

STATE OF NEW HAMPSHIRE

PUBLIC UTILITIES COMMISSION

OCTOBER 25, 2011 - 1:20 p.m.  
Concord, New Hampshire

AFTERNOON SESSION ONLY

RE: DW 04-048 CITY OF NASHUA, NEW HAMPSHIRE:  
Petition for Valuation Pursuant to RSA 38:9  
DW 11-026 CITY OF NASHUA; PENNICHUCK  
CORPORATION; PENNICHUCK WATER WORKS, INC.;  
PENNICHUCK EAST UTILITY, INC.; AND PITTSFIELD  
AQUEDUCT COMPANY:  
Joint Petition for Approval to Acquire Stock  
in Pennichuck Corporation

PRESENT: Chairman Thomas B. Getz, Presiding  
Commissioner Amy L. Ignatius

Sandy Deno, Clerk

APPEARANCES:

Reptg. City of Nashua, N.H.:  
William F. J. Ardinger, Esq. (Rath, Young...)  
Andrew W. Serell, Esq. (Rath, Young...)

Reptg. Pennichuck Corporation, Pennichuck  
Water Works, Pennichuck East Utility, and  
Pittsfield Aqueduct Company:  
Steven V. Camerino, Esq. (McLane, Graff...)

NHPUC NOV14'11 AM 8:55

COURT REPORTER: Susan J. Robidas, LCR NO. 44

{DW 04-048/DW 11-026}[AFTERNOON SESSION ONLY] {10-25-11}

APPEARANCES: (C O N T I N U E D)

Reptg. Merrimack Valley Regional  
Water District:

Stephen J. Judge, Esq. (Wadleigh, Starr...)

Reptg. Anheuser-Busch:

John T. Alexander, Esq. (Ransmeier & Spellman)

Reptg. Town of Merrimack, N.H.:

Edmund J. Boutin, Esq. (Boutin & Altieri)

Reptg. Town of Milford, N.H.:

David K. Wiesner, Esq. (Olson & Gould)

Fred S. Teebom, Pro Se

Reptg. Residential Ratepayers:

Rorie E. P. Hollenberg, Esq.

Stephen Eckberg

Office of Consumer Advocate

Reptg. PUC Staff:

Marcia Thunberg, Esq.

Mark Naylor, Director/Gas & Water Division

James Lenihan, Gas & Water Division

Douglas Brogan, Gas & Water Division

Jayson LaFlamme, Gas & Water Division

## I N D E X

## PAGE NO.

## WITNESS: MARK NAYLOR

Direct Examination By Ms. Thunberg	5
Cross-Examination By Mr. Teebom	13
Cross-Examination By Ms. Hollenberg	16
Questions by Cmsr. Ignatius	19
Redirect Examination By Ms. Thunberg	24

## WITNESS: FINLAY L. ROTH AUS

Direct Examination By Mr. Boutin	26
Cross-Examination By Mr. Judge	43
Cross-Examination by Mr. Teebom	47
Cross-Examination by Mr. Camerino	52
Questions by Cmsr. Ignatius	54

## CLOSING STATEMENTS:

By Mr. Boutin	59
By Ms. Hollenberg	64
By Mr. Wiesner	65
By Mr. Teebom	66
By Mr. Alexander	69
By Mr. Judge	69
By Ms. Thunberg	72
By Mr. Ardinger	72
By Mr. Camerino	84

## EXHIBITS

12, 16, 18, 19	City Exhibits	Premarked
22	Town of Merrimack Exhibits A through J	Premarked

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

2 CHAIRMAN GETZ: Okay. Good afternoon.  
3 We're back on the record.

4 And Ms. Thunberg, are you ready to  
5 proceed?

6 MS. THUNBERG: Yes, but we have a couple  
7 procedural issues regarding exhibits. And I'll defer  
8 to Attorney Serell.

9 MR. SERELL: Thank you. We wanted to  
10 have marked final exhibits that were not referred to  
11 earlier in testimony, but they're Exhibit Numbers 12  
12 through 16 and then 18 on our exhibit list.

13 And then, in addition, I'm going to ask  
14 to be marked, I think what's going to be Exhibit 19,  
15 the record request. So I have three copies of that.  
16 And that's all for the Joint Petitioners.

17 (Exhibit 12, 16, 18, 19 marked for  
18 identification.)

19 CHAIRMAN GETZ: Okay. Thank you.

20 MR. BOUTIN: I marked -- or I produced  
21 exhibits and distributed them to all the parties of  
22 Exhibit J that we talked about. And I placed four  
23 with the clerk. So she has three for the Commission  
24 and one for herself.

1 CHAIRMAN GETZ: Thank you.

2 MR. BOUTIN: And that's already marked  
3 as Exhibit J, I believe.

4 CHAIRMAN GETZ: Thank you. That's  
5 helpful to those of us who are colorblind. Looks like  
6 I can actually make out the green.

7 MS. THUNBERG: And with respect to  
8 Exhibit 17, which was the charter that earlier this  
9 morning we did not have ample copies for the Bench, I  
10 have provided copies to the clerk so that she can  
11 provide you with Exhibit 17. And I understand Exhibit  
12 17 came in without the cover page that was as it was  
13 filed with the Commission. I inadvertently copied the  
14 cover page. But the clerk will be taking that cover  
15 page off. So it's just the charter itself.

16 CHAIRMAN GETZ: Okay. Anything else?

17 MS. THUNBERG: I'd like to call Mark  
18 Naylor as a witness.

19 (Whereupon, MARK NAYLOR was duly sworn  
20 and cautioned by the Court Reporter.)

21 MARK NAYLOR, SWORN

22 DIRECT EXAMINATION

23 BY MS. THUNBERG:

24 Q. Mr. Naylor, I'd like to have you start off

1 and have you state your name for the record.

2 A. Yes. My name is Mark Naylor.

3 Q. And I'd like to show you a document and have  
4 you identify it for the record, please.

5 (Witness reviews document.)

6 A. Yes. This is the testimony that I filed in  
7 this proceeding on August 30th of 2011.

8 MS. THUNBERG: And Commissioners, this  
9 document has been listed in the exhibit list as  
10 Exhibit 13, and I presume you have copies. I've given  
11 one to the clerk.

12 CHAIRMAN GETZ: Okay.

13 BY MS. THUNBERG:

14 Q. Mr. Naylor, are your qualifications listed in  
15 your prefiled testimony?

16 A. Yes, they are.

17 Q. And is your testimony today going to be  
18 within your area of expertise, as noted in those  
19 qualifications?

20 A. Yes.

21 Q. And the prefiled testimony, was that drafted  
22 by you prior to involvement in any Settlement  
23 Agreement?

24 A. Yes, it was.

1 Q. And the Settlement Agreement that's been  
2 referred to today, are you familiar with the terms of  
3 that document?

4 A. Yes, I am.

5 Q. I'd like to have you give an overview for the  
6 Commission on why Staff is supportive of the  
7 Settlement Agreement. And in particular, I'd like to  
8 have you address why Staff believes the Settlement  
9 Agreement is in the public interest.

10 A. Certainly. Staff believes this Agreement  
11 provides benefits to customers of all the three  
12 utilities over the long term. I think the benefits of  
13 this Settlement Agreement can be summarized in three  
14 areas: First, the overall cost of capital is expected  
15 to be lower than under current ownership, and it may  
16 be substantially lower. The current equity capital of  
17 the three utilities will be replaced with the City  
18 bond fixed revenue requirement at an interest rate  
19 that, as the Commission heard this morning, may be  
20 below 5 percent. Combined with the existing debt of  
21 each utility and the City's commitment to request a  
22 lower cost of equity when it does accumulate equity  
23 capital in the utilities in the future, the total  
24 return costs may be lower, even considering that this

1 transaction requires an acquisition premium. Future  
2 capital improvements, of course, as you heard  
3 testimony this morning, will be financed with debt,  
4 which, of course, carries a lower cost than equity  
5 capital.

6 Secondly, we are assured a continuation of  
7 the good service that this company has provided over  
8 the years. The management and operational personnel  
9 will remain in place.

10 And I think, thirdly, the City has agreed to  
11 not take withdrawals of capital from the utilities,  
12 with the two exceptions that were noted this morning:  
13 Repayment of the City's acquisition debt and recovery  
14 of its costs incurred in the eminent domain case,  
15 which, of course, has some restrictions on it, which  
16 means that over time, if the utilities do generate  
17 retained earnings, those earnings will be an  
18 additional source of capital for future improvements  
19 in the water systems.

20 There are several other benefits I think in  
21 addition to those, which Staff is pleased with in  
22 recommending this Agreement. One of the issues I  
23 raised in testimony was a concern that there was no  
24 provision in the ratemaking structure proposed



1 originally that would potentially pass savings to  
2 customers through rate cases. There was no proposal  
3 to change rates at any time soon after the transaction  
4 would close. And the Settlement Agreement calls for  
5 rate filings in 2013, after a year of operation under  
6 City ownership. And if we do see the interest rate on  
7 the acquisition bonds that we hope to see, the impact  
8 on customer rates may be favorable.

9 Another benefit of this Agreement, I think,  
10 is that the City's request to establish a rate  
11 stabilization fund has been modified through the  
12 Agreement, and I think it's an improvement. The fund  
13 will only be established in PW. The rates  
14 stabilization fund will be used only if necessary  
15 under certain circumstances, as was discussed this  
16 morning. And it's used only to insure payment of the  
17 City's debt service obligation. Also, the City has  
18 agreed not to seek recovery of its eminent domain  
19 costs through the general obligation bonds, and that  
20 reduces the total borrowing anticipated for this  
21 transaction; and, of course, the City will be  
22 reimbursed for those costs only as the utilities are  
23 able to generate net income over time.

24 So I think that summarizes the significant

1 benefits Staff sees of this Agreement.

2 Q. Mr. Naylor, I'd like to cover a couple points  
3 that you had raised in your testimony, understanding  
4 your testimony was based on -- is it fair to say that  
5 your testimony was based on the petition as it was  
6 filed?

7 A. Yes, it was, and, of course, in consideration  
8 of the discovery materials that were generated through  
9 review of the filing.

10 Q. Do you recall in your testimony raising a  
11 concern about R.S.A. 378:30-a, the so-called  
12 "anti-clip statute"?

13 A. Yes.

14 Q. Can you please explain how the Settlement, if  
15 it does address this current concern, how it addresses  
16 the concern that you had?

17 A. Well, I think some of the modifications that  
18 the Settlement contains kind of alter the nature of  
19 the rate stabilization fund. I think clearly it's  
20 more open now to interpretation that the rate  
21 stabilization fund is really more of a working capital  
22 fund than it is construction work. It is not plant in  
23 service. It does not represent plant in service. And  
24 it is not considered permanent capital. It will exist

1 throughout the 30-year life of the City's acquisition  
2 bonds being drawn upon and replenished as necessary.  
3 But at the end of the 30 years, it will be turned over  
4 or credited to customers in some manner. So I think  
5 in this context it is more like a working capital fund  
6 than anything else.

7           Significantly, too, the rate stabilization  
8 fund, under the terms of the Settlement Agreement,  
9 will not be considered to be a part of the Pennichuck  
10 Water Works as equity for purposes of calculating the  
11 Company's capital structure; thus, it will not  
12 contribute any additional weighting toward equity in  
13 future rate proceedings.

14           Q. Mr. Naylor, on Page 13 of your testimony, you  
15 talked about there being no mechanism for savings to  
16 be passed on to customers. Can you -- does the  
17 Settlement Agreement address that concern?

18           A. Yes. Could you point me to the spot in --

19           Q. I'm just looking at Page 13, Line 18.

20           A. Page 13. Yes, that's -- I referred to that  
21 earlier. And as my testimony indicates, we had a  
22 concern that if the City is able to obtain a lower  
23 rate, there's no mechanism in place to pass savings on  
24 to customers and lower rates accordingly. The

1 Agreement provides for the three utilities to make  
2 rate filings in 2013, where the CBFRR will be adjusted  
3 and set, based on the actual interest rate the City is  
4 able to obtain.

