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STATE OF NEW HAMPSHIRE

PUBLIC UTILITIES COMMISSION

October 12, 2007 - 2:05 p.m.  
Concord, New Hampshire

RE: DW 04-048  
CITY OF NASHUA, NEW HAMPSHIRE:  
Petition for valuation pursuant to RSA 38:9.  
(Hearing regarding admissibility of exhibits)

PRESENT: Chairman Thomas B. Getz, Presiding

APPEARANCES: Reptg. the City of Nashua:  
Robert W. Upton, II, Esq. (Upton & Hatfield)  
Justin C. Richardson, Esq. (Upton & Hatfield)

Reptg. Pennichuck Water Works, Inc.:  
Steven V. Camerino, Esq. (McLane, Graf...)

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

Court Reporter: Steven E. Patnaude, CCR

## I N D E X

1		
2		PAGE NO.
3	STATEMENTS REGARDING ADMISSIBILITY OF EXHIBITS:	
4	RE: EXHIBITS 1019-1054:	
5	Mr. Camerino	5, 9, 10, 12
6	Mr. Upton	5
7	Mr. Richardson	7, 10
8	Ms. Thunberg	13
9		
10	RE: EXHIBIT 1096	
11	Mr. Camerino	14, 16, 17, 19
12	Mr. Upton	15, 17, 18
13		
14	RE: EXHIBIT 1117A	
15	Mr. Camerino	20
16	Mr. Richardson	21
17		
18	RE: EXHIBIT 1145 & EXHIBIT 3258	
19	Mr. Camerino	22, 23, 26
20	Mr. Richardson	23, 24, 25, 28
21	Mr. Upton	24
22		
23		
24		

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

2 CHAIRMAN GETZ: Good afternoon,  
3 everyone. Long time no see. We'll reopen the hearing in  
4 docket DW 04-048 to address some outstanding evidentiary  
5 issues. Let me figure out where we are. I know there's  
6 at least three things I was prepared to rule on right off  
7 the bat. Make sure that I've got track of everything.  
8 One was the -- we have Nashua's motion to strike the  
9 testimony of Donald Ware that was submitted  
10 September 25th, and I believe Mr. Camerino responded to  
11 orally at the end of the hearings. And, we have the two  
12 pieces of supplemental testimony, one by Ms. Pressley and  
13 one by Ms. McHugh. I think, when we last spoke on this  
14 issue, Mr. Camerino, it was unclear what position you were  
15 going to take on that supplemental testimony?

16 MR. CAMERINO: Yes. And, we're not  
17 going to object to striking the identification.

18 CHAIRMAN GETZ: Okay. All right. Then,  
19 we will allow the supplemental testimony of both  
20 Ms. McHugh and Ms. Pressley. And, with respect to the  
21 motion to strike the testimony of Donald Ware, we'll deny  
22 the motion. We find no basis for concluding that Mr. Ware  
23 provided false testimony that he's not qualified to  
24 testify as an expert. There may be disputes between the

{DW 04-048} [Hearing Re: Exhibits] (10-12-07)

1 parties as to what weight to give the testimony, and there  
2 will be one of many issues that we are going to have to  
3 address arguments about the weight to assign to various  
4 arguments. So, I'll deny that motion.

5 Okay. So, is there anything else then  
6 that is hanging out there? I thought we had taken care of  
7 all of the motions to substitute testimony, is that  
8 correct?

9 MR. CAMERINO: I think that's correct.  
10 I would mention, and I've mentioned this to Attorney  
11 Richardson this morning. We are not objecting -- one of  
12 the exhibits that Nashua is seeking to have marked are the  
13 resumés of Mr. Siegfried and Ms. Willans. And, we are not  
14 objecting to having those admitted into evidence. To the  
15 extent that we have previously asserted an objection to  
16 their testifying, that still stands. But it really  
17 relates to the substance of their testimony and not  
18 background information as to who they are, obviously. So,  
19 even though we previously objected to their testimony, we  
20 are not going to object to their resumés being admitted  
21 into evidence.

22 CHAIRMAN GETZ: Okay. So, that saves me  
23 one more ruling?

24 MR. CAMERINO: I think so.

1                   CHAIRMAN GETZ: All right. Okay. Then,  
2 we have the -- I guess I'm going to try to work off, as a  
3 template here, is this letter of October 11th. Is that  
4 where we should be concentrating?

5                   MR. CAMERINO: I think that's right.  
6 And, all of the ones down through 1054 are really one  
7 issue.

8                   CHAIRMAN GETZ: And, I know in your --  
9 I've done a number of things since we were last together.  
10 I'd like to be -- have my memory refreshed on what the  
11 debate is about that series of Exhibits 1019 through 1054.

