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STATE OF NEW HAMPSHIRE

PUBLIC UTILITIES COMMISSION

September 26, 2007 - 9:07 a.m.
Concord, New Hampshire

DAY XII

RE: DW 04-048
CITY OF NASHUA, NEW HAMPSHIRE:
Petition for valuation pursuant to RSA 38:9.PRESENT: Chairman Thomas B. Getz, Presiding
Commissioner Graham J. Morrison
Commissioner Clifton C. BelowConnie Fillion, Clerk (a.m. session)
Sandy Deno, Clerk (p.m. session)APPEARANCES: Reptg. the City of Nashua, NH:
Robert Upton, II, Esq. (Upton & Hatfield)
Justin C. Richardson, Esq. (Upton & Hatfield)
Linda ReganReptg. Pennichuck Water Works, Pennichuck
East Utilities & Pittsfield Aqueduct Co.:
Steven V. Camerino, Esq. (McLane, Graf...)
Sarah B. Knowlton, Esq. (McLane, Graf...)
Daniel MaiReptg. Anheuser-Busch:
John T. Alexander, Esq.(Ransmeier & Spellman)Reptg. the Town of Milford:
E. Maria Reinemann, Esq.(Brown Olson & Gould)Reptg. the Town of Merrimack:
Edmund Boutin, Esq.

COURT REPORTER: STEVEN E. PATNAUDE CCR

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

Reptg. Merrimack Valley Regional Water Dist.:
Stephen J. Judge (Wadleigh, Starr & Peters)

Barbara Pressley, pro se

John Gustin, pro se (For Claire McHugh)

Reptg. Residential Ratepayers:
Stephen Eckberg (Office of Consumer Advocate)

Reptg. PUC Staff:
Marcia A. B. Thunberg, Esq.

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WITNESS: MARK A. NAYLOR

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1144 Nashua's response to PWW Data Request No. 5-1 126

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

2 CHAIRMAN GETZ: Okay. Good morning.
3 We're back on the record in docket DW 04-048, concerning
4 the City of Nashua's petition under Chapter RSA 38, with
5 respect to the assets of Pennichuck Water Works. And, can
6 we begin with appearances please.

7 MR. UPTON: Good morning. I'm Rob
8 Upton, for Nashua. With me is Justin Richardson and Linda
9 Regan.

10 CHAIRMAN GETZ: Good morning.

11 CMSR. MORRISON: Good morning.

12 CMSR. BELOW: Good morning.

13 MR. ALEXANDER: Good morning. John
14 Alexander, on behalf of Anheuser-Busch.

15 CHAIRMAN GETZ: Good morning.

16 CMSR. MORRISON: Good morning.

17 CMSR. BELOW: Good morning.

18 MR. BOUTIN: Good morning. Ed Boutin,
19 on behalf of the Town of Merrimack.

20 CHAIRMAN GETZ: Perfect timing,
21 Mr. Boutin.

22 MR. JUDGE: Steve Judge, on behalf of
23 the Merrimack Valley Regional Water District.

24 CHAIRMAN GETZ: Good morning.

{DW 04-048} [Day XII] (09-26-07)

1 CMSR. MORRISON: Good morning.

2 CMSR. BELOW: Good morning.

3 MR. JUDGE: Good morning.

4 MR. ECKBERG: Good morning. Stephen
5 Eckberg, for the Office of Consumer Advocate.

6 CHAIRMAN GETZ: Good morning.

7 CMSR. MORRISON: Good morning.

8 CMSR. BELOW: Good morning.

9 MS. PRESSLEY: Barbara Pressley, citizen
10 intervenor. Good morning.

11 CHAIRMAN GETZ: Good morning.

12 CMSR. MORRISON: Good morning.

13 CMSR. BELOW: Good morning.

14 MR. GUSTIN: Good morning. John Gustin,
15 alternate intervenor for Clair McHugh.

16 CHAIRMAN GETZ: Good morning.

17 CMSR. MORRISON: Good morning.

18 CMSR. BELOW: Good morning.

19 MS. THUNBERG: Good morning. Marcia
20 Thunberg, on behalf of Staff. And, with me today is Jon
21 Osgood, Amanda Noonan, Mark Naylor, Randy Knepper. I
22 think that's it. Thank you.

23 CHAIRMAN GETZ: Good morning.

24 CMSR. MORRISON: Good morning.

1 CMSR. BELOW: Good morning.

2 MR. CAMERINO: Good morning,
3 Commissioners. Steve Camerino and Sarah Knowlton, on
4 behalf of the Pennichuck companies. With us today at
5 counsel's table are Donald Ware, President of Pennichuck
6 Water Works, and Duane Montopoli, CEO of the Pennichuck
7 Corporation. And, at the table in the rear are Bonalyn
8 Hartley and Stephen Densberger. Also, probably today it's
9 appropriate for us to recognize Daniel Mai, who's been our
10 assistant throughout this, and, really, I think you've
11 noticed, has made it go a lot more smoothly for all of us,
12 and we appreciate his efforts.

13 MR. UPTON: And, we agree. He's been
14 great.

15 CHAIRMAN GETZ: And, as do we,
16 considering how many more days this might have taken. Is
17 there anything we need to address before we hear from the
18 Staff witnesses? Mr. Judge.

19 MR. JUDGE: In excess of caution, the
20 last time that we were here I was cross-examining
21 Mr. Scanlon, and the point that I was making was that the
22 City intended to transfer the assets to the district. You
23 may remember Mr. Camerino objected, and there was some
24 discussion with the Bench, and the Chairman suggested that

1 that statement was in Mr. Scanlon's direct testimony, to
2 which I boldly said "it's not." Upon further review, it
3 actually is in his direct testimony. So, I apologize to
4 the extent that I was cross-examining on something that
5 was in direct testimony. And, I apologize that I ever
6 doubted you.

7 CHAIRMAN GETZ: Thank you very much.

8 MR. CAMERINO: I'd just mention, as the
9 Commission is aware, there's a number of procedural
10 matters we need to take up. And, I think it's the
11 parties' intention to address that at the close of the
12 testimony today. So, if we could plan to have a short
13 discussion of those items at the end of the day, that
14 would be helpful.

15 CHAIRMAN GETZ: Okay. Anything else?

16 (No verbal response)

17 CHAIRMAN GETZ: Then, Ms. Thunberg, is
18 there going to be a panel from Staff or individually? How
19 are you -- How would you wish to proceed?

20 MS. THUNBERG: Staff testified
21 individually. So, we will be proffering them
22 individually, not as a panel. So that some, who aren't
23 related to other issues don't get stranded up there for
24 the duration of the day. And, we would like to start off

[Witness: Knepper]

1 with Randy Knepper, followed by Amanda Noonan, and then
2 followed by Mark Naylor.

3 CHAIRMAN GETZ: Please proceed.

4 (Whereupon Randall S. Knepper was duly
5 sworn and cautioned by the Court
6 Reporter.)

7 RANDALL S. KNEPPER, SWORN

8 DIRECT EXAMINATION

9 BY MS. THUNBERG:

10 Q. Mr. Knepper, I'd like to just get on the record, if you
11 could please state your name and by whom you're
12 employed.

13 A. My name is Randall Knepper. I'm employed by the New
14 Hampshire Public Utilities Commission.

15 Q. And, I don't think my speaker is working, but I think I
16 heard you coming loud and clear on yours. Could you --
17 I'm sorry, did you explain your position with the
18 Commission?

19 A. My position is I am the Director of Safety.

20 Q. And, as the Director of Safety, are there statutory
21 programs you oversee?

22 A. Yeah, I have three main responsibilities that we handle
23 at the Safety Division. That is, we handle emergencies
24 and emergency response and help coordinate with other

[Witness: Knepper]

1 agencies of the state. We handle pipeline safety,
2 mostly in terms of gas, and we also oversee the State's
3 Underground Damage Prevention Program.

4 Q. Could you please briefly describe your involvement with
5 this docket.

6 A. I submitted testimony on way back in 2006, I believe.
7 And, my testimony was that I had concerns about the
8 involvement or the takeover of the Pennichuck Water
9 Works system, mostly focussed on the Underground Damage
10 Prevention Program.

11 Q. And, prior to your offering of testimony, did you
12 review the filing or filings and discovery in this
13 matter?

14 A. Yes.

15 Q. Were you -- Did you respond to data requests as part of
16 your involvement with this docket?

17 A. I believe I responded to two.

18 Q. And, are you aware that your testimony has been filed
19 as an exhibit for identification in this, or marked for
20 identification in this docket?

21 A. Yes, but I couldn't tell you what the number is.

22 Q. Okay. All righty. With respect to the testimony that
23 you have filed and the data responses that you
24 responded to, do you have any corrections or changes

[Witness: Knepper]

1 that you wish to make to either of those?

2 A. No. There's nothing material, no.

3 Q. And, is the testimony that you provided true and
4 accurate to the best of your knowledge?

5 A. To the best of my knowledge.

6 MS. THUNBERG: And, I believe that's it
7 for direct. Thank you.

8 CHAIRMAN GETZ: Okay. As I understand,
9 the order of cross would be intervenors opposing the
10 petition, intervenors -- then Pennichuck Water Works, then
11 intervenors with no position, intervenors supporting the
12 petition, and then the City would have the last
13 opportunity to cross. Is there any objection to that
14 order?

15 (No verbal response)

16 CHAIRMAN GETZ: Okay. Then, let's begin
17 with --

18 MR. UPTON: Mr. Chairman, can we just
19 note for the record that his testimony is marked as
20 "Exhibit 5002"?

21 CHAIRMAN GETZ: So marked.

22 MR. UPTON: Thank you.

23 CHAIRMAN GETZ: Okay. Then, Mr.
24 Alexander?

[Witness: Knepper]

1 MR. ALEXANDER: I have no questions.

2 Thank you.

3 CHAIRMAN GETZ: Mr. Boutin?

4 MR. BOUTIN: I have one.

5 CROSS-EXAMINATION

6 BY MR. BOUTIN:

7 Q. Mr. Knepper, have you, either through transcripts or
8 otherwise, been aware of the testimony in this case so
9 far?

10 A. I briefly looked at some transcripts, not too many.
11 They're pretty numerous.

12 Q. Is that the transcripts related to issues that you are
13 concerned with?

14 A. I believe so.

15 Q. Have you seen anything in those transcripts that cause
16 you to change or amend any of your testimony?

17 A. No.

18 MR. BOUTIN: Okay. Thank you. Nothing
19 further.

20 CHAIRMAN GETZ: Then, Mr. Camerino.

21 BY MR. CAMERINO:

22 Q. Good morning, Mr. Knepper. You referred to the
23 "Underground Damage Prevention Program", that's
24 commonly known as DigSafe, is that correct?

[Witness: Knepper]

- 1 A. That's correct.
- 2 Q. Is there a fee to join DigSafe?
- 3 A. Yes.
- 4 Q. Do you know how that fee is determined?
- 5 A. The fee is determined dependent upon the size of the
6 utility. If you have under 100 miles of facilities,
7 which Pennichuck doesn't in this case, I think they
8 charge a dollar a call that's made or a dollar per
9 notification. And, I believe they also charge I think
10 on the order of \$75 a quarter. Then, for those
11 utilities that have over 100 miles in the state, it
12 doesn't matter whether it's water, gas, or telephone,
13 or electric, I believe they take -- they separate out
14 those that we just mentioned, and they take the overall
15 cost of the program and they divide it and prorate it
16 per the number of notifications that are made for that
17 company.
- 18 Q. Okay. Thank you.
- 19 A. I think it varies every year, depending upon how many
20 calls they get.
- 21 Q. And, so, that last calculation you were describing
22 would apply to Pennichuck, because it has over 100
23 miles of main?
- 24 A. Correct.

[Witness: Knepper]

1 Q. Can you explain why you think it's important to be a
2 member or participant in DigSafe, as opposed to simply
3 trying to comply with the notification process?

4 A. Well, I think it leads to a reduction in potential
5 safety hazards that occur when damage is done. That's
6 my primary reason why I think -- I'm a very big
7 advocate of that program, so --

8 Q. Is it fair to say that it's important from a public
9 safety standpoint?

10 A. Yes.

11 Q. How about from a reliability of utility service
12 standpoint?

13 A. Sure.

14 Q. Is there a legal requirement that municipalities who
15 operate utilities join DigSafe?

16 A. Not in New Hampshire.

17 Q. Can you explain to me how DigSafe is enforced by you
18 and the Commission?

19 A. The Commission has ordered that the Safety Division be
20 the department that enforces it. What we typically do
21 is we require all utilities that are members of DigSafe
22 to report damages or probable violations of the rules
23 to us on a monthly basis. We request contractors to do
24 the same, but we don't require that. And, then, based

[Witness: Knepper]

1 upon those incidents or probable violations, we then
2 administer enforcement actions.

3 Q. Those enforcement actions include the assessment of
4 fines?

5 A. "Civil penalties" I believe is what we use, the term.

6 Q. And, they can be substantial at times for repeat
7 offenses or more serious offenses?

8 A. I believe we're capped at \$5,000.

9 Q. Okay. And, you can assess those fines, as I understand
10 it, against the utility, not just against the
11 excavator?

12 A. Yes, and I do quite often.

13 Q. The statute that defines this program refers to an
14 "operator". Is it your understanding that the term
15 "operator" refers to a public utility?

16 A. No, not necessarily. I mean, cable TV is not a public
17 utility. Propane operators aren't a public utility.

18 So, the term "operator" refers to people that own
19 utilities that fall under the definition of the -- I
20 think it's 362:2 or 362:4, in the case of water.

21 Q. But, by its terms, it does not include a municipality,
22 does it?

23 A. Correct.

24 Q. Now, if a regulated utility is at fault for a DigSafe

[Witness: Knepper]

1 violation or incident, where utility property is
2 damaged, it could be the case that the utility wouldn't
3 be able to recover those costs through rates, if it had
4 acted imprudently and allowing that damage to occur.

5 Is that your understanding?

6 A. That's my understanding.

7 Q. And, if the Commission were to issue an order regarding
8 compliance with DigSafe requirements or other follow-up
9 requirements, and a utility didn't comply with that
10 order, it could be subject to further fines for
11 violating a Commission order, could it not?

12 A. Yes, I believe that falls under the procedures per the
13 Commission.

14 Q. In some cases, the Commission might find it necessary
15 to issue a "cease and desist" order, so that improper
16 activity didn't occur? Is that a fair statement?

17 A. I think it's an injunction, yes.

18 Q. I want to ask you a question about the Commission's
19 authority under the DigSafe statutes. So, if you don't
20 know, please feel free to indicate so. But, if the
21 Commission doesn't have jurisdiction over a municipal
22 utility, then it may, to your knowledge, it may not be
23 able to enforce an order against a municipal utility.
24 Is that a fair statement?

[Witness: Knepper]

1 A. No. If you're an excavator, all excavators, there's
2 two hats you have to wear. There's an operator and an
3 excavator. All excavators, we have the ability to
4 apply civil penalties. If you're a homeowner as an
5 excavator, there's a particular portion of the law
6 that's says we can issue a violation, but cannot assess
7 a civil penalty. But, if you're a municipality and
8 you're excavating and you hit a private line, you are
9 subject to civil penalties, like any other contractor.

10 Q. In your status as an excavator?

11 A. Yes.

12 Q. Okay.

13 A. And, since utilities have both dual roles, the answer
14 to that is they can get civil penalties.

15 Q. I understand. But, on the other hand, if you're only
16 in the operator role, but you're not within the
17 statutory definition of "operator", then the Commission
18 might have an enforcement problem?

19 A. That's correct.

20 MR. CAMERINO: Thank you. That's all I
21 have.

22 CHAIRMAN GETZ: Mr. Eckberg?

23 MR. ECKBERG: No questions for this
24 witness. Thank you.

[Witness: Knepper]

1 CHAIRMAN GETZ: Thank you. And,

2 Ms. Pressley?

3 MS. PRESSLEY: No questions. Thank you.

4 CHAIRMAN GETZ: Mr. Gustin?

5 MR. GUSTIN: Just one question. Good
6 morning, Mr. Knepper.

7 THE WITNESS: Good morning.

8 MR. GUSTIN: My name is John Gustin.

9 BY MR. GUSTIN:

10 Q. Just one question. You mentioned that you have
11 concerns regarding the petition for Nashua to take over
12 the Pennichuck Water Works. And, if I understand
13 correctly, your concern is that initially it would not
14 be under the jurisdiction of your office, is that
15 correct?

16 A. Yes. Currently, Pennichuck Water Works is -- the City
17 of Nashua is not, in terms of being an operator.

18 Q. Okay. And, during the proceedings, if Nashua were to
19 agree to maintain your jurisdiction or maintain being
20 under your jurisdiction or to participate in that
21 DigSafe, would that alleviate your concern?

22 A. Not entirely, but it would be a step forward.

23 MR. GUSTIN: Okay. Thank you.

24 CHAIRMAN GETZ: Mr. Judge?

[Witness: Knepper]

1 MR. JUDGE: No questions.

2 CHAIRMAN GETZ: Then, --

3 MS. THUNBERG: Mr. Chairman, could I
4 just try to get that microphone to work, because I'm
5 having a hard time hearing?

6 CHAIRMAN GETZ: Please.

7 (Off the record.)

8 CHAIRMAN GETZ: Okay. And, so,
9 Mr. Richardson, Mr. Upton, who will be questioning the
10 witness?

11 MR. RICHARDSON: Yes. Good morning, Mr.
12 Knepper.

13 THE WITNESS: Good morning.

14 MR. RICHARDSON: I'm Justin Richardson.
15 I'm here on behalf of the City of Nashua. Some of the
16 questions I intended to ask have kind of been gone over,
17 so I'll try to move through this quickly.

18 BY MR. RICHARDSON:

19 Q. I understand your main concern in your testimony is
20 relative to Nashua's role as a municipality, and that
21 the statute doesn't authorize the Public Utilities
22 Commission to mandate that Nashua become a member of
23 DigSafe. Is that correct?

24 A. Yeah. Yes.

[Witness: Knepper]

1 Q. And, there were some questions related to whether you
2 had reviewed documents in responses that had been
3 provided. And, I'd like to show you one. Why don't we
4 go to -- well, first, why don't we start off with
5 Exhibit 1005B, Page 48. And, that's the contract
6 between the City of Nashua and Veolia Water. And, do
7 you see Paragraph (d) there? Let's blow that up. And,
8 you see where it says, and I'll represent to you these
9 are the requirements that Veolia has agreed to perform,
10 it says that they'll "locate and mark water mains and
11 water services in the right-of-way when requested by
12 the owner or by DigSafe. Had you ever looked at that
13 provision when you filed your testimony?

14 A. I'm trying to recall the sequence of events. It's been
15 two years since I wrote this, so -- or a year and a
16 half. Yes, I believe I did look at that.

17 Q. Okay. But, so, it's, just to be clear, it's your
18 understanding that Veolia is required to perform all
19 the locating functions that would be implemented under
20 the DigSafe Program?

21 A. From what I see there, yes.

22 Q. Okay. And, were you aware that Veolia's -- excuse me,
23 Nashua's oversight contractor would also be overseeing
24 Veolia's implementation and compliance with the DigSafe

[Witness: Knepper]

1 locating requirements?

2 A. Yeah, I believe so.

3 Q. Okay. Why don't we look at Exhibit 1006, Page 90.

4 And, so, you see this -- I'll represent to you this is
5 the Nashua contract with R.W. Beck.

6 A. Uh-huh.

7 Q. Have you seen this document before?

8 A. Yes.

9 Q. Okay. And, you see where it states that the "Oversight
10 of State, Federal and Local Permit Compliance", the
11 last section. Do you think that having an oversight
12 contractor review compliance with DigSafe is a prudent
13 thing?

14 A. I think that's fine. One of the concerns I have is
15 that where it says "if subscribed to", which leaves the
16 question "Is it going to be subscribed to?" And, so,
17 that kind of threw me for a loop.

18 Q. Okay.

19 A. Meaning that that may not happen. They may not even be
20 a member of DigSafe.

21 Q. Okay. Let's look at then Exhibit 1027, Page 1. And,
22 you see this is a response from Mayor Streeter and Paul
23 Noran. And, this has a date of March 20th. And, would
24 you agree that the City is committing to be "a member

[Witness: Knepper]

1 of and participate in the DigSafe Program"?

2 A. I see those words.

3 Q. Okay. And, do you agree that that's a commitment that
4 the City is making?

5 A. What my concern is, when I see something like that,
6 there's nothing that says that they cannot change that
7 a year from now, two years from now, ten years from
8 now. Right now, Pennichuck Water Works can never as
9 part of the statute. So, you know, I don't see -- my
10 concern is the binding part of it. Is it perpetual?
11 Is it long term? Those are the questions I have.

12 Q. Okay. And, those are fair questions. So, and I
13 believe in your testimony, when you referred to Article
14 28-a, and that's in Exhibit 5002, Page 4, and beginning
15 at Line 8. You say that you had some questions "upon
16 advice of counsel". Did you -- I'm not asking you to
17 go into anything that's attorney/client, but when you
18 were discussing your testimony, did you discuss whether
19 the Commission could impose a condition, if Nashua
20 volunteered, as they have in this data request, to
21 comply with DigSafe, if the condition could make that
22 -- if the Commission could make that binding?

23 A. I don't believe we discussed that, no.

24 Q. Okay. So, if that was, in fact, something that the

[Witness: Knepper]

1 Commission did, and required the City of Nashua to
2 become a member of DigSafe, that could address part of
3 your concerns?

4 A. Yes. It could address part my concerns, yes.

5 Q. And, if the City further agreed to participate as a
6 member, and also in the -- I believe there's a DigSafe
7 Advisory Council?

8 A. Uh-huh.

9 Q. Would that be something you would recommend?

10 A. We would recommend that. We encourage all contractors
11 and municipalities and utilities to participate.

12 Q. Okay. And, were you aware that RSA 38:14 states that
13 "municipalities are, in fact, utilities when they're
14 providing service outside of their borders"?

15 A. I'm not familiar with that RSA.

16 Q. You talked about, during I believe Mr. Camerino's
17 questions, there were some questions about liability,
18 and a utility being responsible for the cost of, you
19 know, if they failed to comply with DigSafe, a utility
20 would have to absorb that cost and couldn't charge
21 ratepayers, is that correct?

22 A. Yes, I believe we don't include that as part of their
23 rate of return.

24 Q. Why don't we go back to Exhibit 1005, and take a look

[Witness: Knepper]

1 at Page 21, which I believe is Section 12.1 of the
2 Veolia contract. I'll represent to you, it says here
3 that "VWNA", that's Veolia, "hereby agrees to indemnify
4 and hold Owner harmless from any liability or damages
5 for bodily injury, including death, property damages
6 and pollution damages which may arise from VWNA's
7 negligence or willful misconduct under this Agreement".
8 And, what I'd like to ask you is, those are, you know,
9 these DigSafe laws are important standards. And, in
10 your opinion, would failure to locate in compliance
11 with DigSafe be a negligence type of action?

12 A. It could be a violation of the rules.

13 Q. And, I guess what I'm trying to ask you is this. Any
14 person excavating, using ordinary care, should be in
15 full compliance with the requirements for DigSafe, if
16 they're an excavator?

17 A. Yes, that's correct.

18 Q. And, so, in fact, the City of Nashua, if Veolia were to
19 fail to comply with DigSafe requirements, under this
20 provision they could potentially be liable to the City
21 of Nashua or to third parties for failure to comply
22 with DigSafe?

23 A. I don't have any comment on that.

24 Q. Okay. Well, let me ask you this then. If someone

[Witness: Knepper]

1 fails to comply with the DigSafe requirements, and
2 they're acting as a contractor on behalf of Nashua,
3 they might sue the City of Nashua for having to have
4 its contractors not comply with what the law says, is
5 that right? Does that sound fair?

6 A. They may.

7 Q. Okay.

8 A. And, as a Safety Division, we just give violations of
9 whether something followed the rules or the statutes.
10 We don't get involved in outside proceedings,
11 adjudicative actions. So, --

12 Q. Oh, I -- I understand that. And, I'm just trying to
13 ask if you would think it would be reasonable for
14 someone to say that, if Veolia doesn't meet the DigSafe
15 requirements, they're taking the risk that they would
16 be liable for any property damages?

17 A. I guess they may.

18 MR. RICHARDSON: Okay. Thank you. No
19 further questions.

20 CMSR. BELOW: Oh, yes. One question.

21 BY CMSR. BELOW:

22 Q. Do you know if there's any municipalities in New
23 Hampshire that belong to DigSafe?

24 A. Yes.

[Witness: Knepper]

1 Q. Do you know about how many?

2 A. I don't know the number, but City of Concord here is;
3 Town of Hudson, next to Nashua, is; Dover; Portsmouth,
4 to name a few.

5 CMSR. BELOW: Okay. A few at least.

6 Okay. Thank you.

7 CHAIRMAN GETZ: Redirect, Ms. Thunberg?

8 REDIRECT EXAMINATION

9 BY MS. THUNBERG:

10 Q. Mr. Knepper, I just wanted to have you expand upon an
11 issue that was raised during cross-examination about
12 "Veolia performing locates". And, do you have any
13 concerns with Veolia performing those locates?

14 A. I do.

15 Q. And, what are those concerns?

16 A. Well, my concern is some of the things I've mentioned
17 in my testimony previously, but I can repeat some of
18 them here. It's, you know, familiarity with the
19 system, familiarity with the local construction methods
20 used by Pennichuck, familiarity with other utilities'
21 local construction methods, type of restrictions that
22 are put in by cities and ordinances, reviewing
23 documents, interpreting the symbology. All those type
24 of things are, you know, beneficial beyond just being

[Witness: Knepper]

1 able to use a piece of equipment to locate something.

2 Q. Do those concerns impact public safety?

3 A. I believe they do.

4 Q. And, how so?

5 A. Well, I believe damage can occur. And, when damage
6 occurs, services can get broken, you can have fire
7 supply interrupted, you can have large bodies of water
8 where you're not supposed to, and that affects traffic
9 and a bunch of other types of safety considerations.

10 Q. So, is it fair to say then, with performing locates, it
11 all hinges on familiarity with the distribution system?

12 A. I think it's a critical element of it.

13 Q. You were asked about your testimony and the
14 constitutional provision 28-a. Do you feel comfortable
15 offering an opinion as to whether the Commission can
16 override that Article 28-a and have valid conditions
17 that it can impose on the City of Nashua?

18 A. Well, I'm not an attorney. So, I would leave that to
19 the attorneys.

20 Q. Now, you were shown a couple of provisions in the
21 contracts where Veolia and Beck will oversee DigSafe,
22 if it's part -- I guess, in Beck, it was "if requested"
23 or something to that effect. And, do you have any
24 concerns with contractors being agents of a member

[Witness: Knepper]

1 performing the DigSafe participation functions?
2 A. My preference is that they use in-house people that are
3 familiar with the distribution systems. And, a lot of
4 utilities throughout this state many of those people
5 that do those locating things, you know, in former
6 positions within the Company, may have constructed it,
7 may have drawn it up, may have been part of when the
8 initial installation happened. And, so, I find those
9 things are immeasurably beneficial to being just to
10 locate.

