?

3 A. They are.

4 Q. Did you subsequently file testimony
5 substituting yourself for Mr. Nesbit?

6 A. I did.

7 Q. And do you adopt his testimony in full?

8 A. I do.

9 Q. And is your -- I guess your testimony
10 has not been entered as an exhibit at this point.

11 MR. ALEXANDER: I believe it will be
12 Exhibit 4008. If I may approach the bench.

13 CHAIRMAN GETZ: Please. We have copies
14 of the --

15 MR. ALEXANDER: Of the substitution?

16 CHAIRMAN GETZ: Oh.

17 (Exhibit No. 4008 was marked.)

18 Q. And do you adopt the substituted
19 testimony at this time?

20 A. I do.

21 MR. ALEXANDER: Thank you. The witness
22 is available for cross-examination.

23 CHAIRMAN GETZ: Thank you. And

1 Mr. Boutin? Okay, Mr. Eckberg?

2 MR. ECKBERG: No questions of the
3 witness. Thank you.

4 CHAIRMAN GETZ: And, Ms. Thunberg?

5 MS. THUNBERG: Staff has no questions
6 for this witness. Thank you.

7 CHAIRMAN GETZ: And Ms. Pressley?

8 MS. PRESSLEY: Thank you, no questions.

9 CHAIRMAN GETZ: Mr. Gustin?

10 MR. GUSTIN: No, thank you.

11 CHAIRMAN GETZ: And Mr. Judge?

12 MR. JUDGE: No, thank you.

13 CHAIRMAN GETZ: And Ms. Knowlton?

14 MS. KNOWLTON: I have no questions for
15 the witness.

16 CHAIRMAN GETZ: Mr. Richardson?

17 CROSS-EXAMINATION

18 BY MR. RICHARDSON:

19 Q. Good morning.

20 A. Good morning.

21 Q. Mr. Mills, I believe your testimony
22 states that it's crucial to Anheuser-Busch to have
23 high quality water?

1 A. (Witness nods.)

2 Q. And good working relations with its
3 supplier, and I believe you said that was
4 fundamental, is that correct?

5 A. That's correct.

6 Q. You weren't here when the -- I believe
7 your attorney, Mr. Alexander, asked a question of
8 Veolia Water and about its relations with some of
9 its customers in Indianapolis, and I'd like to
10 show you Veolia's response and see if this -- and
11 get your reaction to that.

12 MR. CAMERINO: Could we pull up the
13 transcript from September 5th, starting at page
14 330.

15 Q. And you can see Mr. Alexander's
16 question there, and he asks one of the
17 Anheuser-Busch's key interests in this proceeding
18 is its ability -- is the ability to communicate
19 and have good cooperation with its supplier. And
20 then he asks, are there any particular services or
21 operations that Veolia anticipates putting in
22 place to facilitate those arrangements.

23 And then Mr. Ashcroft responds that

1 there's some things they do in Indianapolis. And
2 then on the next page -- did you have a chance to
3 read that?

4 A. I did.

5 Q. On the next page Ms. Willans starts to
6 describe those. And if you could take a moment to
7 review those.

8 A. Okay.

9 Q. All right. And so it looks like here
10 Ms. Willans is describing a 24 hour technical help
11 line, and there's also a process of e-mails to top
12 users concerning what the system's doing, whether
13 there's any change in the treatment process, and
14 then I believe there's -- it continues on the next
15 page. There's a technical advisory group.

16 So, Mr. Mills, are those -- are those
17 approaches the type of communications that you
18 would want to see the city put in place?

19 A. Those are certainly examples of the
20 type of service we would expect, yes.

21 Q. And if Nashua were willing to agree as
22 a condition of approval to implement the proposals
23 that Ms. Willans has described, would that address

1 your concern regarding communications?

2 A. It would be a step in that direction.

3 Q. There's -- also in your testimony you
4 talk of a concern about rates, I believe, and your
5 relationship with Pennichuck under its existing
6 wholesale contracts.

7 And if Nashua were to agree as a
8 condition -- legally binding condition based on
9 the commission's approval that it would continue
10 to provide service consistent with the terms and
11 conditions of its existing wholesale contract and
12 the renewal of, would that address your concerns
13 regarding the -- the wholesale contract?

14 A. When you say wholesale contract, I
15 think about our third special contract.

16 Q. Yes. I'm sorry, is that different from
17 a wholesale contract?

18 A. Well, it's a specific contract to
19 Anheuser-Busch.

20 Q. I didn't mean to draw a distinction.
21 That's the one I'm referring to in this question.

22 A. Certainly we are comfortable with the
23 way that we have the board's oversight in any rate

1 change that may be applied. And if what you're
2 saying is that the city of Nashua would have -- be
3 subjected to the same administration or oversight
4 of the board, and if that was an enforceable and in
5 perpetuity position to protect our rates to make
6 sure that we got long term, locked in reasonable
7 rates based on cost allocation, then that, in fact,
8 would -- would be helpful.

9 Q. And that was my follow-up question.
10 With respect to rates, if Nashua were to agree
11 that the commission could retain jurisdiction over
12 the special contract or the wholesale contracts,
13 would that address -- or a complaint alleging that
14 the rates were unjust and unreasonable, would that
15 address your concern?

16 A. The way we've worked in the past is any
17 time there's a rate adjustment to be made, there's
18 a cost of service study done first. That cost of
19 service study gets approved first by the board --
20 by the commission, and then it goes into place. We
21 would want to see that same type of thing.

22 MR. RICHARDSON: Thank you.

23 CHAIRMAN GETZ: Okay. Opportunity for

1 redirect?

2 MR. ALEXANDER: No questions.

3 CHAIRMAN GETZ: Then you're excused.

4 Thank you, sir. We have about 20 minutes. I
5 guess the question is do we want to start with
6 Ms. Pressley and then deal with Mr. Scanlon later,
7 or just recess now and come back, I guess, at one
8 o'clock? Is there any preference among the
9 parties?

10 MS. KNOWLTON: I think we can put
11 Ms. Pressley on now.

12 MR. UPTON: I agree.

13 CHAIRMAN GETZ: Okay, let's forge
14 ahead.

15 MR. UPTON: I've agreed to try to help
16 her get her testimony in, to have her adopt it.
17 It seemed like I was the most appropriate person
18 to do that since she's not represented.

19 CHAIRMAN GETZ: Okay. Please proceed.

20 (Barbara Pressley, sworn)

21 DIRECT EXAMINATION

22 BY MR. UPTON:

23 Q. Would you state your name and your

1 position in this matter?

2 A. Thank you, good morning. My name is
3 Barbara Pressley. I'm a citizen of Nashua. I'm a
4 taxpayer and a ratepayer, and I've been involved in
5 this issue from the beginning, and I'm currently an
6 intervenor.

7 Q. Now, Mrs. Pressley, you have filed
8 testimony dated April 22, 2005 which has been
9 identified as Exhibit 2001, is that correct?

10 A. Yes, it is.

11 Q. And you've also filed testimony dated
12 January 10, 2006 which has been identified as
13 Exhibit 2002, correct?

14 A. Yes, that's correct.

15 Q. And, finally, you've filed testimony
16 dated May 19, 2006, identified as Exhibit 2003,
17 and that included a history of the relationship
18 between Pennichuck and the city which has been
19 marked as an exhibit, 2004, is that correct?

20 A. Yes, it is.

21 Q. And do you adopt that prefiled
22 testimony as your testimony in this case?

23 A. Yes, I do.

1 Q. Do you wish to add anything to your
2 testimony?

3 MS. KNOWLTON: Before we move on to
4 that I want to note an objection for the record.
5 To the extent that Ms. Pressley has any late-filed
6 testimony that was filed outside the timeframe set
7 forth in the procedural schedule approved by this
8 commission, we object to the use of that testimony
9 in this proceeding.

10 CHAIRMAN GETZ: Let's address that
11 first. I take that to be the issue that we held
12 in abeyance and the secretary letter of January
13 16, and that goes to the filing that Ms. Pressley
14 made on January 16, is that your understanding,
15 Ms. Knowlton --

16 MS. KNOWLTON: Yes.

17 CHAIRMAN GETZ: -- that is the
18 testimony in dispute. And I guess there will be
19 an opportunity for you to respond, Ms. Pressley,
20 but I take it here that what we're talking about
21 in that package that came in that day is we have
22 an additional research by Mr. Manoian concerning
23 the history of Pennichuck Water Works, and then

1 the other -- I'm not sure what else is being
2 sought to be put in.

3 In that filing you made on that day
4 there was reference to the investigation by the
5 state securities division, but I don't see any
6 documents, so what is it you're trying to actually
7 get in?

8 THE WITNESS: I apologize for that. A
9 matter of days before the parties recessed to try
10 to negotiate another -- a department of the state
11 released the documents that had been requested, so
12 the timing was such that no testimony could have
13 been submitted.