12                   MR. UPTON: The exhibits are responses  
13 to data requests made by the various witnesses that Nashua  
14 presented, which supplement their testimony.

15                   CHAIRMAN GETZ: And, the objection on  
16 your part, Mr. Camerino, is just characterizes what the  
17 wholesale introduction of data responses as exhibits in  
18 the proceeding?

19                   MR. CAMERINO: Yes. In that they are,  
20 essentially, and, in fact, Mr. Upton during the hearings I  
21 think correctly characterized them this way, that they are  
22 supplementary to the direct testimony of the various  
23 witnesses that they were offered through. Ironically, in  
24 some cases, the responses are by people who are not

1 witnesses in this case, even -- such as, I know for sure,  
2 Mr. Munck, in one case, with regard to one person, there  
3 are multiple responses from him, which have, even though  
4 you've got however many exhibits that is, 30 or so, each  
5 of those exhibits then has, in some cases, a dozen or more  
6 separate responses to data requests. They're all Nashua  
7 responses to data requests. And, they're -- if they were  
8 to come in, they're coming in after the completion of the  
9 procedural schedule, which provided for the filing of  
10 testimony. And, they are nothing more than supplementary  
11 testimony, to which Pennichuck has not had a chance to  
12 reply and hasn't really had a meaningful chance even to  
13 cross-examine on, because, until the hearings, you don't  
14 know which exhibits are actually coming in.

15 But the real objection is, we had a  
16 procedural schedule. We have already expressed our  
17 concern throughout the case as to the continual changing  
18 of the testimony, expansion, changing of positions. To  
19 then come in at the hearing and put in dozens and dozens  
20 and dozens of additional responses, and that is not an  
21 overstatement, there are many dozens, with attachments, we  
22 really think is inappropriate and is, in the truest sense,  
23 a violation of the Commission's procedural order, and  
24 really deprives us of our ability to respond.

{DW 04-048} [Hearing Re: Exhibits] (10-12-07)

1                   CHAIRMAN GETZ: Mr. Richardson, are you  
2 responding?

3                   MR. RICHARDSON: I'd like to. I think  
4 the allegation that Nashua has, well, in some cases, it's  
5 correct that there have been things that have changed,  
6 obviously, the Veolia contract was something that came in  
7 during the pendency of this proceeding. But Nashua was  
8 aware that that accusation had been leveled. And, what we  
9 really wanted to do was to identify for the Commission the  
10 important commitments that had been made. The testimony  
11 was, obviously, filed, and it's, in a case as expansive as  
12 this, covering as many issues as we have, to prepare  
13 testimony that would simply attach each and every single  
14 data request would have made the testimony -- it would  
15 have been almost a useless act, because we would have had  
16 to speculate at the time the testimony was filed, before  
17 even seeing data requests -- or, excuse me, what the  
18 responses would need to be.

19                   RSA 541-A:33, II, allows -- states that  
20 "The rules of evidence do not apply in adjudicative  
21 proceedings", and that the Commission can receive "any  
22 oral or documentary evidence". These are data requests  
23 that were submitted to us by other parties. The parties  
24 received their responses in accordance with the procedural

1 schedule.

2                   Had there been capstone testimony at the  
3 end, we probably would have tried to attach some of these.  
4 But it really would have just been "these are commitments  
5 we've made", "these are our responses to data requests."  
6 And, it effectively is the same thing. The capstone  
7 testimony was eliminated because there were two rounds of  
8 testimony that people felt were simply duplicative. There  
9 was some discussion about the need to bring data requests  
10 in. At that time, Pennichuck didn't agree to that  
11 approach, but that was something that we discussed during  
12 the briefs. And, I think these are -- these data requests  
13 are going to help the Commission reach a decision in its  
14 investigation of what is in the public interest. There  
15 are data requests concerning how Nashua would treat  
16 satellite acquisitions in response to testimony that we  
17 had on that subject. There are everything from the impact  
18 of real estate developments to Nashua's Water Ordinance,  
19 to rates. It really goes to the core of what Nashua is  
20 proposing to do in this proceeding.

21                   And, there's nothing in the Commission's  
22 rules that I found that suggest that you cannot introduce  
23 data responses as exhibits, simply because they weren't  
24 attached to testimony. In fact, even Staff has done that

{DW 04-048} [Hearing Re: Exhibits] (10-12-07)

1 with its own data requests in some instances. And, I  
2 think what the Commission does in this proceeding is it  
3 not only adjudicates what the evidence that is presented  
4 by the parties, but it also has to investigate what it  
5 determines to be in the public interest. And, these data  
6 requests that we tried to pare down, in anticipating of  
7 what the Commission might ask, are all intended for that  
8 purpose. So that, if the Commission has questions or if  
9 we want to further address what Nashua has done in its  
10 testimony or in response to those data requests, we can  
11 make that information available to the Commission.  
12 Otherwise, the Commission is left without an understanding  
13 of what the Nashua witnesses said.