11 One of my concerns with outside locates,
12 no matter how you break it down, you're still -- your
13 focus is to get so many locates done per some unit, so
14 many locates done per day, so many locates done per
15 hour. And, when you put that on there, it puts time
16 constraints on these important tasks.

17 MS. THUNBERG: Okay. If I could have
18 the ELMO switched.

19 MR. RICHARDSON: May I confer with
20 counsel for a moment, Mr. Chairman?

21 CHAIRMAN GETZ: Certainly.

22 (Atty. Richardson conferring with Atty.
23 Thunberg.)

24 MR. RICHARDSON: Mr. Chairman, I think

[Witness: Knepper]

1 we're going into an area relative to whether Veolia would
2 use subcontractors. I think we've gone beyond the scope
3 of cross-examination on that issue. And, if we do want to
4 go down this road, I don't have an objection, but I'm
5 going to want to recross on this particular issue, because
6 I don't think it's been addressed through any of the
7 cross-examinations.

8 MS. THUNBERG: I don't think Staff's
9 questions go beyond the scope of cross-examination. The
10 crux of the cross was that there may be agents conducting
11 some of the DigSafe measures on behalf of the City of
12 Nashua, whether that's a contractor or subcontractor, I
13 don't think that matters much, it's the agency principle.
14 And, Staff has one more question directed to that point.

15 CHAIRMAN GETZ: I think, Mr. Richardson,
16 you opened the door to this issue when you turned to the
17 Veolia contract. So, I'll allow the question. And, if
18 you have an argument of why you should be allowed recross,
19 we'll entertain that when Ms. Thunberg completes her
20 redirect.

21 BY MS. THUNBERG:

22 Q. Mr. Knepper, the next question I have relates to the
23 data response that you were shown, I believe it was
24 Mayor Streeter responding to 4-1, and that "Nashua

[Witness: Knepper]

- 1 would become a member". Do you remember that data --
- 2 A. Could I see it again? Is that possible?
- 3 Q. Sure. I think that was Exhibit 1027, Page 1.
- 4 A. I just want to make sure I'm looking at whatever you're
- 5 referring to.
- 6 Q. And, with respect to the response that "Nashua will
- 7 become a member", have you reviewed some of the
- 8 transcripts from this hearing, in particular, Veolia's
- 9 comments to DigSafe issues?
- 10 A. I believe there's one that I looked at. I'm not
- 11 totally up-to-date with all the transcripts. I think
- 12 I've looked over some of the ones up through VIII, I
- 13 believe. So, I might be behind, but --
- 14 Q. Can I offer to show you a page, and see if you recall
- 15 if you have looked at this?
- 16 A. Okay.
- 17 Q. Now, I'll represent to you that this is a transcript
- 18 from Day IV, and you see Mr. Camerino examining
- 19 Mr. Noran on Page 184. And, at the bottom, Lines 21
- 20 and 22 pertain to DigSafe. Are you familiar with
- 21 Mr. Noran's statement on that page?
- 22 A. No, I'm reading it for the first time.
- 23 Q. Okay. With respect to Veolia saying that there's an
- 24 "incremental cost of DigSafe of \$100,000 per year", and

[Witness: Knepper]

1 you were given the Data Response 4-1 saying that Nashua
2 is going to be "a member", and you've also been asked
3 on cross-examination if Nashua were to condition to be
4 a member. With all of that, what is your opinion of
5 what Nashua is offering to do by what parties?

6 A. Well, this says it's an incremental cost of doing
7 DigSafe is 100,000 per year. So, I assume that's not
8 part of the original agreement that they were referring
9 to or doing it. So, the word "incremental" tells me it
10 wasn't really considered in the beginning. Who
11 actually joins, whether it's Veolia or the City of
12 Nashua, I was referring to -- I looked at the Day III
13 transcript, and I believe someone's testimony, a
14 Mr. Noran, said that "Veolia would be the member".
15 And, I don't necessarily believe Veolia can be the
16 member of DigSafe. I believe the legal entity that
17 owns this facility, whatever that may be at the outcome
18 of this proceeding, has to be the member, would have to
19 be the member. So, any time we do any type of things,
20 getting back to the civil penalties and things like
21 that, we're just assessing the owner that's fulfilling
22 the operator's role. We never assess whether they have
23 an outside contract or a separate contract. Whatever
24 we assess is the entity that's responsible.

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[Witness: Knepper]

1 Q. Now, if Nashua is going to be the member, yet Veolia is
2 offering to add or to perform some DigSafe, are you
3 understanding that Veolia is then going to be an agent
4 of Nashua or do you have -- are you unsure that you
5 have a firm understanding of what the proposal is with
6 respect to DigSafe?

7 A. I'm a little unsure, because the statements say that
8 "Veolia will become a member", and I don't believe they
9 will be able to. So, it still seems somewhat
10 conflicting.

11 MS. THUNBERG: Okay. Thank you. The
12 Staff has no more, no more questions.

13 CHAIRMAN GETZ: Thank you. Mr.
14 Richardson?

15 (No verbal response.)

16 CHAIRMAN GETZ: All right. Then, that
17 completes the examination of Mr. Knepper. Thank you.
18 You're excused.

19 MS. THUNBERG: Staff is next going to
20 call Amanda Noonan.

21 (Whereupon Amanda O. Noonan was duly
22 sworn and cautioned by the Court
23 Reporter.)

24 AMANDA O. NOONAN, SWORN

[Witness: Noonan]

1 DIRECT EXAMINATION

2 BY MS. THUNBERG:

3 Q. Okay. Ms. Noonan, we'll do a mike check. If you could
4 please state your name and by whom you're employed for
5 the record.

6 A. Yes. My name is Amanda Noonan. I'm employed at the
7 New Hampshire Public Utilities Commission.

8 Q. And, could you please describe your position with the
9 Commission?

10 A. Certainly. I'm the Director of the Consumer Affairs
11 Division.

12 Q. And, as the Director of Consumer Affairs Division, what
13 do you do? If you could give by way of example?

14 A. Sure. Well, the Consumer Affairs Division staff
15 interacts with customers on a daily basis regarding
16 questions they may have about their utility service,
17 conflicts they may have with their utilities,
18 assistance they need in resolving disputes. And, the
19 Consumer Affairs Division as a whole provides input to
20 the Commission on trends in utility service and issues
21 that the Commission ought to be aware of.

22 Q. Can you please just briefly describe your involvement
23 with this docket?

24 A. Certainly. In April of 2006, I filed testimony in this

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[Witness: Noonan]

1 proceeding relative to service quality issues that were
2 of concern in the proposed transaction. And, I'll
3 clarify, when I talk about "service quality", my issues
4 really focus on the interaction of customers with the
5 Company or potentially with the City of Nashua, not
6 water service quality types of issues.

7 Q. Now, with respect to that testimony that you referred
8 to, was that true and accurate or true and correct to
9 the best of your knowledge and belief?

10 A. Yes, it is.

11 Q. And, do you adopt that testimony as your testimony
12 today?

13 A. I do.

14 Q. And, did you attach exhibits to that testimony?

15 A. Yes, I did.

16 Q. Did you respond to data requests in this docket?

17 A. Yes, I did.

18 Q. And, are you aware that your testimony is an exhibit or
19 marked for identification as an exhibit in this docket?

20 A. Yes, I am.

21 Q. Do you have any corrections to make to your testimony
22 or any of the data responses you provided in this
23 docket?

24 A. No, I do not.

[Witness: Noonan]

1 MS. THUNBERG: Okay. Thank you. Staff
2 has no further questions.

3 CHAIRMAN GETZ: And, I guess we'll just
4 note that Ms. Noonan's testimony is marked for
5 identification as "Exhibit Number 5003".

6 MS. THUNBERG: Thank you very much.

7 CHAIRMAN GETZ: And, turn to Mr.
8 Alexander?

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

11 CHAIRMAN GETZ: Mr. Boutin?

12 MR. BOUTIN: Just, as it turns out,
13 three. I'm just trying to be sure that we might cover a
14 gap in the direct examination.

15 CROSS-EXAMINATION

16 BY MR. BOUTIN:

17 Q. Did you have the opportunity to hear of or examine the
18 transcripts of prior testimony in this proceeding?

19 A. I was either in the hearing room or reviewed the
20 transcripts of witnesses who testified related to
21 service quality issues.

22 Q. Did anything that you read or heard change any of your
23 prefiled testimony or your responses to data responses?

24 A. No, it did not.

[Witness: Noonan]

1 MR. BOUTIN: Thank you.

2 CHAIRMAN GETZ: Okay. Then,

3 Mr. Camerino.

4 MR. CAMERINO: Good morning, Ms. Noonan.

5 THE WITNESS: Good morning.

6 BY MR. CAMERINO:

7 Q. What's your opinion of Pennichuck Water Works' level of
8 customer service versus other utilities that you
9 oversee?

10 A. Generally, I'd say we have a good opinion of the
11 service that Pennichuck provides to its customers. We
12 receive very few complaints from Pennichuck customers.

13 Q. The City of Nashua has, and you may have read this in
14 the transcript, has touted Veolia's size as an
15 indication that it can be more efficient and will have
16 more expertise than Pennichuck Water Works. In your
17 experience, does the fact that one company is
18 substantially larger than another mean that the larger
19 company is going to provide better customer service?

20 A. Absolutely not.

21 Q. In your opinion, is there a difference between the role
22 that a municipal tax department or municipal sewer
23 department performing billing and collection plays
24 versus the role of customer service for a drinking

[Witness: Noonan]

1 water system?

2 A. I think so. Certainly, you know, I have to draw on my
3 own experience in dealing with municipal services.
4 But, certainly, I think there is different interaction
5 between customers.

6 Q. Are there differences that relate to the customer's
7 level of anxiety when they're interacting with the
8 utility for a drinking water system versus tax bills
9 and sewer bills?

10 A. Absolutely. Customers have a very heightened
11 sensitivity to their water service.

12 Q. Nashua has indicated in deposition testimony that it
13 would use its statutory power to put municipal liens in
14 place on delinquent accounts within the City of Nashua.
15 I take it you're familiar with that statutory lien
16 power?

17 A. Yes.

18 Q. Now, that power isn't available outside of the
19 municipality, is it?

20 A. It's not available to public utilities.

21 Q. All right. And, Nashua has indicated that, because the
22 statutory lien power isn't available, it will need to
23 use its authority to disconnect customers who have
24 delinquent bills. My question to you is, do you have

[Witness: Noonan]

1 concerns about using disconnects for customers outside
2 of the City, while customers inside the City may simply
3 have a lien placed on their property? Does that create
4 concerns?

5 A. I think, for a couple of reasons, it would create
6 concerns. Certainly, there's differing treatment among
7 customers of the same company, and there's also the
8 potential impact on working capital and uncollectible
9 expenses that might impact rates, if you're not --
10 you'll ultimately get your money with a lien, but it
11 may be a long time before that money comes in.

12 Q. And, if Nashua had those additional costs, because it
13 wasn't disconnecting customers in town, to your
14 knowledge, that would be borne by all other customers
15 of the system? Is that a fair statement?

16 A. Without knowing exactly how Nashua intends to set its
17 rates, that would be my assumption, that all customers
18 would bear those costs.

19 Q. If Nashua had committed that the rates would be the
20 same in-town and out-of-town, then that would be true,
21 wouldn't it?

22 A. Yes.

23 Q. Is it your understanding that customers in Nashua, who
24 have concerns, will be contacting their aldermen or

[Witness: Noonan]

1 someone else in Nashua about complaints related to
2 water service? What is your understanding about who
3 they would contact?

4 A. I would presume it would follow the typical municipal
5 model, which would be residents in the city or town
6 would contact their elected officials, whether it be
7 the town selectmen, board of aldermen, mayor, city
8 council, whatever the appropriate board is, to voice
9 their concerns.

10 Q. Now, whom do you understand that customers outside of
11 Nashua would be contacting?

12 A. Well, I think that's a question that hasn't been
13 answered in the proposal, because the Board of Aldermen
14 in Nashua, for example, is not elected by customers
15 outside of the City of Nashua and has no responsibility
16 or obligation to them. So, these folks seem to be in a
17 no man's land.

18 Q. Do you know at this point what role the PUC would be
19 playing in that regard?

20 A. It appears, based on everything that's been filed and
21 discussed, that the Commission would not play a role.

22 Q. And, I take it you also don't know what enforcement
23 powers the Commission would have with regard to
24 consumer complaints related to out-of-town service?

[Witness: Noonan]

1 A. It's my understanding that, if Nashua provides the same
2 level and quality of service at rates not more than
3 15 percent above those provided in the City, the
4 Commission has no jurisdiction over those customers or
5 interactions.

6 Q. Isn't it possible that customers outside of the City of
7 Nashua might call the PUC if they have service
8 complaints --

9 A. Sure.

10 Q. -- regardless of who has jurisdiction?

11 A. Absolutely.

12 Q. Do you have concerns that the Commission may be being
13 visited by the problems that consumers have, but not
14 have any power to do anything about it?

15 A. Certainly, that's an issue.

16 Q. Do you know whether -- let me ask you first. Can you
17 just, in some general way, describe what the PUC 1200
18 rules are?

19 A. Certainly. The 1200 rules is a series of rules that
20 governs the relationship between the utilities and
21 their customers, along the lines of the provision of
22 new service, deposits, connections, payment
23 arrangements, medical emergencies, protections for
24 financial hardship, their appeal rights to the

[Witness: Noonan]

1 Commission.

2 Q. Do you know, under the proposal that Nashua is making
3 in this case, whether the Puc 1200 rules would apply to
4 Nashua?

5 A. I don't recall seeing that in the filing.

6 Q. Have you seen the Draft Water Ordinance for the City of
7 Nashua? And, that's been marked as "Exhibit 3246" in
8 this case.

9 A. Yes.

10 Q. I want to show you Page 9 on my copy of that. And, I
11 want to focus your attention, if you look just before
12 Section x-9, you'll see some italicized language,
13 subpart (i). And, it says "The City may designate and
14 delegate the negotiation of payment arrangements to its
15 contract operating entity subject to individual
16 approval of the arrangement by the City." Do you see
17 that?

18 A. I do.

19 Q. Does that cause you any concern that the City may first
20 take on billing and collection, but then contract out
21 the negotiation of payment arrangements?

22 A. It does. It seems to be a rather inefficient and
23 burdensome way to deal with payment arrangements, and
24 difficult for the customer to negotiate.

[Witness: Noonan]

1 Q. Is it fair to say that the establishing of payment
2 arrangements and collection practices by private
3 businesses generally is different from what is expected
4 of public utilities normally?

5 A. Yes, I think that's a fair statement.

6 Q. You're aware that Nashua plans to list multiple parties
7 or phone numbers on its bill for customer service
8 contact?

9 A. Yes.

10 Q. And, do you have concerns about customer confusion
11 related to having more than one contact number?

12 A. Certainly, when -- yes, I do. Certainly, when there's
13 a number -- a number of numbers listed, it increases
14 the possibility the customer will call the wrong place,
15 will get bounced around, and add to their frustration.

16 Q. I want to show you Nashua's response to Staff Data
17 Request 4-22. This was marked by Nashua as "Exhibit
18 1037", it's Page 3 of that. And, if you look at the
19 first paragraph, it indicates that per "Nashua's
20 Wastewater System, customer complaints are handled
21 immediately over the counter at City Hall or on the
22 telephone." And, then, down below, in the next
23 paragraph, it says "Under Nashua's current system, when
24 research is required, customers are asked to submit a

[Witness: Noonan]

1 request in writing which enables us to document and
2 follow up on any customer concerns." Do you see that?

3 A. Yes, I do.

4 Q. I take it that, in your experience with utilities, if
5 you were using the word "immediately", that would not
6 include waiting on a line?

7 A. Most likely not.

8 Q. And, similarly, you have concerns about how long
9 customers are placed on hold when they call on a
10 telephone?

11 A. Yes.

12 Q. And, is it normal practice, with significant utilities
13 in the state, to your knowledge, to require customers
14 who have concerns to submit a request in writing?

15 A. No, it's not normal practice.

16 Q. Now, I'm going to show you the Nashua's response to
17 4-23, which is the next page. And, if you look at the
18 first paragraph, Ms. Anderson says that "Nashua will
19 adopt a process similar to that used for Nashua's
20 Wastewater System." Do you see that?

21 A. Yes, I do.

22 Q. Based on your understanding of how Nashua operates its
23 sewer customer service system, and what I've read to
24 you from the prior data request, do you have concerns

[Witness: Noonan]

1 about handling utility complaints for a drinking water
2 system in the same manner that the City handles its
3 wastewater complaints or billing and collection issues?

4 A. I do. I'm not intimately familiar with Nashua's
5 Wastewater System, but, as they described it in their
6 data responses, it doesn't adequately capture the range
7 of complaints or calls they would get regarding the
8 water system. The system that they proposed seems
9 rather inflexible and not capable of handling those.

10 Q. And, I take it that the kinds of questions, to your
11 knowledge, that a municipality might get with regard to
12 its wastewater system are, in fact, more similar to
13 those of a tax department, where they are basically
14 relatively limited in range? Is that a fair statement,
15 from your knowledge?

16 A. Based on the few sewer utilities we regulate, yes, I
17 think that's fair.

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

20 CHAIRMAN GETZ: Mr. Eckberg?

21 MR. ECKBERG: No questions for Ms.
22 Noonan. Thank you.

23 CHAIRMAN GETZ: Ms. Pressley?

24 MS. PRESSLEY: No questions. Thank you.

[Witness: Noonan]

1 CHAIRMAN GETZ: Mr. Gustin?

2 MR. GUSTIN: No questions. Thank you.

3 CHAIRMAN GETZ: Mr. Judge?

4 MR. JUDGE: I'll make it unanimous. No
5 questions.

6 CHAIRMAN GETZ: Okay. Then, Mr.
7 Richardson.

8 MR. RICHARDSON: Thank you, Mr.
9 Chairman. Good morning, Ms. Noonan.

10 THE WITNESS: Good morning.

11 BY MR. RICHARDSON:

12 Q. I understand from your testimony that one of your
13 concerns is that, in fact, you state as the first
14 concern in your testimony, that it "would result in the
15 transfer of the management and operation of a water
16 system, currently serving approximately 24,000
17 customers, to an entity with little experience in
18 providing water service or utility service." Is that a
19 fair summary?

20 A. Yes, I believe so.

21 Q. Okay. Now, you indicated I believe in response to a
22 question from Attorney Camerino that a heightened --
23 there is a heightened level of concern for operation of
24 or customer service functions related to water, as

[Witness: Noonan]

1 opposed to wastewater. And, you indicated that that
2 was "based on your own experience". Now, by "own
3 experience", do you mean that that's not a professional
4 opinion as a utility regulator, it's you're drawing
5 upon your personal knowledge as a customer of a sewer
6 system?

7 A. I'm not a customer of a sewer system. So, I think it's
8 fair to say that that's my professional opinion, based
9 on the calls we get and the concerns that are expressed
10 to us here for both regulated water utilities and
11 regulated sewer utilities.

12 Q. So, then, that's different from saying it's you're "own
13 experience", because it's not you're experience as a
14 customer, it's then your experience in the utility
15 industry?

16 A. I think what I was referring to is in dealing with my
17 own town hall on tax bills and so forth is very
18 different than dealing with a regulated utility.

19 Q. Okay. Now, when you state in your testimony that you
20 talk about a -- you're concerned that there be a system
21 serving 24,000 customers would go "to an entity with
22 little experience in providing water service or utility
23 service", you were referring to the City of Nashua, I
24 take it?

[Witness: Noonan]

1 A. Yes, to the City of Nashua, and the proposal that it
2 made for how it intended to handle that.

3 Q. Did you consider Veolia Water's experience and how that
4 might benefit customers?

5 A. Certainly, we did review Veolia's.

6 Q. Well, is it fair to say that Veolia has "little
7 experience", as you state in your testimony, "providing
8 water service"?

9 A. I don't know that it's fair to state Veolia has "little
10 experience". What I was referring to, and my testimony
11 really focuses on, utility service, and the level of
12 service that Pennichuck customers are currently
13 accustomed to receiving.

14 Q. Okay.

15 A. And, moving to a non-utility type of operation is very
16 different.

17 Q. Why don't we look at Exhibit 5003, Page 4. I believe
18 its marked as "3" in the document. Okay. You see on
19 Lines 4 down to 6, if you could blow those up, that
20 section. Okay. And, you say to -- you're talking
21 about transferring the customer service relationship
22 "to an entity with little experience in providing water
23 service or utility service". So, to me, that's saying
24 you can't be talking about Veolia, because they operate

[Witness: Noonan]

1 a number of water systems, don't they? I mean, they do
2 the whole City of Indianapolis.

3 A. As I understand, they do operate a number of utilities'
4 water services, they do not operate a number of public
5 utilities, however.

6 Q. So, the fact that this is a utility and has to comply
7 with utility regulations, does that make it more
8 difficult to provide customer service?

9 A. I think -- I don't think it makes it more difficult to
10 provide customer service. It sets a standard for the
11 interaction between the utility and its customers.

12 Q. Okay. But does that -- the fact that there is that
13 standard, does that make it more difficult?

14 A. Make it more difficult to provide customer service?

15 Q. Yes.

16 A. It simply sets a standard for people that ensures a
17 level of customer service. And, without that in place,
18 there's no guarantee of what customers will receive in
19 terms of customer service.

20 Q. So, is that level of customer service then incorporated
21 into the Public Utility Commission's laws and the Puc
22 1200 regulations? Is that what you're referring to
23 then?

24 A. I think, certainly, that the 1200 rules do address a

[Witness: Noonan]

1 portion of the customer service component that I'm
2 discussing.

3 Q. Okay. And, then, what about the laws themselves? I
4 mean, does the collection of the laws enforced by this
5 Commission concerning customer service and the PUC
6 regulations, is that really what makes the difference
7 between a water system versus a water utility?

8 A. Well, I think you're splitting hairs. But, certainly,
9 let me try and answer your question. The Commission
10 has a series of rules in place for the utilities that
11 it regulates. There are industry specific rules that
12 set certain standards. There are the 1200 rules that
13 govern the relationship between the utility and its
14 customer and requires the utility to do certain things,
15 to allow the customer certain rights, and the customer
16 also has responsibilities. That's very different than
17 a municipal system. We receive calls from municipality
18 -- municipal customers, not every day, but on a
19 periodic basis. And, their ability to deal with the
20 same issues that a regulated utility customer has is
21 very limited, because they don't have those protections
22 in place for them.

23 Q. So, I take it then you weren't aware then that the City
24 of Indianapolis's water system is regulated by the, and

[Witness: Noonan]

1 I may get the name wrong here, but it's the "Indiana
2 Utility Regulatory Commission?

3 A. No, I was not. However, I don't know that that's
4 relevant here, because the Commission doesn't have
5 jurisdiction over municipal utilities.

6 Q. And, what is that opinion based on?

7 A. I'm sorry?

8 Q. Well, --

9 A. I just didn't hear you.

10 Q. Exactly. And, what is your opinion that "the
11 Commission doesn't have jurisdiction over municipal
12 utilities" based on?

13 A. It's, you know, based on conversations with our legal
14 counsel, as we receive calls from municipal utilities
15 over the years. I couldn't -- it's 362:4, I believe,
16 where that's laid out, where it talks about where a
17 municipality would not be subject to the Commission's
18 regulation.

19 Q. So, if your interpretation was wrong, then it's
20 conceivable there could be some jurisdiction over
21 utilities?

22 A. Sure. If, over the past 12 years, I've received
23 incorrect counsel, then that would be true.

24 Q. Okay. Now, the Commission has the authority to impose

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[Witness: Noonan]

1 conditions on the acquisition of the Pennichuck Water
2 Works, doesn't it?

3 A. I don't know.

4 Q. Well, wouldn't that be something you'd want to consider
5 in forming your opinion, as to whether or not this
6 Commission could impose conditions to protect customer
7 service?

8 A. Certainly. You know, in a typical utility-to-a-utility
9 transfer, yes, the Commission has authority and does
10 impose conditions on the transfers.

11 Q. Uh-huh.

12 A. This is not a typical utility-to-utility transfer.
13 And, I'm not an attorney, so I'm not going to offer or
14 interpret what the statute would allow or not allow.

15 Q. Well, let's look at Exhibit 1014. Let's bring up Page
16 16. And, I believe this is the May 22nd reply
17 testimony of Mayor Streeter, as well as two of the
18 Aldermen. You see the bottom paragraph where it states
19 "Nashua's Commitment to Protect Customers Outside of
20 its Borders"?

21 A. Uh-huh.

22 Q. Could you read that paragraph please.

23 A. Sure. "We would also like to highlight that Nashua has
24 made significant commitments that will benefit the

[Witness: Noonan]

1 public interest and ensure that the interests of
2 customers located outside of the City of Nashua are
3 protected and treated fairly in all respects. Nashua
4 fully expects that the Public Utilities Commission, in
5 its discretion, will make these commitments into
6 appropriate binding conditions on its acquisition of
7 its water system."

8 Q. So, what I'm unclear on is why, given that Nashua has
9 made commitments in this proceeding and has told the
10 Commission that it can bind those into conditions that
11 would bind the City of Nashua, why wouldn't that
12 address some of your concerns?

13 A. Well, I think underlying my concerns is really the
14 legal question of if, in fact, the Commission can do
15 that.

16 Q. And, so, it's your opinion that the Commission can't do
17 that?

18 A. I'm not offering an opinion. I don't believe I have
19 the expertise in that area to offer opinions on legal
20 questions.

21 Q. If we could go to the next page, let's look at Page I
22 believe that's 17 now, it's marked as "16" in the
23 actual document. So, it looks -- you see the three
24 commitments that are listed there?

[Witness: Noonan]

1 A. Yes.

2 MR. RICHARDSON: I'm looking forward to
3 not dealing with electronic exhibits for at least the
4 foreseeable future.

5 BY MR. RICHARDSON:

6 Q. You see the first commitment, where it states that
7 "Nashua has committed to operate its system according
8 to the terms of its Water Ordinance in a manner that
9 treats all customers equally." I mean, is that an
10 appropriate commitment for the City to make and to ask
11 the Commission to impose on it?

12 A. Certainly.

13 Q. Okay. And, you see the second, that "to the extent
14 Nashua serves customers outside of its borders, Nashua
15 has agreed and committed to the principle that the
16 terms and conditions of its service, i.e. its Water
17 Ordinance, will continue to be subject to the
18 jurisdiction of the Public Utilities Commission under
19 RSA 362:4 and RSA 374." Isn't that the City asking
20 this Commission that, if it has any concerns regarding
21 what would happen to customers outside of Nashua, it
22 could take jurisdiction over those concerns? It could
23 bind the City of Nashua to ensure that they're treated
24 fairly?