14 CHAIRMAN GETZ: But you didn't -- but
15 you've not included or --

16 MS. PRESSLEY: I had not had the time
17 to look at them. But I think it's important for
18 the commission to know that simultaneously to the
19 parties hoping to negotiate, the securities
20 division did release the -- the supporting
21 documents for their investigation of the
22 corporation.

23 CHAIRMAN GETZ: Well, I'm going to --

1 MS. PRESSLEY: So they're available to
2 the commission.

3 CHAIRMAN GETZ: I'm going to address it
4 this way. I'm going to allow this additional
5 research by Mr. Manoiian. On the one hand it's not
6 clear what the probative value of this additional
7 research paper is, but on the other hand, I don't
8 think there's any harm to any party by including
9 it.

10 With respect to whatever the state
11 securities division may have decided, I'll treat
12 that as a, I guess, request for us to take
13 administrative notice of that, and rather than
14 rule on that now, we'll rule on whether to take
15 administrative notice of the rulings and any
16 documents prepared by the state securities
17 division, and we'll deal with that at the end of
18 the proceeding.

19 MS. PRESSLEY: Thank you.

20 MR. UPTON: I have nothing more.

21 CHAIRMAN GETZ: Okay, then make sure I
22 have the right order for cross-examination of
23 Ms. Pressley. And I think we would begin with

1 other intervenors supporting the petition, so that
2 goes to Mr. Gustin. Any questions?

3 MR. GUSTIN: Not at this time, thank
4 you.

5 CHAIRMAN GETZ: Mr. Judge?

6 MR. JUDGE: No, thank you.

7 CHAIRMAN GETZ: Then, Mr. Eckberg?

8 MR. ECKBERG: No questions. Thank you.

9 CHAIRMAN GETZ: And Ms. Thunberg?

10 MS. THUNBERG: Staff has no questions
11 for this witness. Thank you.

12 CHAIRMAN GETZ: And turning to the
13 intervenors opposing the petition. Mr. Boutin?

14 MR. BOUTIN: None.

15 CHAIRMAN GETZ: Mr. Alexander?

16 MR. ALEXANDER: No questions. Thank
17 you.

18 CHAIRMAN GETZ: Then I guess we go to
19 the city. Mr. Upton, questions?

20 MR. UPTON: Thank you, I have a few
21 questions.

22 CROSS-EXAMINATION

23 BY MR. UPTON:

1 Q. Ms. Pressley, I saw in your testimony
2 the reference to Manchester Water Works. Why do
3 you think the Manchester Water Works is relevant
4 in this case?

5 A. Well, to me, the key to this issue is
6 ownership, and that's been brought up many times in
7 the past. And the most visible contrast between
8 the two types of ownership, meaning a for profit
9 corporation or municipal for the people really is
10 Manchester, and that's something we all can see and
11 we all can feel.

12 I think it's a situation where in the
13 1980 they -- the two took a totally different
14 course. Manchester has purchased protective land.
15 At this time they have 10,000 acres that does
16 nothing but protect their water supply, and the
17 city of Nashua has sold theirs off, and we're down
18 to less than 500. And as a result of that, the
19 contrast between the rates is quite significant.

20 I think another interesting point is
21 that Manchester has not needed to tap into the
22 Merrimack River in order to supplement theirs,
23 whereas Nashua's had to do that for many, many

1 years.

2 And also the biggest thing is the
3 contrast between being able to see what they're
4 doing. The biggest problem that -- that I think we
5 have is that we have no idea what's happening with
6 Pennichuck, our ability to access their decisions
7 and their decision makers is completely
8 nonexistent, and the fact that everything that
9 Manchester does is open to the public and open to
10 public scrutiny, and I think that is a major
11 factor.

12 I also believe that had we had the open
13 form of water supply that Manchester has had, we
14 would not have had the scandal that we currently
15 are dealing with locally regarding the water
16 company.

17 Q. Did you as a citizen attempt to gain
18 access to the inner workings of Pennichuck?

19 A. Yes, I did.

20 Q. What did you do?

21 A. Well, in frustration, I did a couple of
22 things. I --

23 MS. KNOWLTON: I want to object to this

1 line of questioning on the basis that it is
2 extremely repetitive of what's in Ms. Pressley's
3 direct testimony.

4 And as we've seen throughout the
5 hearings that we've had in this case, other
6 witnesses have not been afforded the opportunity
7 to restate their direct testimony. This is
8 intended to be cross-examination.

9 CHAIRMAN GETZ: Mr. Upton, response?

10 MR. UPTON: I thought that this was an
11 appropriate line of questioning for a citizen
12 witness who doesn't otherwise get an opportunity
13 to appear before the board.

14 I didn't think it was improper
15 redirect. It was addressed to the issue of
16 municipal transparency that she raised in my last
17 question, so I thought it was an appropriate line
18 of questioning.

19 MS. KNOWLTON: Ms. Pressley is having
20 the opportunity to participate just as every other
21 witness has in this case. Though she is not
22 represented by counsel, she has filed multiple
23 rounds of testimony, and she has had the

1 opportunity to state her position, which the
2 commission can review in that prefiled direct
3 testimony.

4 If she's allowed to supplement her
5 direct testimony, she's been afforded an
6 opportunity that no other witness in this case
7 has, and I think that's prejudicial to all the
8 parties in this case.

9 CHAIRMAN GETZ: Mr. Upton, she has
10 submitted several rounds of prefiled direct, and I
11 guess it's a question of how much latitude to
12 allow here.

13 MR. UPTON: I don't have -- I don't
14 have very many questions at all for Mrs. Pressley.

15 CHAIRMAN GETZ: Well, I'm going to
16 allow this question, but this shouldn't be just an
17 opportunity to lay open for Ms. Pressley the
18 chance to restate her position or add to her
19 position as a general matter.

20 MR. UPTON: I understand.

21 CHAIRMAN GETZ: So let's keep it
22 focused.

23 MR. UPTON: I've tried not to do that.

1 BY MR. UPTON:

2 Q. What have you done?

3 A. Well, the most significant thing that I
4 have done -- and the repercussions are quite
5 significant and will be new information -- I
6 purchased one share of stock.

7 The company kept saying that they were
8 going to hold a meeting, a shareholders' meeting,
9 and this is the only way I could have a ticket to
10 get in to see how my water company functioned.

11 CHAIRMAN GETZ: Well, I believe -- I
12 think we've already heard Ms. Pressley speak to
13 this issue earlier in the case.

14 MR. UPTON: Okay.

15 MS. PRESSLEY: I think what you might
16 not realize, and I think I would like in the
17 public record to commend the free press, because
18 if were not for the Union Leader, if they had not
19 published this article, there would never have
20 been an SEC investigation.

21 Because we have to go -- a citizen has
22 to go to the press, and they -- they recognize
23 the -- the attorney -- the Secretary of State read

1 this article in the Union Leader and knew that the
2 company was in error, called me, I had calls from
3 lawyers saying that the company was at fault.

4 I had to go to court to get them to --
5 to be able to do what any shareholder can do. And
6 it was because of this that the securities
7 division that comes under the Secretary of State,
8 that they -- this whole investigation.

9 So this is what it takes for a citizen
10 to find out what's going on, to -- to get to the
11 bottom of what is happening with our water supply,
12 and I don't believe people do know that.

13 The Secretary of State has -- he told
14 me that this was the reason; this is what started
15 the whole SEC investigation, the free press, the
16 Manchester Union Leader.

17 And so if that's what it takes for a
18 customer and a citizen to find out what's going
19 on, to go to the extreme that I have had to go to,
20 I think there's a real problem here.

21 CHAIRMAN GETZ: Okay, Mr. Upton. We do
22 provide certain latitudes for pro se witnesses who
23 are unfamiliar with our processes, but let's

1 try -- where are we going with the cross?

2 BY MR. UPTON:

3 Q. My next question is you filed a
4 timeline as a part of your testimony?

5 A. Yes, I did, and I found that to be
6 really helpful to help me out, and also that was
7 how we were able to find out the inconsistencies.
8 Filing a -- creating a timeline that we can change
9 as we go along --

10 CHAIRMAN GETZ: Ms. Pressley, we've
11 read your testimony and seen your timeline. I
12 guess the question was --

13 MR. UPTON: Yes, the question is, and
14 it's not in her testimony --

15 Q. What conclusions did you draw from the
16 timeline?

17 A. Well, I think the same thing. The
18 frustration with the secrecy that exists with the
19 corporation's culture and the lack of openness.

20 MS. PRESSLEY: I'd like to point out to
21 the commission even going back to the beginning,
22 you gave a rate increase on March 2nd of 2002, and
23 we now know that the company was already in the

1 process of selling itself. And I wondered, do
2 they tell you that? I have no idea if they do.