14 MR. CAMERINO: Mr. Chairman, may I  
15 respond to that briefly?

16 CHAIRMAN GETZ: Yes. Let me just make  
17 sure I'm clear on one thing. When you -- In this  
18 October 11 letter, on the second page, where it says  
19 "Exhibits 1019 through 1054", it's not all those? I mean,  
20 it's just 1019, 1028, the ones that are specifically  
21 listed on the front page?

22 MR. CAMERINO: That's right. There were  
23 some places where Nashua had premarked an exhibit, but  
24 they are not now seeking to have the identification

{DW 04-048} [Hearing Re: Exhibits] (10-12-07)

1 stricken. And, so, rather than refer to the reference to  
2 "1019 through 1054" at the end of the letter, you would  
3 need to look at the listing up above to see the ones that  
4 are actually in dispute.

5 CHAIRMAN GETZ: Okay.

6 MR. RICHARDSON: And, Mr. Chairman, I  
7 have actually prepared a list that's in draft form that  
8 has the proposed list that Pennichuck has submitted, Staff  
9 has provided, as well as Nashua, and then indicated the  
10 ones that are -- that are objected to. I don't want to,  
11 and we've discussed this, I don't want to file it at this  
12 time. But, if it would be -- simply because we haven't  
13 had a chance to review it, there may be errors on it,  
14 we've tried to move as quickly as we can. But, if it  
15 would be helpful, would you be okay with providing that  
16 list?

17 MR. CAMERINO: Yes.

18 MR. RICHARDSON: I think this --

19 MR. CAMERINO: Well, this list, as I  
20 understand it, is intended to show you the exhibits that  
21 would be coming in as full exhibits.

22 MR. RICHARDSON: If you look at it,  
23 there's a column for "objection pending". And, these, if  
24 you look at the 1000 series, those are the Nashua

1 exhibits. A few pages in, it switches to Pennichuck's  
2 exhibits in the 3000 series. The 2000 series isn't  
3 listed, because we've agreed that the intervenor exhibits  
4 are to come in. And, then, Staff is at the end in the  
5 5000 series.

6 CHAIRMAN GETZ: Okay.

7 MR. RICHARDSON: Most of the objections  
8 are going to be starting on Page 2 and 3. And, that's  
9 where there's an X marked. In some cases, Pennichuck  
10 actually used some of the exhibits. And, so, they're not  
11 objecting to the pages that are referenced there. Nashua,  
12 obviously, our position is that we've offered these  
13 documents and adopt -- the witness has adopted them. And,  
14 we would like the Commission to consider the responses  
15 that are in there.

16 CHAIRMAN GETZ: Okay. So, then, the  
17 full universe of disagreement is what's laid out on the  
18 first page of the October 11 letter?

19 MR. CAMERINO: That's correct. And, the  
20 list that Mr. Richardson just gave you includes those that  
21 are --

22 CHAIRMAN GETZ: That there's no dispute.

23 MR. CAMERINO: -- that we've already got  
24 agreement on.

1                   CHAIRMAN GETZ: Okay. You wanted to  
2 respond?

3                   MR. CAMERINO: Just briefly, on a few  
4 points. First of all, the fact that there may be no rules  
5 of evidence doesn't mean that there are no rules, and the  
6 Commission has laid out the rules for this case in its  
7 procedural order, and the Nashua is seeking really what is  
8 an end run on that. The second is, that the idea that  
9 these needed to be submitted because there wasn't capstone  
10 testimony is not correct. Because, I think, if you look  
11 at the dates on some of these responses, many of them  
12 precede when testimony was filed. So, the dates are all  
13 over the place. These are just responses that Nashua  
14 sought to use to supplement the testimony when it came  
15 time for trial, and other parties didn't have an  
16 opportunity to do that.

17                   As Mr. Richardson indicated, they had  
18 been threatening to do this for some time, and we  
19 consistently indicated that we had a problem with it.  
20 They didn't come to the Commission and ask for a ruling,  
21 which then would have given other parties a chance to take  
22 similar action or maybe do it through another round of  
23 testimony, if, for some reason, the testimony was  
24 inadequate. I find it hard to believe that Nashua is

1 unwilling to rest on the testimony that it and the other  
2 parties filed, and says that the Commission can't  
3 legitimately decide this case without now this large  
4 supplementing.