[Witness: Noonan]

1 A. Again, I think that's a legal question, and I don't
2 have the background to answer.

3 Q. But, if you didn't have the background to answer it,
4 how then did you arrive at conclusions that the City
5 would be treated unfairly, because the Commission
6 wouldn't have jurisdiction or couldn't protect those
7 customers? Isn't that the essence of your testimony?

8 A. Well, this testimony was filed after my testimony was
9 filed.

10 Q. Okay. But you indicated that "nothing had changed,
11 since you filed your testimony, to cause you to change
12 your opinion." So, did you not consider these
13 commitments?

14 A. You're right, I indicated "nothing had changed". On
15 conversation with counsel here in the Commission, it's
16 still my understanding that the Commission can't impose
17 its jurisdiction on Nashua. It's contradictory to the
18 laws.

19 Q. Let's look at Exhibit 1008, Page 7. The bottom
20 paragraph, which is the response of Paul Noran to Data
21 Request 4-22, I believe from Staff. Mr. Noran is
22 describing a procedure to respond to questions from
23 customers. And, he states that there will be a "call
24 log" system. And, "When necessary, specific work

[Witness: Noonan]

1 orders will be issued to investigate and resolve the
2 issues related to a call." "Call logs will be
3 analyzed." And, my question to you is, if there's a
4 work order system and there's a call log system, and
5 Veolia is required to provide Nashua's customer service
6 with access to those systems, isn't that a benefit to
7 customers?

8 A. Separating those two functions, in my professional
9 experience here at the Commission, has not been an
10 efficient way to address customer service issues. And,
11 frequently, it has resulted in miscommunication to
12 customers.

13 Q. Now, you're aware that Pennichuck Water Service
14 Corporation has systems that it operates where it
15 doesn't provide customer service?

16 A. Where it's simply the system operator and not the
17 public utility?

18 Q. Well, where it may respond to service calls, but it
19 doesn't perform the billing and collection function.
20 Have you seen any increase --

21 A. I'm sorry. Can you tell me what systems you're
22 referring to?

23 MR. CAMERINO: Mr. Chairman, I'm
24 unfamiliar with what Mr. Richardson is referring to, and I

[Witness: Noonan]

1 will allow that it's possible it's in the documents that
2 are in this case, and, if that's so, I would like him to
3 refer to that. But I would like to avoid having him
4 provide testimony through his question on something that I
5 don't believe is in the record. So, if he can refer to
6 something, that's fine.

7 BY MR. RICHARDSON:

8 Q. Well, are you aware of any examples in the State of New
9 Hampshire where a utility has -- or, excuse me, a water
10 company has provided operational services, but the
11 municipality has retained billing functions?

12 A. I am not, no.

13 Q. Okay. Now, I'd like to ask you some questions about
14 staffing levels. You indicate in your testimony,
15 that's Exhibit 5003, at Page 5, that Pennichuck Water
16 Works, would you bring that up, has "nine full-time and
17 two part-time staff available"?

18 A. Yes. Those numbers were provided by Pennichuck.

19 Q. And, that's I believe on Line 18. Could we blow up
20 that paragraph. So, I want to make sure. You say that
21 Pennichuck Water Works has those eleven employees. You
22 are aware that those eleven employees also provide
23 customer service to Pittsfield Aqueduct, right?

24 A. Yes.

[Witness: Noonan]

1 Q. And PEU?

2 A. Yes.

3 Q. And, so, those -- And Pennichuck Water Service
4 Corporation?

5 A. (Witness nodding affirmatively).

6 Q. Now, if you look at Ms. Hartley's response to I believe
7 it's Staff Data Request, it's either 4-2 or 4-22, it's
8 on Page 10 of your testimony. Next page.

9 MR. BOUTIN: Could we be clear as to
10 what this exhibit is? The exhibit number?

11 MR. RICHARDSON: This is her testimony.
12 So, it's Exhibit 5003. It's a response to Data Request
13 Staff 4-2.

14 BY MR. RICHARDSON:

15 Q. Now, it looks like Ms. Hartley's response, in the
16 bottom two paragraphs, is referring to the Company.
17 And, so, actually, let me -- so, it would be correct to
18 say then that's the information you relied on in coming
19 up with the numbers for the number of customer service
20 representatives they have?

21 A. Yes, that's correct.

22 Q. And, what their functions are?

23 A. Yes, that's correct.

24 Q. Okay. All right. So, do you know how many customers

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[Witness: Noonan]

- 1 there are for Pittsfield Aqueduct?
- 2 A. Offhand, no.
- 3 Q. Okay. Well, why don't we bring up -- we know that
- 4 there's -- you say approximately "24,000" for
- 5 Pennichuck Water Works?
- 6 A. That's what's in the data request, yes.
- 7 Q. Okay. So, that's 24,000. Let's look at Mr. Correll's
- 8 testimony, and that's Exhibit 3001, Page 8. And, it
- 9 looks like on this page he's describing the customers
- 10 of -- let's look at the PEU system. Now, I'll
- 11 represent to you that I believe those numbers should
- 12 add up to approximately we'll call that 5,000
- 13 customers, subject to check?
- 14 A. Sure.
- 15 Q. And, further down on that page, I believe he then
- 16 describes -- he lists "1,700", I think it's on the next
- 17 page, as well for Pittsfield Aqueduct. Could we go to
- 18 the next page. Subject to check, would you agree
- 19 that's about 1,700 customers?
- 20 A. Yes.
- 21 Q. Okay. And, now, the Service Corporation is listed
- 22 further down. And, you see that, the "Municipalities
- 23 Served", that paragraph?
- 24 A. Yes.

[Witness: Noonan]

- 1 Q. They have got 5,300 customers in Hudson, 7,300
2 customers in Barnstable, and, in Salisbury, an
3 additional 3,234. And, by my calculation, that comes
4 to 15,834. Does that look right?
- 5 A. Roughly, yes.
- 6 Q. Okay. So, if we were to total this bracket here, which
7 is PEU, PAC, and the Service Corporation, we're looking
8 at approximately, subject to check, I'd say 22,634,
9 based on the numbers we just reviewed, does that sound
10 right?
- 11 A. I'll trust your math.
- 12 Q. Okay. And, so, if Pennichuck Water Works is serving
13 24,000, approximately half the customers that are being
14 served by the Service Department are actually serving
15 non-PWW customers?
- 16 A. I do know that PEU customers and Pittsfield Aqueduct
17 customers contact the Pennichuck Water Works office in
18 Nashua. I don't personally know about their Service
19 Company.
- 20 Q. Uh-huh.
- 21 A. So, really, I'm sorry I can't answer that.
- 22 Q. So, then, you don't really know what the eleven
23 employees are actually doing and who they're serving?
- 24 A. I don't know if they answer calls from the Service

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[Witness: Noonan]

1 Company.

2 Q. Okay. And, in fact, if they were answering calls from
3 those other, then you've got 22,634 customers, an
4 amount almost equal to the "24,000" in your testimony
5 that are serving PWW?

6 A. If that's true, that's correct.

7 Q. Okay. And, if Nashua were not to acquire service in
8 PEU and PAC, presumably it wouldn't need all eleven of
9 the customer service representatives that Pennichuck
10 currently has?

11 A. That's certainly possible.

12 Q. A question about Ms. Raswyk's and Ms. Anderson's
13 testimony. Why don't we bring up Exhibit 1008, Page
14 10. Was the Public Utilities Commission ever aware of
15 the billing problems that are referenced in this
16 letter, before they came up in the Nashua trial?

17 A. I was not. I can't speak for the Commission as a
18 whole.

19 Q. So, I mean, this letter states that I believe "2,500
20 customers were affected by incorrect readings during
21 the period from November 2001 to May of 2002." I mean,
22 it seems to me that there was a failure in the billing
23 process that occurred here. Would you agree with that?

24 A. It appears that they did have a problem, yes.

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[Witness: Noonan]

1 Q. And, I mean, wouldn't that kind of problem result in an
2 increased call volume?

3 MR. CAMERINO: Objection. This witness
4 said she's not familiar with this letter. We haven't
5 established what customers they're talking about, who
6 they're customers of.

7 CHAIRMAN GETZ: Response,
8 Mr. Richardson?

9 MR. RICHARDSON: Well, this is a letter
10 that's been in the testimony. Ms. Noonan has said that
11 she was at the hearings when Ms. Raswyk and Ms. Anderson
12 testified. And, I think, I mean, it's a fair question to
13 ask what her level of knowledge of this is.

14 CHAIRMAN GETZ: I'll allow inquiry into
15 what the witness knows about this matter.

16 BY THE WITNESS:

17 A. As I said, I was not aware of this issue. I have not
18 looked to see if we received any calls here regarding
19 this billing issue. So, I can't tell you if, in fact,
20 it drove more calls in or not.

21 BY MR. RICHARDSON:

22 Q. Well, let's look at what Ms. Raswyk and Ms. Anderson
23 said in their testimony before the Commission.
24 Actually, let's look at their written testimony,

[Witness: Noonan]

1 Exhibit 1008, Page 5, starting, I believe, at Line 64.
2 So, it says that "In early 2002, Nashua's periodic
3 analysis of PWW's data disclosed major discrepancies in
4 the winter meter readings based on unusually high or
5 low readings. Further analysis disclosed that the
6 meter readings were incorrect for some 15 percent of
7 the 17,000 sewer accounts. When this was brought to
8 PWW's attention, they acknowledged responsibility for
9 the widespread errors." I mean, I guess my question to
10 you is that the Commission oversight isn't necessarily
11 fool-proof here, is it?

12 A. We don't micromanage the companies. We set rules in
13 place for them to meet, but there are times when there
14 are billing errors, from the smallest company to the
15 largest company.

16 Q. Then, you see down below that it says "In recent weeks,
17 PWW has notified us of significant problems in the data
18 from certain groups of meters comprising about
19 one-third of the accounts." I guess, isn't it
20 reasonable to assume that, if there are the levels of
21 problems in the billing data, that's going to
22 significantly increase your call volumes?

23 MR. CAMERINO: Objection. Again,
24 Mr. Richardson is proceeding down a road with a witness

[Witness: Noonan]

1 who does not know what customers we're talking about.
2 These are not customers of Pennichuck that are being
3 referred to. The prior testimony related to "sewer
4 billing" issues and "data provided to the City". So, I
5 understand --

6 MR. RICHARDSON: By Pennichuck.

7 MR. CAMERINO: I understand his analogy,
8 and, if that's where he wants to go, that's fine. But he
9 is questioning the witness and creating the impression
10 that we're talking about Pennichuck Water Works here.

11 MR. RICHARDSON: Well, and that is the
12 impression that I get. I mean, we see "periodic analysis
13 of PWW's data disclosed major discrepancies in the winter
14 meter readings." I mean, that's what Ms. Raswyk testified
15 to when she was before the Commission on January 11th, I
16 believe. And, this witness has testified that she
17 believes that "PWW provides excellent service, customer
18 service". And, I'm wondering how this discrepancy that's
19 in this letter from Pennichuck Water Works, stating that
20 there are errors in it --

21 CHAIRMAN GETZ: Can you bring that
22 letter back up?

23 MR. RICHARDSON: Sure. Page 10.

24 (Short pause.)

[Witness: Noonan]

1 BY MR. RICHARDSON:

2 Q. Ms. Noonan, --

3 CHAIRMAN GETZ: I just want to finish
4 reading this letter.

5 (Short pause.)

6 CHAIRMAN GETZ: Okay. Please proceed,
7 Mr. Richardson.

8 BY MR. RICHARDSON:

9 Q. Ms. Noonan, doesn't this indicate to you that there are
10 problems with the way Pennichuck performs its meter
11 readings and its billings?

12 A. No. This appears to be an isolated incident that the
13 Company corrected. As I indicated, every utility we
14 regulate from time to time will contact us about a
15 billing issue, a billing problem they had that affects
16 a number of customers. Doesn't mean they don't provide
17 good service to their customers, doesn't mean they
18 don't make it right. It means that mistakes happen
19 sometimes.

20 Q. Okay. Let's go back then to the prior page we were
21 looking at. I lost my notes. Do you remember what it
22 was?

23 MS. REGAN: Page 5.

24 BY MR. RICHARDSON:

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[Witness: Noonan]

- 1 Q. Page 5 of Ms. Raswyk's testimony. And, this is
2 Exhibit 1008, I believe. And, do you see where it
3 says, on Line 72, "In recent weeks, PWW has notified us
4 of significant problems in the data from certain groups
5 of meters comprising about one-third of the accounts.
6 The full extent of the problem has not yet been
7 determined." So, I mean, it looks to me like Ms.
8 Raswyk is saying these problems are still ongoing?
- 9 A. Based on what she's -- Based on what she's put in her
10 testimony, it would appear that there was another
11 problem, I don't know what it was, I don't know who it
12 affected.
- 13 Q. And, you remember hearing Ms. Raswyk talk about that
14 problem when she testified in January before the
15 Commission?
- 16 A. I recall her talking about the first one. I don't
17 recall the second one.
- 18 Q. Okay. So, you didn't go out then and investigate what
19 the nature of the problem was?
- 20 A. Following her testimony? No.
- 21 Q. But, if this is true, and it says that "one-third of
22 the accounts" are off, that's a pretty significant
23 problem, isn't it?
- 24 A. You know, she's talking about sewer accounts, one-third

[Witness: Noonan]

1 of those, it would indicate that they had a big billing
2 glitch, yes.

3 Q. And, if you do have a big billing glitch like that on
4 one-third of your accounts, isn't that going to
5 increase the amount of call volumes that you're going
6 to get?

7 A. Surprisingly, not necessarily. You know, I don't know
8 the details of this. But we just recently had another
9 utility that had a billing problem with 6,000 of its
10 customers, and neither the utility nor the Commission
11 received any calls.

12 Q. What utility was that?

13 A. That was Northern Utilities.

14 Q. And, do you know how many customers they have total?

15 A. Twenty-five, twenty-six thousand.

16 Q. Okay. Ms. Noonan, as I understand, one of your major
17 concerns is also the bifurcation between customer
18 service or customer billing by the City of Nashua and
19 then operational customer service being performed by
20 Veolia?

21 A. Yes.

22 Q. Now, if Nashua were to agree to a condition that Veolia
23 provide the entire customer service function, and that
24 it comply with the Commission rules, regulations and

[Witness: Noonan]

1 laws related to customer service, subject to the
2 Commission's jurisdiction, would that go a long way to
3 addressing some of the concerns you identified?

4 A. It would perhaps be a step in the right direction. I
5 think a lot would depend on -- there's a lot of
6 unknowns in the question you just posed. There would
7 need to be a lot of conversation and discussion.
8 There's still the question of if the Commission could,
9 in fact, impose jurisdiction on them. And, if we can,
10 how do you enforce? So, it would be a step in the
11 right direction, but I don't know that it's the silver
12 bullet that solves the problem.

13 MR. RICHARDSON: Thank you.

14 CHAIRMAN GETZ: Ms. Thunberg, will you
15 have redirect?

16 MS. THUNBERG: Just a few questions.

17 CHAIRMAN GETZ: Okay. Well, then, let's
18 -- why don't we take your redirect, and we'll try to
19 finish up with this witness before we take our morning
20 recess. I'm sorry, I jumped the gun.

21 MS. THUNBERG: Well, I presumed you had
22 no questions, but I'll wait.

23 CMSR. BELOW: Yes, I don't.

24 CHAIRMAN GETZ: Please proceed.

[Witness: Noonan]

1 REDIRECT EXAMINATION

2 BY MS. THUNBERG:

3 Q. Ms. Noonan, I just had a follow-up question, when you
4 were asked about the full-time equivalents at Nashua
5 and at Pennichuck.

6 A. Uh-huh.

7 Q. Are you aware of -- or, actually, with respect to
8 occurrences since your testimony, I believe you
9 testified that you had read transcripts and reply
10 testimony since your testimony?

11 A. Yes.

12 Q. Or, since your April testimony?

13 A. Yes.

14 Q. And, did you also review the transcript from the
15 testimony given by Veolia?

16 A. Earlier this month, yes.

17 Q. And, did Veolia ever comment on the splitting of having
18 full-time equivalents do certain functions in the City
19 and full-time equivalents doing functions at Veolia,
20 did they ever comment on that scenario?

21 A. Yes. As I reviewed the transcript, I saw that they
22 did, in fact, comment on that.

23 Q. And, what was that comment and by whom, do you know?

24 A. I believe it was by a Veolia witness, Burton, and his

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1 view was that that was not the preferred way of
2 conducting customer service and it created confusion
3 for customers.

4 Q. To the extent you may have notes in front of you, do
5 you have a page reference or a line reference of that
6 statement?

7 A. I do. It appears to be Page 46 of the -- I believe
8 it's September 5th transcript, and it's Line -- begins
9 on Line 10.

10 Q. So, I just want it to be clear that the Page 46, Line
11 10, that's where you're directing our attention to, as
12 to Veolia's comment?

13 A. Yes.

14 Q. And, what did you understand that comment to be?

15 A. Well, I understood Mr. Burton to say that there are
16 problems with dividing the two aspects of customer
17 service, the billing function from the operational
18 service issues, and that combining them together is the
19 best way to operate.

20 Q. With respect to the condition of Veolia performing all
21 of those functions, is that your understanding of
22 Nashua's official proposal?

23 A. No. As I understood, Nashua's proposal would not be
24 combined together, it would be split between Ms.

[Witness: Noonan]

1 Raswyk's staff at City Hall and the Veolia staff.

2 Q. Just one or a couple last questions. You were asked
3 earlier about your general impression of Pennichuck's
4 ability to provide customer -- or, quality customer
5 service, and how do you judge Pennichuck in relation to
6 other utilities? Do you remember that?

7 A. Yes, I do.

8 Q. That line of questioning?

9 A. Uh-huh.

10 Q. And, on what -- does your department or do you base
11 your judgment on the number of calls or complaints the
12 Commission receives with respect to each utility?

13 A. Sure. We base them in part on the number of complaints
14 that come in. That's a good, quick and easy metric.
15 But, also, the general tone and nature of the calls
16 that come in. You know, how disgruntled and
17 dissatisfied is the customer? Is it indicative of a
18 bigger problem?

19 Q. Okay. And, do you have any magnitude of calls that
20 come in in relation to other calls by either -- or,
21 calls relating to other utilities that you could offer,
22 even ballpark estimates would be okay?

23 A. Sure. I did look at that, in preparation for today's
24 hearing. And, we receive on, you know, roughly each

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[Witness: Noonan]

1 year, from Pennichuck customers, anywhere between, you
2 know, 30 and maybe 80 calls a year. Roughly
3 equivalent, another utility that I have looked at their
4 statistics recently for other purposes, would be
5 Northern Utilities, which is a gas utility in the
6 state, has about 25, 26,000 customers, and their call
7 volume on a yearly basis is 150 to 200 a year.

8 MS. THUNBERG: Okay. Thank you. No
9 further questions.

10 CHAIRMAN GETZ: Okay. Then, that
11 completes the testimony and examination of Ms. Noonan.
12 You're excused. Thank you. Let's take the morning recess
13 now, and resume at 11:15 with Mr. Naylor.

14 (Recess taken at 10:45 a.m. and the
15 hearing resumed at 11:20 a.m.)

16 CHAIRMAN GETZ: Okay. We're back on the
17 record in DW 04-048, and are prepared for the testimony of
18 Mr. Naylor. Ms. Thunberg.

19 (Whereupon Mark A. Naylor was duly sworn
20 and cautioned by the Court Reporter.)

21 MARK A. NAYLOR, SWORN

22 DIRECT EXAMINATION

23 BY MS. THUNBERG:

24 Q. Mr. Naylor, if you could please just state your name

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[Witness: Naylor]

- 1 and by whom you're employed for the record.
- 2 A. Yes. My name is Mark Naylor. And, I employed by the
3 New Hampshire Public Utilities Commission.
- 4 Q. And, what is your position and responsibilities with
5 the Commission?
- 6 A. I am the Director of the Commission's Gas & Water
7 Division.
- 8 Q. Can you please briefly describe your involvement with
9 this case?
- 10 A. I've been involved with the case from the beginning. I
11 have reviewed all the filing by the City, the testimony
12 of all parties, participated in discovery, and
13 submitted testimony on April 13th, 2006.
- 14 Q. And, when you say you referred to "discovery" and
15 "testimony", was that pre, prior to and after your
16 testimony submission?
- 17 A. Yes.
- 18 Q. And, with respect to the testimony, do you have -- was
19 that testimony true and correct to your understanding
20 and belief at the time?
- 21 A. Yes, that's correct.
- 22 Q. And, do you adopt that testimony today?
- 23 A. Yes, I do.
- 24 Q. Do you have any corrections to make to that testimony?

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[Witness: Naylor]

- 1 A. No, I don't have any corrections. Of course, the
2 timing of the procedural schedule in this case had
3 other parties filing testimony, particularly the City
4 and the Company, after my April testimony. But, as of
5 the date I filed my testimony, I adopt it as my
6 testimony today.
- 7 Q. On the basis of your review of the discovery and
8 testimony that happened subsequent to your testimony,
9 are there any portions that are no longer relevant in
10 your testimony that you wish to strike?
- 11 A. No. No, I don't believe so.
- 12 Q. Okay. And, today you are prepared to discuss issues
13 that were raised in testimony and discovery subsequent
14 to your April testimony, is that correct?
- 15 A. Yes, to the best of my ability. Certainly, not having
16 another opportunity for testimony after April 13th, I
17 may not have focussed on every issue raised, for a
18 variety of reasons. But I'm certainly familiar with
19 it, and particularly applicable was the reply testimony
20 provided in May and in July of 2006 that followed my
21 testimony.
- 22 Q. Your testimony was filed as an exhibit in this case,
23 correct?
- 24 A. Yes.

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[Witness: Naylor]

1 Q. And, I'll just note for the record that that exhibit
2 number is "5001". And, Mr. Naylor, you also responded
3 to data responses [requests?] in this docket?

4 A. Yes, I did.

5 Q. And, I forget if I've asked you if you have any
6 corrections or changes to make to any of your
7 responses?

8 A. No.

9 MS. THUNBERG: Okay. The witness is
10 available for cross-examination.

11 CHAIRMAN GETZ: Okay. Then,
12 Mr. Alexander.

13 MR. ALEXANDER: Good morning, Mr.
14 Naylor.

15 THE WITNESS: Good morning.

16 CROSS-EXAMINATION

17 BY MR. ALEXANDER:

18 Q. In your direct testimony, you made reference to the
19 "Anheuser-Busch special contract", do you remember
20 that?

21 A. I believe I did, yes.

22 Q. And, is that contract, to the best of your knowledge,
23 based on a 2001 cost study?

24 A. Yes, it was.

[Witness: Naylor]

1 Q. And, was the rate in the contract submitted to and
2 approved by the Commission?

3 A. Yes.

4 Q. Are there cost allocations built into the rate under
5 that contract?

6 A. Yes, there are. The cost of service study, as I
7 recall, made allocations of costs, appropriate
8 allocations of costs to the Anheuser-Busch contract.

9 Q. And, do those allocations include a contribution to
10 Pennichuck's administrative and general costs?

11 A. Yes, they did.

12 Q. Is Anheuser-Busch's rate under the special contract
13 subsidized by Nashua ratepayers?

14 A. Not in my opinion, no.

15 MR. ALEXANDER: Thank you.

16 CHAIRMAN GETZ: Mr. Boutin.

17 MR. BOUTIN: Good morning, Mr. Naylor.

18 THE WITNESS: Good morning.

19 BY MR. BOUTIN:

20 Q. In your direct testimony this morning, you described
21 and adopted your previously filed testimony and adopted
22 data responses. But something you said gave me pause.
23 You indicated that you had not had an opportunity to
24 submit a additional testimony based on the reply

[Witness: Naylor]

1 testimonies that were filed and other things that were
2 filed subsequently to your direct testimony. And, I
3 don't think that I heard the follow-up question. Based
4 upon the things you saw in that subsequently filed
5 material, does that change in any way your filed
6 testimony in this case?

7 A. No. It doesn't change my opinion of the filing.

8 Q. Now, let me just ask you a couple of other questions.
9 In the testimony, you've been here this morning for the
10 cross-examinations, have you not?

11 A. Yes, I have.

12 Q. Have you been able to keep track of the various
13 concessions that Nashua has made through its testimony
14 or through offers of its counsel?

15 A. Well, I haven't kept a scorecard. I know that the
16 City, in the proceeding thus far, has alluded to
17 "conditions", which I believe that's what you're
18 referring to?

19 Q. That's one of the things, yes.

20 A. And, I guess those would be issues that were not in the
21 City's original direct case. That they now have
22 apparently proffered as amendments to their filing.

23 Q. And, in terms of the conditions you've heard offered,
24 do any of those affect your view of the case as

[Witness: Naylor]

1 expressed in your direct testimony, direct filed
2 testimony and your data responses?

3 A. Well, I have a problem with the concept of
4 "conditions". I don't think this is a normal PUC
5 proceeding, where conditions can or should be imposed,
6 for a couple of important reasons. Number one would be
7 that, you know, there's no opportunity for discovery on
8 those issues, for the Commission or the benefit of the
9 Commission or the parties. And, you know, if the
10 Commission were to set conditions on an approval, I
11 don't know how the -- how the shareholders of the
12 Company are put back into their original position, if
13 the City subsequently was not meeting the conditions.
14 So, that's a concern that I have.

15 Q. Well, is -- for instance, you heard a representation
16 this morning that Veolia, in the City's current offer
17 to change its proposal, would "conduct all of the
18 customer service". And, is it your view that that
19 would increase the amount that Veolia would be charging
20 Nashua for its service?

21 A. I have no idea.

22 Q. Is this one of the issues that trouble you, in terms of
23 lack of discovery?

24 A. Certainly. Yes.

[Witness: Naylor]

1 Q. And, if there were a price increase because of that,
2 would it affect rates, in your view?

3 A. It could, depending on the magnitude of the cost.

4 Q. Now, and I'm not asking you to give me a legal opinion,
5 but is it your view that, even if the so-called
6 "conditions" that Nashua is now offering as concessions
7 were part of the order, could the PUC have anything to
8 do with their enforcement?

9 A. Well, that's a good question. I don't know. I'm not
10 convinced that the City's operation of this utility,
11 after this proceeding, would be subject to Commission
12 regulation. I'm not convinced that regulation is
13 something that the City can opt into or out of.