3 But it seems to me that we didn't know.
4 So if you look at the timeline, you know, they
5 were in the process -- they were coming to you for
6 a rate increase, a 19 percent rate increase, while
7 they were marketing their company for sale. I
8 mean, things like this are just amazing to me.

9 If this were done in the public forum,
10 we would know what was going on. And the city of
11 Nashua is not going to be perfect, nor is Veolia,
12 but at least we'll know what they're doing and
13 we'll be able to speak out. But the secrecy, that
14 just contradicts everything that we stand for.

15 And this is our drinking water. The
16 water belongs to us, it does not belong to them.
17 They only process it and deliver it.

18 MR. UPTON: I have no more questions.

19 MS. PRESSLEY: Thank you.

20 CHAIRMAN GETZ: Well, I guess

21 Ms. Knowlton?

22 MS. KNOWLTON: I have no questions for
23 the witness. Thank you.

1 CHAIRMAN GETZ: I don't know if she can
2 redirect to herself.

3 MS. PRESSLEY: Thank you so much.

4 CHAIRMAN GETZ: So that completes the
5 examination of Ms. Pressley. Thank you.

6 MS. PRESSLEY: Thank you. Time for the
7 break.

8 CHAIRMAN GETZ: Yeah, let's take the
9 recess. And just to make sure about the arrival
10 of Mr. Scanlon, let's resume at one o'clock. And
11 my understanding, that's the last remaining item
12 we have to address today?

13 MR. UPTON: I believe so, yes.

14 CHAIRMAN GETZ: Well, let's recess
15 until one. Thank you.

16 (Recess taken.)

17 CHAIRMAN GETZ: Okay, we're back on the
18 record in docket DW 04-048, and I believe we have
19 Mr. Scanlon prepared to testify this afternoon,
20 and you make an appearance, Mr. Sullivan.

21 MR. SULLIVAN: I will, for the first
22 time in a long time. Eugene Sullivan for the town
23 of Milford.

1 (Michael Scanlon, sworn)

2 DIRECT EXAMINATION

3 BY MR. SULLIVAN:

4 Q. Could you have a seat? State your
5 name, and spell your last name for the record,
6 please?

7 A. My name is Michael Scanlon,
8 S-C-A-N-L-O-N.

9 Q. And how are you employed, Mr. Scanlon?

10 A. Presently I'm in a full-time position
11 as a lumber trader for Empire Wholesale Lumber in
12 Bedford, New Hampshire.

13 Q. And do you hold any political offices
14 on the town of Bedford?

15 A. I do. I'm on the Bedford town council.

16 Q. And at the time you filed your
17 testimony, did you hold any other political
18 offices?

19 A. I did. I was a representative.

20 Q. Are you still a representative?

21 A. No.

22 Q. And did you prefile testimony in this
23 case?

1 A. I did.

2 Q. And are you willing to adopt that
3 testimony as your testimony today?

4 A. I am.

5 Q. With that correction on your
6 political --

7 A. Yes.

8 Q. -- background.

9 MR. SULLIVAN: And the witness is
10 available.

11 CHAIRMAN GETZ: Thank you. And we turn
12 first to intervenors supporting the petition,
13 Ms. Pressley -- no. Mr. Judge.

14 CROSS-EXAMINATION

15 BY MR. JUDGE:

16 Q. Good afternoon, Mr. Scanlon.

17 A. Good afternoon.

18 Q. Now, you are also the chairman of the
19 board of Merrimack Valley Regional Water District?

20 A. I am.

21 Q. And what is your understanding in
22 regard to Nashua's intentions of what they will do
23 with these assets if they're successful at this

1 proceeding?

2 A. I believe --

3 MR. CAMERINO: Objection. The
4 commission has already ruled in this case that the
5 transfer to the Merrimack Valley Regional Water
6 District is not relevant to the purposes of this
7 proceeding, and that this is a case relating to
8 whether it's in the public interest for Nashua to
9 acquire these assets.

10 MR. JUDGE: I agree that this case has
11 to do with Nashua acquiring the assets. The
12 only -- the question was, just as Mr. Camerino
13 stated in his objection, that there is an intent
14 to transfer the assets at some point in the future
15 following the PUC proceeding, and that's the
16 extent of my cross-examination.

17 CHAIRMAN GETZ: That's the extent of
18 your cross-examination?

19 MR. JUDGE: That's it. I don't believe
20 he testified about that in his direct testimony.

21 MR. CAMERINO: I'll withdraw the
22 objection.

23 CHAIRMAN GETZ: Please proceed.

1 Q. Do you remember the question?

2 A. Yes. It is my understanding that their
3 intention is to turn the assets over to the
4 district if they're successful.

5 MR. JUDGE: Thank you very much.

6 CHAIRMAN GETZ: And Mr. Eckberg?

7 MR. ECKBERG: No questions for the
8 witness. Thank you.

9 CHAIRMAN GETZ: Ms. Thunberg.

10 MS. THUNBERG: Yes, briefly,
11 Mr. Chairman.

12 CROSS-EXAMINATION

13 BY MS. THUNBERG:

14 Q. Good afternoon, Mr. Scanlon.

15 Mr. Scanlon, are you familiar with Karen White in
16 the town of Bedford?

17 A. I am.

18 Q. And are you -- or have you been aware
19 in the past of her filing testimony before this
20 commission in any proceedings?

21 A. I am.

22 Q. And to the extent you recall her
23 testimony, is it fair to say that her testimony

1 was flattering of Pennichuck Water Works?

2 MR. UPTON: Maybe Ms. Thunberg can
3 identify what testimony in what proceeding?

4 MS. THUNBERG: Certainly, I can do
5 that.

6 Q. Mr. Scanlon, in particular are you
7 aware of Ms. White having filed testimony in a
8 Philadelphia Suburban proposed acquisition of
9 Pennichuck Water Works?

10 A. I guess I recall that she probably did,
11 but to what was in that testimony, I don't believe
12 I recall well enough to testify to.

13 Q. Fair enough. In your testimony you
14 mentioned that Manchester Water Works serves a
15 portion of the town of Bedford. And with respect
16 to that service, have there been any times that
17 Manchester Water Works has been unwilling to
18 extend service in Bedford?

19 A. I believe so, yes.

20 Q. And have there been any instances when
21 Manchester has not extended service that
22 Pennichuck has resolved whatever problems there
23 were for extending service to a particular area?

1 A. I believe so, yes.

2 MR. ALEXANDER: I'm having a little bit
3 of difficulty hearing the witness.

4 THE WITNESS: I said I believe so, yes.

5 CHAIRMAN GETZ: Maybe if you pull the
6 microphone a little bit closer.

7 THE WITNESS: My wife always tells me
8 I'm a little too loud sometimes.

9 CHAIRMAN GETZ: That jurisdictionally
10 extends so far.

11 THE WITNESS: That's really good to
12 know, actually.

13 Q. Mr. Scanlon, is it fair to say that
14 your testimony on behalf of Bedford is concerns
15 that Pennichuck Water Works would be sold to a
16 foreign company?

17 A. Yes, that was part of it.

18 Q. And is it also fair to say that Bedford
19 fears that under such a sale its local concerns
20 may be ignored?

21 A. Correct.

22 Q. Does Bedford feel that its concerns are
23 ignored presently with respect to water supply

1 issues?

2 A. No.

3 Q. If a foreign owner were to purchase
4 Pennichuck Water Works, are you aware of whether
5 the commission would retain jurisdiction over that
6 utility?

7 A. I would assume so, but I can't testify
8 for sure on that.

9 Q. And is Bedford aware that it could come
10 to the commission to air any concerns it had with
11 respect to utilities -- regulated utilities
12 serving in its area, or in the town of Bedford?

13 A. Yes.

14 Q. Now, with respect to the city of Nashua
15 taking Pennichuck Water Works' assets, does
16 Bedford believe that under such a scenario it
17 would have a forum to air -- or raise its concerns
18 with respect to water supply?

19 A. Eventually, yes.

20 Q. And can you please explain?

21 A. If the intent would be to turn the
22 assets over to the district, which Bedford would be
23 a member of, then, yes, we would have direct input

1 into those decisions.

2 Q. And in the event that transfer to the
3 district did not occur, are you aware of any forum
4 in which Bedford would be able to raise its
5 concerns?

6 A. I wouldn't -- at this point, no.

7 Q. So is it fair to say that Bedford is
8 supportive of Nashua's petition only to the
9 extent -- or only in the event that the assets are
10 held by the district?

11 A. I couldn't testify to that.

12 Q. Okay. I have a general question. To
13 the extent you know, do you have an opinion as to
14 whether an investor owned utility might be
15 expected to work across municipal boundaries with
16 towns like Bedford on water issues?

17 A. I would assume so. I think every
18 corporation would have its own philosophy and
19 management, so I wouldn't say yes or no to that,
20 but.