5 And, finally, as to the Staff doing  
6 something similar, that is not something that the Company  
7 asked for, nor condoned nor supported. Nashua, for its  
8 own reasons, has decided to, by agreement, not object to  
9 any of Staff's exhibits. That parties can, by agreement,  
10 submit any exhibits that the Commission receives. But, in  
11 this case, we don't agree to having those admitted. And,  
12 we think it's a fundamental violation of the Commission's  
13 procedural order.

14 CHAIRMAN GETZ: Okay. Ms. Thunberg, did  
15 you have any position on this set of arguments about data  
16 requests? You don't have to. If you would like to.

17 MS. THUNBERG: Staff had a couple of  
18 comments. But I will preface this that we haven't looked  
19 through every single one of these exhibits in detail, with  
20 respect to the arguments. But, to respond to the argument  
21 that there wasn't time for discovery on some of these  
22 later amendments to testimony, that seems, to Staff, that  
23 it could be fixed by an appropriate weight of that  
24 evidence, knowing that it came in late, wasn't subject to

{DW 04-048} [Hearing Re: Exhibits] (10-12-07)

1 full recovery, wasn't subject to reply testimony.

2 The second and last comment is this is a  
3 unique proceeding before this Commission. I know Staff  
4 has been in a habit of proffering data responses as  
5 exhibits during rate cases and such, and is, in effect,  
6 supplementing its single testimony with data responses  
7 again in this proceeding. My understanding is that  
8 neither side is objecting to Staff requesting those be  
9 admitted as exhibits. But just that there's a general  
10 practice out there in this Commission in other cases, but  
11 this is unique. And, those are the only comments that  
12 Staff can offer at this time.

13 CHAIRMAN GETZ: Thank you. Okay. Let's  
14 go through the rest of the list then. Exhibit 1096?

15 MR. CAMERINO: I think I probably should  
16 lead off on that, since it's our objection. This is  
17 similar, to a large extent, to the other documents we just  
18 referred to. This is, and I don't know if the Chair has a  
19 copy of this available, but it's a one-page document,  
20 which is a chart --

21 CHAIRMAN GETZ: First, let me call it up  
22 here.

23 MR. CAMERINO: Okay.

24 CHAIRMAN GETZ: This is the Reilly sales

1 analysis?

2 MR. CAMERINO: Well, that's actually one  
3 of the issues. It began as a Reilly document, I believe.

4 MR. UPTON: I can tell the -- since it's  
5 my exhibit, I'd be happy to explain what it is. It's a  
6 summary of the sales contained in the Reilly report,  
7 prepared by us, but it has the information that -- the  
8 information comes from the Reilly report. And, it  
9 attempts to put it all on one page. And, I'll be happy to  
10 explain in argument why we did it this way.

11 CHAIRMAN GETZ: Yes, go ahead.

12 MR. UPTON: The Chair may remember that  
13 I -- what's important about this chart is basically that  
14 last column, the "Sale Price to Revenue Multiple". And,  
15 the Chair may remember that I crossed Mr. Reilly about  
16 those multiples. At the bottom, you can see there's the  
17 median and the mean of the sale price to revenue multiples  
18 for the various sales that Mr. Reilly analyzed. And, I  
19 crossed him about multiples, I mean, whether you use the  
20 median or the mean. Then, there's the indicated value of  
21 Pennichuck Water Works using the median and the mean of  
22 the multiple, which I also crossed him about. And, the  
23 purpose of this exhibit, which I confess, I quite honestly  
24 forgot about in the heat of the moment cross-examining

1 Mr. Reilly, I intended to have him identify it when I was  
2 going through the various steps and calculating the  
3 ratios, the multiples, and then applying them, I forgot to  
4 actually have him identify it. But the purpose was to  
5 simplify the understanding of what I was trying to do for  
6 the Commission.

7 To follow what I did and what I'm going  
8 to argue in our brief, if this is not allowed, it's going  
9 to require everybody to shift from page to page to page in  
10 the Reilly report, as opposed to having it all in one  
11 place. It's going to be much easier to follow if it's all  
12 on this one page. As I said, I meant to get him to  
13 identify it, and I just simply forgot about it in the  
14 process of having it. It's been marked since back in  
15 January.

16 CHAIRMAN GETZ: Mr. Camerino.

17 MR. CAMERINO: Yes. First of all, the  
18 fact that it's been marked since January is true of every  
19 document on the list. So, I don't think that makes any  
20 difference. What's critical is that the witness wasn't  
21 allowed to discuss or explain the information that's been  
22 added here. So, it begins, most, the left-hand side of  
23 this page essentially, everything up through "Geographic  
24 Location", is from Exhibit 1007A, Page 71. That's where

1 that information is taken from, and can be found there.  
2 So, this document isn't needed for that. The two columns  
3 "Geographic Size" and "Type of Deal" also are from that  
4 page.