5 Q. Mr. Naylor, does a Settlement Agreement  
6 satisfy the concerns that you had expressed in your  
7 testimony?

8 A. Yes, it does.

9 Q. And is it Staff's position -- or I guess,  
10 what is your opinion on the Settlement Agreement being  
11 in the public interest?

12 A. I believe it is in the public interest.

13 Q. And do you believe that the Merger Agreement  
14 filed by the Petitioners and modified by the  
15 Settlement Agreement is also in the public interest?

16 A. Yes, I do.

17 MS. THUNBERG: Staff has no further  
18 direct.

19 CHAIRMAN GETZ: Okay. Thank you. Mr.  
20 Serell.

21 MR. SERELL: The City has no questions.

22 CHAIRMAN GETZ: Mr. Camerino.

23 MR. CAMERINO: No questions. Thank you.

24 CHAIRMAN GETZ: Mr. Judge.

1 MR. JUDGE: No questions.

2 CHAIRMAN GETZ: Mr. Alexander.

3 MR. ALEXANDER: No question.

4 CHAIRMAN GETZ: Mr. Teebom.

5 MR. TEEBOM: I have a question.

6 CHAIRMAN GETZ: Please.

7 CROSS-EXAMINATION

8 BY MR. TEEBOM:

9 Q. Mr. Naylor, take a look at Page 10 of the  
10 Settlement Agreement, item number little E.

11 A. Okay.

12 Q. So there's non-traditional, apparently,  
13 ratemaking procedure, and there's traditional  
14 ratemaking principle and procedure. Where are these  
15 traditional ratemaking principles and procedures  
16 defined?

17 A. They're defined in the Commission's  
18 ratemaking practice, which has been a part of rate  
19 setting for many, many years.

20 Q. Are they defined under administrative  
21 procedures?

22 A. There are, in our administrative rules,  
23 certain requirements for what the rate filing must  
24 include. There are certain schedules, as defined in

1 our administrative rules, that must be filed with a  
2 rate case. So there is an extensive body of both  
3 administrative rules and practices for us to follow in  
4 setting rates in the future.

5 Q. Such things as establishing a rate base,  
6 calculations that make up a rate base, the return on  
7 investment, the grossing-up process, all that  
8 computational stuff, where is that defined?

9 A. Some of it is in our administrative rules, in  
10 our Chapter 1600 rules. Some of it is through the  
11 traditional practices that the Commission has  
12 followed.

13 Q. So unless you're familiar with these  
14 practices, there's no way to figure it out.

15 A. Well, I know where you're going with this,  
16 and I understand it's difficult for folks who do not  
17 appear before the Commission on a regular basis to  
18 understand a lot of it. There's a lot of different  
19 things that are involved in analyzing a company's  
20 financial statements and translating that into a  
21 calculation of whether or not a regulating utility is  
22 due for a rate increase or decrease or otherwise. But  
23 I think there is an adequate body of practice and  
24 tradition for us to rely on in setting rates not only

1 for the three companies at issue here, but all of the  
2 companies that this Commission regulates.

3 Q. Do you follow textbook procedures?

4 A. Could you repeat that?

5 Q. Do you follow textbook procedures or manuals?

6 A. I'm not sure. There's a lot of literature on  
7 rate setting and rate practice and theory which has  
8 been developed over many decades. I'm not sure you  
9 will find any one particular textbook that will, you  
10 know, be devoted entirely or substantially to  
11 traditional cost-of-service ratemaking. But there are  
12 a number of materials out there that deal with the  
13 subject in considerable depth.

14 Q. Final question: For purpose of this  
15 Settlement Agreement, when I refer to "acting like a  
16 traditional ratemaking principle," somebody trying to  
17 track a few years from now, trying to figure this out,  
18 don't you think it would be a good idea to write this  
19 down, the procedure used by the New Hampshire Public  
20 Utility Commission in setting up a rate structure?

21 A. Well, I think there's -- as I have indicated,  
22 I think there's adequate documentation of  
23 cost-of-service ratemaking within the Commission's  
24 orders and its administrative rules, in a number of

1 places. I don't think there's any confusion on the  
2 part of Commission Staff, the Consumer Advocate, the  
3 utilities that are regulated here, the Commissioners,  
4 others, that we know what needs to be done. There are  
5 guidelines in our administrative rules for what must  
6 be filed and the kind of schedules that must be filed.  
7 So I think there's adequate documentation.

8 MR. TEEBOM: That's all the questions.

9 CHAIRMAN GETZ: Thank you.

10 Mr. Wiesner.

11 MR. WIESNER: No questions.

12 CHAIRMAN GETZ: Ms. Hollenberg.

13 MS. HOLLENBERG: Thank you.

14 CROSS-EXAMINATION

15 BY MS. HOLLENBERG:

16 Q. Just a couple questions, Mr. Naylor. Thank  
17 you.

18 Would you agree that the city acquisition  
19 debt, as it's defined in the Settlement Agreement, is  
20 not utility debt?

21 A. I believe that is a fair representation, yes.

22 Q. And you would -- would you also agree that  
23 the Joint Petitioners are not asking for approval of  
24 the City's borrowing of the city acquisition debt?



1           A.     I would agree with that.

2           Q.     Thank you.  Would you agree that it's  
3 possible that the city acquisition debt could be more  
4 than the amount reflected in the Settlement Agreement?

5           A.     Yes.

6           Q.     And would you agree that if the city  
7 acquisition debt was higher, that the higher amount  
8 would be recoverable from ratepayers if the Commission  
9 approved the Settlement Agreement?

10          A.     Yes.

11          Q.     Thank you.

12                 You mentioned earlier about -- you said  
13 something to the effect of interest rates on the  
14 acquisition bonds that we hope to see.  And I wondered  
15 what Staff's expectations were or hopes were for the  
16 acquisition bond debt interest rate.

17          A.     Well, I'm only going by what we -- what's  
18 been indicated by Mr. Patenaude for the City  
19 primarily.  He's indicated that rates for the general  
20 obligation bonds could be less than 5 percent.  I have  
21 not done any research myself to verify those numbers,  
22 but -- so that's the source of the information.

23          Q.     And you would agree that earlier, on  
24 questioning by the Joint Petitioners' counsel, that

1 the fours were -- "somewhere in the range of the  
2 fours" were mentioned?

3 A. Yes.

4 Q. Thank you. Another thing that you said a few  
5 moments ago was that the rate stabilization fund, the  
6 RSF, would be turned over and credited -- something to  
7 the effect that it will be turned over and credited to  
8 customers at the end of 30 years. And if you would  
9 look at -- I wondered if you could just tell me what  
10 the basis for your -- for that statement is. Is there  
11 somewhere in the Settlement Agreement that states  
12 that, or is that just your understanding of the  
13 discussions that you've had in the context of reaching  
14 the Settlement Agreement?

15 A. It's the latter. I don't believe the  
16 Settlement Agreement is specific on that point.

17 Q. Okay.

18 A. But I think it's certainly my expectation,  
19 and I would be surprised if anyone on the team of the  
20 Joint Petitioners disagreed, that those funds would  
21 not ultimately be credited back to the customers at  
22 the conclusion of the 30 years.

23 Q. And if you were to look at Exhibit C to the  
24 Settlement Agreement, Paragraph 1 states the RSF will

1 remain in effect for 30 years or until the city  
2 acquisition bonds are retired or refinanced. Would  
3 Staff -- oh, I'll let you get there. Sorry.

4 A. Okay.

5 Q. So Paragraph 1, last sentence says, "The RSF  
6 will remain in effect for 30 years or until the city  
7 acquisition bonds are retired or refinanced." Would  
8 Staff interpret that sentence as equating to what you  
9 said earlier, which was that, when the city  
10 acquisition bonds are paid off, that the RSF would go  
11 back to customers?

12 A. Yes.

13 Q. Okay. Thank you.

14 MS. HOLLENBERG: Thank you. No other  
15 questions.

16 CHAIRMAN GETZ: Thank you.

17 Mr. Boutin.

18 MR. BOUTIN: No questions.

19 CHAIRMAN GETZ: Okay.

20 CMSR. IGNATIUS: Thank you.

21 QUESTIONS BY COMMISSIONER IGNATIUS

22 Q. Good afternoon, Mr. Naylor.

23 A. Good afternoon.

24 Q. You described a number of issues that were in

1 your prefiled testimony in Exhibit 13 that are no  
2 longer of concern to you, given the final terms of the  
3 Settlement Agreement.

4 A. Yes.

5 Q. There were a couple of areas that I wanted to  
6 ask you about, that you didn't discuss with your  
7 counsel, and get your view of today.

8 One is in around Pages 10 and 11, you talk  
9 about a shift in the risk that a utility bears, and  
10 that it seemed to you that, under the proposed  
11 transaction, the utilities were seeking to be  
12 assured -- or the City was seeking, that the utilities  
13 be assured recovery of their revenue requirement, as  
14 opposed to an opportunity to earn that revenue  
15 requirement. What's your current view of that issue?

16 A. Well, it's certainly something that was of  
17 concern to Staff when we began to review this merger  
18 proposal. I think we quickly began to realize that  
19 this is kind of the square peg/round hole scenario,  
20 where we have a municipal owner at the top of the  
21 pyramid and regulated utilities at the bottom. And  
22 when you think about that, you sort of come to some  
23 conclusions that some things just have to be different  
24 to make it work. So as we moved through discovery and

1 discussions with the parties and began to think about  
2 what a Settlement Agreement might look like, I think  
3 there are enough benefits to customers, both inside  
4 and outside Nashua, that that concern has been greatly  
5 lessened.

6 Q. You recommended on Page 14 of your prefiled  
7 testimony that the three utilities move towards  
8 consolidated rates. Is that still something that you  
9 think should be done as part of this transaction?

10 A. It's -- well, that opinion is not obviously  
11 part of the Settlement Agreement. It's not something  
12 that the Settlement Agreement calls for. So I'm not  
13 advocating for it at this point. I think it was one  
14 way of potentially addressing some of the concerns we  
15 had with the initial proposal and the initial  
16 ratemaking structure.

17 As you've heard so far today, there have been  
18 a number of changes and modifications made to the  
19 original proposal which I think have addressed a  
20 number of the concerns that Staff had and that other  
21 parties had. So I'm not advocating for consolidated  
22 rates at this time. It's something that may have some  
23 merit. I think it would need to be studied. There  
24 are some good reasons why there are different rates

1 among the three companies: Differences in service  
2 territories and the nature of those service  
3 territories. For example: PWW has a core system  
4 with, you know, 22- or 23,000 customers; whereas, PEU  
5 tends to have smaller, separate systems. So there are  
6 some reasons why there are different rates. But as  
7 part of the Settlement, I'm certainly not advocating  
8 for that.

9 Q. If the transaction were approved as described  
10 in the Settlement Agreement, do you think the economic  
11 viability of the utilities would be weakened in any  
12 way?

13 A. No, I don't think so. I do think, however,  
14 that the cash flow for the utilities will be -- will  
15 tend to be a little bit tighter. The companies'  
16 management is going to have to be very vigilant. And  
17 we've already had some discussions about this. I  
18 think it's quite clear that cash flow is going to be a  
19 little bit tighter. So the companies will be somewhat  
20 more sensitive to changes in operating expenses,  
21 property taxes, this kind of thing. So the management  
22 is going to be -- is going to have to be more vigilant  
23 as the regulator of these utilities, and this  
24 Commission will need to be more vigilant of these

1 utilities as well. But I think on a general basis,  
2 I'm not concerned that there is a risk that  
3 significant problems will arise from this ratemaking  
4 structure.

5 Q. How about from the perspective of the  
6 ratepayer customer? Do you see any way in which the  
7 reasonableness of rates will be adversely impacted if  
8 approved as filed today?