14 Q. Now, is it your view that the PUC can obtain
15 jurisdiction by agreement, as opposed to by statute?

16 A. I have not heard of that.

17 MR. BOUTIN: Thank you. I have nothing
18 further.

19 CHAIRMAN GETZ: Ms. Knowlton.

20 MS. KNOWLTON: Good morning, Mr. Naylor.

21 THE WITNESS: Good morning.

22 BY MS. KNOWLTON:

23 Q. I'm going to ask you some questions first about
24 troubled water systems. That's been the subject of

[Witness: Naylor]

1 some discussion and testimony in this docket so far.
2 Is it correct that, in your testimony, you express
3 concerns about whether there will be any water utility
4 that is willing to acquire troubled water systems, if
5 Pennichuck Water Works no longer exists?

6 A. Yes.

7 Q. Okay. I'd like to see Exhibit 1132, Pages 57 and 58
8 please. If you take a look at your screen, are you
9 familiar with this document?

10 A. Yes, I am.

11 Q. What is this?

12 A. This is a listing of regulated utilities, regulated
13 water utilities regulated by this Commission. And, I
14 see the date, the last date that this was updated was
15 November of 2006.

16 Q. Does this list include the entire universe of
17 potentially troubled water systems in New Hampshire?

18 A. No, it does not.

19 Q. Do you agree with Mr. Sansoucy's testimony that "there
20 are hardly any troubled water systems left in New
21 Hampshire"?

22 A. I do not agree with that testimony.

23 Q. How would you define the universe of troubled water
24 systems or potentially troubled water systems in our

[Witness: Naylor]

1 state?

2 A. Virtually any water system out there. Typically, what
3 happens is that a water system will come to the
4 attention of the Commission through some kind of
5 contact from a customer. Commission had no idea it was
6 out there. And, it could be a homeowners association
7 that's no longer able to handle the system that they
8 have or can't comply with Safe Drinking Water Act
9 requirements, or could be a developer system that
10 simply should have been regulated, but wasn't.

11 Q. Are you aware of whether, let's just take Pennichuck
12 East Utility as an example, whether PEU has acquired
13 any systems that were constructed by developers?

14 A. Oh, yes, I believe so.

15 Q. Are those the type of systems that, in the past, have
16 become troubled, either because they later, you know,
17 after -- they ran into a source of supply problem after
18 they were constructed or there were ongoing maintenance
19 problems or because they weren't built properly by the
20 developer in the first instance?

21 A. It could be all of those conditions. There was a time
22 back, I really can't cite the dates, perhaps in the --
23 from the mid '70s and back, I believe, where DES had
24 very little impact on systems that were being

[Witness: Naylor]

1 constructed. They didn't have to go through regulatory
2 process at DES. So, a lot of systems -- a lot of the
3 troubled systems we've seen are 1960s and '70s vintage
4 systems that were poorly constructed, used substandard
5 materials, and so forth.

6 Q. Is it possible that, and, again, let's just stick with
7 PEU, that, by its acquisition of these
8 developer-constructed systems and PEU's proper
9 maintenance of them, that it has kept some systems from
10 actually becoming troubled?

11 A. I have no doubt that's the case. I couldn't think of
12 any examples of that right at the moment. But,
13 certainly, PEU, since it's been in existence for about
14 ten years or so, has made additional acquisitions of
15 systems that were in various states of repair, some not
16 too bad and some others that were a lot more troubled.

17 Q. Is it possible that a municipal water system, and let's
18 take Merrimack Village Water District as an example,
19 could encounter problems and become troubled in some
20 way?

21 A. I'm sure it's conceivable.

22 Q. And, is it possible then, in that instance, you know,
23 let's take Merrimack again, Village Water District,
24 that, if it ran into source of supply problems and it

[Witness: Naylor]

1 needed to have some kind of permanent interconnection,
2 that it could also need the help of a company like
3 Pennichuck Water Works?

4 A. Yes.

5 Q. Let's look at Exhibit 5014, Page 48 and 49. If you
6 could make the first page bigger. If you take a look
7 at this, Mr. Naylor.

8 A. Yes. This is a data response that I provided.

9 Q. Were any of the troubled water systems that are listed
10 here acquired -- that were acquired by PWW or any of
11 its affiliates actually multiple systems?

12 A. Yes. You may test my memory a little bit here.
13 Certainly, the Consumers New Hampshire Water, listed
14 under "PEU", had a number of separate systems.

15 Q. Do you have a recollection about what the quality or
16 the state of affairs were with regard to those systems
17 when they were acquired by PEU?

18 A. I recall that those systems, some of which I believe
19 were originally known as the "Policy systems", were --

20 MS. THUNBERG: Can I just ask for a
21 clarification? When you're talking about "these systems",
22 do you mean "Consumer systems" for the record?

23 MS. KNOWLTON: Yes, I'm referring to the
24 Consumer systems.

[Witness: Naylor]

1 THE WITNESS: That's what I -- I think
2 that's what I inferred.

3 BY THE WITNESS:

4 A. Yes, I think there's -- a good number of those were
5 systems that had significant problems.

6 BY MS. KNOWLTON:

7 Q. And, were those the systems that Mr. Noran was
8 responsible for?

9 MR. UPTON: I object. I don't know why
10 that is relevant to the inquiry.

11 MS. KNOWLTON: Well, we had testimony
12 from Mr. Noran earlier in this case that relying on his
13 experience in running those systems as part of his, his
14 and Veolia's qualifications for running systems in its
15 proposal to run the Pennichuck assets. And, I think, to
16 the extent that Mr. Noran was involved in the Consumer
17 systems, it's highly relevant.

18 CHAIRMAN GETZ: Well, I don't think it's
19 relevant to the testimony of this witness. If he's
20 responding to questions about troubled water systems, and
21 whether it's in the public interest for PWW to exist to
22 take on such systems, how those systems became troubled I
23 don't think is relevant to the inquiry of Mr. Naylor. So,
24 I'll disallow the question.

[Witness: Naylor]

1 BY MS. KNOWLTON:

2 Q. Mr. Naylor, can you describe what the quality of those
3 Consumer systems are, now that they have been taken
4 over by PEU?

5 A. Well, I'm aware of some of the improvements that have
6 been made at some of those systems. I can't speak to
7 specific instances, and whether they were originally
8 Consumer systems or others. But I know that, and I
9 believe my testimony does discuss some of the work
10 that's been done in certain systems. And, one I
11 particularly remember is -- I believe is Green Hills or
12 Green Acres, I forget exactly which one, but that is an
13 example I put in my testimony. So, I know that the
14 Pennichuck companies have, in a number of cases,
15 acquired systems and put capital into them and improved
16 them and provided safe and adequate service to the
17 customers.

18 Q. Let's turn a few pages forward on Exhibit 5014, to the
19 response to Data Request 6-46. I think it starts at
20 Page 50. If you can make that first page bigger
21 please. Are you familiar with Lakes Region -- with
22 Lakes Region Water Company's acquisitions of troubled
23 water systems that are listed here?

24 A. Yes.

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[Witness: Naylor]

1 Q. Based on this list, is it fair to say that Lakes Region
2 only buys systems that are in close geographic
3 proximity to it?

4 A. Lakes Region is headquartered in Moultonborough. And,
5 I think that the system they own that's farthest away
6 from headquarters would be Conway, could be perhaps a
7 system in Freedom, that's a distance away. But, for
8 the most part, the Company has concentrated on
9 acquisitions around the Lakes Region.

10 Q. Are you familiar with whether Lakes Region Water
11 Company has recently experienced any difficulties in
12 the operation of any of its systems?

13 A. Yes.

14 Q. What are the nature of those problems?

15 A. Oh, they have had some significant problems with, you
16 know, source of supply difficulties, bacteria hits,
17 things of that nature, yes.

18 Q. Is it possible that any of those difficulties result
19 from the Company's limited access to capital to make
20 necessary improvements to its systems?

21 A. I don't think there's any question that that's a part
22 of the problem, yes.

23 Q. Are you aware of whether Veolia plans to make any
24 equity infusions into troubled water systems in New

[Witness: Naylor]

1 Hampshire as part of the City's plan?

2 A. It was made clear to Staff that Veolia has no interest
3 in being regulated as a public utility. So, unless it
4 intends to be a banker, I don't think they're going to
5 be putting capital into small systems.

6 Q. Are you aware of any municipal water companies that
7 have acquired troubled water systems?

8 A. I'm not aware of any acquisitions of stand-alone
9 systems. There are some examples where municipal
10 service may have been extended over a municipal
11 boundary to pick up a customer or two that may have
12 experienced a contamination of the groundwater or
13 something of this nature. I think we had one a year or
14 two ago over near the Seacoast, and I forget if it was
15 Rollinsford or a town there. But there are -- to my
16 knowledge, I don't recall any municipal acquisitions of
17 stand-alone systems.

18 Q. Are you aware that Pittsfield Aqueduct Company, which
19 is an affiliate of PWW, has recently experienced some
20 difficulties with the Birch Hill system that it
21 acquired?

22 A. Yes. Those difficulties have been ongoing for some
23 time. And, Pittsfield Aqueduct I believe acquired this
24 system about 18 months ago, something like that.

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[Witness: Naylor]

- 1 Q. What is your understanding of the nature of the
2 problems with the Birch Hill system?
- 3 A. Well, they need -- the quality of the groundwater at
4 the site is a problem. And, really, the system
5 requires a new source of water. There have been some
6 -- certainly some long-standing problems in the
7 distribution system and so forth. But I think the
8 water quality has really been the particular issue
9 there.
- 10 Q. Are you familiar with how Pittsfield Aqueduct Company
11 has responded to those issues?
- 12 A. Yes. Yes. The Company has kept us up-to-date on its
13 efforts at the Birch Hill system. And, in fact, I've
14 attended a couple of meetings in Conway in the last,
15 you know, six to eight months regarding Birch Hill and
16 other related issues.
- 17 Q. In your opinion, has the response been prompt and
18 sufficient?
- 19 A. On the part of Pittsfield Aqueduct?
- 20 Q. On the part of Pittsfield Aqueduct Company?
- 21 A. Yes.
- 22 Q. Have you had any communications with the State
23 Department of Environmental Services regarding the
24 situation at Birch Hill?

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[Witness: Naylor]

1 A. Yes. Yes, I have.

2 Q. Do you have a sense for what DES's -- whether DES has a
3 view of how Pittsfield Aqueduct Company has responded?

4 A. My --

5 MR. UPTON: I object. If he's going to
6 state what he thinks DES's response is, that's clearly
7 hearsay, and way beyond what he's able to say, I think,
8 even though we have no rules of evidence.

9 MS. KNOWLTON: What I believe I asked
10 the witness was what his under -- if he had an
11 understanding of what DES's sense was of PAC's response
12 here. So, it would be limited to his understanding.

13 MR. UPTON: That's just a backdoor way
14 of, you know, "what does DES say?"

15 CHAIRMAN GETZ: Well, because of the
16 interaction between the Commission and DES on these
17 issues, I'm going to allow this question, to the extent
18 you have a view.

19 THE WITNESS: And, could you give me the
20 question again.

21 BY MS. KNOWLTON:

22 Q. I think the question was, you know, do you have an
23 understanding of what DES's view is, if any, regarding
24 Pittsfield Aqueduct Company's response to the problems

[Witness: Naylor]

1 at Birch Hill?

2 A. I know for a fact that DES staff is very satisfied with
3 the efforts being made by the Pittsfield Aqueduct
4 Company to address the water quality problems at Birch
5 Hill.

6 Q. Are you aware that Pittsfield Aqueduct Company had
7 applied for a Drinking Water State Resolving Loan --
8 Fund loan to upgrade the Birch Hill system?

9 A. Yes, that request was filed here at the Commission for
10 a financing approval.

11 Q. And, did the Commission grant that approval?

12 A. Yes, it did.

13 Q. Do you know whether PAC experienced any difficulties in
14 being able to close on that DWSRF loan for Birch Hill?

15 A. Yes, I am aware that there were, there was a delay.

16 Q. Do you know why it was delayed?

17 A. My understanding of that issue is that there was
18 concern among residents and perhaps the selectmen in
19 Conway, I'm not certain of necessarily the origin of
20 the concerns, but, certainly, there were concerns in
21 the town that, you know, the installation of new wells
22 by the Company for service to its Birch Hill franchise
23 would potentially lead to a commercial use of the wells
24 and bottling and so on and so forth.

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[Witness: Naylor]

1 MR. UPTON: Can I ask how this is
2 relevant to the issues that are before us? And, whether
3 she's going to keep going along this line of questioning?

4 MS. KNOWLTON: If Mr. Upton is not going
5 to inquire into this, I don't need to ask any further
6 questions in this area.

7 MR. UPTON: I'm going to inquire into
8 North Conway, but I'm not going to inquire into bottling
9 water for sure.

10 BY MS. KNOWLTON:

11 Q. Mr. Naylor, you participated in the August 14th, 2001
12 report titled "Regulatory Barriers to Water Supply
13 Regional Cooperation and Conservation in New
14 Hampshire", right?

15 A. Yes, I did.

16 Q. And, that was jointly prepared by the PUC and the DES,
17 right?

18 A. Correct.

19 Q. One of the recommendations of that report was for the
20 PUC to recommend legislation that would enable the
21 Commission to authorize a rate premium to encourage
22 municipal water utilities to provide service outside
23 their municipal boundaries. Is that an accurate
24 statement?

[Witness: Naylor]

1 A. Yes, it is.

2 Q. And, was that legislation ultimately embodied in RSA
3 362:4?

4 A. Yes, it was.

5 Q. Since that amendment has been in effect, how many
6 municipal water utilities have expanded their service
7 outside their municipal boundaries?

8 A. A few. I couldn't tell you how many. I know that the
9 City of Laconia has provided some service to customers,
10 I believe in Gilford. Manchester Water Works may have
11 added some customers in one of the neighboring towns.
12 These are all extensions of the municipal system. I
13 can't think of any others right at the moment, or if
14 there were others.

15 Q. In your view, has the financial incentive that that
16 statutory amendment created have the intended effect?

17 A. I'm not sure. To my recollection, the only -- the only
18 municipality that's taken advantage of that is Laconia,
19 but I'm not certain of that. I just don't know, from
20 the time that that -- that the 362:4 was amended, which
21 I believe was in 2002, I can't remember, you know, how
22 many applications the Commission would have had for
23 expansion of municipal service or would be franchise
24 applications, prior to that time, after that time, I

[Witness: Naylor]

1 really can't say. There certainly hasn't been anything
2 substantial.

3 Q. Would it be fair to say that, even with that financial
4 incentive, that municipalities are reluctant to provide
5 service outside their limits?

6 A. That's generally true, yes.

7 Q. Are you familiar with the New Hampshire Supreme Court
8 case Blair versus Manchester that was referred to by
9 Mr. Patch in his testimony?

10 A. Well, I've read his testimony, but I don't recall the
11 specifics of the case at this particular point.

12 Q. Well, let me ask it this way. Is it your understanding
13 that the Commission does not have the authority to
14 order municipal utilities to extend service to
15 customers in out-of-town areas?

16 A. Yes.

17 Q. And, so, for example, even if the municipality was
18 already serving some customers in, let's say, a
19 neighboring town, the Commission wouldn't have the
20 legal authority to compel the municipality to extend
21 that service to other people in that town, is that
22 right?

23 A. That is correct. That is my understanding.

24 Q. Would the Commission have the legal authority to order

[Witness: Naylor]

1 an investor-owned utility to expand its service in that
2 type of circumstance, where they're already serving
3 part of a franchised area, and there is a need to serve
4 others that are outside of the currently authorized
5 franchised area?

6 A. I'm not sure they have the power to compel a utility to
7 serve outside its franchise area. Certainly, a
8 regulated public utility has an obligation to provide
9 service within its franchise area, subject to certain
10 conditions, like main extension policy, something of
11 that nature.

12 Q. Are you aware that the City of Nashua has held up the
13 City of Portsmouth as an example of a municipal water
14 utility that's a successful model in serving others
15 outside of its city bounds?

16 A. Yes.

17 Q. Are you aware that the City of Portsmouth only serves
18 five customers in the Town of Durham?

19 A. I'm not sure I knew the number. It may be in -- It may
20 be in one of the reply testimonies provided by the
21 City, but I'm not certain of that.

22 Q. I want to show you a data response from the City of
23 Nashua, including its mayor. They were asked "how many
24 customer accounts the City of Portsmouth had in the

[Witness: Naylor]

1 outlying areas that it serves?" If you could review
2 this and see if it refreshes your recollection about
3 the extent to which Portsmouth has served customers
4 outside its bounds?

5 A. Okay. Yes.

6 Q. In your opinion, is Portsmouth -- the City of
7 Portsmouth functioning as a regional utility?

8 A. Well, I guess you have to define "regional utility".
9 They're providing service outside their boundaries.
10 Whether those areas are directly contiguous to the
11 municipal boundaries of the city, I don't know.

12 Q. There's -- We can do the math. They're serving five in
13 Durham, five in Dover, that's ten. They have got a
14 couple of private residences and a mobile home
15 association in Portsmouth. So, let's say, let's just
16 give them credit and say that's 100. So, they're
17 serving 100, and let's just, for purposes of this
18 question, assume they're serving approximately 110
19 customers on a retail level outside of their bounds.
20 Would you consider that a regional operation?

21 MR. UPTON: I object. She's
22 mischaracterized what that says completely. Talking about
23 485 customers in Greenland, --

24 MS. KNOWLTON: I'm sorry. I'll --

[Witness: Naylor]

1 MR. UPTON: -- the Town of Newington. I
2 mean, she's said nothing about those.

3 BY MS. KNOWLTON:

4 Q. Excuse me. I'll add in the 485. So, let's add in the
5 485. So, that's 585, plus 10, 595. Let's say -- Let's
6 say 600, 700 customers out-of-town. Do you consider
7 that a regional operation?

8 MR. UPTON: I object again. She still
9 has not included Newington or New Castle, or any of the
10 other towns that are listed in there.

11 MS. KNOWLTON: And, my understanding is,
12 is that the service to New Castle is not, for purposes of
13 this question, let's assume it's not retail water service.
14 That's wholesale water service from Portsmouth to the Town
15 of New Castle.

16 MR. UPTON: That's not what that --
17 that's not what's said in the exhibit.

18 MS. KNOWLTON: The exhibit says --

19 CHAIRMAN GETZ: Well, let's hold on for
20 a second.

21 (Chairman and Commissioners conferring.)

22 CHAIRMAN GETZ: Yes, I take the point
23 from Mr. Upton, Ms. Knowlton, that it's -- at least I can
24 can't derive from this answer, of what the number of

[Witness: Naylor]

1 customers they serve is. I mean, if you have that number
2 or I'm not sure how you're going to address this to the
3 witness without -- to have him make some conclusion
4 without the information existing in this exhibit. Is
5 there a way for you to rephrase your question?

6 MS. KNOWLTON: I can move on. I don't
7 have an exact number. So, I can move on, if he can't
8 answer the question based on this.

9 MR. UPTON: Can we have this marked as
10 an exhibit?

11 MS. KNOWLTON: I have no objection to
12 marking this.

13 CHAIRMAN GETZ: And, this would be,
14 let's see, where are we?

15 MS. KNOWLTON: You can put your number
16 on it.

17 MR. UPTON: Okay.

18 CHAIRMAN GETZ: Whoever can get ahold of
19 their most recent number most quickly can have the
20 exhibit.

21 MR. CAMERINO: We don't know how many
22 they have added I think.

23 MS. KNOWLTON: Can we, on the break, I
24 just need to make a photocopy of this, and then I'll mark

[Witness: Naylor]

1 the photocopy version.

2 CHAIRMAN GETZ: Yes. We'll handle that
3 over the next recess.

4 MS. KNOWLTON: Okay. Thanks. What's
5 the number?

6 MR. UPTON: Oh, I don't know. What's on
7 there?

8 MS. KNOWLTON: No, there's no number on
9 here.

10 MR. UPTON: Oh.

11 CHAIRMAN GETZ: Let's take care of it
12 over the break.

13 BY MS. KNOWLTON:

14 Q. Mr. Naylor, are you aware that Pennichuck Water Works
15 serves approximately 3,000 customers outside of the
16 City of Nashua?

17 A. Yes.

18 Q. Are you aware of any municipal water utility in New
19 Hampshire that serves more than 3,000 customers outside
20 its municipal limits?

21 A. No, I don't know how many customers. I guess it would
22 be Manchester Water Works that would probably serve the
23 most number of customers outside its limits. I don't
24 know that for certain. But I don't think it's in that

[Witness: Naylor]

1 range of magnitude.

2 Q. The DES/PUC report that we were talking about
3 previously, which has been marked as Exhibit 3002A,
4 states that there are "13 major water supply systems"
5 in the Seacoast, yet there are "only three
6 interconnections or backups for emergency purposes,
7 despite the proximity of the systems." Does that
8 statement in a report tell you anything about the
9 propensity of municipal water utilities to work in a
10 cooperative fashion?

11 A. Well, I think I -- my testimony talks about some of
12 these issues to some extent. It really comes down to
13 the fact that selectmen and mayors and city councillors
14 aren't elected to worry about people in other towns.
15 They're elected to worry about their own town and the
16 people in their own town.

17 In addition to that, as we all know,
18 living in New Hampshire, there has always been for
19 years a competitive situation between municipalities
20 for non-residential development to enhance the tax
21 base. That has been one of the reasons that I've seen
22 that a lot of towns do not want to share water or other
23 services across municipal boundaries for -- based on
24 the concern that that town will get some new business

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[Witness: Naylor]

1 or expanding business that they would like to get in
2 their town. So, there are a number of reasons, and
3 understandable reasons. I wasn't suggesting in my
4 testimony there's anything nefarious about it. But
5 it's just the nature of how municipalities work and how
6 their leadership is oriented.

7 Q. And, isn't it right that, in this case, we've, in fact,
8 heard testimony from the Town of Merrimack that that is
9 one of their very concerns?

10 A. Yes. And, I believe I mentioned that in my testimony
11 as well.

12 Q. Let's talk about Nashua's plan that it's put forward to
13 the Commission. And, let's assume for the moment that
14 Veolia hires the majority of PWW employees, and that
15 none of the critical PWW employees decide to seek other
16 employment before the assets are taken. Do you have
17 any idea who would be left to operate Pittsfield
18 Aqueduct Company, Pennichuck East Utility, and to serve
19 the customers of Pennichuck Water Service Corporation?

20 A. I have no idea.

21 Q. Do you have any concerns about that?

22 A. I have considerable concerns about the impact on the
23 two regulated utilities that are left behind. That's
24 clear in my testimony. I'm concerned about the rate

[Witness: Naylor]

1 impacts on those utilities, and other aspects of
2 providing service to those customers.

3 Q. Is it your understanding that not all of the costs
4 under the Veolia and Beck contracts are known at this
5 time?

6 MR. UPTON: I object. This is just
7 direct testimony, that she's just -- that he has said that
8 in his direct testimony. That was a direct question of
9 him in his direct testimony, and that's what he responded
10 to.

11 MS. KNOWLTON: I'm just asking the
12 question for foundation purposes.

13 MR. UPTON: I withdraw --

14 MS. KNOWLTON: I can just move to my
15 next question.

16 MR. UPTON: I withdraw the objection, if
17 that's the case.

18 MS. KNOWLTON: Of course, you might
19 object to my next question, but if I can move onto it.

20 CHAIRMAN GETZ: Let's see.

21 MS. KNOWLTON: I will.

22 BY MS. KNOWLTON:

23 Q. Does the lack of certainty about Nashua's true
24 operating costs make it difficult to assess whether

[Witness: Naylor]

1 there will be any rate savings associated with the
2 City's proposed ownership of the utility?

3 MR. UPTON: That's what his testimony
4 was.

5 MS. KNOWLTON: And, we've had additional
6 testimony since the merits hearing has occurred that has
7 addressed that issue of the costs associated with the
8 operation of the assets. And, I'd like to know whether
9 that's still his opinion based on what he's heard in the
10 hearing room.

11 CHAIRMAN GETZ: I'll allow that.

12 MR. UPTON: That's fine. I withdraw the
13 objection to that extent.

14 CHAIRMAN GETZ: Do you remember where we
15 are?

16 THE WITNESS: No.

17 MS. KNOWLTON: Do you know the question?

18 THE WITNESS: I've lost it again.

19 BY MS. KNOWLTON:

20 Q. Okay. So, the question is, based on what you've heard
21 in the hearing room during the merits hearing in this
22 case about Nashua's proposed operating costs, is it
23 still your opinion that there is a lack of certainty
24 about what those costs will be that will make it

[Witness: Naylor]

1 difficult to assess whether there will be any rate
2 savings if the City owns and operates the utility?

3 A. I think it's clear there's a lack of certainty. My
4 testimony, at the time it was filed, indicates my
5 opinion that, you know, based on certain assumptions
6 that I pointed out, that I think the City could
7 probably demonstrate a slightly lower cost of service.
8 Whether that translates into lower rates now, I don't
9 know. The City hasn't indicated that they're planning
10 to lower rates immediately. But, yes. Clearly. And,
11 the setting of value is the other big factor for what
12 rates could be.

13 Q. If the Commission were to approve the taking of the
14 assets, what control would the Commission have over who
15 Nashua contracts with to operate the utility?

16 A. I don't believe the Commission will have any say over
17 it.

18 Q. So, if the City later decided they wanted to operate
19 the water utility itself, instead of contracting out
20 that function, the PUC wouldn't have any jurisdiction
21 over that decision?

22 A. My understanding is that the only way regulation of
23 Nashua as a utility would occur would be if its rates
24 to the customers outside the City were higher than the

[Witness: Naylor]

1 rates inside the City.

2 Q. Now, in this case, there hasn't been any discovery, has
3 there, related to whether Nashua itself has those
4 internal capabilities, meaning the technical and
5 managerial capability, to run a water utility?

6 A. My understanding, from the case as filed and through
7 discovery, is that the City does not have any technical
8 Staff. Does not intend to hire any. That it will rely
9 totally on the two contractors for the operation of the
10 system and the oversight of the system. Its Public
11 Works Department will not be involved. That's what
12 they have told us.

13 Q. When Pennichuck Water Works makes capital improvements,
14 such as the upgrade to the water treatment plant, isn't
15 it limited to recover only those costs that are
16 prudently incurred?

17 A. That's correct.

18 Q. And, in your opinion, what does "prudence" mean?

19 A. Well, was the project or improvement necessary? You
20 know, what decisions were made or what considerations
21 were taken into account for that improvement? Was
22 there something else that could have been done? Were
23 the costs reasonable? Does it follow good utility
24 practice? Those types of things.