5 What Mr. Walker did was he added the  
6 "Revenue Estimates" line and the "Sales Price" line, and  
7 then the information down at the bottom about median and  
8 mean and value. So, that's Mr. Walker's testimony, as I  
9 understand it, or it comes from somewhere else. I don't  
10 know who added that.

11 MR. UPTON: The "Revenue Estimates" are  
12 all directly from Mr. Reilly's testimony.

13 MR. CAMERINO: Well, that may be, but  
14 they're not from the chart -- I'm sorry. What I guess I  
15 should say is, that information doesn't come from the  
16 chart I just referred to that's in Mr. Reilly's exhibits.  
17 It may come from somewhere else in Mr. Reilly's documents.  
18 So, this chart, which, if the you look at Page 71 of  
19 Exhibit 1007A, looks very similar on the left side. The  
20 right side has been altered, not improperly so, it's just  
21 that information on the right side has been removed and  
22 other information has been added.

23 What Mr. Upton is saying, apparently,  
24 which only furthers my argument, is this information

1 that's been added can be found elsewhere in the record.  
2 There is no need for this document, if that's the case.  
3 All the information is already in the record. What's  
4 important is, Mr. Reilly was not shown this document, and  
5 might have had explanations or something to say about the  
6 data that has been added, and he didn't have that  
7 opportunity. So, this is a place where we -- it's our  
8 view that this is, again, essentially being used on a  
9 supplementary basis. It's something, this median and mean  
10 and value are things that they have added, that they have  
11 calculated, and they didn't give the witness a chance to  
12 testify about it.

13 CHAIRMAN GETZ: Well, is it fair to say  
14 that it compiles some information from Reilly and some  
15 information from Walker, both -- all of which information  
16 is in our other exhibits?

17 MR. UPTON: The only thing -- The only  
18 thing that is new is the "Sale Price to Revenue Multiple",  
19 and that is just a calculation based upon revenue  
20 estimates --

21 CHAIRMAN GETZ: When you say "new", you  
22 mean it's not -- that those numbers don't actually occur  
23 in the record anywhere else?

24 MR. UPTON: Most of those do occur in

{DW 04-048} [Hearing Re: Exhibits] (10-12-07)

1 the record. In fact, I cross-examined him about many of  
2 them, and I cross-examined him about the mean and the  
3 median. And, I went through the calculation that arrived  
4 at the indicated value of Pennichuck using the mean and  
5 the median in my cross-examination of him. I mean, this  
6 document is something we could recreate in our brief.

7 CHAIRMAN GETZ: Well, that's kind of  
8 where I was going, to ask is that a question that you --

9 MR. UPTON: It just seems to me that  
10 that doesn't -- I mean, I'm happy, if that's where the  
11 Commission wants us to go, I mean, we can go there.

12 CHAIRMAN GETZ: Well, let's not jump  
13 ahead. I'm just trying to understand the arguments.

14 MR. UPTON: Okay.

15 MR. CAMERINO: So, I mean, bottom line  
16 is, I know, from talking to Mr. Reilly and Mr. Conner,  
17 that they would have had a lot to say about this document  
18 had it been offered at the hearings, and it wasn't. And,  
19 you know, I'm not going to respond to the statement that  
20 "it was forgotten", because, you know, there's no way to  
21 confirm that. But it's important in a hearing that a  
22 witness have a chance to explain the information that's in  
23 the record. And, to just put something that's fairly  
24 significant in afterwards, other than by agreement, I

1 think is improper.

2 CHAIRMAN GETZ: All right. Let's move  
3 on to -- I want to hear the arguments on 1117A, but let me  
4 drag that up first.

5 MR. CAMERINO: And, maybe I should go  
6 first on that, because my argument is fairly simple. I  
7 don't know that you even need the document in front of you  
8 for this, Mr. Chairman.

9 CHAIRMAN GETZ: Okay.

10 MR. CAMERINO: It was my understanding  
11 that the Commission ruled on this at the hearing. And,  
12 so, I didn't think it was still an open issue. And, I can  
13 reference you to the place in the transcript where that  
14 was.