9 A. No. I think it's very clear from the terms  
10 of this Settlement Agreement that all customers, both  
11 inside and outside Nashua, will see, in the long term,  
12 lower rates than what they would have seen under  
13 existing ownership. I'm quite confident of that.

14 Q. Do you anticipate any impact on quality of  
15 service or adequacy of service?

16 A. No, I don't.

17 Q. Any safety issues?

18 A. No.

19 Q. Is it -- would you agree with the testimony  
20 of Mr. Ware and Ms. Hartley that the management of the  
21 utilities will not be different in any respect under  
22 this structure than they have been in recent years  
23 under the existing structure?

24 A. I agree with that testimony, yes.

1 Q. Thank you.

2 CMSR. IGNATIUS: Nothing else.

3 CHAIRMAN GETZ: Any redirect, Ms.  
4 Thunberg?

5 MS. THUNBERG: Yes, just a couple.

6 REDIRECT EXAMINATION

7 BY MS. THUNBERG:

8 Q. Mr. Naylor, I just want to follow up on the  
9 line of -- or the issue that Commissioner Ignatius was  
10 getting at with your recommendation in the prefiled  
11 testimony to consolidate rates.

12 Can you compare the benefits you were trying  
13 to achieve with a consolidated rate with the benefits  
14 the outside customers get under the Settlement  
15 Agreement?

16 A. Well, I think I made the point in my  
17 testimony that -- and, of course, a lot of this  
18 analysis was done with the projected interest rate on  
19 the acquisition debt of 6.5 percent. Although I  
20 didn't think outside customers, non-Nashua customers,  
21 would be harmed, I didn't see where they were going to  
22 get a lot of benefit. Maybe some benefit with lower  
23 debt costs or capital improvements in the future being  
24 financed primarily with the debt.



1           And so in consideration of all of the aspects  
2   that this merger entails -- recovery of an acquisition  
3   premium, for example, rate stabilization funds, some  
4   other non-traditional aspects to it -- I think Staff  
5   was primarily looking for sort of, you know, a  
6   balancing, more of a balance to provide some  
7   additional benefits to customers outside Nashua. And  
8   I think that's quite clear in my testimony. I  
9   probably couldn't find it very quickly. But I think I  
10   indicated in the testimony that we were looking to  
11   provide some additional benefits to customers outside  
12   Nashua. And I think this Settlement Agreement and the  
13   modifications that it contains from the original  
14   proposal has done that.

15           MS. THUNBERG: No further redirect.  
16   Thank you.

17           CHAIRMAN GETZ: Thank you.  
18   Then you're excused. Thank you, Mr.  
19   Naylor.

20           (Whereupon the Witness was excused.)

21           CHAIRMAN GETZ: Mr. Boutin.

22           MR. BOUTIN: I'll call Finlay Rothaus to  
23   the stand.

24           (Whereupon, FINLAY ROTH AUS was duly

1 sworn and cautioned by the Court Reporter.)

2 FINLAY ROTH AUS, SWORN

3 DIRECT EXAMINATION

4 BY MR. BOUTIN:

5 Q. For the record, just state your full name and  
6 spell it.

7 A. It's Finlay Rothaus. That's F-I-N-L-A-Y,  
8 R-O-T-H-A-U-S.

9 Q. As I understand it, you are an officer holder  
10 with the Town of Merrimack; is that correct?

11 A. Yes. I sit on the town council and currently  
12 serving as the chair.

13 Q. And how long have you had service in  
14 municipal government?

15 A. Off and on in local government since 1995.  
16 Prior to that, I was with the State for four years.

17 Q. Approximately 15 years. Did you serve in the  
18 Legislature?

19 A. Yes, I did, for two terms, actually.

20 Q. And you're familiar with how municipalities  
21 go about setting capital budgets, aren't you?

22 A. Yes.

23 Q. And you're also familiar with how  
24 municipalities approve bonds?

1           A.     Yes.

2           Q.     You heard Mr. Naylor's testimony that this  
3     hybrid structure that we've created has at the top of  
4     the pyramid a municipality; is that right?

5           A.     Yes.

6           Q.     And you also heard testimony this morning  
7     that, in terms of capital expenses, all of the capital  
8     expenses will be funded with debt?

9           A.     Yes.

10          Q.     And that was to be bond debt?

11          A.     Yes.

12          Q.     And did you also hear testimony this morning  
13     that the board of aldermen in Nashua have the ultimate  
14     authority to approve that?

15          A.     Yes.

16          Q.     Now, in your experience as a municipal  
17     official, have you known --

18                   MR. CAMERINO:   Excuse me, Mr. Chairman.

19     I just want to object at this point.  I apologize.

20     But I'm concerned about Mr. Boutin restating the  
21     record from this morning, because I don't think he's  
22     stating it correctly.  And I don't want to get into a  
23     debate about how we differ from how he's stating it.

24     And I think he could just ask questions without

1 reprising this morning's testimony, unless he wants to  
2 get the stenographer to read back, which obviously  
3 would be problematic.

4 MR. BOUTIN: I'm asking the witness what  
5 he understood and heard this morning. I think he can  
6 testify to what he understood and heard.

7 CHAIRMAN GETZ: Well, let's -- we're  
8 going to approach it this way: I think it's a fair  
9 inquiry in terms of, effectively, supplemental direct,  
10 I take it, to seek the opinion of the witness about  
11 some of the characterizations this morning. I take  
12 your point, Mr. Camerino. I don't want to slow down  
13 this proceeding to go back and go through the  
14 transcript to see if Mr. Boutin is repeating directly  
15 word for word what was stated. But I think we're  
16 going to allow his characterization as his  
17 characterizations, his recollections. To the extent  
18 that you want to pursue something in cross, then I  
19 think that's the way we're going to have to handle  
20 this. That may be the most expeditious way. So,  
21 proceed.

22 MR. BOUTIN: Thank you. I'm going to  
23 sit down because the steno's having trouble with  
24 hearing me.

1 BY MR. BOUTIN:

2 Q. Now, the last question I asked you was about  
3 how the bonds would get approved, as you heard it this  
4 morning. Do you remember that?

5 A. By the aldermen.

6 Q. And do you understand -- strike that.

7 In terms of your experience in municipal  
8 government, would a body like the aldermen approve a  
9 capital budget or a borrowing without knowing what it  
10 was for?

11 A. I would think not.

12 Q. And would you also consider it likely that  
13 they would be making choices as to whether or not they  
14 wanted to approve individual projects?

15 MR. SERELL: Objection. This really  
16 calls for speculation. He's asking him to speculate  
17 what the Nashua Board of Aldermen would do, especially  
18 when there's already been testimony that they're not  
19 going to look at individual line items.

20 CHAIRMAN GETZ: Mr. Boutin, response?

21 MR. BOUTIN: My response is that we  
22 don't know because the charter certainly doesn't -- or  
23 the articles of incorporation certainly don't speak to  
24 that limitation. And in fact, how do legislative

1 bodies in municipalities act? I think that's a fair  
2 question of this witness.

3 CHAIRMAN GETZ: Well, we're going to  
4 permit the question. I think it is -- I take it this  
5 witness' speculation based on his experience in one  
6 town and how aldermen in another town might act in a  
7 particular situation and what weight we'll give to  
8 that is a matter for us as the fact finders.

9 But, I mean, this goes back to  
10 continuing your line of argument about the difference  
11 between approving the capital budget versus the actual  
12 project. So, you know, let's move this along.

13 MR. BOUTIN: All right.

14 BY MR. BOUTIN:

15 Q. Answer the question.

16 CHAIRMAN GETZ: Well, do you recall the  
17 question?

18 A. If I recall it correctly, from my standpoint,  
19 I would hope that I would know and would make it known  
20 what was involved and included in the group of capital  
21 projects to be voted on. If that wasn't the question,  
22 please correct me.

23 BY MR. BOUTIN:

24 Q. That's fine. Now I'm going to just ask you

1 to state very simply what it is that you're asking the  
2 Commission to do.

3 A. From Merrimack's standpoint, we believe it's  
4 critical that we be allowed by right a seat at the  
5 table on the board of directors.

6 Q. And why is that?

7 A. Well, there's many reasons, not the least of  
8 which we believe that it would allow issues to be  
9 looked at from different perspectives, similar to that  
10 that would be brought to the table by the  
11 representative from the... oh, goodness... Merrimack  
12 Valley Regional Water District. We believe that it  
13 would have that same type of effect, as opposed to  
14 just the preponderance of membership within that  
15 organization being relatively controlled by Nashua.  
16 And that's -- it's pretty much so we think the board  
17 would be in better stead to have those different ideas  
18 being brought to the table.

19 Q. Do you have any expectation as to whether the  
20 presence on the board would be good for the utilities  
21 or bad for the utilities, and why?

22 A. Well, I believe it would be good for the  
23 utilities, again, for that -- you know, from a  
24 potentially different perspective on the issues that

1 would be at hand.

2 Q. Would it be an advantage if things are hashed  
3 out at the board level as opposed to at the PUC level?

4 A. Absolutely. I'm imagining, looking through  
5 the room, it's very costly time to be sitting here.  
6 And having those different ideas discussed might  
7 preclude that from happening.

8 Q. Now, in terms of illustrating your testimony,  
9 I'm going to walk you through some exhibits that we  
10 provided the Commission today. What I'd like you to  
11 do is -- we have a binder -- look at the exhibit and  
12 identify it and tell the Commission why it is that it  
13 was included, if you can. Fair enough?

14 Exhibit A is the first exhibit. You  
15 identified that as your prefiled testimony.

16 A. Yes.

17 Q. And you adopt it today?

18 A. Do I adopt it today? Yes.

19 Q. Now, I notice that there is an attachment, a  
20 two-page attachment to that prefiled testimony, which  
21 is a response to a data request from Merrimack's tech  
22 session data request to Joint Petitioners Set 1. Do  
23 you recognize that?

24 A. Yes.



1 Q. And can you tell me what information on that  
2 is important to the Commission?

3 A. What the response shows is that approximately  
4 60 percent of the watershed land owned by the  
5 Pennichuck subsidiaries is in Merrimack. And the  
6 second page of that attachment also shows that  
7 5 percent of the revenue comes from Merrimack  
8 ratepayers, and 10 percent of the Pennichuck Water  
9 Works consumption is delivered to the ratepayers of  
10 Merrimack.

11 Q. I'm going to show you, or ask you to turn to  
12 Exhibit B. Can you tell me what that document is and  
13 why it's there?

14 A. This is -- it's the water lease source  
15 section of the town master plan back in 2002.

16 Q. Now, does that -- I bring your attention to  
17 Page Roman Numeral IV-35.

18 CHAIRMAN GETZ: Mr. Boutin, these  
19 Exhibits B through I --

20 MR. BOUTIN: Yeah?

21 CHAIRMAN GETZ: -- these were not  
22 previously submitted or attached to the testimony from  
23 September 8th. These are additional exhibits you're  
24 seeking to introduce today?

1                   MR. BOUTIN: They're essentially  
2 illustrative, yes, Your Honor -- yes.

3                   CHAIRMAN GETZ: Illustrative of what?

4                   MR. BOUTIN: Illustrative of the points  
5 in his prefiled testimony.

6                   CHAIRMAN GETZ: But not cited to in any  
7 way in his testimony.

8                   MR. BOUTIN: No.

9                   CHAIRMAN GETZ: Okay.

10 BY MR. BOUTIN:

11           Q. Did you -- strike that.

12                   Has the water district, the Merrimack Water  
13 District, indicated to the council whether or not it  
14 has excess capacity which might be available for its  
15 expansion?