[Witness: Naylor]

- 1 Q. And, in the case of an investor-owned utility, if costs
2 are deemed imprudent, who pays for them?
- 3 A. It won't be the ratepayers.
- 4 Q. The shareholders?
- 5 A. Presumably, they will not get recovery, so it drops to
6 the bottom line as an unrecovered expense, and it
7 impacts shareholder equity on the Company's balance
8 sheet.
- 9 Q. So, in the case of a municipal utility, if there are
10 costs that are imprudent, is there a mechanism for
11 disallowing them?
- 12 A. Well, I'm not sure who there would be to determine the
13 costs were imprudent. But, assuming that those costs
14 were held to the same standard that a regulated
15 utility's costs would be, no. I mean, all costs would
16 be recovered through rates. They have to be. There's
17 no other way to recover them.
- 18 Q. We have heard some questioning and testimony by the
19 City of Nashua that it would like to submit itself to
20 jurisdiction of this Commission, at least perhaps as to
21 its out-of-town customers. Assume for the purpose of
22 this question that that's possible, and that is, in
23 fact, the case. If the Commission determined that
24 there were some capital investment that Nashua made in

[Witness: Naylor]

- 1 a system that was located outside its bounds, and that
2 investment was imprudent, wouldn't those costs still
3 have to be recovered from someone?
- 4 A. Presumably so, yes. I'm not sure I know where.
- 5 Q. But it couldn't be the out-of-town customers, because
6 the Commission wouldn't -- doesn't allow the recovery
7 of imprudent costs from ratepayers, right?
- 8 A. Right. And, that's -- I understand that's the
9 presumption of your question. And, yes, I would agree
10 with that.
- 11 Q. So, the only place left to go would be the in-town
12 customers for recovery of those costs, right?
- 13 A. Presumably, yes.
- 14 Q. And, wouldn't, in effect, that be a subsidy, in-town
15 customers subsidizing the cost of out-of-town service?
- 16 A. Could be.
- 17 Q. And, in the case of an investor-owned utility like
18 Pennichuck Water Works, if its electricity costs go up,
19 does it have an automatic pass-through of those costs
20 to its customers?
- 21 A. No, it doesn't.
- 22 Q. Same would be true for labor costs, right?
- 23 A. Well, any costs that a regulated utility incurs, it
24 doesn't get automatic rate adjustment for them. It has

[Witness: Naylor]

1 to seek new rates through a proceeding here at the
2 Commission, and justify them to the Commission and ask
3 for an adjustment of its rates to recover them. So,
4 there is -- I guess your question I thought went more
5 to the timing and how quickly they can get recovery, am
6 I understanding that?

7 Q. I think you answered the question, that you have to
8 come for a rate increase. You can't just pass the
9 costs directly through for investor-owned utilities?

10 A. Correct.

11 Q. And that, in the case of a municipal-owned utility,
12 like the City of Nashua, if it owns these water assets,
13 it would have the ability to pass through all of its
14 costs to its customers?

15 A. I believe that is the case.

16 Q. Is it your understanding that the Veolia contract costs
17 will go up automatically every year?

18 A. I recall that there is a -- I don't know if it's
19 referred to as an "escalator", but, yes, I recall that
20 being true.

21 Q. One of the conditions that we've heard about in this
22 hearing room that the City seeks to have imposed on
23 itself is that the Commission would have jurisdiction
24 over their Water Ordinance. Is that your

[Witness: Naylor]

1 understanding?

2 A. Yes, I think the -- I think it's intended to relate to
3 their service to customers outside Nashua. Yes. I
4 could be wrong on that, but I believe that's the case.

5 Q. Do you have any concerns about the Public Utilities
6 Commission dictating the terms of the City of Nashua's
7 Water Ordinance to the Nashua Board of Aldermen?

8 A. Well, again, I'm not an attorney, and I don't play one
9 at the PUC. But, having said that, I don't believe, in
10 my review of what's before this Commission, I don't
11 believe the City can opt into regulation. You look at
12 362:4, it's fairly clear that there are certain
13 conditions where a municipal utility is regulated.
14 And, I don't believe it's possible for the City to opt
15 into regulation. That's my opinion as a nonlawyer,
16 obviously.

17 Q. Are you aware that the City initially took the position
18 in this case that it would not incur any regulatory
19 expense, because it would not be regulated by the
20 Commission?

21 A. Yes. And, I think there's a data response attached to
22 my testimony that indicates that.

23 Q. And, you're aware that, in November of 2006, that Mr.
24 Sansoucy subsequently revised his estimate of the

[Witness: Naylor]

1 City's revenue requirement to include regulatory
2 expense?

3 A. I believe that's the case, subject to check. And, I
4 don't recall specifically that, but I believe that was
5 a topic of discussion back in the two days of hearings
6 in January, but I'm not certain.

7 Q. Does the fact that the City has changed its position on
8 such a critical issue as regulation by the Commission
9 concern you?

10 A. Yes, it concerns me for a couple of reasons.

11 Q. What are they?

12 A. Well, it's no secret to anyone in this room that this
13 is a contested case. The City is requesting to take
14 the assets of a public utility. The public utility
15 doesn't want to sell their assets. It seems to me that
16 fairness dictates that the City put a proposal on the
17 table that this Commission and all the parties to this
18 case can evaluate and explore and discover upon, and
19 file testimony rendering opinions. And, if the case
20 keeps changing, it seems to me it's fundamentally
21 unfair to the Company and the other parties in this
22 case.

23 Q. Well, do you think that the need for all of these
24 conditions simply demonstrates the extent to which the

[Witness: Naylor]

1 taking is not in the public interest?

2 A. I think that could be a fair interpretation of it.

3 Q. Well, is that your opinion?

4 A. Well, yes. And, I think it goes to -- well, I'll leave
5 it at that. Yes.

6 MS. KNOWLTON: I have no further
7 questions for this witness.

8 CHAIRMAN GETZ: Mr. Eckberg?

9 MR. ECKBERG: No questions for this
10 witness. Thank you.

11 CHAIRMAN GETZ: Ms. Pressley?

12 MS. PRESSLEY: No questions for this
13 witness. Thank you.

14 CHAIRMAN GETZ: Mr. Gustin?

15 MR. GUSTIN: Just a couple of questions.

16 Good afternoon, Mr. Naylor.

17 THE WITNESS: Good afternoon.

18 BY MR. GUSTIN:

19 Q. I would like to take you back, if I may, to the
20 question regarding the hypothetical for the Merrimack
21 Water District. And, if they were in trouble, would
22 they turn to the expertise of PWW? And, you thought
23 that that would be conceivable? That was earlier on.

24 A. Merrimack Village District?

[Witness: Naylor]

- 1 Q. Village District Water, I'm sorry.
- 2 A. Yes. I recall that the Merrimack Village District has
3 had a relationship with the Company, I believe, for an
4 emergency backup supply. So, they have had a
5 relationship, as I recall.
- 6 Q. And, would you believe it to be conceivable that, were
7 Nashua to acquire Pennichuck, and have the expertise of
8 Veolia, as well as Beck, that they -- that this would
9 also be a possible hypothetical situation that
10 Merrimack would turn to Nashua and its management
11 companies for support? Do you think that's
12 conceivable?
- 13 A. Well, I guess, if it's in their contract. I mean,
14 certainly, I would expect Veolia to expect to be paid
15 for its services, but it's certainly possible.
- 16 MR. GUSTIN: Thank you very much.
- 17 CHAIRMAN GETZ: Mr. Judge?
- 18 MR. JUDGE: No questions. Thank you.
- 19 CHAIRMAN GETZ: Mr. Upton.
- 20 BY MR. UPTON:
- 21 Q. Mr. Naylor.
- 22 A. Good afternoon.
- 23 Q. You've used the term "troubled systems" in your
24 testimony, your written testimony, and in your

[Witness: Naylor]

1 testimony today. And, you state that you're concerned
2 that this acquisition will result in the Pennichuck
3 companies no longer serving as an acquirer for those
4 troubled systems, correct?

5 A. Yes.

6 Q. Let's see if we can get some understanding on what
7 "troubled system" means. Do you agree that it means
8 that it's a system that is under capitalized, can't
9 meet its capital needs?

10 A. That can be one condition, yes.

11 Q. How about public health and safety being at risk, is
12 that a "troubled system"?

13 A. Certainly.

14 Q. The operator is in financial distress, can't meet its
15 expenses?

16 A. Yes. Related to your first point about capital, sure.

17 Q. Can you think of any other?

18 A. Well, unable to meet the Safe Drinking Water Act
19 standards.

20 Q. Wouldn't that be under capitalized?

21 A. Sure. Yes, I'm --

22 Q. Anything else?

23 A. I'm not clear how broad your categories are there.

24 Q. Sure. That's how you use the expression. You know,

[Witness: Naylor]

1 anything else that would fall under the category of a
2 "troubled system"?

3 A. Death of the owner.

4 Q. Okay. Anything else?

5 A. Probably covers most of it.

6 Q. I think I agree with you. The term "troubled system"
7 doesn't necessarily include a small community system,
8 does it?

9 A. I'm not sure I understand the premise of your question.

10 Q. Well, you talked about a number of small systems that
11 have a series of problems. Just because it's a small
12 community system, doesn't necessarily make it a
13 troubled system, does it?

14 A. I agree.

15 Q. And, Pennichuck has acquired a number of small systems
16 that are not troubled systems, hasn't it?

17 A. I believe that's true, yes.

18 Q. And, that was for the purpose of obtaining growth,
19 correct?

20 A. It's my understanding that this company has stated
21 itself that it's interested in growing its business.

22 Q. Okay. Now, with respect to those small systems, those
23 small community systems, DES adopted regulations in
24 1997 to deal with those smaller systems that were about

[Witness: Naylor]

- 1 to become troubled, didn't it?
- 2 A. You'll have to show me what you're referring to.
- 3 Q. Sure.
- 4 A. I'm not --
- 5 Q. Let me show you --
- 6 A. I'm not denying it. I just don't know what you're
- 7 referring to.
- 8 Q. Let me show you part -- I'm never sure how you
- 9 pronounce it, but Env-Ws 363. Are you acquainted with
- 10 that regulation?
- 11 A. Oh, yes. Yes, I recall this.
- 12 Q. Okay. And, you'll agree, by looking at that, that the
- 13 purpose of those rules is to make sure that community
- 14 water systems have sufficient technical, managerial,
- 15 and financial capability to meet the requirements of
- 16 the Safe Drinking Water Act and to provide effective
- 17 and reliable service to customers, correct?
- 18 A. Yes.
- 19 Q. And, one of the ways it does that is that it requires
- 20 that the system submit a business plan, correct?
- 21 A. That's correct.
- 22 Q. And, the business plan includes "a description of
- 23 current managerial and financial matters sufficient to
- 24 provide a clear understanding of the present

[Witness: Naylor]

- 1 operational condition of the water system", right?
- 2 A. I'm sorry. Where are you reading that?
- 3 Q. All right. I'm referring in "Env-Ws 363.04, Business
4 Plan", Number (3).
- 5 A. Yes.
- 6 Q. And, it also includes "an assessment of the system's
7 future needs including Safe Drinking Water Act
8 compliance, facilities or equipment that need
9 replacement."
- 10 A. Yes.
- 11 Q. And, it also includes "an assessment by the system
12 concerning system expansion or reduction where
13 appropriate".
- 14 A. Yes.
- 15 Q. And, that's been in place since 1997?
- 16 A. I believe that's correct.
- 17 Q. Now, --
- 18 A. Now. do --
- 19 Q. You finished?
- 20 A. Does this apply to new system applications or existing
21 systems? I believe that rules promulgated by DES, and
22 I'm not sure if these are the rules, were intended to
23 apply to new system applications.
- 24 Q. And, does this talk about "existing systems", "for

[Witness: Naylor]

1 existing public water systems"?

2 MS. THUNBERG: I'd like to offer some
3 sort of an objection, because I'm not sure, in my
4 note-taking, if I heard any foundation established that
5 Mr. Naylor has a working knowledge of the rules that he's
6 being asked to agree with. And, I --

7 CHAIRMAN GETZ: I'm taking this as this
8 goes to legitimate inquiry into his opinion on the value
9 of PWW taking on troubled systems, and what else might be
10 out there. I think it's a fair line of inquiry, but let's
11 see where it goes.

12 MS. THUNBERG: Thank you.

13 BY MR. UPTON:

14 Q. The title of this, at least these regulations, is
15 "Capacity Assurance for Existing Public Water Systems",
16 correct?

17 A. Yes, I see that.

18 Q. And, you understand that there are also similar type
19 regulations for new systems?

20 A. I thought there were. I thought there were.

21 Q. Now, would you put up 5014, 49. Now, in this Data
22 Request 6-45, I asked you to "identify and list all
23 "troubled systems" acquired by PWW, PEU, or PAC",
24 correct?

[Witness: Naylor]

- 1 A. Yes.
- 2 Q. And, you provided a list of those systems, correct?
- 3 A. Yes, I did.
- 4 Q. And, these are the kinds of troubled systems that you
5 worry about in the future?
- 6 A. That I "worry about in the future"?
- 7 Q. Not being acquired, if Pennichuck is -- if Pennichuck
8 Water Works is acquired by Nashua?
- 9 A. Sure. These and others, certainly. There's a very
10 significant trend in, not only in New Hampshire, but
11 many other states, that regulatory commissions, not
12 only agencies like public utilities commissions, but
13 Environmental Services agencies and so forth, that have
14 policies, that they want -- feel that there's a public
15 need for small systems to be acquired by larger ones.
16 It makes sense, considering the substantial increase in
17 testing requirements and other requirements over the
18 last 10 to 20 years. So, --
- 19 Q. All right.
- 20 A. That's an important function that, in my opinion, it's
21 an important function that Pennichuck and its
22 affiliates have performed.
- 23 Q. And, this is the list of those troubled systems that
24 the Pennichuck companies have acquired, correct?

[Witness: Naylor]

1 A. Yes. Yes. I believe that the list is complete.

2 Q. And, I know you were also asked about this earlier, and
3 I apologize if I'm doubling up on you. But I also
4 asked you to "identify and list all troubled systems
5 acquired by any other investor-owned utility in New
6 Hampshire." And, you gave me this list, is that
7 correct?

8 A. Yes.

9 Q. Now, Pennichuck Water Works and the other Pennichuck
10 companies don't buy every troubled system that they
11 look at, do they?

12 A. It's my understanding they don't.

13 Q. And, in fact, according to 6-46 that's in front of you,
14 since 2000, it appears actually that Lakes Region has
15 purchased more troubled systems than the Pennichuck
16 companies. And, I'd be happy to bring up 6-45, if you
17 want to look at it.

18 A. Well, I think that's a little bit misleading, when you
19 look at the number of customers in these systems and
20 the size of the systems. These Lakes Region systems
21 are all very small. I think the largest system in
22 those Lakes Region acquisitions would be LOV Water, and
23 I think that's 215 customers, something like that. So,
24 --

[Witness: Naylor]

- 1 Q. But doesn't -- I'm sorry, I didn't mean to interrupt
2 you.
- 3 A. And, the other ones here listed below that, with the
4 exception of one acquisition in 1990 by Hampstead Area
5 Water Company, appears to me all those other systems
6 are now owned by the Pennichuck companies.
- 7 Q. Doesn't this exhibit show that, at the very least,
8 Lakes Region Water Company is out there buying small
9 troubled community systems?
- 10 A. They have been up until recently.
- 11 Q. Okay. Now, with respect to the Pennichuck companies,
12 you'd agree that they looked at, but didn't buy,
13 Fryeburg Water Company in Conway, and Gunstock Glen,
14 even though they had a presence in those areas?
- 15 A. I don't believe they looked at Fryeburg Water Company.
16 I believe they considered the acquisition of a small
17 portion of the distribution system located on the --
- 18 Q. In Conway.
- 19 A. -- New Hampshire side of the boundary.
- 20 Q. Right. That's what I meant.
- 21 A. Seventy-five customers, something along that line.
- 22 Q. But they didn't acquire it, did they?
- 23 A. I don't believe the owner wanted to sell it.
- 24 Q. They didn't acquire Gunstock Glen?

[Witness: Naylor]

- 1 A. I think you asked Ms. Hartley about that. I think she
2 indicated there were some tax issues related to the
3 assets there.
- 4 Q. Well, you've heard the testimony, you heard Ms. Hartley
5 say that "it has to fit" -- "an acquisition has to fit
6 the Company's financial model", correct?
- 7 A. Yes. And, I think that model has proven to work very
8 well. Because, since ten years ago, the acquisition of
9 the Pennichuck East Systems, the Company has had a
10 greater range of rate -- rate levels that they could
11 fit a system in as it made sense to fit it in.
- 12 Q. And, you heard her testimony that their acquisitions
13 are done "on a case-by-case basis", right?
- 14 A. Yes.
- 15 Q. Now, isn't that just what Nashua has said it's going to
16 do?
- 17 A. I don't believe for a minute that Nashua will acquire
18 unconnected systems in other communities.
- 19 Q. Do you have your testimony?
- 20 A. Yes, I do.
- 21 Q. I'd ask you to look at Page 56. That's Exhibit 5001, I
22 believe. Now, your testimony indicates, beginning at
23 Page [Line?] 11, that "Nashua, in response to some
24 Staff data requests, said that the Regional Water

[Witness: Naylor]

1 District", this is when the Regional Water District was
2 still in the case, "would be willing to entertain the
3 acquisition of troubled systems if the Town wanted to
4 do so and if the system was in a geographically logical
5 location, and that Nashua would be willing to acquire
6 troubled systems in Towns in which it already had a
7 presence and for which there was no objection by the
8 Town." You went on to say "Nashua further stated that
9 acquisitions of troubled systems would be considered on
10 a case-by-case basis." And, that "these responses
11 indicate that Nashua's role, at best, would be much
12 more limited than the present role", right, "that
13 approximate PWW plays", right?

14 A. That's what I said, yes.

15 Q. Okay. Now, would you agree that, if Nashua's value of
16 85 million was determined by the Commission to be the
17 fair value of the assets, and having in mind Mr.
18 Guastella's testimony that "Nashua could pay
19 248 million and not raise rates", Nashua would
20 certainly have the economic ability to make -- to buy
21 these small systems that become troubled, wouldn't it?

22 A. If you tie -- If you tie in this line of questioning to
23 the answers that are provided, you're extremely --
24 you're limiting what Nashua -- what would be candidates

[Witness: Naylor]

- 1 for acquisition.
- 2 Q. So, is the answer "yes" or "no"?
- 3 A. No.
- 4 Q. Would Nashua have the economic ability, if its value
- 5 was determined to be the fair value?
- 6 A. I don't believe for a minute that Nashua will acquire
- 7 unconnected systems in other communities.
- 8 Q. If Nashua's value was adopted by the Commission, that's
- 9 a lot of savings, isn't it?
- 10 A. I didn't testify on valuation.
- 11 Q. Now, let's go back to 1132. You were asked about this
- 12 list of the regulated water companies. It comes from
- 13 the PUC website. Can you walk me through this list and
- 14 tell me which of them you think are currently
- 15 potentially troubled?
- 16 A. It's guesswork.
- 17 Q. Is Aquarion potentially troubled?
- 18 A. No, I don't believe so.
- 19 Q. Atkinson Woods?
- 20 A. Acquisition Woods is no longer regulated.
- 21 Q. Bow Lake?
- 22 A. Possibly.
- 23 Q. Daniels Lake?
- 24 A. No, that's been acquired.

[Witness: Naylor]

1 Q. That was troubled?

2 A. Oh, yeah. It sure was.

3 Q. I think we all agree. Dockham Shores?

4 A. I'm not familiar with Dockham Shores to any great
5 degree. I don't believe -- I don't believe they have
6 had any kind of proceeding here for awhile.

7 Q. Forest Edge?

8 A. Forest Edge is a small system that is immediately
9 adjacent to the Birch Hill system in Conway that is
10 owned by Pittsfield Aqueduct.

11 Q. Potentially troubled?

12 A. I don't think so. Possibly.

13 Q. All right. Fryeburg Water?

14 A. Well, the Fryeburg portion in New Hampshire, just
15 within the last year, has had its service substantially
16 upgraded through the construction of a transmission
17 main from Fryeburg over to New Hampshire. And, the
18 customers are now receiving good quality water. So, my
19 --

20 CHAIRMAN GETZ: Mr. Upton is it your
21 intent to go through the entire list?

22 MR. UPTON: It's my intent. I thought
23 he would be able to go right through it very fast for me,
24 but he's not wanting to do that. So, I'm having to do it.

{DW 04-048} [Day XII] (09-26-07)

[Witness: Naylor]

1 I mean, I'm happy to have him go through and just tell me
2 which ones he thinks are potentially troubled, without me
3 asking him "is this troubled?" That's what I had hoped he
4 would do.

5 CHAIRMAN GETZ: Is there a way to
6 address it in a more qualitative way?

7 MR. UPTON: Well, I want to do that,
8 once I know what the systems are that he thinks are
9 troubled.

10 BY THE WITNESS:

11 A. It's strictly hypothetical. It's based on some
12 knowledge I might have about the particular situations
13 of those companies, and I don't know --

14 BY MR. UPTON:

15 Q. Well, you regulate these systems, don't you?

16 A. Yes, of course.

17 Q. So, don't you know whether it's likely to be troubled
18 or not? They file reports with you, they file all
19 kinds of things with you. Don't you have some sense of
20 whether or not a system is troubled?

21 A. No, of course not.

22 Q. All right.

23 A. You might have an owner that has millions of dollars in
24 the bank and doesn't spend a penny on the water.

[Witness: Naylor]

- 1 Q. Well, let's do this.
- 2 A. I mean, it's just speculation.
- 3 Q. Let's go through and identify the ones that are clearly
4 not troubled. Do think Hampstead Area is a troubled
5 system?
- 6 A. No, I don't.
- 7 Q. How about Lakes Region?
- 8 A. I have concerns about Lakes Region.
- 9 Q. All right. Pennichuck Water Works?
- 10 A. No.
- 11 Q. Pennichuck East?
- 12 A. No.
- 13 Q. Pittsfield Aqueduct?
- 14 A. No.
- 15 Q. So, if we took those companies, and Aquarion you said
16 earlier, if we took Aquarion, Hampstead, Pennichuck
17 Water Works, Pennichuck East, Pittsfield Aqueduct out
18 of the equation, you'd agree that the number of
19 customers in the remaining systems is pretty small by
20 comparison, isn't it?
- 21 A. Yes. If you took out the ones you mentioned, yes.
- 22 Q. Am I right that contract operations is not something
23 you have to deal with in a regulated environment?
- 24 A. Generally not.

[Witness: Naylor]

- 1 Q. Do any of the regulated water companies on Exhibit 1132
2 use contract operators?
- 3 A. Not that I'm aware of.
- 4 Q. And, is this the first time in this case that you've
5 had to analyze a contract ops contract?
- 6 A. Probably, yes.
- 7 Q. Now, did you ever contact the City of Indianapolis to
8 see how its contract -- operations contract was working
9 and what experience it had with Veolia?
- 10 A. No, I didn't.
- 11 Q. Didn't Nashua and Veolia offer to arrange such a
12 meeting?
- 13 A. My recollection was that you offered to have Staff go
14 to Indianapolis and see the system there.
- 15 Q. And, did you contact any of the other communities that
16 were identified in the Veolia filings where they had a
17 contract?
- 18 A. I didn't feel I needed to, because I haven't criticized
19 Veolia's capabilities.
- 20 Q. But you have expressed concern whether the savings will
21 be available to Nashua under the Veolia contract,
22 haven't you?
- 23 A. My testimony is that I think, when it all shakes out,
24 based on Nashua's estimate of the value, the City will

[Witness: Naylor]

1 be able to show a slightly reduced cost of service.
2 That's from a bottoms-up analysis, eliminating federal
3 income taxes, some other things.

4 CHAIRMAN GETZ: Mr. Upton, it appears
5 we've moved on from the troubled water system line of
6 inquiry?

7 MR. UPTON: Yes, we moved on from the
8 troubled systems. And, I'm not going to finish before
9 1:00, if that was the question?

10 CHAIRMAN GETZ: Well, I was wondering
11 how much further we should go on this. Is this a good
12 break --

13 MR. UPTON: Sure, this is a good break
14 place.

15 CHAIRMAN GETZ: Okay. Let's take the
16 lunch recess. It's 12:40 now, let's resume at 1:45.

17 (Lunch recess taken at 12:40 p.m. and
18 the hearing reconvened at 1:55 p.m.)

19 (During the lunch recess, the response
20 to Request No. 5-1 was marked as
21 Exhibit 1144 for identification.)

22 CHAIRMAN GETZ: Okay. Good afternoon.
23 We're back on the record in DW 04-048, and continuing with
24 the examination of Mr. Naylor. Mr. Upton.

{DW 04-048} [Day XII] (09-26-07)

[Witness: Naylor]

1 MR. UPTON: Thank you, Mr. Chairman.

2 BY MR. UPTON:

3 Q. Mr. Naylor, when we broke, we were talking about the
4 fact that you had not contacted Indianapolis. And, I
5 want to show you Exhibit 1016, Page 61. Would you
6 highlight the first three paragraphs. This was a part
7 of Mayor Streeter and Mr. McCarthy's testimony. Do you
8 recall seeing this?

9 A. Yes.

10 Q. And, this article indicates that, in the second
11 paragraph, that "According to the Indianapolis
12 Department of Waterworks, its operating costs are lower
13 now than when it bought the investor-owned system from
14 NiSource and contracted out operations to Veolia four
15 years ago." Right?

16 A. That's what it says, yes.

17 Q. And, that's not something you would have wanted to talk
18 to the Indianapolis people about, their experience?

19 A. I didn't think that travelling to Indianapolis was
20 necessary for my review of the issues in this case.

21 Q. Or calling them?

22 A. I didn't criticize Veolia in my testimony, and I didn't
23 suggest that the City was going to have higher rates.

24 Q. Have you ever had -- have you ever had to -- excuse me.

[Witness: Naylor]

- 1 Have you ever had to analyze an oversight contract like
2 Beck's before this case?
- 3 A. No, I haven't.
- 4 Q. That just doesn't happen much in the regulated
5 environment, does it?
- 6 A. That's correct.
- 7 Q. Do any of the -- none of the regulated systems that you
8 regulate, that we saw in 1132, use an oversight
9 contractor, do they?
- 10 A. No.
- 11 Q. Exhibit 1006, Page 11. Mr. Naylor, this is a page from
12 the CV of Paul Doran, who will be the oversight
13 contractor for the City. I direct your attention to
14 the "Taunton, Massachusetts". And, that indicates that
15 in Taunton "Mr. Doran provided oversight services"?
- 16 A. Yes, I see that.
- 17 Q. Did you ever contact Taunton, Mass. to find out what
18 its experience was with an oversight contractor and
19 with Mr. Doran specifically?
- 20 A. No, I did not. I didn't think it was necessary.
- 21 Q. Okay.
- 22 A. I didn't criticize Beck's capabilities in my testimony.
- 23 Q. And, then, the same question with Plymouth?
- 24 A. Same answer.