15 CHAIRMAN GETZ: Okay.

16 MR. CAMERINO: This is a Consumer  
17 Confidence Report, the City had marked a package of  
18 Consumer Confidence Reports as 1117, and I can't remember  
19 whether those were actually shown to Mr. Ware or not, but  
20 we're not objecting to those. At the hearing, it came up  
21 with a new one, in addition to the others. And, at the  
22 time, we objected, that's beginning on Page 84 of Day VII,  
23 going through around Page 88 to 89. And, it seemed pretty  
24 clear to me that at that time the Commission ruled that

{DW 04-048} [Hearing Re: Exhibits] (10-12-07)

1 1117A should not come in as an exhibit, and that it was  
2 unnecessarily cumulative, where it wasn't previously  
3 marked, and 1117 was already available on the same  
4 subject. And, that's the extent of our objection.

5 CHAIRMAN GETZ: Does that fairly recite  
6 what we said?

7 MR. RICHARDSON: I believe, I mean, I  
8 think what the one thing that was not, at the time I asked  
9 to move the document in, as it turns out the Commission  
10 allowed Nashua to essentially refer to the events during  
11 cross, the facts that are in there, and this exhibit, I  
12 believe, would help the Commission understand what, in  
13 fact, is being discussed. The record --

14 CHAIRMAN GETZ: So, now you're getting  
15 into the argument about why it should be in?

16 MR. RICHARDSON: Exactly.

17 CHAIRMAN GETZ: Regardless of what I may  
18 have said on Day VII that I can't recall at the moment?

19 MR. RICHARDSON: Well, you indicated  
20 that you would allow the document at that time to be  
21 admitted for cross-examination. And, then, there -- it  
22 was used for that purpose, there was discussion of the  
23 issues that are in there. I believe that the  
24 cross-examination does provide the basic facts.

1 Obviously, the document would provide the Commission with  
2 the underlying backup for those, what was being discussed.

3 This is offered for the Commission's  
4 benefit. I don't -- Nashua doesn't feel strongly if the  
5 Commission's inclined to rule against our request on this,  
6 if it doesn't believe that it would be helpful to review  
7 the underlying document. We can use Mr. Ware's responses.

8 CHAIRMAN GETZ: Okay. All right. Thank  
9 you. I'm just trying to get everything in my head again.  
10 Okay. Let's go to 1145. Is that the next one?

11 MR. CAMERINO: Let me start by saying  
12 that 1145 and 3258 are largely related. And, I think it's  
13 fair to say, and my understanding, at the risk of  
14 characterizing Nashua's position, is that they don't have  
15 an objection to 1145, if 3258 comes in. Their objection  
16 is --

17 MR. UPTON: It's the other way around.

18 MR. CAMERINO: The other way around.

19 MR. RICHARDSON: You said it backwards.

20 MR. CAMERINO: They don't object to  
21 3258, which is the Company's response to record requests,  
22 if 1145 comes in. So, the problem is this.

23 CHAIRMAN GETZ: Is the 3258 also the one  
24 where we have the novel issue of a rebuttal to a record

1 response?

2 MR. CAMERINO: Yes, that's correct.

3 MR. RICHARDSON: We considered, Mr.  
4 Chairman, because we -- when we saw the response that  
5 came, there were certain things that we questioned. And,  
6 we considered filing a motion to compel, but we felt that  
7 that would be -- because we felt that the answers were  
8 incomplete, and, in lieu of engaging in more motions, we  
9 thought it would be more direct to the point if we simply  
10 indicated what we thought was missing from the response.  
11 And, so, we filed the response to the same request.

12 MR. CAMERINO: And, the problem is that,  
13 first of all, we didn't ask for the record request, but we  
14 did respond and we tried to do two things. One is, pick  
15 the words very carefully, so that we weren't misleading  
16 the Commission. And, second of all, provide as little  
17 additional information as possible, so that the response  
18 wasn't argumentative. I received a two-page memo from  
19 Mr. Reilly on the City of Anderson transaction alone, and  
20 did not want to start supplementing the record. So, we  
21 tried to keep it as limited as possible, and accurate.  
22 The response is neither of those things. In fact, the  
23 Duke Power/Anderson County transaction, both parties did  
24 bid. They were different bids. It is true that, at the

{DW 04-048} [Hearing Re: Exhibits] (10-12-07)

1 end, the parties cooperated. But, initially, they both  
2 bid and drove up the price. In the New Haven situation,  
3 I've got a book here, the very book that Mr. Walker  
4 referred to, that indicates that both parties bid. I've  
5 got prices of what they bid. The other two transactions  
6 were characterized with other wording. So, the response  
7 was accurate as it stood. I understand the problem of  
8 then going into additional details about those  
9 transactions. But our view was, if we started going into  
10 all that information, it was for sure going to provoke  
11 this kind of response. So, we were somewhat at a loss to  
12 know what to do. We provided the most narrow answer we  
13 could. If the City's response is allowed to stand, then  
14 we absolutely feel the need to provide some mechanism to  
15 respond, because it's incorrect.