16           A. Yes. Essentially, this water resources  
17 section in the master plan speaks to the concerns of  
18 the water district, in that during peak demand times,  
19 there is in fact a shortage, and the water district  
20 would not be able to fulfill its deliverables at those  
21 times without strict conservation measures. And  
22 that's within the water district's current area that  
23 they supply. To expand down further into the area  
24 covered by the Pennichuck franchise, it would be an

1 impossibility, they claim.

2 Q. All right. I'd also refer you to Exhibit C,  
3 and in particular to Page 8. Can you tell me why  
4 that's there?

5 A. This is a chart for the Merrimack Valley  
6 Regional Water District. And Page 8 and 9 actually  
7 speak to the voting and how voting might happen. The  
8 Town of Merrimack believes that -- our concern is that  
9 this organization's group is, in essence, controlled  
10 by Nashua, because votes that would deal with tariffs,  
11 the rate structures and charges that would be applied  
12 would be a vote of the customer; and that, in essence,  
13 is Nashua, just by sheer numbers of the customer base  
14 that they do hold, which is why Merrimack chose not to  
15 participate.

16 CHAIRMAN GETZ: And this is basically  
17 the same position you're taking in your brief and  
18 writing in your brief that you filed yesterday?

19 MR. BOUTIN: Yes, it is. The difference  
20 in the briefing is strictly that, as I read the  
21 Merrimack Charter, the voting by customer is  
22 controlled by Nashua because, as you heard Mr. Ware  
23 testify, 80 percent of the PWW customers are in  
24 Nashua; 67 percent of the entire system's customers

1 are in Nashua. And when it comes to nominating the  
2 director, the charter is silent, although it was  
3 pointed out this morning in testimony, to be fair,  
4 that some people read the charter, again on Page 9, as  
5 saying that that will be a vote by director. Since it  
6 wasn't at the time a vote -- or wasn't at the time  
7 contemplated that there would be this type of vote,  
8 then I think the charter is ambiguous. And it was  
9 this Nashua control that essentially prevented  
10 Merrimack from joining in the first place.

11 MR. SERELL: I'm going to object to that  
12 question. I think it's compound, leading. Counsel's  
13 testifying. That wasn't even really the question.

14 CHAIRMAN GETZ: Well, I'm not sure if  
15 he's testifying or arguing. But it seems that I'm not  
16 sure of the necessity of going through this witness to  
17 get, again, into the record arguments that are going  
18 to be made. It's really not testimony. It's argument  
19 about what weight we should give or what  
20 interpretation we should give these documents.

21 MR. BOUTIN: Well, I --

22 CHAIRMAN GETZ: Mr. Judge, what did you  
23 have?

24 MR. JUDGE: Just as far as this witness

1 is concerned, and Attorney Boutin hasn't touched on  
2 this, but the document on the Page 8 states that the  
3 rule is that the vote is by director, unless there is  
4 something in the document that specifically says  
5 otherwise. This gentleman is not a legal scholar.  
6 His opinion about what the document means, I think, is  
7 meaningless. And I think we should move off this  
8 subject. I think you're right. It's a matter of  
9 legal opinion. It's not a matter of testimony.

10 MR. BOUTIN: Well, I was through,  
11 anyway.

12 CHAIRMAN GETZ: I'm sorry?

13 MR. BOUTIN: I was through, anyway, with  
14 Exhibit C.

15 MR. JUDGE: Then I move to strike his  
16 answer to that testimony -- to that question.

17 MR. BOUTIN: I don't think it should be  
18 stricken. I think it has some relevance.

19 CHAIRMAN GETZ: Well, we're going to  
20 take this all under advisement because I want to see  
21 where else you're going with it, because it strikes me  
22 that all of these so-called exhibits -- I'm not sure  
23 what's supplemental testimony and what's argument  
24 because I haven't had a chance to read all of them.

1 But to the extent that they're supplied today at a  
2 hearing, appended to a document that was prefiled in  
3 September, I'm concerned about how this comports with  
4 the reasonable process.

5 MR. BOUTIN: Well, I can tell you that I  
6 provided everybody with copies in advance of the  
7 hearing, including the paper I filed. But in terms of  
8 the remaining documents, they are all maps and  
9 illustrative of the testimony, and should aid the  
10 Commission as opposed to impede it.

11 CHAIRMAN GETZ: And where exactly does  
12 it Exhibit D come from?

13 MR. BOUTIN: Exhibit B is --

14 CHAIRMAN GETZ: No, D.

15 MR. BOUTIN: D?

16 CHAIRMAN GETZ: Is that extracted from  
17 somewhere?

18 MR. BOUTIN: No, it's a document  
19 provided to me by Attorney Ardinger in response to a  
20 question that I asked him.

21 CHAIRMAN GETZ: So that's a data  
22 response?

23 MR. BOUTIN: It wasn't a formal data  
24 request. But I don't think there's a dispute as to

1 where it came from or what it is.

2 CHAIRMAN GETZ: I think we can move  
3 through this, recognizing we'll treat them as marked  
4 for identification. And to the extent when we, at the  
5 close of hearing, deal with admitting exhibits into  
6 evidence, to the extent there's any objections, we'll  
7 deal with the objections at that point. So let's  
8 proceed through this package of materials.

9 BY MR. BOUTIN:

10 Q. All right. Exhibit D, if you could turn to  
11 that. Can you tell me what that means to you?

12 A. Actually, you just touched on it. It was  
13 provided by Nashua's lawyers. It identifies Nashua's  
14 view that Merrimack contains 5.6 of Pennichuck Water  
15 Works' assets, based on cost.

16 Q. And Exhibit F [sic], tell me what that is?

17 A. That's taken from the town master plan of  
18 2002. It shows the area supplied by the Merrimack  
19 Village District, which is our water supplier, for a  
20 majority of our residential area.

21 Q. And then I'm going to go to Exhibit F. Tell  
22 me that what is and why it's there.

23 A. This map was compiled as part, again, of our  
24 current master plan update. And the map shows that

1       there are 419 acres of watershed protection parcels  
2       owned by Southwood Corporation.

3           Q.     And those are all shown on this map colored  
4       in orange?

5           A.     Actually, most of these are -- there are  
6       other parcels, just under 200 acres, that are  
7       elsewhere, not shown on this map.

8           Q.     Well, are they elsewhere, or are they parcels  
9       owned by Pennichuck Corporation and not shown?

10          A.     I'm sorry. Ask that again?

11          Q.     Are they elsewhere, or are they parcels owned  
12       by Pennichuck Corporation in Merrimack and not shown  
13       on this chart?

14          A.     No, these are in Merrimack.

15          Q.     And the additional acreage that you -- I'm  
16       going to --

17          A.     It is in Merrimack as well.

18          Q.     I'm going to refer you to the data request  
19       which is attached as Exhibit 1 -- or exhibit --  
20       Attachment 1 to your testimony. And does that speak  
21       to the acreage you're trying to identify?

22          A.     Yes, it does.

23          Q.     Now, what is Merrimack's concern with these  
24       watershed parcels?



1           A.    Well, part of the potential development of  
2 those parcels down the road would be at issue.

3           Q.    I'm going to turn now to Exhibit G. Can you  
4 identify it and can you tell us why it's there?

5           A.    Okay. This item shows transitional parcels,  
6 parcels that are underdeveloped and likely to move for  
7 future development and have a great impact on the --  
8 potentially with regards to the franchise agreement  
9 that the Town has with Pennichuck.

10          Q.    I'm going to skip Exhibit H and go to Exhibit  
11 I. Can you identify that and tell us why that's  
12 there?

13          A.    This exhibit shows partly vacant parcels that  
14 consist of about 415 acres.

15          Q.    Now, this entire area is also shown on the  
16 new Exhibit J; is it not?

17          A.    Yes, it is.

18          Q.    And all of the parcels that are colored in  
19 blue are within the Pennichuck franchise area; is that  
20 right?

21          A.    The transitional properties. Yes, they are.

22          Q.    What is the zoning of that zone -- of that  
23 area?

24          A.    That's our industrial area. And it's a large

1 preponderance of our industrial zone in Merrimack.

2 Q. Now, is there an area of Nashua that competes  
3 for the same type of industry and commercial  
4 development as this does?

5 A. I'd say the 101 corridor would be part of  
6 that. So, yes.

7 Q. And last, that new Exhibit J that I referred  
8 to is the same map with the franchise outlined in  
9 green; is that correct?

10 A. Is that --

11 Q. Is that correct?

12 A. That's correct, yes.

13 Q. Does that comport with your understanding?

14 A. That this is the franchise zone?

15 Q. Yeah.

16 A. Yes.

17 Q. Yeah. Now, the area that's shown within the  
18 franchise area, can you tell me what type of customers  
19 are there, water customers?

20 A. Industrial users.

21 Q. So they're relatively large users?

22 A. Large users and a potential -- future  
23 potential large users, yes, which is our concern.

24 Q. And I take it that you have some concern

1 that, seated on the board, you could mitigate any  
2 problems there?

3 A. It's not a matter of mitigation. It's a  
4 matter of offering input that would be beneficial more  
5 so to the region as opposed to just Nashua.

6 MR. BOUTIN: I have nothing further.

7 CHAIRMAN GETZ: Thank you.

8 Let's start with Ms. Hollenberg. Do you  
9 have questions for this witness?

10 MS. HOLLENBERG: No. Thank you.

11 CHAIRMAN GETZ: And we'll go around with  
12 Mr. Wiesner. Any questions?

13 MR. WIESNER: No questions, Mr.  
14 Chairman.

15 CHAIRMAN GETZ: Mr. Alexander?

16 MR. ALEXANDER: No question.

17 CHAIRMAN GETZ: Mr. Judge?

18 MR. JUDGE: Yes, a few questions. Thank  
19 you.

20 CROSS-EXAMINATION

21 BY MR. JUDGE:

22 Q. Am I correct in stating that you're elected  
23 by the voters of Merrimack?

24 A. Yes.

1 Q. And you are here today representing the  
2 interests of Merrimack?

3 A. Yes.

4 Q. The member of the board that you're seeking  
5 to have be placed on the Board of Directors of the  
6 Pennichuck Corporation would be there to represent the  
7 interests of Merrimack?

8 A. No, they'd be there to have insight  
9 available, another answer to issues that pertain to  
10 the water works as a whole.

11 Q. Did you just testify that one of the issues  
12 that you wanted to have dealt with by the board was  
13 future large water users in Merrimack?

14 A. I'm saying that's our -- the potential is  
15 there. I mean, that is our concern, that those ideas  
16 wouldn't be able to be conveyed without a member of  
17 our community sitting on the board of directors.

18 Q. And that is an idea that would benefit  
19 Merrimack.

20 A. Yes, I guess it would.

21 Q. Would you tell me how that would benefit  
22 Pittsfield Aqueduct Company?

23 A. Because it would recognize that the seating  
24 on the directors is not necessarily in the best

1 interests of anybody but Nashua, and that's the  
2 concern.

3 Q. If Merrimack had a seat on the board and  
4 caused future large water users to go to Merrimack,  
5 how that would benefit Pittsfield Aqueduct Company?  
6 It wouldn't, would it?

7 A. No, I guess it wouldn't.

8 Q. And it wouldn't benefit Pennichuck East  
9 either, would it?

10 A. Okay.

11 Q. So what you're asking for is for Merrimack's  
12 purposes, and Merrimack's purposes only; isn't that  
13 correct?

14 A. Well, again, as I stated earlier, the  
15 Merrimack Valley Regional Water District is in the  
16 same position. It's offering opinion and ideas that  
17 might not otherwise be carried by the City of Nashua.

18 Q. Were you here earlier when there was  
19 testimony that the Merrimack Valley Regional Water  
20 District contains members of PEU, PAC and PWW?

21 A. Did they do what? I'm sorry?

22 Q. Were you here earlier when there was  
23 testimony, or are you aware of the fact that the  
24 Merrimack Valley Regional Water District contains

1 members that are in Pittsfield, members that are in  
2 Pennichuck East, and members that are in Pennichuck  
3 Water Works?