21 Q. Okay. Fair enough. Do you have an
22 opinion as to whether a profit motive would help
23 answer -- or would help an investor owned company

1 like Pennichuck Water Works seek out business
2 opportunities in the town of Bedford and
3 surrounding areas?

4 A. Certainly most businesses are for
5 profit and that's what -- that's what moves them
6 forward. So if they felt they could make money,
7 I'm sure they would absolutely look at those
8 opportunities. But I wouldn't, again, presume what
9 their -- what their philosophies are, what would
10 drive them to do anything.

11 Q. I'd like to turn to a specific portion
12 of your testimony, and do you recall using as an
13 example the town of Hudson acquiring a water
14 utility and its rates being reduced by 10 percent
15 for a period of years thereafter? Do you recall
16 that portion?

17 A. Yes.

18 Q. I can direct your attention to page 7.
19 Do you have a copy of your testimony?

20 A. I do.

21 Q. And it's on page 7.

22

23 MS. THUNBERG: This is Exhibit 2003,

1 for the record.

2 Q. And it's specifically lines 19 through
3 21, and I had a question regarding your discussion
4 about the 10 percent reduction in rates.

5 A. Not to be disrespectful, but my reading
6 glasses are in my sunglasses, and I forgot my
7 reading glasses in the office, so -- I'm not trying
8 to... okay.

9 Q. Are you aware of any instances where
10 Pennichuck utilities companies have acquired
11 systems and have also reduced their rates by, say,
12 10 percent for a period of years?

13 A. I wouldn't know that.

14 Q. So you're not denying that that could
15 have happened?

16 A. Could have. I have no -- I know
17 they've taken over companies, but what they've done
18 to the rates, I would have no idea.

19 Q. I'd like to turn to page 8 of your
20 testimony and just have you refresh your
21 recollection as to lines 2 through 4 and the
22 discussion of city of Nashua acquiring key
23 management personnel.

1 A. Okay.

2 Q. And is it the town of Bedford's
3 assumption that key management personnel will be
4 retained should Nashua take the Pennichuck Water
5 Works's assets?

6 A. I have no idea. I have no idea as to
7 who they're planning on retaining or what people
8 would stay.

9 Q. I think you had used key management
10 personnel being kept as a reason to support the
11 acquisition, is that not a fair characterization?

12 MR. UPTON: Maybe she could point that
13 out in his testimony if that's what he said.

14 MS. THUNBERG: Page 7, and then
15 continue on to page 8. And I had zeroed in to
16 lines 2 through 4 in the key management personnel,
17 but it's in a paragraph that begins on page 7.

18 MR. SULLIVAN: If I could just show the
19 witness his testimony.

20 MS. KNOWLTON: Marcia, do you want to
21 put it up on the screen?

22 MS. THUNBERG: I believe he has his
23 testimony before him.

1 MR. SULLIVAN: He does. He said it was
2 possible, he didn't say it was certain.

3 MS. THUNBERG: I'm sorry, which line?

4 MR. SULLIVAN: Beginning at line 5,
5 page 8, after the sentence that you had read, it
6 states in addition, it's possible.

7 A. Yeah, I would agree with my attorney,
8 you know, anyway's possible, so.

9 Q. Well, I'm just trying to get to the
10 reason why you included this in there, and I
11 thought it was that these were attributes of a
12 nonprofit entity such as city of Nashua taking the
13 assets.

14 And if you're now unsure as to whether
15 management is being kept, the question is is this
16 no longer useful as supportive testimony?

17 A. No. I think this testimony was
18 probably more just a -- you know, general feelings
19 as to how you would -- you know, certain scales of
20 economy and certain things.

21 I think you're reading more into it
22 that I would have some inside knowledge as to what
23 was going to happen with Pennichuck if the eminent

1 domain was successful. I have no idea. The city
2 of Nashua, I'm not involved with their case or
3 their plans, and I would have no idea as to what
4 their plans would be for their employees.

5 MS. THUNBERG: Thank you, that's a fair
6 enough clarification. Staff has no further
7 questions.

8 CHAIRMAN GETZ: Mr. Alexander?

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

11 CHAIRMAN GETZ: And Mr. Upton?

12 MR. UPTON: Yes, thank you.

13 BY MR. UPTON:

14 Q. Do you remember when you filed your
15 testimony?

16 A. I do.

17 Q. When?

18 A. It was a long time ago.

19 Q. If I told you it was April 2005, would
20 you agree?

21 A. I would.

22 Q. A lot of time has passed since then?

23 A. It has.

1 Q. And a lot has happened in this case
2 since then?

3 A. It has.

4 Q. And since you've submitted your
5 testimony, Nashua has made a number of commitments
6 that I'd like to ask you about. If Nashua has
7 committed in its testimony and agreed to a
8 condition of approval by this commission that it
9 provide service to all customers located outside
10 the city, including Bedford, how would that impact
11 your testimony?

12 A. As far as my support?

13 Q. Yes.

14 A. It would make me more supportive.

15 Q. And, likewise, if Nashua has committed
16 in its testimony and agreed to a condition of
17 approval by the commission that it will provide
18 service under its water ordinance that will not
19 discriminate against customers located outside
20 Nashua, including Bedford, and that the terms and
21 conditions of the water ordinance as applied to
22 customers outside the city shall be subject to the
23 jurisdiction of the commission, how would that

1 have impact on your testimony?

2 A. It would make me more supportive.

3 Q. And if I added to that that Nashua has
4 also committed and agreed to a condition of
5 approval by the commission that Nashua will
6 provide service to customers outside the city that
7 is reasonable and safe and adequate, and in all
8 other respects just and reasonable, and that
9 service in any franchise outside Nashua's borders
10 shall be subject to PUC jurisdiction, and that the
11 commission shall have jurisdiction relative to any
12 complaints concerning water service, would that
13 have any impact on your testimony?

14 A. It would make me more supportive.

15 Q. One of the council members from
16 Bedford -- I'm sorry -- from Merrimack this
17 morning was asked if the town supported the
18 council's position. Do you know if the voters of
19 Bedford support the position of the council in
20 this case -- of Bedford?

21 A. Yes, they do. I'm going to say it was
22 probably three or four years ago at our town
23 meeting we actually voted to acquire the assets in

1 Bedford through eminent domain.

2 Q. And that's the RSA 38 vote?

3 A. It is.

4 Q. Go ahead. I didn't mean to interrupt
5 you.

6 A. Just to say, before -- we were not
7 sure, that was before the PUC ruled on whether or
8 not they were going to be able to take the Bedford
9 assets, and then when they ultimately decided they
10 could take the core system, which included Bedford,
11 we didn't pursue that; since they were included in
12 Nashua's eminent domain, we felt we would just stay
13 with Nashua and allow the process to play out.

14 Q. Mr. Richardson notes that in the first
15 commitment that I asked you about I didn't
16 indicate that Nashua has committed to charge core
17 rates to customers outside of Nashua. Did you
18 understand that?

19 A. Yes.

20 Q. Okay. And that's -- it's the
21 commitment to provide service at core rates to
22 customers outside Nashua that allows you to
23 provide additional support?

1 A. Yes, it is.

2 MR. UPTON: Thank you.

3 CHAIRMAN GETZ: Mr. Camerino?

4 CROSS-EXAMINATION

5 BY MR. CAMERINO:

6 Q. Good afternoon, Mr. Scanlon.

7 A. Good afternoon.

8 Q. I think you already said, you're
9 currently a member of the Bedford town council?

10 A. Yes.

11 Q. And you are past chairman?

12 A. I am.

13 Q. Okay.

14 A. Or was.

15 Q. You're now past?

16 A. Now past.

17 Q. And you're also Bedford's
18 representative to the Merrimack Valley Regional
19 Water District, is that correct?

20 A. Yes.

21 Q. And you serve as chair of that
22 organization?

23 A. I do.

1 Q. Since when?

2 A. I believe it was since the charter was
3 approved by the minimum number of communities, when
4 we went out of a, you know, mode of writing the
5 charter to when we actually officially formed.

6 Q. So essentially since inception?

7 A. Correct.

8 Q. I'm going to just ask you to move the
9 microphone a little closer there.

10 A. Okay, I'm sorry. I'll try to speak up
11 a little bit.

12 Q. I want to ask you about one correction
13 I think you have to your testimony. If you look
14 at page 7 -- you've got that in front of you --
15 you said on line -- beginning on line 3, Bedford
16 is very concerned because not only have all the
17 directors of Pennichuck who had opposed the
18 Philadelphia Suburban merger been removed from the
19 board of directors -- et cetera, et cetera, and
20 then you go on and talk about Mr. Korrell's
21 contract. Do you see that line about all of those
22 directors have been removed from the board?

23 A. Yes.

1 Q. And am I correct that in response to a
2 data request you subsequently corrected that and
3 indicated that was a wrong statement?