16 MR. RICHARDSON: Mr. Chairman, --

17 CHAIRMAN GETZ: Can we step back? I  
18 want to make sure I understand the interrelationship  
19 between 1145 and 3258. I lost track of your --

20 MR. RICHARDSON: Nashua's position is  
21 simply that if 3258 comes in --

22 CHAIRMAN GETZ: 3258 -- 3258, Part 1?

23 MR. UPTON: 3258 is Mr. Reilly's  
24 response to Commissioner Below's record request.

1                   CHAIRMAN GETZ: Right. And, then, you  
2 guys responded to that.

3                   MR. UPTON: We responded, and that's  
4 1145.

5                   CHAIRMAN GETZ: And, that's all I'm  
6 trying to understand, is when Mr. Richardson says "3258",  
7 is he speaking just about the initial --

8                   MR. UPTON: Yes. Because we marked --  
9 we've marked our responses "1145".

10                  CHAIRMAN GETZ: Oh, okay. All right.  
11 Now, I get it. All right. I was looking at them as both  
12 attempts to be answers to 3258. I see. Okay. I have the  
13 numbering issue resolved in my head.

14                  MR. UPTON: If you do, you're doing  
15 better than the rest of us.

16                  MR. RICHARDSON: We felt, I mean, Mr.  
17 Camerino's argument is -- expresses exactly how Nashua  
18 felt about Mr. Reilly's response. That we -- R.W. Beck,  
19 for example, has worked in New Haven in Connecticut since  
20 1978. And, when we saw the response, I asked the R.W.  
21 Beck witnesses "is this your recollection?" And, there  
22 were some questions. And, so, I think what it comes down  
23 to is, is whether you characterize as Mr. Camerino has  
24 pointed out as the bids being put in by New Haven versus

1 the Regional Water District that was -- it's called the  
2 "South Central Connecticut Regional Water District".  
3 There were statements made by people that they were on the  
4 City's side. That they were trying to put their bid in  
5 order to create the district. So, we have -- it's really  
6 a question of judgment. And, I think it's not a --

7 CHAIRMAN GETZ: Well, one of the issues  
8 that occurred to me when reading your response, 1145, was  
9 "why isn't this something that's just addressed in brief  
10 by both sides?" But I'm taking it that --

11 MR. RICHARDSON: The problem would be  
12 that it was not clear from Mr. Reilly's response what he  
13 was basing his decision, and whether he was actually  
14 saying that they were both interested in acquiring the  
15 system, and may have worked something out, or whether they  
16 bid as competitors, because it's the competitor part of  
17 the bidding. We don't dispute that New Haven and the  
18 Regional Water District both made offers to purchase.  
19 But, if you look at the statements that were being made,  
20 it was a contemporaneous, basically, a single effort, like  
21 in Nashua.

22 MR. CAMERINO: And, I have to stress,  
23 from a factual standpoint, that's just wrong. And, if you  
24 look at Page 48 of the book that Mr. Walker cites, it's

1 very clear there were two offers; the same with Anderson  
2 County. But that's not the point.

3 CHAIRMAN GETZ: So, there's a dispute  
4 both as to the facts and to the characterization of the  
5 facts?

6 MR. CAMERINO: Correct.

7 MR. RICHARDSON: Yes.

8 MR. CAMERINO: And, I would -- one thing  
9 I would concede is I don't believe this is something that  
10 could be resolved through briefs. And, we would be quite  
11 concerned if Nashua started bringing in additional facts  
12 through the brief. And, I think that's, to us, one of the  
13 reasons that we feel a need to respond to their response,  
14 if it's allowed to come in. And, we -- that's why we were  
15 very --

16 CHAIRMAN GETZ: Is it fair to say that  
17 you both would be happy if both were out?

18 MR. CAMERINO: Well, perhaps and perhaps  
19 not. Our concern is that -- I think this is an important  
20 point. My understanding was, and I have to say I wasn't  
21 here that day, so I've only read the transcript and talked  
22 to my colleagues. There were some questions from  
23 Commissioner Below about whether it was realistic, instead  
24 of thinking about multiple municipal purchasers or

1 multiple governmental purchasers, on a hypothetical basis,  
2 whether it was realistic to have multiple governmental  
3 bidders. And, so, he asked "do you know of any examples?"  
4 And, Mr. Reilly said "Yes, but I'd have to go check. I  
5 don't have them on the tip of my tongue." And, so, that's  
6 what generated the record request. And, if the absence of  
7 a response to that question created the impression that it  
8 never happened or couldn't happen, then we wouldn't be  
9 okay without that information in the record. Mr. Reilly  
10 has testified that it can happen, but he didn't point to  
11 specifying examples, until the record request.