4 A. Yes.

5 Q. And do you understand that they have a much  
6 broader interest than just what's good for Merrimack?

7 A. Well, I think the same would hold true the  
8 other way. I don't understand how it might be  
9 different.

10 Q. You said you've been on the town council  
11 since 1995?

12 A. No, I was on the boards of selectmen at that  
13 time until 2001, and then 2006 to current I'm sitting  
14 on town council.

15 Q. So were you involved when Merrimack had an  
16 opportunity to draft the charter of the Merrimack  
17 Valley Regional Water District?

18 A. As a matter of fact, from what I understand,  
19 that in fact they did contribute to that cause.

20 Q. And were you aware that Merrimack was asked  
21 to join the Merrimack Valley Regional Water District?

22 A. Yes. And I think for the reasons that I  
23 stated earlier, there was a concern that, in fact,  
24 that representation, because of the type of voting,

1     which I think you alluded to earlier I might not  
2     understand, wouldn't adequately represent the  
3     different members of that -- of your group, but in  
4     fact might represent that of Nashua.

5           Q.     Do you have any background in understanding  
6     legal documents?

7           A.     Apparently not.

8           Q.     Would you agree with me that you don't  
9     understand how the voting works in the charter?

10          A.     I'm telling you what I understand is what I  
11     just told you.

12          Q.     Based on what?  What's the basis of your  
13     understanding?

14          A.     Discussions with my attorney, with my fellow  
15     town councilors, with our town manager.

16          Q.     Have you ever asked the Merrimack Valley  
17     Regional Water District how the voting would work?

18          A.     No.

19                   MR. JUDGE:  I don't have anything  
20     further.  Thank you.

21                   CHAIRMAN GETZ:  Mr. Teebom.

22                   CROSS-EXAMINATION

23     BY MR. TEEBOM:

24          Q.     Yeah, I'd like to ask a couple questions

1 about that map, Exhibit G [sic]. These blue  
2 properties, are those currently properties of  
3 Southwood or Pennichuck?

4 A. A couple of those are, yes.

5 Q. Couple? Acreage-wise, how many -- of all of  
6 these, which are Southwood?

7 A. Hold on just a moment. I'll pull that up.

8 MR. BOUTIN: First of all, I'd like to  
9 make sure we're all on the same page. You're  
10 referring to Exhibit G?

11 MR. TEEBOM: J.

12 MR. BOUTIN: Exhibit J has nothing to do  
13 with Southwood. Exhibit J are vacant properties. Go  
14 ahead.

15 A. I was going to say, though, that out of  
16 Exhibit J there are -- it appears to be two parcels  
17 that are Southwood Corporation. And I can't call them  
18 out to you. I can point to them, but I don't know  
19 that you'd know what I was pointing at.

20 BY MR. TEEBOM:

21 Q. I'm not -- I can't figure out your concern  
22 there. If they were all part of Southwood, then they  
23 would all be under the control of Nashua ultimately  
24 because Nashua owns the whole thing. But if they do



1 not belong to Southwood, then what is your concern  
2 about Nashua owning Pennichuck?

3 A. Our concern is that the potential  
4 development -- our industrial base is relatively small  
5 in Merrimack. This is a large part of it right here.  
6 And our inability -- our ability or inability to get  
7 water into there, this industrial zone, is very  
8 critical as time goes on. And we're relying on the  
9 Pennichuck franchise to do that.

10 Q. We're talking about land here, apparently;  
11 right?

12 A. Hmm-hmm.

13 Q. You said some of these parcels are Southwood,  
14 just a couple of them.

15 A. Yes.

16 CHAIRMAN GETZ: Well, let's --

17 BY MR. TEEBOM:

18 Q. Other than the fact --

19 CHAIRMAN GETZ: Hold on. Let's make  
20 sure we're talking about the right map, because I  
21 think this is very confusing. Would it make more  
22 sense, Mr. --

23 THE WITNESS: Rothaus.

24 CHAIRMAN GETZ: -- Mr. Boutin or

1 Rothaus, to be working off of Exhibit F? That  
2 actually shows, I think, Southwood Corp. parcels.

3 Do you have Exhibit F, Mr. Teebom?

4 MR. TEEBOM: Well, I'm --

5 CHAIRMAN GETZ: Well, do you have  
6 Exhibit F?

7 MR. TEEBOM: I have Exhibit J. It's J  
8 I'm addressing, because J, I think, is the map. J has  
9 been introduced.

10 CHAIRMAN GETZ: They've all been  
11 introduced. But maybe you know, maybe he knows what,  
12 from Exhibit J, you know, what parcels are Southwood.  
13 I don't.

14 MR. TEEBOM: No. Mr. Chairman, I'm just  
15 trying to find out the concern of this councilor from  
16 Merrimack. If it's just a few parcels, I don't see  
17 the big deal. That's what I'm trying to figure out.  
18 If it's all Southwood, I can understand his concern.  
19 So I'm trying to figure out how many of these parcels  
20 are Southwood and how many are not. Because if  
21 they're not Southwood, then why is he concerned?  
22 Nashua only controls Southwood.

23 A. Right. And our concern, Mr. Teebom, is to  
24 the future of the -- of our industrial zone relies

1 heavily on being able to get water from -- through our  
2 Pennichuck Water Works franchise agreement. That's  
3 where the concern is. It isn't that there are two  
4 parcels that are owned by Southwood Corporation within  
5 our industrial zone. It's the fact that, in the  
6 future, it's of critical necessity that we're able to  
7 do that; otherwise, we wouldn't be able to develop our  
8 industrial zone.

9 BY MR. TEEBOM:

10 Q. Well, your concern is not the parcels. It  
11 concerns whether Nashua is going to service you with  
12 water.

13 A. We want them to understand our issues, I  
14 think, yes.

15 Q. Okay. I completely lost the train of the  
16 questioning.

17 I don't know understand what -- on what basis  
18 do you expect that Nashua would not serve you with  
19 water for these industrial properties?

20 A. I don't know. Maybe completing -- competing  
21 interests. I don't know.

22 Q. Well, if you don't know, I mean, it's just  
23 conjecture.

24 A. Yes, it is conjecture, I suppose.

1 MR. TEEBOM: I guess I lost the point of  
2 the earlier questioning, and I have no further  
3 questions.

4 CHAIRMAN GETZ: Okay. Ms. Thunberg.

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

7 CHAIRMAN GETZ: Mr. Serell.

8 MR. SERELL: I'll defer to Attorney  
9 Camerino first.

10 CROSS-EXAMINATION

11 BY MR. CAMERINO:

12 Q. Good afternoon, Mr. Rothaus.

13 A. Good afternoon.

14 Q. I just have a few questions about  
15 Anheuser-Busch.

16 As I understand it, one of Merrimack's major  
17 concerns is the proper and fair treatment of  
18 Anheuser-Busch. Is that a fair statement?

19 A. Yes.

20 Q. Okay. And you mentioned some consumption  
21 statistics and revenue statistics before for Merrimack  
22 as a share of Pennichuck. It would be fair to say,  
23 isn't it, that Anheuser-Busch -- the reason perhaps  
24 that Anheuser-Busch is such a focal point of your

1 concern is it's the vast majority of the consumption  
2 by customers within the Town of Merrimack, isn't it?

3 A. They are. They do have the contract that you  
4 I'm sure are alluding to. And that is true. It is a  
5 10-year contract. But I think our bigger concern  
6 would be the fact of that entire industrial zone and  
7 its development in the future.

8 Q. But your basis for seeking representation has  
9 to do with the revenues and volume of water that are  
10 consumed by Merrimack; right?

11 A. Yes.

12 Q. And so you think that warrants separate  
13 representation for Merrimack; right?

14 A. Yes.

15 Q. And so what I am just trying to confirm is  
16 that, of that Merrimack consumption, the vast majority  
17 of it is by Anheuser-Busch; correct?

18 A. It is.

19 Q. Something on the order of what? More than  
20 70, 75 percent? Do you know?

21 A. Oh, I'd say more than 75 percent, I'm sure.

22 Q. Okay. And Anheuser-Busch has signed the  
23 Settlement Agreement; have they not?

24 A. Yes.

1 MR. CAMERINO: Thank you.

2 CHAIRMAN GETZ: Mr. Serell.

3 MR. SERELL: I have no questions.

4 CMSR. IGNATIUS: Thank you.

5 QUESTIONS BY COMMISSIONER IGNATIUS

6 Q. Good afternoon.

7 A. Good afternoon.

8 Q. Correct me if I'm wrong. Did you state that  
9 your goal in having a seat at the Pennichuck  
10 Corporation Board is to have input on the regional  
11 issues, not to control the vote or to sway votes, but  
12 to have an input on regional issues that affect  
13 Merrimack?

14 A. I think that's accurate. I think one vote  
15 wouldn't sway the entire board of directors. It's  
16 quite large -- would be quite large.

17 Q. And then did you also say that Merrimack  
18 chose not to participate in the water district because  
19 it felt it would be outvoted, so there was no reason?

20 A. No, it wasn't that it was outvoted. It was  
21 just -- and there is some possibility that I don't  
22 understand because I don't have that legal mind that's  
23 necessary. But the way I understood it was that a  
24 vote by customer would in fact negate the rest of the

1 Merrimack Valley Regional Water District's vote, when  
2 it's a vote of the customer.

3 Q. So you didn't see the opportunity for having  
4 input on regional issues at the district level.

5 A. The input would have been there. It would  
6 have been, yes.

7 Q. On the maps and the other exhibits that are  
8 attached -- or are in addition to your prefiled  
9 testimony -- and those had some attachments of their  
10 own -- but the rest of the items here in the notebook,  
11 B through I -- and we'll leave off J for a moment --  
12 was there any reason that you were not able to produce  
13 those when you filed your testimony?

14 A. No, I can't tell you why we did not file  
15 them.

16 Q. I know you don't routinely appear here, so  
17 you wouldn't know that our practice is to have things  
18 filed in advance and that all parties have an  
19 opportunity to question and evaluate and make sure  
20 that they understand in advance.

21 A. Sure.

22 Q. J is different, obviously. It was created  
23 today.

24

1 CMSR. IGNATIUS: I guess no other  
2 questions. Thank you.

3 CHAIRMAN GETZ: Any redirect, Mr.  
4 Boutin?

5 MR. BOUTIN: None.

6 CHAIRMAN GETZ: Okay. Then the witness  
7 is excused. Thank you, sir.

8 (Whereupon the Witness was excused.)

9 CHAIRMAN GETZ: I take it there are no  
10 other witnesses; is that correct?

11 (Chairman Getz and Cmsr. Ignatius confer.)

12 CHAIRMAN GETZ: Okay. Then let's turn  
13 now to the exhibits. Is there any objection to  
14 striking the identifications and admitting the  
15 exhibits into evidence?

16 (No verbal response)

17 CHAIRMAN GETZ: Okay. Hearing no  
18 objection, we'll admit them into evidence.

19 But I do have one question with respect  
20 to the Joint Petitioners' Exhibit 18, and it refers to  
21 a Docket DW-04-100 and Commission review of charter  
22 pursuant to R.S.A. 53-A:5. I haven't gone back to --  
23 you haven't provided that, and I haven't gone back to  
24 the docket book in that case. Is that one document



1 you're looking to introduce, or everything that's in  
2 the docket book?

3 MR. SERELL: Yeah, I can reply to that.  
4 It's one specific page, and it actually has been  
5 provided. And the only reason was because -- I'm  
6 sorry if I didn't make extra copies for the  
7 Commissioners. It wasn't important to the Joint  
8 Petitioners at all. Attorney Judge, on behalf of his  
9 client, asked us to have both the Merrimack Valley  
10 Regional Water District Charter admitted and then also  
11 the order of this Commission approving it. So it's  
12 not important to us. It was something Attorney Judge  
13 asked for, and we didn't have any problem providing  
14 it.