[Witness: Naylor]

- 1 Q. Those are both relatively close, aren't they?
- 2 A. Yes.
- 3 Q. Now, in your testimony regarding harm to PEU and PAC,
4 you said that you "didn't have an opportunity to do
5 discovery" -- I'm sorry, I'm having trouble getting the
6 do's -- "to do discovery on Mr. Guastella's analysis",
7 so you were "unable to express an opinion on his
8 figures", do you recall that?
- 9 A. Yes, I do.
- 10 Q. Okay. Did you do any independent financial analyses on
11 your own?
- 12 A. After my testimony?
- 13 Q. Well, we'll start prior to your testimony.
- 14 A. As I indicated in my testimony, there were some
15 discovery requests that had not been completed. As it
16 turned out, the timing of Staff's testimony wasn't
17 optimal for evaluating everything that was coming in.
18 As you recall, there was testimony, I think, in late
19 February, with respect to the Company's reply case on
20 some of the January 12th testimony. So, there was a
21 pretty limited window of time, unfortunately, for some
22 of that analysis.
- 23 Q. Before you express the opinion, you did express the
24 opinion that, notwithstanding your inability to do

[Witness: Naylor]

1 discovery, that you felt the impact would be negative
2 on PEU and PAC?

3 A. I'm sorry, would you point me to where in my testimony
4 that I talk about that, if you have it?

5 Q. Sure. Would you look at Page 46. Do you have that?

6 A. Yes, I do.

7 Q. And, at the top of the page, you say "Without an
8 opportunity for discovery on these figures, Staff is
9 unable to render an opinion on them. Nonetheless, I
10 believe it is quite clear that there would be a
11 negative" -- "there would be negative financial impacts
12 to both PEU and PAC if the assets of PWW are taken."
13 So, before you expressed the opinion that the "impact
14 would be negative", did you consider whether PEU or PAC
15 could hire a contract operator, like Veolia or
16 American, and reduce or eliminate the rate impact, that
17 a contract operator could provide the economies of
18 scale that these companies were losing from PWW?

19 A. Well, I think my position on this is pretty clear,
20 going back a couple of pages in my testimony. The PEU
21 and PAC systems, as well as the operations of the Water
22 Service Company, utilize the common assets and
23 personnel of Pennichuck Water Works. Following a
24 taking, those common assets will be gone. Now, it's

[Witness: Naylor]

1 certainly true that in the revenue requirement of both

2 --

3 Q. If I could interrupt. The question I asked was "did
4 you consider a contract operator?" If you want to
5 answer that, and then complete your answer with what
6 you're saying now, that's fine with me. But I'd like a
7 "yes" or a "no" answer to my question first.

8 A. The answer is "no".

9 Q. All right.

10 A. Both companies, as well as the Water Service Company,
11 rely on the common assets, personnel of Pennichuck
12 Water Works. It is clear, I think, from the facts in
13 this case, the facts of how these companies are
14 integrated, that there will be financial impacts on PEU
15 and PAC. Whether they hire someone to do the work,
16 whether they replace the common assets, I don't think
17 there's any question there's going to be a rate impact
18 to those systems. They're going to lose the
19 efficiencies, the economies of scale, that they enjoy
20 now, as well as some other things, not the least of
21 which is access to capital, reasonably priced capital.

22 Q. Isn't the creation of a company, with a structure like
23 the Pennichuck companies have, going to be an obstacle
24 to your ever concluding that an acquisition of any

[Witness: Naylor]

1 company would be in the public interest?

2 A. You have to look at each case individually.

3 Q. If there's a company -- If there's a company that
4 creates multiple operating systems, with one of the
5 systems providing all of the employees and all of the
6 assets to operate the other two, isn't there always
7 going to be so much harm to the other two that it will
8 never be, in your opinion, in the public interest to
9 acquire the assets of the first one?

10 A. It's entirely possible. You have to look at the
11 individual facts. But the impacts before us in this
12 case are quite clear. And, in fact, this Commission
13 has put in place protections for how these companies
14 are operated and how the assets are shared and how the
15 costs are allocated appropriately.

16 Q. If -- are you done?

17 A. Yes. I was just going to say that that's the case
18 before us. I understand you're positing a
19 hypothetical, but --

20 Q. If PEU or PAC came in for a 60 plus percent rate
21 increase, you would want to look at whether there were
22 more economical ways for that company to operate,
23 wouldn't you?

24 A. Absolutely.

[Witness: Naylor]

- 1 Q. And, wouldn't you also consider treating them as
2 "troubled systems" if they came in with a 60 plus
3 percent rate increase and look for a buyer?
- 4 A. I can't rule that in or rule it out. I don't know. We
5 have to see what's presented to us.
- 6 Q. And, at least in the case of the Town of Pit -- I mean,
7 in the case of PAC, the Town of Pittsfield has
8 expressed an interest in buying the assets in
9 Pittsfield, hasn't it?
- 10 A. That's my understanding, from some time ago, yes.
- 11 Q. And, they took an RSA 38 vote?
- 12 A. I believe they did, yes.
- 13 Q. Do you think Aquarion might be interested in buying
14 some of the assets of PEU?
- 15 A. I don't know.
- 16 Q. Operates in the same general region, southeastern part
17 of the state?
- 18 A. Your premise of your question is is that it's up to the
19 companies remaining and the shareholders of the
20 remaining company to take care of -- take care of what
21 harms result from this potential taking. I'm not sure
22 that's the case.
- 23 Q. But, if they came before this Commission looking for a
24 60 plus percent rate increase, those are alternatives

[Witness: Naylor]

1 that you would start to look at, wouldn't you, before
2 you imposed a 60 plus or allowed a 60 plus percent rate
3 increase to get imposed on those ratepayers?

4 A. Possibly. I mean, we have utilities, water utilities
5 in the state that have rates substantially higher than
6 the rates of any of the three of these companies. It's
7 because of their unique circumstances, their cost of
8 service. We have one utility that has, for an average
9 residential home, a rate of, I don't know, it's over
10 \$800.

11 Q. So, a 60 plus percent rate increase you're saying might
12 not be unreasonable?

13 A. Might not be unreasonable.

14 Q. If you did an analysis of the harm to PEU and PAC and
15 found that the impact could be mitigated or eliminated
16 by using a contract operator or the sale of the system
17 to another utility or even a municipality, would it
18 have any impact on your opinion that this is not in the
19 public interest?

20 A. I'm sorry. I don't mean to be dense, it's kind of a
21 long question.

22 Q. Well, a long question.

23 A. I didn't quite catch the premise of the first part of
24 your question.

[Witness: Naylor]

- 1 Q. Yes. You want me to try to do it more slowly?
- 2 A. That would be good.
- 3 Q. All right. If you did an analysis of the harm to PEU
4 and PAC, and you found that the impact could either be
5 mitigated or eliminated by a sale or by using a
6 contract operator that brought economies of scale to
7 the operation, that resulted in no impact to the rates,
8 would that have any impact on your opinion that this
9 acquisition is not in the public interest?
- 10 A. It's possible. It's possible.
- 11 Q. Okay.
- 12 A. I don't think, in the circumstances of this particular
13 case, it's appropriate for the Commission to direct the
14 remaining entities to operate their businesses in a
15 certain way. I mean, the premise of utility regulation
16 is that there are standards and there are rules and
17 guidelines and certain expectations as to how utilities
18 will provide service. But there are significant
19 limitations to what a regulatory commission can do.
20 It's also not -- It's not the role of a regulatory
21 commission to prevent companies from failing, if they
22 make imprudent decisions. So, I think we might be
23 overstating the power of the Commission, with respect
24 to how utilities are operated.

{DW 04-048} [Day XII] (09-26-07)

[Witness: Naylor]

1 Q. Let me ask you this. I was going to wait and do this
2 later, but, you know, this may be a better place to do
3 it. Since you said that "Staff has not conducted any
4 discovery on Mr. Guastella's analysis of the harm", if
5 Nashua agreed to a condition that it mitigate any harm
6 to PEU and PAC by creating a mitigation fund, the
7 amount of which would be determined by a docket
8 proceeding before the Commission, would that give you
9 the opportunity to make the necessary analysis of the
10 harm, to quantify it, and to look at the likely
11 mitigation areas?

12 A. Is this a good time for me to give my speech on
13 conditions?

14 Q. I think you've already done that, quite honestly.

15 A. Earlier in the proceeding, I don't recall if it was
16 yourself or Mr. Richardson or someone else, put on the
17 screen one of the statutes, one of the sections from
18 Chapter 38, and it indicated "the Commission may impose
19 standards" or "may impose conditions". And, I read
20 that and understood it, but I also wanted to understand
21 it more fully in the context of the entire section, the
22 entire Chapter 38. And, it's certainly true that
23 Chapter 38 is not just for this type of action. It
24 doesn't exist just for an eminent domain proceeding.

[Witness: Naylor]

1 And, that's clear in 38:2. My opinion is that, for the
2 Commission to establish conditions, as a part of an
3 approval of Nashua's petition, is inappropriate.
4 Because, if the City does not comply with those
5 conditions a year from now, two years from now, five
6 years from now, the shareholders can never be put back
7 into the position they are now. A decision in favor of
8 the City in this case is irreversible. And, therefore,
9 that goes to my point about the City's case needs to be
10 put before the Commission and evaluated as it is filed.

11 Q. You don't think that, if the Commission imposed
12 conditions on Nashua, and let me accept your assumption
13 that Nashua will violate those conditions, which I
14 don't think is a proper assumption, but, for the
15 purpose of the question, assume Nashua violated those
16 conditions. You don't think that this Commission could
17 instruct its Staff to march down and file an
18 enforcement action in the Superior Court to compel
19 Nashua to meet the terms of those conditions?

20 A. I don't think that's the point at all. What the
21 Commission is deciding in this case is to permit the
22 City to purchase the assets of this company, and the
23 Company's not willing to sell, it doesn't want to sell.
24 It's a whole different situation. So, the shareholders

[Witness: Naylor]

1 can never be made whole again, is what I'm saying.

2 Q. Under RSA 38, does the Commission have to make any
3 public interest determination if there's an agreed upon
4 sale?

5 A. A consensual transaction?

6 Q. Yes.

7 A. I believe that is the case. And, I believe that was
8 the case in Hudson that Mr. Sansoucy spoke about
9 earlier in the proceeding.

10 Q. In fact, RSA 38:11 says "The commission need not make
11 any public interest determinations when the
12 municipality and utility agree upon the sale of utility
13 plant and property." Would you accept that?

14 A. Yes, I read that. Yes.

15 Q. But, in the same paragraph, "When making a
16 determination as to whether the purchase or taking of
17 utility plant or property is in the public interest
18 under this chapter, the Commission may set conditions
19 and issue orders to satisfy the public interest." Do
20 you really think the Commission doesn't have the
21 authority to set conditions on Nashua's purchase,
22 enforceable conditions?

23 A. Of course, they have. It's clear in that writing.
24 That doesn't mean I think they're appropriate. It says

[Witness: Naylor]

1 "may". It's permissive.

2 Q. So, I guess, getting back to my question, your answer
3 is that you don't think that that would give you the
4 opportunity, having a docket to look at all of those
5 issues, would give you the opportunity to make the
6 necessary analysis of harm? You're prepared to go with
7 your gut that it's, you know, it's instinctively going
8 to harm those companies?

9 A. I think it's likely that it will.

10 Q. All right. Nashua has presented evidence in this case
11 from Mr. Walker that the value at December 31, '04 was
12 85 million, right?

13 A. Yes.

14 Q. And, rate base at that date, I think I'm right, was
15 about 44 million? Does that sound right?

16 A. Subject to check.

17 Q. Okay.

18 A. It sounds about right.

19 Q. And, I'm doing the same thing you are, it sounds about
20 right. And, that's the value that the Company is
21 permitted to earn on in the regulated environment,
22 isn't it?

23 A. It's rate base, yes.

24 Q. Right. And, if another regulated company bought PWW's

[Witness: Naylor]

1 assets, and paid more than rate base, would that
2 company be able to earn on or recover that premium?

3 A. Generally not, although there have been circumstances,
4 in consensual transactions, where, if the acquiring
5 entity met certain standards, you know, service --
6 savings in operations and so forth, I think there have
7 been a couple instances where they might be able to
8 either earn on some of the premium or retain some of
9 the savings, which they achieved, which to me is pretty
10 much the same thing.

11 Q. Nashua -- I'm sorry, PWW's evidence in the case on
12 value, from Mr. Reilly, is that, with a rate base of
13 44 million, the value is really, at first, 248 million,
14 and then updated 273 million, right?

15 A. I believe those are the numbers, yes.

16 Q. And, Mr. Guastella testified that, at the 248 million
17 value, Nashua would not have to raise rates. Do you
18 recall that?

19 A. Yes.

20 Q. And the reason for that, he said, and I assume you
21 would agree, are the synergies that Nashua has? For
22 example, they don't have to pay 1.1 million in officer
23 salaries?

24 CHAIRMAN GETZ: I think that when --

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[Witness: Naylor]

1 during that earlier examination, we substituted the word
2 "cost advantage" for "synergies".

3 MR. UPTON: All right. Okay. I'm
4 sorry. "Synergies" is so stuck in my mind.

5 BY MR. UPTON:

6 Q. "Cost advantages", okay. It's because of the cost
7 advantages that Nashua has?

8 A. Yes. There's a number of items of costs that the City
9 would not incur.

10 Q. One of those is the 1.1 million in officer salaries,
11 doesn't pay an income tax, a Business Profits Tax, a
12 Statewide Utility Tax?

13 A. Yes.

14 Q. Lower cost of capital?

15 A. Yes.

16 Q. No dividends to shareholders or other shareholder
17 costs?

18 A. Yes.

19 Q. No compliance costs with Sarbanes-Oxley?

20 A. Yes.

21 Q. No board of director costs?

22 A. Costs related to being a publicly traded entity go
23 away, correct.

24 Q. Now, in your testimony, you say that "based solely on

[Witness: Naylor]

- 1 Nashua's valuation", the 85 million, "it appears that
2 Nashua would have only a slightly reduced cost of
3 service." Do you recall that?
- 4 A. Yes, I do.
- 5 Q. And, you base that, in part, on "Mr. Ware's testimony
6 that Nashua had understated its costs". Do you recall
7 that?
- 8 A. And, I think I also pointed out that I hadn't had a
9 discovery opportunity on that.
- 10 Q. Uh-huh.
- 11 A. I guess I had some comparison with some of the costs
12 from their annual report, but --
- 13 Q. Right. You testified that you confirmed what he said
14 by "looking at the 2005 Annual Report"?
- 15 A. Yes.
- 16 Q. Okay. Now, the 2005 Annual Report had not been filed
17 with the Commission, had it, when you submitted your
18 April 13, 2006 testimony?
- 19 A. That's correct.
- 20 Q. It wasn't, in fact, entered until middle of May?
- 21 A. I'm not sure what the date was, but you are correct.
22 It had not yet been filed.
- 23 Q. You were given an advance copy?
- 24 A. No, I was not.

[Witness: Naylor]

- 1 Q. How did you get a copy?
- 2 A. That's explained in my testimony. I asked the Company
3 if they had completed the schedules related to their
4 O&M costs.
- 5 Q. Okay.
- 6 A. And, they had completed them, and they submitted them
7 to me, and I attached them to my testimony.
- 8 Q. You knew that Nashua didn't have those, that advance
9 copy, didn't you?
- 10 A. I presume they didn't.
- 11 Q. And, it was basing its determination of cost on the
12 2004 Annual Report?
- 13 A. As far as I recall, yes.
- 14 Q. Did you look at the 2004 Annual Report before you said
15 "Nashua's costs were understated"?
- 16 A. I didn't say "Nashua's costs were understated". I went
17 through a number of particular expense items that Mr.
18 Ware had raised, and tried to verify whether or not
19 those allegations were correct. That's all I was
20 trying to do there.
- 21 Q. Okay. Would you -- Well, you know now, don't you, that
22 Nashua correctly reported what was in the 2004, and
23 that those -- some of those same costs were not
24 correctly reported or entered in the 2004 Annual

[Witness: Naylor]

1 Report?

2 A. I recall that there were some costs that had been put
3 into different accounts. They were all there. And,
4 the total operation and maintenance expense was
5 reported correctly, but some of the categories were
6 different.

7 Q. For example, if I looked at 2004 Annual Report, under
8 Account 602, "purchased water", I might see that there
9 was nothing reported. When, in 2005, it's "\$182,125".
10 Wouldn't that give me some pause?

11 A. Pause for?

12 Q. Well, wouldn't that -- do you think it's fair to
13 criticize Nashua for understating its costs, when it
14 reports what is in the Annual Report of the Company in
15 2004?

16 A. Did I criticize Nashua regarding purchased water? I
17 don't recall that I did.

18 Q. Well, let's find it.

19 CMSR. BELOW: Top of Page 44.

20 MR. UPTON: Yes, Page 43, top of 44.

21 BY MR. UPTON:

22 Q. "It appears that Nashua has underestimated the cost of
23 unplanned maintenance, utilities such as fuel and
24 electricity, purchased water, and costs related to the

[Witness: Naylor]

1 DigSafe Program or Nashua's alternative to that
2 program."

3 A. Okay. I'm with you.

4 Q. Fair criticism, where the 2004 Annual Report shows
5 nothing for "purchased water"?

6 A. Yes. Absolutely.

7 Q. All right. How about fuel and electricity? If I told
8 you that, in 2004, under "fuel or power", the 623
9 Account, the figure was "\$556,441", and that it
10 increased, in 2005, to "\$970,178", would you think it's
11 a fair criticism that, if Nashua reported "556", that
12 that's a fair criticism that it "understated its costs
13 for fuel and electricity"?

14 A. It could be. It could be, unless there was a
15 substantial increase in the cost of fuels and so forth.
16 I think -- I understand where you're going with this,
17 and I'm not unappreciative of the point you're making.
18 I think the bottom line here is, I didn't criticize the
19 City's proposal for rates, and indicated that I felt,
20 with the best information I had, the City would likely
21 show a reduced cost of service.

22 Q. But only if its value was accepted, right?

23 A. That's what I said in the testimony, that's correct.

24 Q. Yes. Now, with respect to those costs that you feel

[Witness: Naylor]

1 that Nashua underestimated, when the update testimony
2 was filed, those areas were corrected by Nashua,
3 weren't they?

4 A. Yes, they were.

5 Q. Would you show Exhibit 1017, Page 20. Can you blow it
6 up please? The operations and maintenance costs used
7 by the City, projected by the City, are contained in
8 Lines 2 through 11, correct?

9 A. Yes.

10 Q. And, if I told you that the total was "\$10,068,000",
11 would you accept that subject to check?

12 A. Sure.

13 Q. All right. Do you think that's understated? Or
14 underestimated?

15 A. Well, I have some concerns about your staffing,
16 proposed staffing level, and that may factor into it.

17 Q. Well, let's compare to what Mr. Guastella looked at.
18 I'm giving you Exhibit 3016X, confidential. Does the
19 Commission -- I've given you copies in the past. I
20 have more copies in case you don't have them with you.

21 (Atty. Upton handing documents to the
22 Chairman and Commissioners.)

23 BY MR. UPTON:

24 Q. I want you to look at Exhibit C, if you would -- I'm

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[Witness: Naylor]

1 sorry, not "Exhibit C", Schedule C. And, these are the
2 projected operations under municipal ownership that
3 Mr. Guastella based his analysis on?

4 A. Yes. Was this filed as part of the November 2006
5 update testimony?

6 Q. I believe it was filed with the May testimony, but I'm
7 --

8 A. Okay.

9 Q. I can be corrected, because I'm not entirely sure. I
10 think it was with the May testimony. In any event,
11 would you agree that, for 2008, looking at his line,
12 oh, I guess it's the second, second box, "Total
13 Operating Expenses", you see that?

14 A. Yes.

15 Q. Would you agree that his total operating expenses for
16 Nashua are \$650,000 less than what Mr. Sansoucy used in
17 his GES Exhibit 4?

18 A. Yes.

19 Q. And, if you compare his Schedule C with his Schedule B,
20 which projects ownership operations under PWW, he shows
21 an almost \$5 million spread per year, doesn't he?

22 A. You're referring to 2008?

23 Q. Starting at 2008, his total operating expenses for PWW,
24 compared with his 2008 total operating costs for

[Witness: Naylor]

1 municipal ownership on Schedule C, it's an almost
2 \$5 million a year difference, isn't it?

3 A. Yes.

4 Q. And, it grows every year?

5 A. The difference grows every year?

6 Q. Yes.

7 A. It appears to, yes.

8 Q. Now, this document JFG-1 Revised shows Exhibit -- I'm
9 sorry, Exhibit 3016X, shows the City could pay
10 248 million, and it would have no rate impact, right?

11 A. Could you show me where the --

12 Q. I'm just asking about his testimony. Didn't he say
13 that this showed that there would be no rate impact --

14 A. Okay.

15 Q. -- if the City paid 248 million?

16 A. Yes. And, he said that here in the hearing.

17 Q. Right. And, did you also hear him say that, because of
18 the synergies that give rise or give the City a lower
19 cost of operation, that for every dollar below
20 248 million the price was set, the savings would grow?

21 MR. CAMERINO: And, Mr. Chairman, my
22 concern is that Mr. Upton is characterizing a prior
23 witness's testimony, and he is not characterizing it
24 correctly. He did not agree that "there would be

{DW 04-048} [Day XII] (09-26-07)

[Witness: Naylor]

1 synergies or cost savings". He indicated that all he did
2 was back out certain specific expenses that a municipal
3 utility would not incur, and that he assumed that the
4 efficiency of the municipal utility would be the same as
5 Pennichuck's efficiency. He didn't say that "there would
6 be savings or synergies".

7 CHAIRMAN GETZ: Mr. Upton.

8 MR. UPTON: I thought I characterized
9 his testimony correctly, but I'll restate the question, if
10 you'd prefer?

11 CHAIRMAN GETZ: If you could, because
12 I'm not prepared off-the-cuff to determine which of you
13 has just characterized the testimony from a couple of
14 weeks ago correctly.

15 BY MR. UPTON:

16 Q. You know, independent of whether there were savings in
17 cost of operations, I didn't use "synergies",
18 independent of whether there are savings from the cost
19 of operations, didn't Mr. Guastella say here that "for
20 every dollar the price was set below 248, there would
21 be savings to the City"?

22 A. Well, I don't recall if he said that or not. And, he
23 may very well have. I think it, certainly on its face,
24 it makes sense that the less the City has to borrow,

[Witness: Naylor]

- 1 the less its debt service is going to be. So, --
- 2 Q. And the value presented by Nashua is 85 million, which
- 3 is 163 million less than 248, so that's going to
- 4 translate into some significant savings, isn't it?
- 5 A. I don't think you're -- keeping in mind I didn't file
- 6 valuation testimony, keeping that in mind, I don't
- 7 think the 85 is the current number, because I think
- 8 even Mr. Sansoucy's number is somewhere closer to 150,
- 9 --
- 10 Q. Well, even --
- 11 A. -- based on the improvements, including the water
- 12 treatment plant upgrades.
- 13 Q. I think his updated testimony was 139. But, even if
- 14 you go to 139 million, so that you're comparing apples
- 15 to apples, there's a big difference between 273 million
- 16 and 139 million, isn't there? And, that's going to
- 17 convert into a lot of savings to ratepayers.
- 18 A. If you assume that the operation and maintenance
- 19 expenses are the same or --
- 20 Q. I'm not assuming anything. Mr. Guastella is assuming
- 21 that.
- 22 A. Well, that's -- his testimony isn't mine, so --
- 23 Q. All right. Let me ask you about your testimony. Do
- 24 you or does Staff have an opinion whether the most

[Witness: Naylor]

1 likely buyers of PWW's assets include any New Hampshire
2 city or town?

3 A. That's not in my testimony. And, that's -- I know
4 that's part of the valuation testimony.

5 Q. Do you have an opinion?

6 A. No.

7 Q. Well, if he's right, that means the Commission was
8 wrong, doesn't it, when it held that Nashua couldn't
9 take the assets of PEU and PAC? Wouldn't you think?

10 A. If he's wrong?

11 Q. If he's right.

12 A. If he's right --

13 Q. -- that any New Hampshire city or town could take the
14 assets or buy the assets of PE -- I mean, of PWW?

15 MS. KNOWLTON: I'm going to object to
16 that question. You know, Mr. Reilly clarified his
17 position on that issue the day that he testified. And, I
18 don't believe that that's an accurate characterization of
19 his testimony.

20 MR. UPTON: Well, I'm willing to stand
21 by the Commission's --

22 MS. THUNBERG: I also have another
23 objection, to the extent that he is asking a legal opinion
24 on as to what the Commission [Nashua?] can or cannot

[Witness: Naylor]

1 acquire. There is an order out there. But I think the
2 question was asking for a legal opinion from Mr. Naylor as
3 to applicability of RSA 362 -- I'm sorry, RSA 38.

4 MR. UPTON: I've made the point that I
5 wanted to make, and I'm ready to move on.

6 CHAIRMAN GETZ: Please move on.

7 MR. UPTON: And, I won't go on any more
8 on this.

9 BY MR. UPTON:

10 Q. Mr. Naylor, in your testimony, at Page 52, you suggest
11 that "municipal water suppliers are not only not the
12 answer to regional cooperation, many contribute to the
13 lack of cooperation." Do you recall that?

14 A. Yes.

15 Q. And, you say you got that from the report, the
16 "Regulatory Barriers" report?

17 A. That, and my own experience, yes.

18 Q. Okay. And, in that testimony, in your testimony, you
19 say that it's your opinion that "it is in the nature of
20 municipalities to look inward." Do you recall saying
21 that?

22 A. I think that's true. And, it goes back to what I
23 stated earlier today, that selectmen and city
24 councillors and mayors aren't elected to be concerned

[Witness: Naylor]

1 about people in other municipalities.

2 Q. I want to show you Figure 4 from the -- all right. Let
3 me just show you, I'm told it's an exhibit, --

4 MS. KNOWLTON: It's 3002A.

5 MR. UPTON: I don't know where it is,
6 but let me just show you the exhibit.

7 BY MR. UPTON:

8 Q. Figure 4 from the report. You participated in the
9 preparation of this report, didn't you?

10 A. Yes, I did.

11 Q. And, so, you've seen Figure 4 before?

12 A. Yes, I have.

13 Q. And, Figure 4 indicates that Manchester Water Works
14 provides retail service in Bedford, Londonderry,
15 Hooksett, Goffstown, and Auburn, right?

16 A. Yes, it has customers in those communities.

17 Q. And, it provides wholesale service to all those that
18 are listed on the right-hand side of the figure?

19 A. Yes.

20 Q. Including some Pennichuck companies in those other
21 areas?

22 A. Correct. That's in my testimony as well, regarding
23 Bedford and their circumstances.

24 Q. Exhibit 1014, Page 66. This is about Portsmouth. Now,

[Witness: Naylor]

1 based upon this exhibit --

2 MS. KNOWLTON: Can I just ask you to
3 clarify what the exhibit number is, because I thought I
4 heard you say "1014", but this says "5001" on the bottom
5 of the screen.