12 CHAIRMAN GETZ: Okay.

13 MR. RICHARDSON: Mr. Chairman, if I  
14 could just respond on the record to your request. The  
15 City of Nashua has no objection if both responses are  
16 withdrawn or stricken. I think it's --

17 CHAIRMAN GETZ: But you wouldn't be  
18 happy if they had one more chance?

19 MR. RICHARDSON: I think that it's an  
20 issue that, in the absence, given the posture we're in  
21 right now, that without going through and cross-examining  
22 them, and actually asking direct questions to the  
23 witnesses "what does this, in fact, mean and how do you  
24 interpret this?", we'd be left with a situation where both

1 sides would want to respond to what the other said, and,  
2 you know, without, and I think rightfully so.

3 CHAIRMAN GETZ: Ms. Thunberg, do you  
4 have anything on the rest of these exhibits?

5 MS. THUNBERG: No. Thank you.

6 CHAIRMAN GETZ: Okay. So, is that the  
7 entirety of what's left to decide in this case? Well, --

8 MR. CAMERINO: Other than the case.

9 CHAIRMAN GETZ: -- other than the case.  
10 Evidentiary issues?

11 MR. UPTON: We all tried really hard to  
12 narrow down the disputes. And, I think we did a pretty  
13 good job at it.

14 CHAIRMAN GETZ: I appreciate that.

15 MR. RICHARDSON: I agree.

16 MR. CAMERINO: Yes.

17 (Brief off-the-record discussion  
18 ensued.)

19 MR. CAMERINO: One other thing I just  
20 want to mention, which again I've mentioned off the record  
21 to counsel, is Exhibit 3064 that is physically in the  
22 Commission's file right now is just the cover page of the  
23 document that needs to be in the record. At some point in  
24 the next few days we'll get the actual document in, and

1 we'll provide it to, although it came from Nashua  
2 originally, we'll provide it to them first to make sure  
3 they're satisfied with what's being substituted. There  
4 were other documents at the close of the hearing where we  
5 needed to make switches, and that's already been done, and  
6 that's reflected in the letter to the Commission.

7 CHAIRMAN GETZ: Ms. Thunberg, did you  
8 have something on that?

9 MS. THUNBERG: It doesn't need to be on  
10 the record. Thank you.

11 CHAIRMAN GETZ: Okay. All right.

12 MR. CAMERINO: Could I mention one other  
13 thing, before we go off the record?

14 CHAIRMAN GETZ: Yes.

15 MR. CAMERINO: Just a reminder that the  
16 parties have agreed that the briefs, initial briefs would  
17 be due 30 days after the Commission issues its order on  
18 these exhibits. So, there's, while we don't have a  
19 particular timing need, that any timing on the  
20 Commission's order would keep pushing back the briefing  
21 date.

22 CHAIRMAN GETZ: Yes. What I was hoping  
23 to do, I mean, and I want to go back and look at the  
24 transcript, I want to look at some of these exhibits

{DW 04-048} [Hearing Re: Exhibits] (10-12-07)

1 again, and take it into combination with all of your  
2 arguments today. I had been hoping to respond orally, and  
3 not write an order on this, and to make those rulings, and  
4 was actually thinking about whether I could do that at the  
5 end of the day Monday, like at 4:00 on Monday, if we would  
6 reconvene then, and I'll just make the rulings orally.  
7 Does anyone have any problem with that procedure or with  
8 that timing?

9 MR. CAMERINO: From my standpoint,  
10 that's fine. Although, I think we'd also be satisfied to  
11 get a letter that just identifies the disposition of each  
12 one.

13 MR. UPTON: And that works equally well  
14 for us. If it's easier for you to do it in a letter,  
15 that's fine.

16 CHAIRMAN GETZ: What I had hoped to not  
17 have to do is to --

18 MR. UPTON: Okay.

19 CHAIRMAN GETZ: -- put out a full-blown  
20 order. But -- Well, let's go off the record for a second.

21 (Brief off-the-record discussion  
22 ensued.)

23 CHAIRMAN GETZ: All right. Let's go  
24 back on the record then. Rather than schedule a hearing

1 for Monday, what I'll do is review the arguments and issue  
2 a letter resolving the various debates, evidentiary  
3 debates, by, certainly, by the end of next week that that  
4 will be out, hopefully, earlier in the week.

5 Anything else?

6 (No verbal response)

7 CHAIRMAN GETZ: Okay. Then, thank you  
8 very much.

9 (Whereupon the hearing regarding  
10 admissibility of exhibits ended at 2:45  
11 p.m.)  
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