15 CHAIRMAN GETZ: So, for full  
16 identification then, it's just the one document issued  
17 June 4, 2004.

18 MR. SERELL: Correct.

19 MR. JUDGE: And just to clarify a little  
20 more. There was some question about the PUC approving  
21 the charter. So I just wanted to make sure that there  
22 was no question about that.

23 CHAIRMAN GETZ: Okay. Thank you.  
24 Anything else with respect to any of the exhibits

1 then?

2 (No verbal response)

3 CHAIRMAN GETZ: Okay. Well, is there  
4 anything we need to address prior to opportunity for  
5 closings? Mr. Camerino.

6 MR. CAMERINO: One, hopefully, minor  
7 procedural matter. I alerted Staff and a couple of  
8 the parties to this.

9 I know that there were a couple of  
10 documents provided during the discovery process --  
11 they're not in the record -- for which confidentiality  
12 was sought. And we recognized last night that we have  
13 not filed a motion on those. And I just wanted to  
14 alert the Commission to that and ask for leave to  
15 submit that, say within a week of today, so that the  
16 Commission could include that in its final order.

17 CHAIRMAN GETZ: Any objection to that  
18 process?

19 (No verbal response)

20 CHAIRMAN GETZ: Hearing nothing, then if  
21 you could file that within a week, that would be good.

22 Okay. So then, anything else before  
23 opportunities for closings?

24 (No verbal response)

1                   CHAIRMAN GETZ: Then with respect to  
2 closings, I guess this is the -- well, I guess this  
3 would be the order I would suggest: We go to start  
4 with Mr. Boutin, then Ms. Hollenberg. And then we  
5 would go to the -- go to Mr. Wiesner. Well, Mr.  
6 Teebom's not here at the moment. But then Mr.  
7 Alexander, Mr. Judge, Ms. Thunberg, and then Mr.  
8 Camerino and Mr. Serell. Is that acceptable?

9                   MR. SERELL: Yes. My only caveat would  
10 be that Attorney Ardinger will be closing for the  
11 City.

12                  CHAIRMAN GETZ: All right. Then Mr.  
13 Boutin.

14                   CLOSING STATEMENT BY MR. BOUTIN

15                  MR. BOUTIN: Well, we have been  
16 participating in this proceeding as an intervenor  
17 throughout.

18                   Tell me if you have a problem with me.

19                   And throughout we have requested  
20 representation on the board. And I think that we've  
21 stated the reasons, although with a great deal of  
22 difficulties. Trying it this way is almost like the  
23 criminal case when you try to get -- chip at the edges  
24 until you get a chance to put on a witness.

1           But what we have tried to establish is  
2   that Merrimack isn't necessarily antagonistic to the  
3   utility. What it has a problem with is if the utility  
4   is so under the control of Nashua, that it effectively  
5   sets up a competition with the utility's own  
6   customers. And because of the adjacent development  
7   districts, which are the two most active development  
8   districts I believe in this area of the state -- and I  
9   think that's probably something you might take notice  
10  of -- the request for a board member is a way to allay  
11  problems rather than a way to create them; and that  
12  is, to be able to get on the board and make concerns  
13  both of Merrimack, but also -- let's face it, they're  
14  part of the reason, too -- the region. Much is made  
15  of the fact they didn't join the Merrimack Valley  
16  Water District. If you recall at the time that was  
17  created, that was created as part of the 04-048  
18  process. It was going to be an operating utility if  
19  the eminent domain went through. And at that time,  
20  decisions on things like capital expenditures were to  
21  be voted on by customer. "Voted on by customer" means  
22  80 percent of the votes would have been Nashua's at  
23  the time. Merrimack didn't see an opportunity to do  
24  anything there, especially in the 04-048 context,

1 because Nashua was resisting regionalization and  
2 introduced testimony in several respects in that  
3 proceeding about regionalization.

4 Now Merrimack is faced with the prospect  
5 of not having a voice, not having a vote, despite the  
6 fact that it's part of the core system. It's the only  
7 part of the core system where there's any significant  
8 industrial base. And Merrimack's whole industrial  
9 base is in the area served by Pennichuck. So it has  
10 an interest in bringing to the table those things that  
11 could benefit all of the ratepayers, because  
12 industrial development is by far the most profitable.  
13 They're larger users of water. They don't require a  
14 proliferation of main extensions. They may require  
15 main extensions for themselves, but they're generally  
16 economical to do, as I understand it.

17 So Merrimack is looking to be a customer  
18 that is going to benefit the system -- or a territory  
19 that's going to benefit the system as a whole. Pipes  
20 to other areas go through Merrimack.

21 And what we've tried to do is to  
22 establish not a sense that there's antagonism, but a  
23 sense that there's a potential for cooperation. It's  
24 one seat on the board. Merrimack -- or Nashua already

1 has designed the charter so that they can pick  
2 somebody who doesn't reside in Nashua to be on the  
3 board. One person. They can now pick somebody from  
4 the water district who's -- that's unclear even from  
5 the testimony -- who is nominated by the District, but  
6 may be rejected, I guess, by Nashua.

7 In the end, we have been through a long  
8 process of working with everybody here, in terms of  
9 this ratemaking. And we were heavily involved in  
10 that. We got it to the point where we didn't oppose  
11 the Settlement Agreement in its ratemaking iterations,  
12 or in any other iterations, except for this question  
13 of corporate government.

14 I've argued in my brief, but I'll argue  
15 it briefly here. There's nothing wrong with having a  
16 board composed of people who may have interests.  
17 Classes of stock in business corporations are  
18 generally represented by different directors. Each  
19 class may nominate its own directors. They obviously  
20 have different interests. You may have other  
21 situations where the board of directors may be  
22 composed of geographic representatives. There's no  
23 limitation on the qualifications of directors in New  
24 Hampshire law of business corporations. But here you

1 have the ultimate hammer and the ultimate authority in  
2 the Nashua Board of Aldermen. So to argue that this  
3 would create a faction because you have different  
4 points of view, everybody has to look to the Nashua  
5 Aldermen for ultimate approval of those things that  
6 matter most: Capital expenditures funded with debt.  
7 All capital expenditures are funded with debt under  
8 this proposal. Therefore, having a board with an eye  
9 on that and having an independent voice with an eye on  
10 that isn't much different than having an audit  
11 committee on a publicly held corporation to keep an  
12 eye on things and be able to bring things to the table  
13 at meetings before they become problems. That's why  
14 we've presented this case. I realize it's not much of  
15 a case because of the fact that we are talking some  
16 very nuance things about a structure that's not been  
17 approved before by this Commission, as far as I know.  
18 And again, the top of the pyramid is the municipality,  
19 and it flows down to business corporations. So, for  
20 this reason, being part of the business corporation is  
21 very important, because at least we get that much  
22 farther up the pyramid to be able to make our voice  
23 known. Thank you.

24 CHAIRMAN GETZ: Thank you.

1 Ms. Hollenberg.

2 CLOSING STATEMENT BY MS. HOLLENBERG

3 MS. HOLLENBERG: Thank you. Thank you,  
4 Commissioners, for the opportunity to make this  
5 closing statement.

6 The Office of Consumer Advocate does not  
7 oppose the Settlement Agreement or the transaction as  
8 modified by the Settlement Agreement. We view the  
9 modifications to the transaction to be an improvement  
10 to the transaction as originally proposed. In  
11 particular, we believe that the Settlement comes  
12 closer than the original proposal to achieving some  
13 balance of benefits and burdens between Nashua  
14 residents and those who live outside the City.

15 In addition, the Settlement properly  
16 excludes from the City's debt and from the recovery in  
17 rates the City's \$5 million in eminent domain costs.

18 We are disappointed, however, that the  
19 Settlement Agreement requires the City, and ultimately  
20 the customers of the three utilities, to pay more than  
21 \$2 million in severance benefits to Pennichuck  
22 executives. We hope that the diligence that we have  
23 seen from the City will continue as it undertakes to  
24 secure the acquisition debt and that these efforts



1 will result in an interest rate that is as low as  
2 possible. We look forward to seeing the benefits of  
3 the proposed -- of the lower interest rates passed on  
4 to all Pennichuck customers.

5 We'd like to thank the parties for their  
6 efforts and cooperation throughout these proceedings.  
7 We particularly appreciate and thank the mayor for her  
8 time and attention that she has dedicated in finding a  
9 resolution to the very protracted and contentious  
10 eminent domain litigation. Thank you.

11 CHAIRMAN GETZ: Thank you.

12 Mr. Wiesner.

13 CLOSING STATEMENT BY MR. WIESNER

14 MR. WIESNER: Yes. Thank you,  
15 Commissioners. The Town of Milford has signed the  
16 Settlement Agreement, supports the terms and  
17 conditions of the Settlement as a significant  
18 improvement over the proposal originally described in  
19 the Joint Petition. And we urge the Commission to  
20 approve the Settlement Agreement and the Joint  
21 Petition, subject to the Settlement terms and  
22 conditions, as soon as possible so that the benefits  
23 of lower interest rates are available to all customers  
24 of all utilities. Thank you.

1                   CHAIRMAN GETZ: Thank you.

2                   CLOSING STATEMENT BY MR. TEEBOM

3                   MR. TEEBOM: Yes, sir. My name is Fred  
4 Teebom. I'm the only signatory to the Settlement  
5 Agreement who is not an attorney, for I am a citizen  
6 intervenor acting on behalf of all the citizens who  
7 have questioned this acquisition. I am the only  
8 ratepayer who took the City to court just before the  
9 enabling vote in 2003 under R.S.A. 38, because I  
10 claimed that the voters were not informed of the true  
11 cost and consequence of their vote -- namely, no pro  
12 and con positions were published by the City.

13                  Many of us were concerned about seeing  
14 2,000 acres of conservation land transferred from a  
15 regulated utility to an unregulated real estate arm of  
16 Pennichuck Corporation. Over 1,000 acres were  
17 transferred for \$37 an acre and sold at an average  
18 cost of between \$20,000 and \$30,000 an acre. Not a  
19 penny of this enormous windfall profit went to benefit  
20 the ratepayers. That started this acquisition train  
21 on the path of over-emotion -- "they're stealing our  
22 water" -- when Pennichuck agreed to be merged with an  
23 out-of-state company that was, in turn, owned by a  
24 French company, Veolia. Nearly a decade and many

1 events later, you now must decide whether Nashua's  
2 acquisition of the entire corporation, not just the  
3 PWW component within Nashua, is in the public  
4 interest.

5 For \$152 million, all borrowed money,  
6 exactly what is Nashua buying? All developable land  
7 in Nashua has been sold at this point. The nearly  
8 500 acres that could still be developed lies outside  
9 Nashua, mostly in Merrimack. All the real estate  
10 known as HECOPS have been sold. Silted ponds remain  
11 contaminated sites, conditions of pipes underground  
12 unknown, liabilities unknown.

13 The Hartley spreadsheets in the  
14 Settlement Agreement, following a PUC financial model  
15 using mostly unwritten rules, show that there is a  
16 slight reduction in the revenue requirement under  
17 Nashua ownership as compared to the current ownership,  
18 in spite of the fact that Nashua must incur  
19 \$11 million, roughly, annual payments over 30 years on  
20 the \$152 million debt that currently does not exist,  
21 all to be reimbursed by ratepayers, not taxpayers.

22 How is that possible? It's done by  
23 financing all capital improvements, hundred-percent  
24 finance. Nashua agreed to run against a rate base

1 less than half of the current Pennichuck rate base and  
2 against about 3 percent lower pretax rate of return --  
3 in other words, a much, much more leniently run  
4 operation. Is that possible, especially if you  
5 consider that this is a taxable corporation owned by a  
6 government, municipality?