4 A. I believe so, yes.

5 Q. Okay, thank you.

6 A. It sounds familiar.

7 Q. Now, Ms. Thunberg asked you about the
8 testimony -- let me ask you one other question.
9 You're appearing here today as a representative of
10 the town of Bedford, is that correct?

11 A. Correct.

12 Q. And so essentially your statements are
13 on behalf of the town?

14 A. Correct.

15 Q. And Ms. Thunberg asked you about some
16 testimony that Karen White filed in the
17 Philadelphia Suburban/Pennichuck merger case, do
18 you remember those questions?

19 A. Yes.

20 MR. CAMERINO: And just for the record,
21 that's been marked as Exhibit 3022 for
22 identification.

23 Q. And could you explain to the commission

1 who Ms. White is?

2 A. Now she is a happily retired
3 ex-planning director from the town of Bedford,
4 probably somewhere in Florida, but at the time that
5 was planning director.

6 Q. And when she filed that testimony -- I
7 have the cover sheet here, I'm not trying to be
8 tricky about this -- it says on behalf of the town
9 of Bedford. So in that case it's fair to say she
10 was the representative of the town of Bedford, in
11 that case? If you'd like me to show you the
12 document, I'd be happy to do that.

13 A. No. I mean, if that's what it says,
14 she was probably by and on our behalf.

15 Q. And just I'll pull that up, just to
16 show you that I'm representing that accurately.

17 A. Yup, that's what it says.

18 Q. Okay. And I'm not trying to put you on
19 the spot in case this answer is no, but is it fair
20 for me to assume you hold her in fairly high
21 regard?

22 A. Yes.

23 Q. She's a very credible and professional

1 and capable person?

2 A. I believe so, yes.

3 Q. Now, I looked at her testimony in that
4 case and I looked at your testimony in this case,
5 and there were large portions of her testimony
6 that appeared verbatim in your testimony, and you
7 may recall Mr. Donovan asked you about that in
8 your deposition?

9 A. I don't, but.

10 Q. What I'm trying to establish without
11 taking you through line by line, which is what
12 Mr. Donovan did in his testimony, is that there
13 appears that there's a lot of information -- I'll
14 call it background information --

15 A. Yup.

16 Q. -- that you took from her testimony and
17 adopted it in yours, so that you clearly had gone
18 through her testimony at some point and selected
19 those portions that you thought were helpful in
20 this case.

21 A. I didn't reinvent the wheel, I guess
22 you could say, yes.

23 Q. So a lot of your testimony actually

1 comes from that testimony in the prior case, is
2 that a fair statement?

3 A. Yes.

4 Q. And so one could -- and I assure the
5 chairman I'm not going to do this -- could go
6 through this line by line and see which portions
7 actually came from the other testimony if you did
8 a side-by-side comparison?

9 A. Sure, you could.

10 Q. In your testimony you indicate that
11 Pennichuck Water Works has a franchise to serve
12 about three-quarters of Bedford, and Manchester
13 Water Works has a franchise for about a quarter,
14 does that sound correct?

15 A. Roughly, yup.

16 Q. And you would agree, wouldn't you, that
17 Manchester Water Works was not willing to expand
18 its system in Bedford, and Pennichuck Water Works
19 stepped in and helped out the town in that regard?

20 A. Yes. That was before my time on the
21 council, but that is my understanding, yes.

22 Q. And that's reflected -- actually, if we
23 turn to page 9 of Ms. White's testimony --

1 MR. UPTON: I object, Mr. Chairman,
2 this is cumulative. He has testified that that's
3 precisely what his understanding was. He
4 testified in response to questions from somebody
5 else that Pennichuck had stepped in when
6 Manchester had refused.

7 He answered Mr. Camerino's question
8 that they had stepped in when they refused, and
9 now we're going to go into Karen White's testimony
10 back in -- back in the Pennichuck -- I mean the
11 Philadelphia Suburban docket. I think that's
12 cumulative; it's beyond the direct testimony.

13 CHAIRMAN GETZ: Well, before I can
14 decide whether it's cumulative, I'm not sure what
15 the next question is.

16 MR. CAMERINO: I'm just asking him if
17 that's what's described there. I'm not going to
18 ask him to read it. I mean, I have further
19 reasons that this is an appropriate line, but,
20 frankly, I'm just going to ask him if that is
21 described on page 9 of Ms. White's testimony,
22 which is an exhibit in the case.

23 CHAIRMAN GETZ: I'll allow the

1 question.

2 Q. Is that's what's described there?

3 A. That's what's on the monitor, yes.

4 Q. Well, I can show you your deposition
5 where you gave a similar description, if you'd
6 like, so I'm asking if that's your understanding.

7 A. Yes, that's my understanding.

8 Q. Thank you. And is it your
9 understanding that the Bedford town council
10 ultimately asked Pennichuck Water Works to serve
11 an area called Powder Hill within the town of
12 Bedford?

13 A. Again, that's before my time on the
14 council, but I believe that to be correct.

15 Q. And when Pennichuck came to this
16 commission and sought the franchise for that
17 three-quarters of the town, the town supported
18 that request, is that your recollection or
19 understanding?

20 A. Again, before my involvement on the
21 town council, but I believe that to be correct.

22 Q. And then more recently there was a
23 problem at Riddle Brook Elementary School, wasn't

1 there, where Pennichuck stepped in and assisted?

2 A. I know there was a waterline running to
3 that school, and I know that it was Pennichuck that
4 did it.

5 Q. And Pennichuck did that because the
6 town had built the school there, and then it
7 turned out that the water supply was inadequate?

8 A. Again, just before my time, but I
9 believe that to be correct.

10 Q. That water supply that comes to the
11 school, that's actually water that Pennichuck
12 purchases from Manchester Water Works, isn't it?

13 A. I believe so, yes.

14 Q. But Manchester Water Works wasn't
15 willing to extend out to serve the school itself,
16 was it?

17 A. I believe that's correct.

18 Q. And then even more recently --

19 CHAIRMAN GETZ: Mr. Camerino, I think
20 we may now be getting into cumulative evidence
21 about positive relations between the town of
22 Bedford and Pennichuck Water Works.

23 MR. CAMERINO: I actually only have a

1 couple more questions on this, but I have to say
2 that I don't know exactly how long we'll go with
3 this witness, it won't be as long as we've been
4 going with the principal witnesses in this case,
5 but we are well on schedule, and I have some
6 important things to ask him.

7 And I think even though these are
8 separate instances, I think they are fairly
9 significant in terms of how municipal systems work
10 versus investor owned systems, and as I said, on
11 this particular line there's only one more
12 question anyway.

13 CHAIRMAN GETZ: I'll allow the
14 question.

15 MR. UPTON: I would point out that this
16 witness hasn't had any personal knowledge of any
17 of those.

18 CHAIRMAN GETZ: He's testified to that.

19 BY MR. CAMERINO:

20 Q. Finally, quite recently, more recently
21 there's been a situation on Magazine Street in
22 Bedford where there was salt contamination from
23 some town facilities, and Pennichuck Water Works

1 stepped in and helped with that problem, did it
2 not?

3 A. The town of Bedford paid to have that
4 water line extended and upgraded, I don't believe
5 Pennichuck -- maybe some very small financial
6 contributions, but then after we paid for it, my
7 understanding is we then gave it to Pennichuck so
8 they can bill our customers for the water lines to
9 the town that the taxpayers paid for, yes.

10 Q. You're not saying that Pennichuck Water
11 Works is billing for the capital that the town
12 contributed, are you? You're saying they billed
13 for the water that they supplied?

14 A. If the rates are the same as everywhere
15 else, there would have to be some capital in there.

16 Q. That's based on whatever you understand
17 about the rate making process --

18 A. Yes, that's my --

19 Q. I'm sorry, only one of us can talk at a
20 time. I'll ask the question, then you can answer.
21 That's based on your understanding how the rate
22 making process works, whatever that understanding
23 is?

1 A. Correct.

2 Q. But, in fact, the service is provided
3 by Pennichuck Water Works?

4 A. Yes.

5 Q. And you're not aware, are you, of any
6 complaints to the PUC about Pennichuck service in
7 the town of Bedford?

8 A. I have no knowledge of that.

9 Q. But you can't actually say that as to
10 other utilities that serve the town of Bedford;
11 you're aware that there have been complaints about
12 at least one other utility?

13 A. Yes.

14 Q. And you don't have any issues with
15 Pennichuck Corporation or their operation of the
16 water system?

17 A. As I've testified to, no.

18 Q. Now, in your testimony you express
19 concern about the continued longevity remaining in
20 place of the Pennichuck management team, do you
21 recall that?

22 A. Not specifically, no.

23 Q. Well, if you take a look at page 7 of

1 your testimony, and we'll pull that up on the
2 screen, that may have been what Ms. Thunberg
3 directed you to previously, or maybe Mr. Sullivan.

4 And you say on page 7 --
5 (Discussion off the record.)

6 CHAIRMAN GETZ: This doesn't appear to
7 be numbered -- my copy is -- okay, so you're going
8 to line 9, I guess, on my copy.