6 MS. REGAN: It's 1014, Page 66.

7 MR. UPTON: It's 1014, Page 66.

8 BY MR. UPTON:

9 Q. Now, if you look at this document, this exhibit,
10 Portsmouth's water source is the Bellamy Reservoir, in
11 Madbury and Dover?

12 A. I see that.

13 Q. And, it's treatment plant is in Madbury?

14 A. I see that.

15 Q. And, it supplies water to Madbury, Dover, Durham,
16 Newington, Portsmouth, Greenland, Rye, New Castle, and
17 the Pease International Tradeport, right?

18 A. That's what it says here, yes.

19 Q. Now, you know that, in this case, Nashua has committed
20 to charge the same rates to satellites as to core
21 customers?

22 A. Well, I think that's the last position the City has
23 taken. That's --

24 Q. Okay.

[Witness: Naylor]

- 1 A. It's changed a couple times.
- 2 Q. And, it's committed to continued regulation of service
3 in the satellites, to give their customers protection?
- 4 A. Well, I've already opined on that possibility, but --
- 5 Q. It's agreed to honor the wholesale special contracts of
6 Anheuser-Busch, Milford, Hudson, Tyngsborough?
- 7 A. Well, I'd be very concerned, and I know Milford and
8 Anheuser-Busch are very concerned about the statements
9 that have been made by the City's witnesses in this
10 case. So, --
- 11 Q. Is the answer "yes" or "no"?
- 12 A. The answer is, perhaps for the duration of the existing
13 contracts, yes. But your witness, Mr. Sansoucy, has
14 made it clear in testimony here that he thinks Nashua
15 customers are subsidizing all of those contracts, as
16 well as the rates of customers outside Nashua. So,
17 while I would dispute that characterization, if the
18 City leadership accepts that as fact, I'm not sure what
19 these wholesale customers can expect.
- 20 Q. Haven't Nashua, and even Mr. Sansoucy, said that "we're
21 getting a system and we're going to take over what
22 exists, and whatever is happening with those systems,
23 we're going to continue"? Haven't they said that?
- 24 A. That is completely at odds with other statements by Mr.

[Witness: Naylor]

1 Sansoucy in this proceeding.

2 Q. Which came very early, correct?

3 A. It doesn't matter when it came. His testimony has to
4 be scrutinized like everybody else's. And, he's said a
5 lot of things.

6 Q. And, haven't the commitments that have been made been
7 intended to protect customers outside of Nashua?

8 A. Such as which?

9 Q. Charging core rates to them, continued regulation of
10 their service, making sure that the special water
11 contracts were honored.

12 A. As I said, those are the latest statements made by City
13 witnesses. Earlier in the proceeding, we have a
14 response to a data request from one of the City
15 witnesses that said "once we do a cost of service
16 study, we may change rates." So, when I talked about
17 that in my testimony, I said "I don't know what the
18 City's going to do about rates outside."

19 Q. Nashua was instrumental in the creation of the
20 Merrimack Regional Water -- Merrimack Valley Regional
21 Water District, wasn't it?

22 A. I don't really know who the driving force was behind
23 it. I know the City was involved.

24 Q. And, it originally sought to acquire the assets of PEU

[Witness: Naylor]

- 1 and PAC, so that they could be brought into the
2 Regional District, didn't they? Wasn't that what the
3 whole point of that was?
- 4 A. And to avoid harms to those customers in PEU and PAC
5 that would result from a taking just of Water Works.
- 6 Q. Did you hear the testimony from Merrimack and Milford
7 that Nashua cooperates in regional fire and police
8 protection?
- 9 A. I did.
- 10 Q. And, Merrimack even agreed that Nashua has direct
11 benefits from the businesses located in Merrimack,
12 didn't it?
- 13 A. I'm sorry, direct benefits from whom?
- 14 Q. From the businesses that are located in Merrimack,
15 Nashua receives direct benefits from those?
- 16 A. In terms of employment, I believe was the answer that
17 was given.
- 18 Q. And, bringing money into the economy, the local
19 economy?
- 20 A. Yes.
- 21 Q. Nashua benefits from all those things, doesn't it?
- 22 A. Yes.
- 23 Q. And, you heard that its -- Nashua's Public Works
24 Department cooperates with the area towns in anything

[Witness: Naylor]

1 related to public safety?

2 A. I believe I heard that. I don't recall who the
3 witnesses were, but --

4 Q. And, would you agree that providing water is a matter
5 of public safety?

6 A. Health and safety, yes.

7 Q. Now, you testified earlier today about the violation in
8 North Conway. Do you remember that?

9 A. I don't recall a violation.

10 Q. An e-coli violation?

11 A. I don't believe that was part of the discussion about
12 Conway.

13 Q. All right. Well, let me come at it differently. You
14 were here for Mr. Ware's testimony?

15 A. Yes.

16 Q. And, he testified about lead, some lead and other
17 violations?

18 A. Yes.

19 Q. And, do you recall him saying that, "even if there are
20 treatment systems available, if there's no need to
21 treat the water, you don't treat it"?

22 A. I don't remember that as his testimony. I know the
23 discussion about those issues centered on the issuance
24 of new standards, I believe. And that, once the

[Witness: Naylor]

1 Company knew what the standards were, they would
2 implement treatment for the contaminant.

3 Q. Okay. Look at the top of the page. He says, in
4 response to the prior question, "That is the practice
5 throughout the entire industry. Question: So that --
6 Answer: Is that, if there's no need to treat the
7 water, you don't treat it." Do you recall him saying
8 that?

9 A. Is this a transcript of his testimony prior?

10 Q. Yes. This is the transcript of his testimony before
11 the Commission.

12 A. I think it's just an acknowledgement that, until you're
13 required by law.

14 Q. Okay.

15 A. Yes.

16 Q. So, in other words -- in other words, you would agree
17 that you wait for something to break before you fix it?

18 A. I don't think that's what this goes to. I don't think
19 that's a fair characterization of this.

20 Q. Well, I want to talk to you about the --

21 MS. KNOWLTON: Actually, I just -- this
22 has been going on for a while. Mr. Naylor is trying to
23 answer a question, and Mr. Upton keeps cutting him off.
24 And, I think the witness should be allowed to finish

[Witness: Naylor]

1 answering the question.

2 MR. UPTON: I didn't think I cut him
3 off. I have sometimes, but I didn't think I did then.

4 CHAIRMAN GETZ: I think Mr. Upton has
5 been cross-examining within bounds.

6 MR. UPTON: Thank you.

7 BY MR. UPTON:

8 Q. Mr. Richardson was asking at the bottom, he says "I'm
9 almost down with this line of questioning. Why don't
10 we -- Now, there have been additional violations since
11 these hearings originally began back in January of '07,
12 is that right? [Answer] I would have to think about
13 that. I know, as a matter fact, right now we have an
14 E-coli occurrence that occurred" -- "happened up in
15 North Conway." And you testified about that this
16 morning, right?

17 A. I thought my reference to a bacteria hit was with
18 respect to Lakes Region Water Company, but if I'm wrong
19 --

20 Q. You don't recall talking about Birch Hill and the
21 bacteria problem at Birch Hill?

22 A. I didn't think we talked about bacteria at Birch Hill,
23 but I'm happy to be corrected. I know that this has
24 been an issue at Birch Hill, so --

[Witness: Naylor]

1 Q. Well, let me show you --

2 CHAIRMAN GETZ: That's consistent with
3 my recollection from this morning, is that he answered
4 questions of -- it was bacteria about Lakes Region, but --

5 BY MR. UPTON:

6 Q. Okay. Let me show you the -- show you a Water Quality
7 Report taken off the Pennichuck website for Birch Hill.
8 I call your attention to the highlighted areas. In
9 July, there was a discovery of total coliform bacteria,
10 which constituted a violation, correct?

11 A. Yes.

12 Q. And, according to the report, the health effects for
13 total coliform bacteria, which are present in the
14 environment, are used as an indicator that other
15 potentially harmful bacteria are present, right?

16 A. Yes.

17 Q. And, according to the Water Quality Report, "treatment
18 is not required" for these well systems, is it?

19 A. Well, you've highlighted a phrase at the top that says
20 "treatment is not required". I can only assume that
21 that refers to the contaminants listed below, but I
22 don't know that for sure.

23 Q. Well, are you aware that Channel 9 and the local Conway
24 papers are reporting that there was no treatment until

[Witness: Naylor]

1 September 10th, even though it was discovered in July,
2 and that as many as nine people became ill as a result
3 of drinking the water, that some were hospitalized with
4 giardia, and that many are reporting they never
5 received any Boil Water Notice from the Company? Are
6 you aware of that?

7 A. And, you're suggesting that the Company is just --

8 Q. No, I'm asking you if you're aware of it?

9 A. You're suggesting the Company is just ignoring
10 something --

11 Q. I'm not suggesting that at all. I'm not suggesting
12 that at all.

13 A. I mean, come on. That's ridiculous.

14 Q. I'm asking you, are you aware of those reports?

15 A. I am aware.

16 Q. Are you aware that a treatment system that could have
17 prevented these illnesses could have been installed in
18 less than a day, anytime after the total coliform
19 bacteria was discovered in July?

20 A. I'm not aware of that.

21 Q. The fact that this is a troubled system, or was a
22 troubled system when Pennichuck acquired it, that
23 doesn't change the requirements of providing reasonably
24 safe and adequate service, does it?

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[Witness: Naylor]

1 A. Well, I'm not sure you're really aware of some of the
2 things that go on at some of the troubled systems.

3 Q. Maybe you could answer my question first, and then, if
4 you want to talk about it, go ahead.

5 A. Okay. What was your question again please?

6 Q. The fact that there was -- this was once a troubled
7 system doesn't affect the requirement of providing
8 reasonably safe and adequate service, does it?

9 A. It doesn't affect the Company's obligation to provide
10 safe and adequate service. However, this particular
11 system has had problems for years, going back to the
12 prior ownership. And, I can tell you that there have
13 been and continue to be extensive efforts on the part
14 of the Company to find solutions to the quality
15 problems here, including the expenditures of hundreds
16 of thousands of dollars to get a better source of
17 water, including through a potential interconnection
18 with the North Conway Water Precinct, which has far
19 more water than it needs, and yet the voters turned it
20 down and elected not to sell water to the Company for
21 the town's own residents at Birch Hill.

22 Q. What role does the Staff have in these kinds of water
23 quality issues?

24 A. It's the DES staff that has the responsibility for

{DW 04-048} [Day XII] (09-26-07)

[Witness: Naylor]

1 these types of actions.

2 Q. So, the fact that you regulate these systems doesn't
3 necessarily make the water any safer?

4 A. Water quality and quantity is the primary jurisdiction
5 of DES.

6 Q. And, water quality ultimately depends on whether the
7 operator takes its responsibility seriously, isn't that
8 right?

9 A. Certainly.

10 Q. Now, I know you don't like the fact that Nashua is
11 proposing conditions. You've made that very clear, I
12 think.

13 A. You think?

14 Q. Yes. And, you'd agree that there's not a good road map
15 for this kind of a proceeding, is there?

16 A. I would say that we have all discovered that it's not
17 quite as clear as we might have hoped. But,
18 ultimately, it comes down to an evaluation of what the
19 public interest standard is and whether or not the
20 City's proposal meets it.

21 Q. And, this has never been done before, has it, to the
22 extent that it's being done in this proceeding?

23 A. In New Hampshire?

24 Q. Yes.

[Witness: Naylor]

1 A. Well, the only ones I'm familiar with are the hydro
2 stations. And, I believe also the Hudson's Consumers
3 matter was originally filed as a Chapter 38 proceeding,
4 but ultimately was a settlement.

5 Q. Yes. I want to ask you about some of the conditions,
6 knowing how much you dislike them. Nashua has made a
7 number of commitments that it's agreed to, hasn't it?

8 A. In its initial case or since then?

9 Q. In the course of this proceeding.

10 A. Over the course of the proceeding, your proposal has
11 changed, yes.

12 Q. And, Nashua has agreed to accept a condition that it
13 provide service to all customers located outside the
14 City at the same rates it charges to customers in the
15 City, and that its service to customers outside the
16 City will remain regulated, to ensure that it is
17 reasonably safe and adequate and in all other respects
18 just and reasonable, right?

19 A. I understand that is your current proposal.

20 Q. And, Nashua has also agreed to accept a condition that
21 it will provide service in accordance with the rates,
22 terms and conditions of all existing wholesale
23 contracts, including Anheuser-Busch, Milford, Hudson,
24 Tyngsborough, and that these wholesale contracts will

[Witness: Naylor]

1 be subject to PUC jurisdiction for complaints that they
2 are unjust or unreasonable, right?

3 A. I believe that's what the City has indicated, yes.

4 Q. And, you heard this morning that Nashua has proposed to
5 have Veolia provide all customer service and to require
6 Veolia to comply with all PUC customer service rules
7 and regulations, and to make its customer service
8 subject to PUC jurisdiction.

9 MS. KNOWLTON: I want to object to this
10 line of questioning. I mean, this is the first time today
11 that we've heard about this concept now that Veolia is
12 going to be providing all of the customer service and
13 subjecting itself to all of the customer service
14 regulations. You know, we've had no opportunity
15 whatsoever to take discovery on that, we don't know what
16 that plan looks like. You know, we're here on the last
17 day of the merits hearing in this case and hearing about
18 that for the first time. And, I think that raises serious
19 due process issues.

20 CHAIRMAN GETZ: Mr. Upton, response?

21 MR. UPTON: It's something that was
22 discussed this morning, for one thing. But, number two,
23 and under RSA 38:11, if the condition -- if the Commission
24 wants to make this a condition of the acquisition, because

[Witness: Naylor]

1 it believes it's in the public interest for Veolia to
2 provide customer service, it can do so. And, I think I'm
3 entitled to ask of the witness what he thinks of that.

4 CHAIRMAN GETZ: Well, I think, in terms
5 of setting forth the conditions that have already been
6 discussed elsewhere and conditions that possibly haven't
7 been discussed elsewhere, I think this witness has made
8 clear his concern about the Commission's authority to
9 impose, in the first instance, or to enforce after the
10 fact, certain conditions. I think he's been asked a
11 number of questions about conditions, and I think that's
12 -- and I think we're just going down a track that's not
13 going to move the ball any further ahead.

14 MR. UPTON: All right.

15 BY MR. UPTON:

16 Q. Mr. Naylor, has Staff ever indicated to Nashua what
17 conditions Staff believes are necessary to make this
18 acquisition be in the public interest at any time?

19 A. No, absolutely not. That's not our burden of proof.

20 MR. UPTON: I just want to make an offer
21 of proof that subject -- I mean, if the Commission had not
22 ruled the way it did with respect to the conditions, I was
23 going to ask him about a series of conditions that Nashua
24 has made in this case. And, I was also going to ask him

[Witness: Naylor]

1 if Nashua --

2 MS. THUNBERG: Could you speak up, Rob.

3 MR. UPTON: I'm sorry. I was also going
4 to ask him that, if Nashua agreed to a condition that it
5 would be fully regulated by the Commission for a period of
6 five years, whether that would have any impact on his
7 thinking about this, whether or not this is in the public
8 interest. The Commission has said it doesn't want to hear
9 any more about those conditions. So, we'll do that in our
10 brief. And, with that, I'm done.

11 CHAIRMAN GETZ: Okay.

12 CMSR. BELOW: I do have a question.

13 BY CMSR. BELOW:

14 Q. Mr. Naylor, in Attachment MAN-2, Page 5 of 5, which is
15 Page 79 of your testimony, do you have that?

16 A. Yes, I do.

17 Q. Could you characterize what that is? What you
18 understand that to be?

19 A. Yes. This is -- This entire attachment is, obviously,
20 Nashua's -- It's a request to the City from Pennichuck
21 Water Works, and it's regarding the impacts, the
22 potential impacts of a taking of Pennichuck Water Works
23 on the remaining companies. And, the Company has
24 provided an analysis in this response of the impacts on

[Witness: Naylor]

1 Pennichuck East, Pittsfield Aqueduct, and Pennichuck
2 Water Service Corporation. And, the one that you're
3 referring to, Page 5 of 5 of the attachment, is the
4 analysis with respect to Pennichuck Water Service Corp.

5 Q. And, Pennichuck Water Service Company provides contract
6 services to a significant number of private systems, as
7 well as a few municipal systems, is that correct?

8 A. That is correct.

9 Q. And, they don't have any employees or much in the way
10 of assets, in terms of equipment or labs or water
11 meter, service facility, that's all done through
12 Pennichuck Water Works, is that correct?

13 A. That is my understanding.

14 Q. And, is that a bit unusual? I think somewhere in
15 someone's testimony there was a point that that was
16 sort of an "artifact of history", the fact that all of
17 those assets and employees are in PWW, rather than,
18 say, the Service Company. Is it fair to characterize
19 that as a "bit unusual"?

20 A. I don't think so. Certainly, the fact that the common
21 assets and the personnel are within Pennichuck Water
22 Works is an artifact of the historical development of
23 the Company, as I remember it and understand it. That
24 Pennichuck Water Works, for a period of time, was the

[Witness: Naylor]

1 only entity that existed. And, so, it had the common
2 assets, it employed the workers. But, certainly, there
3 are many other examples of utilities in the state
4 across the other industries, perhaps in water, too,
5 although I'm not certain of that, that have
6 nonregulated enterprises that employ the services of
7 the regulated company, use the employees of the
8 regulated company, that's very typical, I know, in the
9 telephones, perhaps in the electrics, too, but I'm a
10 little rusty on that, on that history. But not all
11 that unusual. And, I think that points up the
12 importance of proper cost allocation.

13 Q. Well, isn't it perhaps more typical that a service
14 company that is unregulated and supplies services to
15 regulated entities, as well as nonregulated entities,
16 might have employees and assets that are employed to
17 support those different regulated and unregulated
18 entities?

19 A. Well, I filed testimony about that issue some years
20 ago, as the folks from the Company here will probably
21 recall. I suggested that they might consider moving
22 the employees and the common assets over to the Service
23 Company and allocate from there, because, you know, it
24 might be a better model, I think, for a variety of

[Witness: Naylor]

1 reasons, cost control and so forth. But we realized I
2 think that there's -- that it's not quite that simple,
3 there's a lot things that would have to be done, a lot
4 of, you know, a lot of paperwork and a lot of costs
5 that would go with it, that probably weren't worth it.

6 Q. In looking at this specific exhibit, the first four
7 columns sort of reflect a -- I guess the first column
8 reflects an actual profit/loss statement from their
9 2005 Annual Report. Is that your understanding?

10 A. Yes, that is -- that appears to be what it is, with the
11 revenues from the different sources up above, and then
12 the expenses listed, and a net income calculated.

13 Q. And, the columns to right of that are various proformas
14 with various assumptions, such as reclassifying certain
15 expenses or revenues based on -- well, one of them is
16 entitled "functional reclassification". What do you
17 understand that to be?

18 A. I don't find that here.

19 Q. I think the fourth column over, under "with PWW", is
20 entitled "functional reclassification"?

21 A. Ah. Okay.

22 Q. And, it, for instance, I think it subtracts \$218,000
23 from "PWW Interdivisional Management Fees", and appears
24 to reclassify part of it as "A&G expense" --

[Witness: Naylor]

1 A. Yes.

2 Q. -- and part of it is "total maintenance expense"?

3 A. Yes. Yes, I believe what that is, for that line, which
4 is captioned "PWW Interdivisional Management Fee", and,
5 of course, in that first column, it's "237,000".

6 Because this schedule is premised on the elimination of
7 Water Works, then that has to be zeroed out. There's
8 no more management fee. There's no more cost
9 allocations coming from Water Works. So, I would
10 suspect that these other entries for expense would be
11 -- would be the Company's estimates of what expenses
12 they would incur to do their -- to take care of their
13 contracts and so forth and manage their business, in
14 the absence of Water Works.

15 Q. Well, presumably, that would be the last two columns,
16 and the next to the last column it says "adjustments",
17 would show what they're assuming would be the
18 additional expenses of PW -- of Pennichuck Water
19 Service Company, without PWW, if the taking were to
20 succeed?

21 A. Yes.

22 Q. And, these are the numbers that you didn't have a
23 chance to do any discovery on. You comment in your
24 testimony that you "couldn't do discovery". And, of

[Witness: Naylor]

1 course, the preceding pages have similar analyses for
2 PEU and PAC. And, these are numbers that you didn't
3 get to do discovery on, is that correct?

4 A. At the time of my testimony, correct.

5 Q. Have you done discovery since then?

6 A. Some.

7 Q. Some?

8 A. Yes. Yes.

9 Q. Do you have an opinion as to the validity of these
10 projections?

11 A. Well, I thought I had some notes here on this, in case
12 I was asked about it. I think we tended to look at
13 this as somewhat of a "worst case" scenario. Some of
14 the things we tried to look at here were "what's the
15 operation going to look like without Water Works?"
16 Keep in mind that the employees of Water Works may, in
17 a single day, do work for all four companies,
18 particularly those who are out in the field, stopping
19 at various systems, you know, doing checks, whatever,
20 whatever kinds of maintenance work or other activities.
21 So, I think the model here had to create, you know,
22 sort of a hypothetical scenario, "well, how will we
23 continue to do these three businesses without Water
24 Works?" So, obviously, there's a fair amount of money

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[Witness: Naylor]

1 involved in replacing assets. And, I think that's also
2 in this, in this response, maybe I'm thinking of
3 another one. But, yes, I think we actually did a
4 follow-up data request on this, to get some more detail
5 as to what kind of, you know, how many vehicles they
6 needed to purchase, you know, what kind of lab
7 equipment, you know, tools, all kinds of things, and
8 try to get a sense of it, and replacing personnel
9 computers, replacing software. There's just a
10 multitude of things. I think we -- I think that,
11 really, the bottom line on this is we felt it was kind
12 of a "worst case" scenario that -- but, as I say, I did
13 not have a chance for additional testimony beyond this,
14 so I didn't have a particular reason to get into it in
15 any real depth. I had no more testimony.

16 Q. I mean, so, as part of this proceeding, you haven't had
17 the opportunity or haven't been asked and haven't done
18 a kind of independent analysis of these kinds of
19 projections that you might do in an actual merger or
20 rate case or you haven't done that kind of analysis of
21 it?

22 A. Not in tremendous depth. I mean, we looked at, for
23 example, and I'm quite sure there's a follow-up data
24 request to this, we looked at how many vehicles they

[Witness: Naylor]

1 were proposing, based on the number of employees that
2 they would need for those systems. You know, do they
3 need -- do they need to purchase a building, because
4 part of this takings case is the Company's maintenance
5 operation in Nashua, so they have no building. They
6 have no place to park vehicles. They have no lab.
7 They have no meter, you know, facility for calibrating
8 meters or repairing meters. All those things would be
9 gone. And, you still have two utilities left with a
10 customer base of, I don't know, close to 7,000, and a
11 Water Service Company that I think we determined this
12 morning had some number of 15,000 customers, I think.
13 This Water Service Company operates the system for the
14 Town of Salisbury, Mass., Hudson, New Hampshire, a
15 couple of other ones, and, you know, and a lot of other
16 smaller systems. So, it's not the easiest thing to get
17 your arms around. It's a lot of hypotheticals.

18 CMSR. BELOW: Could I make a document
19 request for that additional discovery, if it exists?

20 MR. CAMERINO: Mr. Chairman, there
21 actually is a document that's already marked, and this may
22 be what Mr. Naylor was referring to.

23 CMSR. BELOW: Okay. Exhibit 3016A
24 includes the Company's response to a data request from

[Witness: Naylor]

1 Staff further explaining the exhibit that Mr. Naylor was
2 referring to. So, I believe, if I understand Commissioner
3 Below's request correctly, it's already in the record.

4 MR. UPTON: Yes, I believe it is, too.
5 And, what I'm concerned about is, if there is any
6 additional analysis that he did that is not a part of his
7 testimony, I don't think that that's appropriate. I mean,
8 he complains about our conditions. That's not part of his
9 testimony or part of his record either. So, I don't think
10 that's appropriate to become a part of the case.

11 MR. CAMERINO: And, just to be clear,
12 there's a place in Mr. Guastella's testimony, the May 22
13 testimony, where the same data request that Mr. Naylor
14 included is there as an exhibit. And, then, immediately
15 behind it is the follow-up data request from the Staff
16 asking for the explanation.

17 CMSR. BELOW: Okay. Fine. Thank you.
18 That's good. That's all.

19 CHAIRMAN GETZ: Okay. Well, let me just
20 say this about that. I think Commissioner Below is going
21 to take a look at those exhibits and see if that answers
22 his question. If Commissioner Below thinks that he needs
23 some more information on this, on this issue, then I will
24 entertain a record request by Commissioner Below on that,

[Witness: Naylor]

1 on that matter. But we'll wait to see his view after he
2 has a chance to look through the exhibits.

3 CMSR. BELOW: That's all.

4 BY CHAIRMAN GETZ:

5 Q. I wanted to revisit just very briefly, Mr. Naylor, the
6 issue of conditions. In his last line of inquiry, Mr.
7 Upton stated as part of one of his questions something
8 to the effect about you "disliking conditions". I've
9 been interpreting your position and your testimony
10 today not so much that you "dislike conditions" or that
11 you have taken a position on the merits or usefulness
12 of any particular condition, but that you hold a
13 general concern about the Commission's authority to
14 enforce any condition? Is that an accurate
15 characterization?

16 A. I think it's that, and it goes to the issue of
17 fairness. That this is, it goes without saying, this
18 is a very contentious and hard-fought case. And, we
19 have a municipal entity asking to take the assets that
20 belong to a private company. And, as I understand the
21 standards, the legal standards, the City needs to make
22 a proposal that shows net benefits to the public
23 interest. And, its case towards the public interest
24 has to be judged as it has been filed, so that the

[Witness: Naylor]

1 Commission and the other parties can evaluate it,
2 debate it, react to it, and file testimony, and so on
3 and so forth. It just seems to me, from my experience
4 and my understanding of how this process should work,
5 given that this is a pretty rare occurrence here, it
6 just seems to me that the City's case needs to be
7 evaluated as it has been filed. And, you know, to make
8 alterations to it or to ask the Commission to impose
9 conditions on it seems to me somewhat unfair to the
10 Company and to the other parties.

11 And, certainly, the enforcement later on
12 is a major concern. This isn't a consensual
13 transaction, where one utility is being sold to
14 another. And, if the conditions to a transfer aren't
15 met, the Commission has powers to remedy that. In this
16 particular case, once this system were to be
17 transferred, the shareholders of the Company can never
18 be put back in the position that they're in now. I
19 think that states it as clearly as I can.