7 So, why did I sign on? Why did I sign  
8 on to this Agreement? Because \$152 million for the  
9 entire company, or \$212 million if you add the debt,  
10 is a lot less than \$243 million for just PWW set by  
11 the Commission in the eminent domain case. Because we  
12 have simply come too far on this acquisition train.  
13 If Nashua is able to pull this off, if the  
14 ever-growing capital-investment debt does not go out  
15 of control as time goes on -- like I said, all that is  
16 borrowed -- if rates are kept reasonably within the  
17 same rate structure under the Pennichuck ownership,  
18 without extra cost to the Nashua taxpayers -- and I  
19 don't believe for a minute it would be less; I think  
20 it would be higher -- if all that happens, a really  
21 big challenge for a very lean operation, then 30 years  
22 from now, after the \$152 million acquisition debt is  
23 paid off, then there will be a big windfall. Then,  
24 the water rates will no longer need to support

1       \$11 million in annual payments.

2                       So, if all this should come true, I mean  
3       hopefully will come true, I agree to sign on. Thank  
4       you.

5                       CHAIRMAN GETZ: Thank you.  
6       Mr. Alexander.

7                       CLOSING STATEMENT BY MR. ALEXANDER

8                       MR. ALEXANDER: The signature of  
9       Anheuser-Busch on the Settlement Agreement should not  
10      be construed to endorse any particular composition of  
11      the water board, but it can fairly be construed to  
12      express the Company's hope and expectation of a long  
13      and fruitful relationship with the City of Nashua and  
14      the new Pennichuck.

15                      CHAIRMAN GETZ: Thank you. Mr. Judge.

16                      CLOSING STATEMENT BY MR. JUDGE

17                      MR. JUDGE: Thank you. I sit here today  
18      representing eight communities: Amherst, Bedford,  
19      Londonderry, Litchfield, Pelham, Raymond, Pittsfield  
20      and Nashua. And as I made the point several times  
21      today, those communities are in every one of the  
22      regulated utilities.

23                      The District did not blindly follow  
24      Nashua. In fact, I believe we were the last ones to

1 sign the Settlement Agreement. There's a bit of a --  
2 and it may be a red herring here, and I just want to  
3 talk about that for a minute.

4 The regulated utility that services the  
5 franchise area on Exhibit J has a requirement to  
6 service the customers there. So the idea that the  
7 regulated utility's going to stop serving customers  
8 for some reason or is going to be in competition  
9 between Merrimack and Nashua I think leads nowhere.

10 The Merrimack Valley District is  
11 regional. We drafted a charter long ago. And the  
12 charter I think had enough foresight in it because it  
13 was designed to go for a long term. I don't think  
14 there's been any dispute really here on the legal  
15 issue that the charter's rule is that you vote by  
16 director. There are exceptions to that rule. And no  
17 one has identified any exceptions which would cause  
18 there to be a vote by customers. So you have eight  
19 communities, each of which gets one vote in terms of  
20 nominating a director, in terms of telling that  
21 director what it is that that community, the regional  
22 district, thinks is important.

23 Finally -- or two things: One is  
24 Merrimack could have petitioned the Joint Petitioners.

1 They were invited to join the District. I urged them.  
2 I remember going to the meeting down in Merrimack and  
3 asking them to join the District. And whatever  
4 problems they may have had in the past of the vote by  
5 customer is completely academic at this point.

6 Finally, I have -- I'm in the  
7 interesting position of representing the District,  
8 which includes Nashua. So that means I get to  
9 represent Nashua, as well as the District. And both  
10 District and Nashua have been wonderful clients. I  
11 particularly want to thank the mayor, who I think went  
12 the extra mile to make this happen. The District is  
13 very well pleased with the result that has come out  
14 here.

15 We ask that you approve this Agreement  
16 and, again, do it as, you know, quickly as reasonably  
17 possible so we can take advantage of the financial  
18 climate that we have at this time.

19 And I thank the Commission and the Staff  
20 and OCA for cooperating and making this schedule go as  
21 fast as they could. Thank you very much.

22 CHAIRMAN GETZ: Thank you.

23 Ms. Thunberg.  
24

1 CLOSING STATEMENT BY MS. THUNBERG

2 MS. THUNBERG: Thank you, Commissioners,  
3 for your time today. And Staff's position is  
4 respectfully requesting the Commission approve the  
5 Settlement Agreement. As Mayor Lozeau started out in  
6 her testimony today, time is of the essence with  
7 respect to the bond rates. And the bond rates being  
8 so low allowed parties to resolve some pretty major  
9 differences. So we're hoping that the Commission will  
10 approve this. Staff feels that the Settlement  
11 Agreement modifications to the original petition are a  
12 much better deal for customers than what the original  
13 petition laid out. So with that, Staff is very  
14 supportive of the Settlement terms. Thank you.

15 CHAIRMAN GETZ: Thank you.

16 Mr. Camerino.

17 MR. CAMERINO: I think I'll -- if Mr.  
18 Ardinger would like to go first, I'll let him go so  
19 that I don't step on anything he's got to say.

20 CHAIRMAN GETZ: Mr. Ardinger.

21 CLOSING STATEMENT BY MR. ARDINGER

22 MR. ARDINGER: Thank you, Mr. Chairman  
23 and Commissioner Ignatius for a chance to offer a few  
24 closing points.



1           The task before the Commission is to  
2       evaluate whether this proposed acquisition of stock of  
3       Pennichuck Corporation by the City is in the public  
4       interest. That's in the special legislation that  
5       governs this proceeding, which the legislature first  
6       passed in 2007 and then amended to refresh it in 2010,  
7       indeed, to allow the City the opportunity to further  
8       enhance the value of a potential acquisition by using  
9       its general obligation, its general credit. This is a  
10      complicated transaction. You all in this room have  
11      lived through this fight much longer than I have. I'm  
12      a Billy Come Lately to this case.

13           When I first talked to the mayor about  
14      this, I said this is complicated. You have to thread  
15      a needle in order to get to a good transaction for the  
16      citizens through tax law, through municipal law,  
17      through the finance and capital markets, through  
18      political issues, through corporate law, fiduciary  
19      law, and also through administrative law. This brings  
20      it all together.

21           But I would submit to you, while there  
22      are many, many details involved in this transaction,  
23      that the proposed acquisition, as modified by the  
24      Settlement Agreement that most of the parties here

1 have signed on to -- and in the key parts, none of the  
2 parties have stated that they object to the key parts  
3 of the Agreement -- that the reasons why this proposal  
4 is in the public interest are pretty straightforward  
5 and pretty clear.

6 First, this would end the uncertainty  
7 that has plagued the City and this company for almost  
8 a decade. It would allow everyone to move forward on  
9 a common basis. And that uncertainty will enhance the  
10 ability to develop economic development, create  
11 further jobs and to settle the issue and move on to  
12 other important issues in the community. That's been  
13 very important to the board and to the mayor.

14 Second, this preserves jobs. It  
15 preserves the integrated management structure that has  
16 been in place that this Commission focused on in the  
17 prior proceeding, the eminent domain proceeding. It  
18 preserves that synergistic management structure with  
19 the same operational team, including Mr. Ware and  
20 Bonnie Hartley, who was here today and who has been  
21 such a key part of that team. And that's a great  
22 value in this economy, has been very important to the  
23 City, its mayor and its board of aldermen.

24 Third, as everyone has testified to, the

1 prospect is that, under the ratemaking structure  
2 proposed in the Settlement Agreement, as modified by  
3 the Settlement Agreement, that the rates under City  
4 ownership over the period from closing forward will be  
5 lower than the rates would be to customers under the  
6 existing corporate ownership. That's a critical part,  
7 I would submit to the Commissioners, about what the  
8 public interest is here. Why are rates lower? I  
9 don't want to repeat the testimony. But it's helpful  
10 sometimes to restate it in simple terms.

11 First, the City has pledged in its first  
12 proposal, and as enhanced by the Settlement Agreement,  
13 to contribute its superior access to low-cost capital  
14 to these utilities and their ratepayers. The City is  
15 blessed right now with a rating from some rating  
16 agencies that is better than the United States  
17 Government. Strange as that may seem, it is committed  
18 to contribute that superior access for the benefit of  
19 these utilities and their customers.

20 Second, the proposal of the City is  
21 different. It doesn't fit into the regular,  
22 traditional ratemaking agreement hole. I think Mark  
23 talked about square peg/round hole. It doesn't fit  
24 perfectly into that. But we'd submit to you that it's

1     been modified in a key way by the City at the outset  
2     and improved by the Settlement Agreement, because it  
3     would propose to allocate the benefit of that  
4     lower-cost capital and the savings on operational  
5     costs with the management to every customer,  
6     regardless of where they live. This is not a proposal  
7     that would try to treat citizens of Nashua better or  
8     worse than citizens of other communities or of other  
9     utilities. The allocation method, the apportionment  
10    methodology that is proposed by the petitioners and in  
11    the Settlement Agreement, and reflected in an  
12    illustrative manner in the schedules in very  
13    detailed -- apologize to Mr. Teebom for that -- but  
14    very detailed ratemaking schedules as an example in  
15    Ms. Hartley's testimony, shows that these benefits are  
16    allocated on an apportionment methodology to every  
17    utility and every customer. So it's shared.

18                 Related to that, the City has come to  
19    the table from the beginning under the premise that it  
20    would not pursue a traditional ratemaking structure.  
21    If what that meant is there had to be an attempt by  
22    the City to collect a profit from ratepayers, a higher  
23    equity return, you'll note -- and this is Mr. Naylor's  
24    testimony -- that this is skinny, the cash flow. We

1 have to be careful and watch it. But we'd agree, in  
2 part, that's due to the fact that the City has  
3 transferred -- sought to transfer in its ratemaking  
4 structure every dollar of the interest rate benefit,  
5 if it can achieve it, through that benefit to  
6 ratepayers, not even one profit or arbitrage debt on  
7 that CBFRR rate or its own capacity to borrow debt  
8 through these utilities for future capital  
9 expenditures. That's important.

10 And how have we made that? We  
11 back-stopped that important thing in the Settlement  
12 Agreement with a commitment, that we would hope that a  
13 Commission order would confirm, that we would not seek  
14 to distribute any good performance, any profit above  
15 the amount necessary to service our debt. We would  
16 not seek to distribute it in the form of dividends or  
17 other distributions to the City for the City to use  
18 for its general account. We're not seeking in the  
19 City -- we have not proposed a ratemaking methodology  
20 that would allow us to look to these utilities as a  
21 method of raising funds to finance anything other than  
22 the debt we've used to acquire these utilities and  
23 transfer that good interest rate to these customers,  
24 with one exception, as Mr. Patenaude noted, on ability

1 to collect an amount of money from good performance  
2 over time, subject to caps, that could go and  
3 reimburse the city taxpayer for the important costs  
4 that many leaders of the City have committed to, to  
5 try to and get us to this point to achieve these  
6 consumer benefits, those of the eminent domain costs.  
7 But as Attorney Hollenberg mentioned, and the Consumer  
8 Advocate has mentioned, not one dollar of those  
9 eminent domain costs are baked into the ratemaking  
10 structure. That's an important improvement, and the  
11 City agrees with it in the Settlement Agreement.

12 A lot -- in addition to lower rates, a  
13 lot has been made about and talked about today of the  
14 governing structure. The City and its board of  
15 aldermen, the mayor, have proposed a corporate  
16 governance structure. Now, it's hard to set up a  
17 governance structure. That charter for regional  
18 districts are complicated. What we look to at the  
19 City is to rely on the existing, clear fiduciary law,  
20 corporate law responsibilities that exist for board  
21 members to serve the interest of the corporation, the  
22 interest of the utility, and not a particular  
23 parochial interest of those who were appointed it.  
24 Yes, there are members of this board who will be

1 residents and citizens of Nashua. But remember, we  
2 have to demonstrate to another area of law, the  
3 capital and finance markets and our rating agencies,  
4 that the City is very focused on preserving this --  
5 the strong functioning of these utilities so that they  
6 are able to generate the debt to support the  
7 acquisition bonds.