9 MR. CAMERINO: First of all, if we
10 could straighten ourselves out procedurally, I
11 think there may be some confusion even on the
12 numbering of the exhibits.

13 I'm showing -- just to make sure we're
14 using the right number -- Mr. Scanlon's testimony
15 I have as Exhibit 2006. Is that what the
16 commission has?

17 COMMISSIONER BELOW: Our copy is marked
18 2003.

19 MR. CAMERINO: Can we go off the record
20 for one second?

21 CHAIRMAN GETZ: Yes.
22 (Discussion off the record.)

23 CHAIRMAN GETZ: Let's go back on the

1 record, and Mr. Camerino is addressing Mr. Scanlon
2 with a question from his testimony of April 22nd,
3 which in my copy appears on page 7 beginning at
4 line 9. And proceed, Mr. Camerino, with your
5 question.

6 MR. CAMERINO: Thank you.

7 BY MR. CAMERINO:

8 Q. Mr. Scanlon, you see there where it
9 says it would be extremely naive to believe that
10 any of the current management team that have
11 helped with Bedford's water extension strategy
12 will remain in place in the long run or the short
13 run. Do you have that in mind?

14 A. Yes.

15 Q. When you talk about the management
16 team, are you talking about Mr. Ware, Mr.
17 Densberger and Ms. Hartley from Pennichuck Water
18 Works? Are those the people you're referring to?

19 A. Yes.

20 Q. And I take it from the statements in
21 here -- but I'll ask you again -- that you have a
22 fairly high opinion of those people and what
23 they've done for Bedford?

1 A. Yes.

2 Q. And you then express concern at the end
3 of that highlighted section that a takeover of
4 New Hampshire utilities results in the loss of
5 locally based managers which are incrementally
6 replaced with individuals from the home office, do
7 you see that?

8 A. Yes.

9 Q. And you're aware that Mr. Densberger
10 and Mr. Ware and Ms. Hartley are all employed by
11 Pennichuck Water Works?

12 A. The first two. I'm not as familiar
13 with --

14 Q. Ms. Hartley?

15 A. -- Ms. Hartley.

16 Q. And that they've worked for Pennichuck
17 for many years?

18 A. Yes.

19 Q. And are you aware that Veolia has
20 indicated they have no plans to retain the
21 management of Pennichuck Water Works?

22 A. I don't know that.

23 Q. Are you aware that many of the

1 functions that those people provide are going to
2 be provided by Veolia people who are located in
3 other cities?

4 A. I do not know anything about the
5 management or future management of the company as
6 relates to employees.

7 Q. Now, as I understand it, what you're
8 really here to support is the operation of
9 Pennichuck Water Works by a regional district, is
10 that right?

11 A. It's been my understanding that if
12 Nashua is successful that they would turn the
13 assets over to the water district.

14 Q. And that's why you support their
15 acquisition?

16 A. One of the reasons, yes.

17 Q. But you said in your deposition that if
18 the question were whether Nashua should be allowed
19 to own and operate the system in Bedford, then the
20 town wouldn't support that, isn't that right? In
21 other words, if it was Nashua owning and operating
22 the system versus a regional district, you would
23 not support that?

1 A. I don't recall that in my testimony,
2 but I can say that -- that -- that, yes -- my
3 support is based on the fact that their intention
4 is to turn it over to a regional water district.

5 Q. And you're here to speak for the town.
6 That's true of the town council, right?

7 A. I cannot specifically speak to that,
8 about the town council. The town council is
9 supportive, as we have voted in the past, but I
10 can't sit here without having that direct question
11 asked; I'm only one of seven.

12 Q. So at least as to your view, that would
13 be true?

14 A. Yeah, I guess.

15 Q. And Mr. Upton asked you a series of
16 questions earlier about would you agree with this
17 condition and would you agree with that condition.
18 You haven't had a town council discussion about
19 those conditions, have you? You used the word me
20 when you were responding, that's what caught my
21 ear. There haven't been any votes of the town
22 council on those conditions?

23 A. When we first embarked down this road

1 many years ago, I'm sure there were many
2 discussions, I just don't -- I can't sit here today
3 and recall those things. I would guess they
4 probably were, but I can't sit here and testify to
5 that.

6 Q. So you're not authorized here today to
7 agree to certain conditions?

8 A. No, I wouldn't agree to any conditions.

9 Q. And in your deposition you also said
10 that you don't believe that Bedford would be well
11 served by being a customer of the city of Nashua,
12 do you recall that?

13 A. Vaguely.

14 Q. Do you want me to show you that, or
15 would you agree that you said that? I can show it
16 to you to refresh your recollection, if you'd
17 like. Why don't I do that.

18 A. Yeah, that would be good.

19 Q. Actually, we can put it on the screen.
20 Page 39 of your deposition.

21 A. I just don't know the context in which
22 that question was asked.

23 Q. Okay, that's fine.

1 MR. SULLIVAN: Do you mind if I give
2 him a copy?

3 MR. CAMERINO: That's fine. Page 39.

4 MR. SULLIVAN: With your permission,
5 sorry.

6 CHAIRMAN GETZ: Please proceed.

7 MR. SULLIVAN: It's been a while.

8 Q. So you see that first question on
9 screen? Question, if they did not, but they
10 acquired all of the assets -- I think Mr. Sullivan
11 is actually going to give you a hard copy, if
12 that's easier?

13 A. No, this is nice and big.

14 Q. Okay -- but they acquired all of the
15 assets of Pennichuck Water Works and operated it
16 on some basis through the city, would you still
17 support Nashua's acquisition of the assets through
18 this process? Answer. No. And why is that?
19 Answer. Because I do not want to -- I do not
20 believe Bedford is well served by being a customer
21 of the city of Nashua.

22 Does that refresh your recollection?

23 A. It does.

1 it?

2 Q. And I'm not asking you to read that, I
3 just want you to have that to refresh your own
4 recollection. Read it to yourself, but I don't
5 want you to read it into the record unless you
6 feel so moved.

7 That document summarizes some of her
8 concerns about -- about Veolia being selected as
9 the operator?

10 A. Yes.

11 Q. And she shared that information with
12 you, didn't she?

13 A. I believe so.

14 Q. And, in fact, you and she went and
15 appeared in front of the city of Nashua board of
16 aldermen and expressed some of your concerns,
17 didn't you?

18 A. We did.

19 Q. And she felt that Veolia should not be
20 selected as the operator, is that correct?

21 A. I believe so, yes.

22 Q. I think just to move this along, in
23 Ms. White's testimony that we referred to before,

1 the testimony in the Philadelphia Suburban case,
2 she made a number of comments regarding the
3 relationship between the town of Bedford and
4 Pennichuck Water Works and Merrimack -- and
5 Manchester Water Works, do you recall that?

6 A. I don't, but.

7 Q. And, essentially as you've testified,
8 one of the problems that Bedford had with
9 Manchester Water Works is Manchester Water Works
10 was not willing to extend its service into a wider
11 area of the town of Bedford, correct?

12 A. Yes.

13 Q. And in her testimony she extolled some
14 of the virtues of Pennichuck Water Works versus
15 service by Manchester Water Works?

16 MR. UPTON: I object. This is way
17 cumulative now. You cautioned him -- the chair
18 cautioned him about it being cumulative once
19 already. This is -- we're right back into that
20 same cumulative testimony.

21 CHAIRMAN GETZ: Mr. Camerino, where are
22 we going with this?

23 MR. CAMERINO: I guess, frankly, my

1 concern is very simple, and I apologize because I
2 have said this previously.

3 I'm concerned about the process we have
4 here where we have many, many documents that are
5 being marked as exhibits and whether those are
6 well presented to the commission by simply putting
7 a document in and having it read later versus
8 having the witness discuss it in the live
9 testimony.

10 Frankly, I'm willing to move on, but
11 I'm concerned there's a lot of important
12 information here regarding the town of Bedford's
13 own position. This witness is essentially the
14 personification of the town of Bedford for
15 purposes of this case, and I think the commission
16 should hear it, but I don't want to delay it
17 either.

18 CHAIRMAN GETZ: I think it's areas of
19 inquiry that you've already addressed, so --

20 MR. CAMERINO: All right, I'll move on.

21 BY MR. CAMERINO:

22 Q. In your testimony, if you look at what
23 I'm going to call page 4 -- and I'll give you a

1 specific reference. At the bottom of page 4 the
2 question that this is answering is what plans has
3 Bedford made for the future of water service in
4 the town. Do you see that question?

5 A. Yup.

6 Q. There's two paragraphs -- the first two
7 paragraphs that follow that, the second one is
8 fairly lengthy.

9 A. Yes.

10 Q. And about three lines up from the
11 bottom of that second paragraph it says the town
12 council has decided to make a commitment to
13 provide municipal investment in an aggressive
14 expansion of water service. Do you see that?