20 Q. But would you agree that, if we were to conclude that
21 we had the authority to impose conditions, and if it
22 comes to it, that position was upheld by the State
23 Supreme Court that we could impose and enforce
24 conditions, wouldn't you agree that conditions, as a

[Witness: Naylor]

1 general matter, have the capability of mitigating
2 potential harms?

3 A. Yes, I'm sure. I'm sure. And, I guess it's just a
4 matter of what kind of conditions, and, you know, how
5 important are they and how critical are they to the
6 Commission's decision and to its finding that the City
7 has met its burden of net benefits.

8 CHAIRMAN GETZ: I understand your
9 position that there's certainly questions of fact about
10 what those particular conditions would be and how closely
11 they resolved any of the issues. Ms. Thunberg, do you
12 have redirect?

13 MS. THUNBERG: Yes, I do.

14 REDIRECT EXAMINATION

15 BY MS. THUNBERG:

16 Q. Mr. Naylor, I'd like to go back to the issue of
17 troubled systems and acquisition by the City of Nashua.
18 And, you were pretty strong in your opinion that you
19 didn't believe that Nashua would acquire troubled
20 systems. But I would like you to just identify or
21 state was there any evidence in the record that drew
22 you to that conclusion?

23 A. Absolutely.

24 Q. And, can you please identify what that evidence that

[Witness: Naylor]

1 caused you to come to this conclusion is?

2 MR. UPTON: I really -- This is going
3 into his direct testimony. This is what his direct
4 testimony was. I mean, that's precisely what his direct
5 testimony was. It's not redirect, it has nothing to do
6 with the cross. Or, if it has anything to do with the
7 cross, it's indirect and it's just going right back into
8 his direct testimony. I just think it's, you know, if I
9 ask about a topic, that doesn't mean that she can ask him
10 "well, say in your direct testimony what the answer was."
11 I mean, it's cumulative, and we're going to be here all
12 afternoon doing this.

13 MS. THUNBERG: This is fairly within
14 redirect -- I'm sorry, within cross. Mr. Upton had gone
15 down a line of questioning on Mr. Naylor's opinion. Mr.
16 Naylor is a Staff witness. And, I would submit that he is
17 not bound by the strict direct/redirect issues paradigm
18 that we followed with respect to the non-Staff witnesses.
19 I'll make an offer of proof that there is evidence in the
20 record, and I would like Mr. Naylor to at least identify
21 for the Commission's benefit where those points are to
22 substantiate that, when he replied to Mr. Upton of this
23 opinion, that it was based in record and it wasn't just
24 out of the blue. And, it won't take too many references.

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1 CHAIRMAN GETZ: Well, I mean, I think
2 certainly redirect is not an opportunity to just restate
3 entirely the prefiled direct. But, if there is a -- if
4 you're seeking a general representation by the witness
5 that he spoke to it in his direct, and he makes his
6 comments in a very summary way, I'll allow it. But I
7 don't want to just rehash what was already prefiled.

8 MS. THUNBERG: I can rephrase it.

9 BY MS. THUNBERG:

10 Q. Mr. Naylor, with respect to your opinion that "Nashua
11 would not acquire troubled systems", that was an
12 opinion that you expressed at the time of your
13 testimony in April 2006, is that correct?

14 A. Yes.

15 Q. And, have you reviewed information since that testimony
16 that either changes or supports that opinion?

17 A. Yes. There was reply testimony filed subsequent to my
18 testimony.

19 Q. Mr. Naylor, with respect to a "mitigation fund" and the
20 "opening of another docket" as a way of dealing with
21 harms to Pennichuck subsidiaries, do you recall that
22 conversation in cross?

23 A. Yes.

24 Q. Has there been any formal proposal, other than that

[Witness: Naylor]

1 that was stated today, from the City of Nashua to
2 address harms to PEU, PAC, and Pennichuck Water Service
3 Corp.

4 A. No. Not that I have seen.

5 Q. Were harms to Pennichuck affiliates the only reason why
6 you oppose this petition by the City of Nashua?

7 A. No.

8 Q. I'd like to revisit the issue of Staff receiving an
9 "advance copy of schedules" that were attached to an
10 annual report. And, is it your understanding that the
11 City of Nashua has -- also had seen a copy of those
12 schedules?

13 A. Yes, they were attached to my testimony. They were the
14 operation and maintenance expenses pages from the
15 annual report.

16 Q. And, did Nashua have an opportunity to discover upon
17 that information?

18 A. Absolutely.

19 Q. And, did it also submit revised schedules reflecting
20 the changes from -- that it acquired through --

21 A. Yes. Yes, I think you're referring to the November
22 update testimony. Yes, I believe that's correct.

23 Q. So, you don't believe that Nashua was disadvantaged by
24 not receiving a copy of what was attached to your

[Witness: Naylor]

1 April 13th testimony?

2 A. No.

3 Q. With respect to savings, it's not -- is it fair to
4 characterize that you do not object -- or, strike that,
5 that question. Have you conceded that the City of
6 Nashua may have a lower cost of service?

7 A. I think it's likely that it will, yes. I still have
8 some concerns about, with the reduction in the staffing
9 that they have proposed, as I indicated in my
10 testimony. But I still think, given Mr. Upton's
11 synergies, I think they will have a slightly lower cost
12 of service.

13 Q. And, what is your opinion as to this lower cost of
14 service and whether it will be reflected in rates?

15 A. Well, the City has not made a proposal for a reduction
16 in rates. I think what's more likely to happen is that
17 out a number of years, as the City's cost of capital is
18 lower, I think, over a number of years, future rate
19 increases will probably be slightly less. I think
20 that's how it eventually would show up.

21 Q. Okay. I'd like to move onto the wholesale water
22 contracts that were discussed. And, do you know if Mr.
23 Sansoucy has characterized these wholesale contracts as
24 needing to be "transformed into tariffs"?

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1 A. Yes, I remember that testimony.

2 Q. Are you generally familiar with the bounds of what the
3 Commission can regulate in RSA 362:4?

4 A. Yes.

5 Q. And, you've heard the condition that the Commission
6 retain regulation of the municipal-to-municipal
7 wholesale contracts, do you recall that?

8 A. Yes.

9 MR. UPTON: I'm sorry. I'm sorry. I
10 don't think that we suggested that the condition would be
11 imposed under RSA 362:4. I think we suggested it would be
12 under RSA 38:11, which altogether different.

13 BY MS. THUNBERG:

14 Q. Mr. Naylor, do you have an opinion as to whether the
15 wholesale contracts between -- or, the Pennichuck
16 wholesale contracts with the municipalities, should
17 Nashua acquire the assets and assume those contracts,
18 are you aware of any mechanism that would allow the
19 Commission to retain jurisdiction over those contracts?

20 A. No, I'm not.

21 Q. And, you've heard the analysis by the attorneys
22 regarding conditions that can be imposed under RSA 38.
23 Have you considered that, that statute?

24 A. In terms of conditions?

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1 Q. That's diving into a legal area, so I'll just -- I'll
2 pass on that question to you. I'd like to just move
3 your attention to the Water Ordinance, and the
4 suggestion that the Water Ordinance be subject to
5 Commission jurisdiction. Do you recall that condition
6 being proposed?

7 A. Yes, I do. I believe the suggestion was that it would
8 be regulated as to service to customers outside the
9 City.

10 Q. Does the Water Ordinance protect customers outside the
11 City as to maintenance and future capital improvements?

12 A. I didn't see anything in the Draft Water Ordinance that
13 specifically referenced those items. I think it's
14 fairly inferred that, if the Water Ordinance requires
15 the City to provide equal service, equal quality of
16 service outside and inside the City, then, presumably,
17 that would extend to maintenance and needed
18 improvements. But, again, as I indicated in my
19 testimony, I think there is -- there really is some
20 concern about the City owning, you know, unconnected
21 systems in other municipalities.

22 MS. THUNBERG: Staff has no further
23 questions. Thank you.

24 CHAIRMAN GETZ: Thank you. Okay. Then,

1 the witness is excused. Thank you, Mr. Naylor.

2 Mr. Camerino.

3 MR. CAMERINO: I don't know what the
4 Commission has planned at this point. But we have had a
5 chance to confer with the other parties, and there's some
6 procedural matters to address. My guess is we're talking
7 ten or fifteen minutes. So, if people were willing to
8 persevere, again, depending on what other issues the
9 Commission had, we might be able to finish up without a
10 break. So, I would just suggest that.

11 CHAIRMAN GETZ: Any concerns about
12 forging ahead?

13 (No verbal response)

14 CHAIRMAN GETZ: Well, actually, before
15 we do that, let me just complete the record or make
16 everyone to know one issue. Mr. Naylor indicated today,
17 with respect to Lakes Region, and I think in response -- I
18 forget who he responded to, the question from whom, that
19 he had some concerns about Lakes Region. And, in fact,
20 Mr. Naylor has made a recommendation to the Commission
21 that we open an investigation into Lakes Region. And,
22 we're considering that, that recommendation. So, just so
23 everyone is aware that there may be some action shortly on
24 that issue from the Commission.

1 But, Mr. Camerino.

2 MR. CAMERINO: Okay. First, let me just
3 identify what I believe to be the universe of procedural
4 issues big and small, and then I'll run through them. The
5 first is there's a few just housekeeping details on
6 exhibits I want to identify. There -- We've had a
7 discussion with Nashua and at lunch with the other parties
8 about the issues of costs of the proceeding -- the costs
9 of the proceeding, striking identification of exhibits and
10 briefing. And, the third is Nashua yesterday filed a
11 motion to strike, which we would at least like to briefly
12 address today and see if it can be disposed of, if not,
13 we'll deal with it subsequently.

14 So, in that order, on the exhibit front,
15 I just want to make it clear that, apparently, there's a
16 map which was marked as Exhibit 5016, which somewhere
17 along the way has gotten lost from the official set. So,
18 our plan is to replace that and we'll consult with Nashua
19 to show them what's going back in in replacement of that.
20 It's apparently a Staff exhibit, but I think it may be a
21 map that -- I don't know who has the map, but, anyway,
22 that's -- I just want to make it clear that their needs to
23 be a replacement of a physical exhibit.

24 The second thing is, we had promised to

1 file Mr. Ware's revised testimony, which was Exhibit 3014,
2 that was formally filed today, but we need to show that
3 document to Attorney Upton, to make sure that he is
4 satisfied that the changes are what he was expecting.

5 The third is we notice that, in
6 Ms. White's prior testimony, which was marked as "Exhibit
7 3022", there was a page missing. Frankly, it's not a page
8 of any significance, but our thought was to replace that
9 copy with a complete one, so that nobody is wondering why
10 there is a blank page in there.

11 And, the last one is, there was a record
12 request made by Commissioner Below of Mr. Reilly, which
13 was given Exhibit Number 3258. And, we've actually been
14 trying to get ahold of Mr. Reilly so that that can be
15 provided to Nashua and be filed. I thought we would have
16 had it today, but he's apparently tied up. So, my guess
17 is tomorrow, I would hope, we'll have that for filing. I,
18 frankly, had hoped we'd have it before we broke from here.
19 So, I did want to mention those four documents.

20 Moving onto the --

21 MR. RICHARDSON: Mr. Chairman, if I may
22 just interrupt? There's also two record requests that I
23 think Nashua has to respond to. One is a request to
24 Mr. Fuller and the other to Mr. Walker, for the USPAP.

1 And, we're preparing to file those tomorrow. I assume we
2 treat them like a data request and file them with the
3 Commission or is that how -- I'm not sure how to respond
4 to the record requests?

5 CHAIRMAN GETZ: Well, record requests,
6 at this point, I would file with the Commission and make
7 copies available to all the parties.

8 MR. RICHARDSON: Okay.

9 MR. CAMERINO: So, then, I was going to
10 move on to the second group of issues, which are with
11 regard to costs, we've agreed with Nashua that we would
12 prefer not to address that issue at this time. Frankly,
13 our expectation would be that we would not address that
14 until after an order of the Commission on the merits. But
15 the parties remain free to seek sooner relief, if they
16 thought that was appropriate. But the point is, we don't
17 plan to address that sooner, unless the Commission had
18 some reason to direct us to do so.

19 The second is, we've come up with a
20 method for addressing the striking of identification on
21 exhibits, but it's subject to the Commission's calendar.
22 The process would be that all parties, and in a moment
23 you'll see why this really pertains to Nashua and the
24 Staff and the Company, will exchange lists of those

1 exhibits for which they are seeking to strike the
2 identification. Promptly thereafter, each of those
3 parties would indicate which ones they have an objection
4 to, so that we would come up with a defined list of those
5 exhibits for which identification being stricken is in
6 dispute.

7 We would then have oral arguments in
8 front of the Commission just on that list of dutied items.
9 And, what we would be seeking is a Commission ruling, if
10 possible, within a week of that oral argument. The reason
11 we want that kind of relatively quick turn-around is we
12 would propose that briefs be submitted 30 days after that
13 Commission ruling, and reply briefs 15 days afterwards.

14 CHAIRMAN GETZ: Well, Mr. Camerino, how
15 much time do you need before oral argument? Because I've
16 been anticipating that, if we're going to have argument
17 about these issues of striking identifications, that I
18 would sit as presiding officer and do that myself
19 sometime, it's just a question of the next couple of
20 weeks?

21 MR. UPTON: Part of the problem is the
22 availability of the transcripts, so that we can get an
23 appropriate list of witnesses -- I mean, of exhibits to
24 exchange with each other. Once we have those, we ought to

1 be able to do the list pretty quickly. There are some
2 contentious exhibit issues that need, I think, some time
3 to respond to. I don't think it needs an enormous amount
4 of time to respond to, but there ought to be more than
5 just a day to respond to the request that identification
6 be stricken on exhibits.

7 CHAIRMAN GETZ: Well, when you say
8 "respond", you mean written --

9 MR. UPTON: To each other.

10 CHAIRMAN GETZ: -- written responses?

11 MR. UPTON: Yes, to each other.

12 CHAIRMAN GETZ: Well, I was assuming
13 that you were talking oral agreement.

14 MR. CAMERINO: You're correct.

15 CHAIRMAN GETZ: There's, for instance,
16 next Thursday or Friday I would be here, and we would slog
17 through this.

18 MR. CAMERINO: Thursday and Friday I
19 believe are doable. To be honest, it's tight. There are
20 two days of transcripts I believe we still need. We need
21 today's, and I think there's one from last week -- the
22 stenographer has three fingers up.

23 CHAIRMAN GETZ: Okay.

24 MR. UPTON: I think there are two days

1 from --

2 CHAIRMAN GETZ: Let me look at the
3 Commission calendar and see if there's a good time in the
4 following week. But we can work this part out.

5 MR. UPTON: And, we can come in at any
6 time, basically, within the Commission's schedule or
7 within the Chairman's schedule, so that it doesn't have to
8 be done at 10:00 or something like that. If you want it
9 at 8:00 or 8:30, we're happy to come in at that time of
10 day.

11 MR. CAMERINO: I would agree with that.

12 CHAIRMAN GETZ: Okay. Well, let's --
13 We'll work on trying to pick a time then the following
14 week.

15 MR. CAMERINO: And, I think we're
16 talking about a relatively short hearing, you know, half
17 an hour to an hour for that. So, once --

18 CHAIRMAN GETZ: Is that a promise?

19 (Laughter.)

20 MR. CAMERINO: It sounds like the
21 witnesses aren't the only people whose credibility are at
22 issue in this case. I can understand why.

23 So, the concept would be 30 days from
24 the Commission ruling on that briefs would be filed. We

1 have -- the Commission has some standards as to margins
2 and spacing, things like that. We've agreed, and I
3 apologize, but we've agreed to 12-point font as well, so
4 that there aren't concerns about people cramming too much
5 information in. There was a request for 75 pages for the
6 initial brief. So, subject to the Commission accepting
7 that, that is -- I think the parties are all amenable to
8 that. The reply briefs would be two weeks after the
9 briefs, 15 pages maximum, limited to responding to things
10 raised in the initial briefs. So, I think that's the sum
11 total of it.

12 And, then, once you're satisfied on
13 that, I'd be prepared to address the motion to strike.

14 CHAIRMAN GETZ: Okay. Mr. Upton or
15 anyone else have anything to respond?

16 MS. REINEMANN: Well, it's not
17 necessarily a direct response. But I have doubled
18 checked, and we don't have any -- anticipate any
19 objections. So, we would like at this point to move to
20 strike identification of our exhibits, for the Town of
21 Milford. And, I probably should note my appearance for
22 the record. Maria Reinemann, for the Town of Milford.
23 So, we move to strike identification of the Testimony of
24 Gary Daniels and William Ruoff. And, that's Exhibits 4001

1 and 4002.

2 CHAIRMAN GETZ: Is there any objections
3 to striking those identifications?

4 MR. UPTON: The City has none.

5 MR. CAMERINO: No, no objection.

6 MR. UPTON: I mean, we're content to let
7 all of the intervenors' exhibits have the identification
8 stricken and become full exhibits in the case. And, I
9 think the Company has stated the same.

10 CHAIRMAN GETZ: Mr. Camerino?

11 MR. CAMERINO: Yes, I think where we
12 were, actually, is that there was agreement, and there's
13 one exception I just want to note in a moment. That, with
14 regard to intervenor testimony, if the intervenors want
15 the ID stricken today, that's acceptable. The one place
16 where I think Pennichuck would like to reserve its rights
17 and consider further is there was late filed testimony by
18 both Ms. McHugh and Ms. Pressley. And, we're not prepared
19 today to agree that those ID should be stricken. We would
20 like to consider that further. But, as to their initial
21 testimony, we do not object.

22 MR. UPTON: I thought we had already
23 addressed that? The Commission allowed it in.

24 MR. CAMERINO: Well, the Commission

1 ruled --

2 CHAIRMAN GETZ: I think we had deferred
3 one of the issues with respect to Ms. Pressley.

4 MR. UPTON: Okay. Yes, that's right.

5 CHAIRMAN GETZ: But this is raising the
6 question of how much I'm prepared to rely on my memory
7 today. Though, I would like to at least get on the
8 record, so all of the intervenors are in a position where
9 they're going to move to strike the identifications and
10 enter the exhibits as full exhibits. If there's no
11 objection, I'd like to get that on the record. And, what
12 I'm taking Mr. Camerino is, is he's just deferring
13 judgment -- withholding judgment with respect to
14 Ms. McHugh and Ms. Pressley. Is that correct?

15 MR. CAMERINO: And only as to the late
16 filed material.

17 CHAIRMAN GETZ: Okay.

18 MR. CAMERINO: And, Mr. Chairman, at the
19 risk of being to presumptuous, I'm not sure that
20 Ms. Pressley or Ms. McHugh's representative have a full
21 understanding of exactly what we're talking about right
22 now. So, it might need some further explanation.

23 CHAIRMAN GETZ: Well, and one of the
24 issues I was leaning towards is maybe we need to ask Mr.

1 Upton, Mr. Camerino, and possibly Ms. Thunberg to work
2 with the parties, let's get this all on a list, so I'll
3 know exactly what I'm dealing with, and actually make the
4 rulings when we return to deal with the remaining disputes
5 between the City and Pennichuck. I don't want to
6 inadvertently miss something here.

7 Okay. So, Mr. Upton, any other issues
8 with any of the issues as described by Mr. Camerino?

9 MR. UPTON: No, the briefing schedule is
10 certainly agreeable with the City. And, the treatment of
11 the exhibits, assuming that we can get the transcripts and
12 get a list of them.

13 CHAIRMAN GETZ: Ms. Reinemann, did you
14 have anything more?

15 MS. REINEMANN: No, I just wanted to
16 make sure that, so our exhibits have been fully submitted
17 or no?

18 CHAIRMAN GETZ: You've made the motion,
19 I've heard no objections. I'm withholding rulings on
20 these. I assume what some of you would like to do is not
21 have to come to the next --

22 MR. UPTON: We're trying to save them.

23 CHAIRMAN GETZ: -- to the next hearing.
24 But I will make the ruling at that hearing. But I just

1 want to get this on the -- some of this on the record
2 today, but not belabor it. Okay. Is there anything else,
3 before I give Mr. Camerino the opportunity to, and this --
4 what you're hoping to do is respond orally to the motion
5 to strike of Mr. Ware?

6 MR. CAMERINO: Yes.

7 CHAIRMAN GETZ: Okay. Please proceed.

8 MR. CAMERINO: Okay. I don't need to
9 know whether the Commission is aware, but maybe by the
10 Chairman's remarks you are, that yesterday, late in the
11 day, Nashua filed a motion to strike that was six pages
12 long, and a rather thick affidavit, with multiple
13 attachments.

14 CHAIRMAN GETZ: I've read the motion.

15 MR. CAMERINO: Okay. And, one of the
16 things that I think is notable is that, if you look at
17 Mr. Siegfried's affidavit, it says, in Paragraph 3, that
18 he felt he had to bring these "errors", he calls them, to
19 the Commission's attention, and he believes they're
20 "materially inaccurate". And, what's odd about this, just
21 from the get-go is, Mr. Siegfried is not a party to this
22 proceeding. He is a witness under contract with the City
23 of Nashua, and the City of Nashua has never mentioned this
24 to Pennichuck's counsel. So, there was no effort made to

1 try to correct the record from what they considered to be
2 a substantial error. They just filed this affidavit with
3 all the attachments. And, the proper way to address this,
4 if they thought it was important, would have been to
5 contact counsel and work on a way to correct the record.
6 They didn't do that.

7 We don't believe there's a need for a
8 written response to this, unless the Commission is going
9 to actually consider on the merits this material from
10 Mr. Siegfried. And, the reason I say that is, this is
11 nothing more than supplemental prefiled testimony. It's
12 an affidavit from a witness, a witness to whose
13 participation we objected from the get-go, and new
14 documentary evidence, which wasn't marked during the
15 course of the proceeding. So, this is really, if you look
16 at it, this is nothing more than prefiled testimony from
17 Mr. Siegfried, talking about how they use Synergen and
18 what efficiencies they think they get from their computer
19 operations.

20 The substance of this is very simple.
21 Mr. Ware apparently used the wrong name to describe a
22 specific computer program. He referred to something
23 called "OPS32", instead of "MP2". We became aware of
24 that. In fact, he told Mr. Siegfried that. And, Mr. Ware

1 would state that some of Mr. Siegfried's characterizations
2 of what Mr. Ware said are wrong, but that doesn't matter.

3 We were prepared to correct that through
4 Ms. Hartley, when Ms. Knowlton attempted to ask Ms.
5 Hartley questions about the computer programs, and
6 Synergen in particular. Mr. Upton objected strenuously
7 and didn't want that testimony. I want to remind the
8 Commission that Ms. Hartley, to whom Mr. Ware deferred,
9 Mr. Ware in his testimony, as Mr. Siegfried says, said
10 that Ms. Hartley would be the best witness of that. Ms.
11 Hartley testified after Mr. Ware. Mr. Upton could have
12 asked her questions about this subject and chose not to,
13 because he thought this would be more dramatic. Well,
14 this is a supplementation of the record that we don't
15 think should be allowed.

16 There's a simple, almost typographical
17 correction that needs to be made to the record, to
18 indicate that the reference to "OPS32" should have been to
19 "MP2", and that would correct this matter. It is not a
20 material inaccuracy.

21 Beyond that, all this motion tries to do
22 is argue that Mr. Ware somehow is not a computer expert in
23 that particular program. Mr. Ware is the President of the
24 Company. He's aware of the computer programs that the

1 Company operates. He indicated in his testimony he was
2 not the person most familiar with them. That the next
3 witness was. This is a tempest in a teapot. It is a
4 contrived situation. It wasn't necessary. All Nashua's
5 counsel had to do was discuss this with us, and they
6 didn't do that.

7 CHAIRMAN GETZ: All right. Let me
8 recover a little bit of ground here, to make sure I
9 understand. And, I'll take under advisement the motion
10 and the objection with respect to striking the Ware
11 testimony. Going through my list of all the witnesses and
12 all the parties. And, so, it's for Milford and the Town
13 of -- Milford and Anheuser-Busch has moved to strike, and
14 there are no objections. At the moment, there's no one
15 here from Bedford or Merrimack. And, as far as
16 Ms. Pressley and Ms. McHugh go, there's still an open
17 question about what to do with the supplemental testimony.
18 Other than that, then it's my -- I'm looking at it is
19 Staff, PWW, and Nashua. Is there any parties' exhibits
20 that I've overlooked on my list?

21 (No verbal response)

22 CHAIRMAN GETZ: Okay. Then, I guess at
23 this point, with respect to Milford and Anheuser-Busch
24 then, I would strike the identifications and admit the

1 exhibits as full exhibits and save the attorneys a trip.

2 MR. UPTON: And, Mr. Boutin is not here,
3 but we agreed that the same thing could apply to
4 Merrimack's exhibits, so that he does not have to return
5 as well.

6 CHAIRMAN GETZ: Any objection to
7 striking the identification for the Town of Merrimack and
8 admitting them as full exhibits?

9 (No verbal response)

10 CHAIRMAN GETZ: Then, they will be
11 admitted as full exhibits. Any objection to doing the
12 same thing with Town of Bedford?

13 MR. UPTON: Not by the City.

14 CHAIRMAN GETZ: Okay. So, then, we'll
15 admit the Bedford and Merrimack exhibits as full exhibits.
16 And, I'm afraid, Ms. Pressley and Mr. Gustin, you'll have
17 to come back one more time, then we'll address that, or,
18 unless, Mr. Camerino, if there's something off the record,
19 some kind of arrangement you want to make with them, or,
20 actually, Ms. Thunberg, on behalf of Staff, perhaps you
21 could explain to the pro se parties the import of
22 admitting exhibits or not admitting exhibits into the
23 record. Okay. Then, is there anything else we should
24 address today?

1 (No verbal response)

2 CHAIRMAN GETZ: Well, then, I'd like to
3 kind of say a couple of things in closing the adjudicative
4 part of the hearings, except for these issues of exhibits.
5 Clearly, this is a complex and important case, and there
6 are various positions that are strongly held. All the
7 parties and all the witnesses, pro se and those
8 represented by attorneys, have provided information that's
9 going to help us make our decision. And, note also as
10 well that the attorneys have advocated zealously for their
11 clients, as is their professional obligation to do. We
12 will expect that the briefs will be equally helpful in
13 making our determinations in this case. We will review
14 the evidence, weigh the arguments, and issue our decision
15 as promptly as we can.

16 I want to thank everyone for their
17 cooperation. Our goal all along has been to conduct a
18 fair and efficient proceeding. And, I'm hopeful that you
19 all will agree that we've achieved that objective. So,
20 thank you, everyone. And, we'll resume sometime in the
21 next two weeks to finish off the evidentiary issues.
22 Thank you.

23 (Whereupon the hearing ended at 3:55 p.m.)

24