8 An important point that came out today  
9 with Commissioner Ignatius' questions is that a very  
10 big change here -- and I believe this is one of the  
11 most important items in the public interest -- is that  
12 the deliberations of these corporations are going to  
13 be subject to the Right To Know Law. This is  
14 administrative law. The board of aldermen and the  
15 mayor, in reviewing this transaction and trying to set  
16 up an appropriate governance structure, thought that  
17 the right answer here, obviously as shareholder, as  
18 the City, the board of aldermen and the mayor,  
19 operating in their capacity -- and by the way, it's  
20 not just the board of aldermen. Under the City  
21 charter of Nashua, decisions of that shareholder are  
22 going to be made by their normal process, which is the  
23 board of aldermen and the mayor. The mayor who has  
24 sat before you today and testified in this proceeding

1 has full rights as an active mayor. And she intends  
2 to be part of this decision-making, as she is on every  
3 issue in the city. But the bottom line is: Every  
4 decision they make is subject to the Right To Know  
5 Law. For Attorney McNamee, that's easy.

6 What is a little trickier is, what about  
7 the corporations and this corporate board? In the  
8 articles -- baked into the articles and the by-laws is  
9 a commitment that the proceedings and deliberations of  
10 this board will be fully public and subject to the  
11 Right To Know Law. That transparency is a further  
12 protection for any party who has an interest in the  
13 decision-making of these three utilities over  
14 extensions of capital, plant, other improvements.

15 Finally, the last reason I just want to  
16 summarize in this list of why this is in the public  
17 interest is that, unlike the eminent domain  
18 proceeding, the City has proposed, and the Settlement  
19 Agreement confirms, that these three utilities will  
20 continue under existing law as regulated utilities,  
21 subject to the oversight in public of this Commission.  
22 In this very complicated case, that additional  
23 certainty provides comfort to many. If someone has a  
24 question about whether the mayor and board of aldermen



1 will exercise their rights even-handedly, they have a  
2 couple of shots at the apple: No. 1, they sit in the  
3 meeting and listen to the debate. They take a  
4 transcript and record. And No. 2, they can come here,  
5 because this Commission reviews capital expenditures.  
6 This Commission reviews other aspects in every rate  
7 case. And you have the ability to initiate on your  
8 own motion reviews of these issues. And we think the  
9 City believes in this case, with this unique  
10 complexity, the continued regulatory oversight of  
11 these utilities serves the public interest.

12 I have only have two more points and  
13 then I'll finish. And I thank you for the opportunity  
14 to go a little bit longer here. It's an important  
15 issue for the City.

16 I want to repeat the points that others  
17 have made. The group of parties in this room, in the  
18 face of a very complex case, worked together.  
19 Everyone, without speaking out of school about  
20 Settlement discussions, no matter whether the parties  
21 signed on or not, they all contributed greatly to the  
22 production of the Settlement Agreement. And we all  
23 worked together. And that is a good thing. This is  
24 not a private company that is acquiring another

1 private company. This is a public body. And the  
2 respect that this public body, the City, got from this  
3 proceeding, I can represent on behalf of the City, was  
4 very important, very much appreciated. And the result  
5 is much better than -- not impossibly better, but much  
6 better than we proposed. And we thank the parties for  
7 that.

8 My last point is a request. You've  
9 heard it before. We're asking for an order of the  
10 Commission approving the acquisition is in the public  
11 interest, and, Commissioner Ignatius, to make the kind  
12 of findings and approvals that are listed in the  
13 Settlement Agreement. The City of Nashua has been  
14 very forceful in the discussions of the Settlement  
15 Agreement, in trying to get in that Settlement  
16 Agreement those approvals and findings that it  
17 believes it needs when it turns to its rating  
18 agencies, when it turns to other constituencies that  
19 it serves, and to say we are approved on a  
20 self-supporting basis, and you can continue to  
21 maintain our high-quality credit rating which allows  
22 us to get to a lower interest rate for all of our debt  
23 and for this debt. That's important to us.

24 And so we request, respectfully, that

1 any order considering these things, if it were to  
2 approve the transaction, be sensitive to the fact that  
3 the parties have worked hard, and the City has worked  
4 hard to consider items and put forth items that are  
5 needed for many constituencies, including our credit  
6 market issues.

7 Finally, timing. I don't need to repeat  
8 it. I do not know what comes tomorrow. I do know  
9 what I've got today. Interest rates are low. If, as  
10 the mayor said and requested, if an order -- every  
11 utility who comes before you asks this, and I'm  
12 embarrassed to ask you. But I need to ask on behalf  
13 of the City that the order come as promptly as  
14 possible. If it were to come, as the mayor said, in  
15 mid-November, and if a 30-day period for rehearing  
16 motions were to conclude without a motion being filed,  
17 there is a possibility that the City would be able to  
18 close this by the end of the year. And the shorter  
19 time period between now and closing is a less risk  
20 that we experience an adverse movement in interest  
21 rates.

22 And so with that request, I want to  
23 thank the Commission for that opportunity to offer  
24 closing thoughts.

1                   CHAIRMAN GETZ: Thank you.

2                   Mr. Camerino.

3                   CLOSING STATEMENT BY MR. CAMERINO

4                   MR. CAMERINO: Thank you, Mr. Chairman.

5                   You know, it's easy to get overwhelmed,  
6 after 10 years of litigation and threatened litigation  
7 and pretty complicated schedules, it's easy to get  
8 overwhelmed with what seems like the complexity of  
9 this case. But in many ways, it's a case which you've  
10 seen many, many times before, which is the acquisition  
11 of a utility. That's really what we have. We have,  
12 if you think about it, a public interest, a "no net  
13 harm" test. It's in the context as a follow-on to an  
14 eminent domain case. The one twist, obviously,  
15 because it is the follow-on to an eminent domain case,  
16 is that the purchaser is a municipality. But  
17 otherwise, you've seen this case dozens of times  
18 before. And the analysis you need to be applying is:  
19 Is there a harm to customers? And I think the Joint  
20 Petitioners feel extremely strongly, and you've heard  
21 from the other parties as well, there's not only no  
22 net harm, but there are benefits. There are real,  
23 substantial benefits to customers that this  
24 transaction makes possible.

1           The other thing about this case that  
2 makes it a little easier is it doesn't occur in a  
3 vacuum. We had extensive litigation on whether the  
4 City of Nashua would be allowed to acquire Pennichuck  
5 Water Works and all of the systems that that entity  
6 operates, not just the city system and the core  
7 system, but all the systems that it operates. And  
8 this Commission determined that that acquisition was  
9 in the public interest, even in a setting where the  
10 City would have completely controlled, through the  
11 aldermen directly, the operations of that utility. So  
12 you've already made that determination. And I'm not  
13 suggesting that you're somehow legally bound by that,  
14 but I suspect you don't really care to revisit it,  
15 either. You've put a lot of consideration into that  
16 and you understood the consequences of it and you made  
17 a determination. So the real question in this case  
18 is: Is there something about what's been proposed  
19 that would cause you to change that determination with  
20 regard to Pennichuck Water Works? And is there  
21 something that's been -- and then also you need to  
22 look at independently the acquisition of PEU and PAC,  
23 because those were not under consideration in the  
24 prior case. But that's really all you need to do

1 here, is say: Is the acquisition of those other two  
2 subsidiaries in the public interest? And is there  
3 something that we've learned here that would cause us  
4 to come to a different conclusion than in the eminent  
5 domain case?

6 We suggest that this transaction is  
7 better in every way. Why is this acquisition in the  
8 public interest? You're going to end up with the same  
9 operating personnel. That wasn't true in the eminent  
10 domain case. You're going to have continued full PUC  
11 jurisdiction. That wasn't true in the eminent domain  
12 case. And you're going to have lower rates not just  
13 for Pennichuck Water Works, but also for the other  
14 entities than you would have under continued  
15 Pennichuck Corporation ownership. So in every way,  
16 this meets the "no harm" standard and produces  
17 substantial benefits.

18 You'll recall that, in the eminent  
19 domain case you were sufficiently concerned about what  
20 would happen to PEU and PAC, that you ordered the City  
21 to pay over \$40 million into a mitigation fund. That  
22 was a very large step, a very large dollar amount.  
23 There obviously was no way to even know for sure if  
24 that \$40 million would take care of all of the harm.

1 There was a lot of risk represented there. That risk  
2 is gone. The concerns addressed by it are gone.  
3 You're going to have customers served by the same  
4 operating management and field personnel. No changes  
5 there. There's no Veolia. There's no third-party  
6 contractors. There's no overseers of the third-party  
7 contractors. All gone. And as you've seen, for very  
8 concrete reasons -- which are the lower cost of  
9 capital and the elimination of some of the  
10 higher-level management costs associated with a public  
11 company -- the operating costs will be lower. And so  
12 those are very real, knowable reasons that you can see  
13 that if you otherwise operate the utility in the same  
14 way, the rates will be lower. It's not complicated.  
15 The spreadsheets may be complicated, but the basic  
16 things that get you there are really pretty simple.

17 The last thing it gets you is,  
18 obviously, the resolution of nine and a half years of  
19 disputes, about seven and a half years of which have  
20 been here at the Commission. And I think the best way  
21 to know that Mr. Ardinger wasn't involved in the  
22 beginning is that he and I are about the same age, and  
23 he's got a very different hair color.

24 So this is the end of that. And I think

1 you can imagine there were disputes before that, that  
2 arose. This will be the end of that relationship, and  
3 we think that's very positive.

4 I want to talk extremely briefly about  
5 the governance issue, because I don't think it's  
6 really Pennichuck's place to say too much about this.  
7 That's really the City's issue. But this is not a new  
8 issue, if you think about it. The two things that I  
9 think you want to focus on are -- first of all, with  
10 all due respect for Merrimack, I think they have it  
11 backwards. I would think that an individual  
12 municipality would want to make sure that individual  
13 municipal interests were not being represented on the  
14 board, and that what Nashua is saying about  
15 professional management is the thing you'd want to  
16 make sure occurred. And there's no reason -- I don't  
17 think you've heard any particular reason in the  
18 evidence to think that Merrimack should get a special  
19 position vis a vis all the other municipalities that  
20 are served. And so I think, from our vantage point,  
21 what the City has proposed is far better than what  
22 Merrimack has proposed.

23 But the second point goes back to what I  
24 said about this not being new. We had an eminent



1 domain case. And had the eminent domain taking gone  
2 forward as approved by this Commission, Merrimack  
3 would not have had a representative at the board of  
4 aldermen when they met to discuss what should happen  
5 with Pennichuck Water Works. So while that might be a  
6 refinement that Merrimack would like, we don't think  
7 it's in the public interest. We don't think it needs  
8 to be layered on.

9 So, as you know, this case has been  
10 extremely contentious. As I've said, it's gone on for  
11 nearly a decade. You're looking at parties that know  
12 how to disagree. We're really good at that. We're  
13 all here today in agreement, with one exception:  
14 Again, with all due respect, Merrimack. I know they  
15 hold their view very strongly about the item they're  
16 asking for. But in the scheme of things, in the  
17 scheme of disagreements that you see, that is a fairly  
18 minor issue. And I think that what you've been  
19 presented with is really something close to a miracle,  
20 in terms of the end of this dispute: A very broad  
21 agreement on all fronts that delivers lower rates to  
22 customers, with the same management in place. And we  
23 think that's an agreement that should be approved.  
24 Thank you.

1                   CHAIRMAN GETZ: Thank you. Well, let me  
2 just say, I was wondering if I was going to see the  
3 end of this proceeding during my term of service,  
4 having been here for the full number of years. And my  
5 hair is a lot whiter, and there's much less of it than  
6 most people in the room.

7                   But we will take the matter under  
8 advisement, and we will issue an appropriate order as  
9 promptly as we can. Thank you, everyone.

10  
11                  (WHEREUPON, the hearing was adjourned at 3:15 p.m.)  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24