15 A. Yup.

16 Q. All right. And then on page 7 -- so
17 this looks to me like a fairly significant
18 commitment by the town to spend money to expand
19 water service in the town, is that a fair
20 statement?

21 A. Would you restate that?

22 Q. The way I read this was that the town
23 council has made a commitment that it wants to

1 invest municipal funds to expand water service in
2 the town, is that a fair reading?

3 A. No, I wouldn't say that.

4 Q. Okay, so what I saw here was has
5 decided to make a commitment to provide municipal
6 investment. Would it be wrong to read that as
7 meaning town monies?

8 A. The town has spent municipal funds on
9 water when it felt it was necessary to do so. We
10 have a long-term plan, but at this point I don't
11 believe we're actively funding any expansion unless
12 it's necessary.

13 Q. So should I read that as the town
14 council has not decided to make a commitment to
15 provide municipal investment?

16 A. Again, at the time there may have been
17 a different philosophy than there is today, I just
18 can't say what that philosophy is.

19 Q. Okay. On page 7 of your testimony --
20 and this is the beginning of the paragraph that
21 starts in contrast.

22 I'm going to continue on and not worry
23 about the screen.

1 MS. KNOWLTON: Here it is.

2 Q. It says, in contrast, Bedford officials
3 believe that acquisition of the Pennichuck
4 utilities by public nonprofit entity such as the
5 city of Nashua would result in lower and/or more
6 stable water rates, et cetera, et cetera. Do you
7 see that?

8 A. Yes.

9 Q. So you're saying here that you believe
10 that acquisition of the Pennichuck utilities by a
11 public nonprofit entity such as the city of Nashua
12 would -- is something that's of interest, right?

13 A. Yes.

14 Q. Something that -- okay. And I'm
15 assuming you would make the same statement with
16 regard to the Merrimack Valley Regional Water
17 District, would you not? In other words, you said
18 here nonprofit entity such as. I'm assuming you
19 would say the same thing for the water district?

20 A. Yes.

21 Q. And the same thing for the town of
22 Bedford if it was the acquirer?

23 A. Yes.

1 Q. And you pointed out before, the town of
2 Bedford has actually already voted to take
3 Pennichuck Water Works' assets by eminent domain,
4 hasn't it?

5 A. We did.

6 Q. And you even sent a demand letter to
7 Pennichuck Water Works asking if it would be
8 willing to sell its system, didn't you?

9 A. Yes.

10 Q. And is it fair to say based on that
11 that if Pennichuck Water Works were for sale the
12 town of Bedford may be interested in maybe talking
13 to it about buying its system?

14 A. I can't make that assumption today.

15 Q. But that was at least true at the time
16 you sent the letter. I mean, you wrote a letter
17 saying we'd like to buy your company, will you
18 agree?

19 A. I believe the demand was for the
20 Bedford portion.

21 Q. So if that were for sale, you would be
22 interested in buying it?

23 A. I can't say that that would be true

1 today.

2 Q. But it was true when you wrote the
3 letter?

4 A. It was.

5 Q. I take it it's also true today in
6 particular that if the company were for sale the
7 regional water district would be interested in
8 buying it, wouldn't it?

9 A. Again, I can't say. We haven't talked
10 about that. We haven't --

11 Q. I thought the purpose of your
12 intervention in that case was to be a step toward
13 the acquisition of Pennichuck Water Works by the
14 water district?

15 A. Ultimately, yes.

16 Q. So if I told you that Pennichuck Water
17 Works was for sale and we would sell it to the
18 district, are you telling me you wouldn't be
19 interested in buying it?

20 A. I didn't say that, no. The district
21 hasn't had that discussion or voted on it. My
22 guess is Pennichuck's for sale, I believe it has
23 been for the last four or five years, it's just a

1 matter of is the price right. So we could have
2 made them an offer at any time, I suppose, if we
3 wanted to.

4 Q. Well, I guess what I'm trying to
5 understand is I thought your support for the
6 petition in this case was premised on a transfer
7 to the district, and if there wasn't a transfer to
8 the district, you're opposed?

9 A. My testimony, I believe, has been our
10 support has been with the understanding that the
11 intention was to turn those over to the district.
12 If that was no longer the intention, I don't
13 believe I can sit here today and tell you what my
14 feelings would be until it was laid out to me and I
15 had a full understanding as to what would
16 transpire.

17 Q. Okay, and my question is such simpler.
18 Pennichuck Water Works is for sale and you get the
19 chance to skip over the step of worrying whether
20 Nashua is going to transfer it. Pennichuck Water
21 Works will just sell directly to the district.
22 Are you telling -- wouldn't the district be
23 interested, at least seriously consider making a

1 proposal to buy the company?

2 A. In my opinion, I would be, but --

3 MR. JUDGE: Objection, Mr. Chairman.

4 This question has been asked and answered several
5 times. He's responded that the district hasn't
6 discussed this issue.

7 MR. CAMERINO: I think it's
8 inconsistent with his prior testimony about his
9 reason for appearing in this proceeding.

10 CHAIRMAN GETZ: I think this needs some
11 clarification, because I want to make sure I have
12 it clear in my mind exactly what it is. But I
13 think there may have been some inconsistencies in
14 the testimony so far, so I'm going to allow the
15 question.

16 A. Do you want me to answer? If the
17 question came in front of the district today, I
18 believe personally that I would support making an
19 offer that -- a reasonable offer to acquire those
20 assets. I believe the district ultimately would.

21 But one thing I've learned about being
22 in public service is I never assume what the other
23 people around the table are going to do. So to sit

1 here today and say they would I don't believe is a
2 fair question on me, because I do not know what the
3 mindset of those other people were.

4 Q. If that was your reluctance in
5 answering, I want to be the first to apologize. I
6 understand exactly what you're saying.

7 Now, the district is a real entity; it
8 exists, right?

9 A. It does.

10 Q. It has members?

11 A. It does.

12 Q. And it has a governing structure?

13 A. Yes.

14 Q. It meets periodically?

15 A. It does.

16 Q. Now, suppose that, again, Pennichuck
17 Water Works is for sale, you've got Manchester
18 Water Works serving already in the town of Bedford
19 and Manchester says, we don't really think there's
20 a need for a new regional water district, we
21 already serve in some towns, we would like to buy
22 Pennichuck Water Works, and we'll provide service
23 in Manchester. Isn't that a possible scenario?

1 CHAIRMAN GETZ: You mean in Bedford?

2 A. In Bedford?

3 Q. In Bedford, I'm sorry. We'll buy
4 Pennichuck Water Works and run the system.

5 MR. UPTON: I object. I think that
6 calls for a legal conclusion whether Manchester
7 Water Works could buy it.

8 Q. Don't worry about the legal aspect, the
9 attorneys can brief that, if necessary. Just tell
10 me whether -- let me rephrase it --

11 CHAIRMAN GETZ: I'll allow the
12 hypothetical.

13 MR. CAMERINO: I'm going to rephrase
14 it, also, so that the witness has a little more
15 clarity.

16 Q. We're talking about a case right now
17 where the city of Nashua says we want to buy
18 Pennichuck Water Works, and we'll operate it as a
19 regional utility and we intend to transfer it over
20 to the district, correct?

21 A. Yes.

22 Q. I'm positing a different situation.
23 Manchester Water Works which already -- the city

1 of Manchester already operates a municipal
2 utility, so Manchester Water Works says we're
3 experienced at this, we'll buy Pennichuck Water
4 Works, and we'll become the regional utility. You
5 understand the situation?

6 A. Yup.

7 Q. First of all, that's a possibility,
8 isn't it? If Nashua could do it --

9 A. Anything's possible.

10 Q. Would you have any problem with that
11 kind of scenario?

12 A. I would have to know the specifics
13 before I could answer a question like that.

14 Q. Any of the things you said before about
15 your concerns about -- in prior testimony about
16 Manchester operating in the town of Bedford, would
17 any of those give you pause in terms of Manchester
18 operating a regional utility in the town of
19 Bedford?

20 A. Again, is it a regional utility that's
21 governed on a regional basis, or is it a Manchester
22 utility that provides a service? Again, in your
23 hypothetical, there's just so many loose ends I'm

1 just not sure I can answer your question.

2 Q. So the governing structure would matter
3 to you as to whether that's acceptable?

4 A. I believe so.

5 Q. But if that were possible and the
6 governing structure were acceptable, you would
7 consider that?

8 A. Again, if under the -- you know, the
9 details were such that I felt it was beneficial to
10 the town of Bedford and would serve our interests,
11 then, yes, I could support it. But until I knew
12 those questions -- the answer to those questions, I
13 don't think I could sit here and testify to those
14 hypotheticals.

15 Q. Now, you mentioned that the town of
16 Bedford voted to authorize the town to purchase
17 the assets of Pennichuck Water Works by eminent
18 domain, right?

19 A. Yes.

20 Q. And, in fact, I'm going to read you
21 some of the words of that vote because I want to
22 make sure I understand what you were saying
23 before. The words -- I'm reading from minutes of

1 the town meeting of March 10, 2005. Does that
2 sound like the right date?

3 A. It's possible. Three or four years
4 ago?

5 Q. Let me just show you to refresh your
6 recollection.

7 A. Yup.

8 Q. And the wording -- let me represent to
9 you; I can show you again in case you want to
10 confirm this -- is that what was for the use of
11 the inhabitants of Bedford and others, and for
12 such other purposes as may be permitted, and to
13 take, purchase, or otherwise acquire the assets of
14 the Pennichuck Corporation, including but not
15 limited to lands, wells and pipes within the
16 corporate boundaries within the town of Bedford
17 pursuant to New Hampshire RSA 38-4. Does that
18 sound correct?

19 A. Yes.

20 Q. And you were the one who presented this
21 article at the town meeting, were you not?

22 A. I was.

23 Q. And you explained the need for this

1 article, didn't you?

2 A. I did.

3 Q. All right. I want to show you an
4 excerpt from these minutes, and I want you to read
5 the first paragraph of what you said at that
6 meeting. And I'm happy to give you the whole
7 document if you want, but I'd like you to just
8 read that first paragraph.

9 A. You want the top line?

10 Q. Just read that into the record, please.

11 A. Starting with what we?

12 Q. Yes.

13 A. What we are asking you to do in giving
14 us this authorization is this will protect us if
15 the PUC were to rule that Nashua could no longer
16 take those assets that are within the town of
17 Bedford.

18 The problem with that is if Nashua only
19 takes the core system, which is the vast majority
20 of the system, that would make Bedford a small
21 standalone system in a fractured company. Our
22 concern is there wouldn't be the customer base that
23 if something catastrophic happened such as when we

1 had a water issue at Riddle Brook School and Powder
2 Hill development, Pennichuck had the assets and the
3 resources to spend roughly \$850,000 of their own
4 money to run waterlines up the New Boston Road to
5 service those neighborhoods.

6 If we were a small fractionalized
7 company, they may not have those assets as in the
8 past the way Pennichuck has grown. That was small
9 water companies were going out of business and they
10 were being abandoned by the companies and over time
11 PUC got Pennichuck to acquire these companies and
12 made them viable again.

13 Our fear is that if Nashua were only to
14 take Nashua's part of the system and leave us
15 fractionally, it could potentially have some major
16 exposure if there was an issue.

17 Q. And so this was your concern as
18 explained to the town of Bedford, correct?

19 A. Yes.

20 Q. And I assume you believe that to be
21 true?

22 A. I do.

23 MR. CAMERINO: Thank you very much.

1 CHAIRMAN GETZ: Redirect, Mr. Sullivan?

2 MR. SULLIVAN: A few questions.

3 REDIRECT-EXAMINATION

4 BY MR. SULLIVAN:

5 Q. In response to Mr. Camerino's
6 questions, has Pennichuck ever approached the
7 water district and offered to sell the utility to
8 the water district?

9 A. No.

10 Q. Are you aware of any tax consequences
11 of Pennichuck selling its assets or its stock to
12 an investor owned utility versus a public entity?

13 A. I wouldn't know that, no.

14 Q. You weren't aware of the fact that
15 there was a -- if the money was reinvested in a
16 certain way that the shareholders wouldn't have to
17 recognize any capital gain if it went to an
18 investor owned utility versus a private water
19 utility?

20 A. I guess I've heard different things,
21 but I specifically wouldn't have any knowledge of
22 those.

23 Q. When the concerns were expressed about

1 Veolia, that would be Veolia purchasing the assets
2 of Pennichuck or the stock of Pennichuck, correct?

3 A. Correct.

4 Q. Is it your understanding that Veolia
5 would be under a contract with the city of Nashua?

6 A. Yes.

7 Q. And would that contract be in
8 perpetuity?

9 A. No.

10 Q. Do you know how long the contract is
11 for?

12 A. I think it's for five years.

13 Q. So if the service was not good at the
14 end of five years --

15 A. They could hire a new company to come
16 in.

17 Q. Versus if Veolia owned the stock, would
18 you have any say in that?

19 A. No.

20 Q. Are you aware of all the contingencies
21 that Nashua has put on its ownership of the assets
22 should it acquire before the commission as part of
23 this proceeding?

1 A. I have a good idea. I can't say I know
2 every one of them.

3 Q. Mr. Upton went through a number of
4 them.

5 A. Yup.

6 Q. And at the time of your deposition when
7 you gave that response, were any of those
8 contingencies or any of those qualifications
9 available to you?

10 A. I believe so, yes.

11 Q. That Nashua would agree to be subject
12 to the jurisdiction of the public utilities
13 commission, that it would charge the same core
14 rates outside as inside?

15 A. I -- I honestly don't remember. There
16 has been so much information, when I first knew
17 that or when it came, I just don't know.

18 Q. Is it fair to say that your main
19 concern -- one of the main concerns you expressed
20 at the end of your testimony is a loss of local
21 control on having to deal with a multi-national
22 corporation that has multi utilities throughout
23 the world and multi investment opportunities?

1 A. Yes.

2 MR. SULLIVAN: Thank you.

3 MR. CAMERINO: Mr. Chairman, there's
4 one thing that the witness just said in response
5 to Mr. Sullivan's questions that is frankly simply
6 incorrect, and I think with two or three questions
7 on recross I could get the record corrected, and I
8 would just ask for leave to do that. It relates
9 to the Veolia issue he asked about.

10 MR. SULLIVAN: And that's fine, if
11 Mr. Camerino -- I just have one more question.

12 BY MR. SULLIVAN:

13 Q. At the time that the regional water
14 district legislation was put through the
15 legislature, were you at that time a member of the
16 legislature?

17 A. I was.

18 Q. And was the water district
19 specifically -- were the rights to eminent domain
20 specifically withdrawn from the water district?

21 A. It was.

22 Q. Do you know who lobbied for that
23 position?

1 A. I believe it was the city of Nashua.

2 Q. Were there any other parties?

3 A. Pennichuck.

4 MR. SULLIVAN: Thank you.

5 CHAIRMAN GETZ: Apparently Mr. Sullivan
6 has no objection --

7 MR. SULLIVAN: I have no objection.

8 CHAIRMAN GETZ: -- to recross, and this
9 is limited to the Veolia contract?

10 MR. CAMERINO: Yes, about Veolia
11 ownership of the system as being -- something that
12 was an issue.

13 REXCROSS-EXAMINATION

14 BY MR. CAMERINO:

15 Q. Mr. Scanlon, first of all, are you
16 familiar with the testimony in this case that
17 Veolia doesn't own any water utilities in the
18 United States?

19 A. I'm not familiar with that testimony.

20 Q. Can you take a look -- I think you have
21 my copy of the memo -- but can you take a look at
22 that there and see if there's anything in that
23 memo that would say that the proposal was for

1 Veolia to own the system as opposed to operate it?

2 I'm specifically trying just to be clear, again.

3 I'm not trying to be tricky.

4 A. You're talking about Karen White's
5 memo.

6 Q. You, you said to Mr. Sullivan -- I want
7 to be exactly clear what I'm trying to clarify.
8 You said to Mr. Sullivan that you thought her
9 concerns related to ownership of the system by
10 Veolia, and it was my understanding from looking
11 at that memo that it actually related to
12 operation --

13 A. It was both. I'm sorry, if I implied
14 that. She had concerns about them owning it, or a
15 foreign company owning it, and we also had concerns
16 about them operating it.

17 MR. CAMERINO: Thank you. That's all I
18 have.

19 CHAIRMAN GETZ: Last chance,
20 Mr. Sullivan? No questions?

21 MR. SULLIVAN: No, thank you.

22 CHAIRMAN GETZ: Thank you. That
23 completes the examination of Mr. Scanlon. Thank

1 you, you're excused, sir.

2 Is there anything further we need to
3 address today? I'm working on the assumption that
4 we resume on Wednesday, September 26 at 9 a.m. for
5 the examination of the staff witnesses. Is there
6 anything else that we should take up today?

7 Okay, hearing nothing, then we will
8 recess and resume next Wednesday. Thank you
9 everyone.

10 (The hearing was adjourned at 2:13 p.m.)

11

12

13

14

15

16

17

18

19

20

21

22

23

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

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.

THE FOREGOING CERTIFICATION OF THIS TRANSCRIPT DOES NOT APPLY TO ANY REPRODUCTION OF THE SAME BY ANY MEANS UNLESS UNDER THE DIRECT CONTROL AND/OR DIRECTION OF THE CERTIFYING REPORTER.

Pamela J. Carle, CCR, RPR
Certificate No. 98 (RSA 331-B)