STATE OF NEW HAMPSHIRE

PUBLIC UTILITIES COMMISSION

March 27, 2012 - 1:43 P.M. **DAY 4**
Concord, New Hampshire ***AFTERNOON SESSION ONLY***

RE:

DW 07-105 LAKES REGION WATER COMPANY:
INVESTIGATION INTO QUALITY OF SERVICE.
DW 10-043 LAKES REGION WATER COMPANY:
AFFILIATE AGREEMENT WITH LRW WATER SERVICES.
DW 10-141 LAKES REGION WATER COMPANY:
PETITION FOR A CHANGE IN RATE SCHEDULES.
DW 11-021 LAKES REGION WATER COMPANY:
PETITION FOR APPROVAL OF LONG-TERM DEBT.

PRESENT: Chairman Amy L. Ignatius, Presiding
Commissioner Michael D. Harrington
Commissioner Robert R. Scott

Clare Howard-Pike, Clerk

APPEARANCES:

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P R O C E E D I N G S

CHAIRMAN IGNATIUS: Welcome back, everyone. I think we were in the midst of cross-examination of Mr. Naylor from the Bench. And Commissioner Scott, questions?

CMSR. SCOTT: Thank you.

MARK NAYLOR, PREVIOUSLY SWORN

INTERROGATORIES BY CMSR. SCOTT:

Q. Good afternoon.
A. Good afternoon.
Q. It was mentioned earlier, I guess it was this morning, again, the 17 systems that the utility has. Do all the 17 systems use the same management, technical resources and financial resources --
A. Yes.
Q. -- to your knowledge?
A. Yes.
Q. And there was a lot of discussion again this morning regarding Lakes Region Exhibit 18, which was the DES fact sheet, if you remember that.
A. I did do.

Q. The second sentence of that talks about -- obviously, the first sentence talked about the burden that smaller systems have. The second sentence talks about kind of the reason for it. It says often shortage of financial, managerial and/or technical resources are the bigger factor to these challenges. Does that sound right? Have you seen the --
A. I'm just trying to put my hand on it.
Q. Sure. I'll slow down for you.
MS. THUNBERG: Can I approach the witness?
CHAIRMAN IGNATIUS: Oh, of course.
(Ms. Thunberg hands document to witness.)
THE WITNESS: Thank you.
A. Right. Yup.
Q. (By Cmsr. Scott) And the reason I brought attention to that -- and again, it was discussed this morning, as you all know -- given those two statements, do you think that -- and I know this is asking for you to

put yourself in somebody else's seat -- do you think DES is talking about a company that serves 1625? When they discuss this, do you think they had this company in mind?

A. Well, "small water utilities" is kind of a term that covers systems from, you know, 15 connections -- I think which is the minimum that qualifies a water system as a public water system in the state -- 15 connections up to thousands. Because if you look at how the term is used across the country, for example, a company like Pennichuck Water Works, which has, I believe, 25,000 connections or something like that, that's a small system compared nationally. That would be our largest. On that scale, you know, Lakes Region Water Company is a small water utility. But it certainly has some of the same challenges that even the very small systems have. So it runs -- really, small systems run the gamut from very small to what we might think of as large, but probably still in the range of small.

Q. Thank you. On your direct examination, which is what, Staff Advocate 11, you make reference to the Mount Roberts property. And you include as an attachment a DES -- I think this is a permit, I gather, for emergency wells?

A. I thought I organized everything before we went back on here. Turns out I've misplaced everything.

(Ms. Thunberg hands document to witness.)

A. Thank you. Yes, I recall the letter that's attached to my testimony.

Q. And I think you put that in there because you were concerned that there would need to be capital invested to move ahead on anything beyond that emergency permit; is that correct?

A. Yeah, I think the important point to make here is that in the text of the testimony I indicate that the Company has capital needs over the next several years in excess of a million dollars, but it does not include this project, which, really, the permanent solution -- you know, really, I don't think there's been a lot of discussion about what potentially the permanent solution is for the Company's supply to the Paradise Shores/Suissevale combined system. So I think the purpose of attaching this letter is just to convey what the Company is doing now and the extent of the work that's required just to get those wells permitted for emergency or seasonal use this coming summer.

Q. Thank you. That's helpful.

I notice on that emergency permit that it shows an expiration date of this Saturday, March 31st?

A. Yeah. I think -- and the Company could probably clarify this. As I recall, the last two or three or four years, I'm not sure exactly, the Company has been permitted to interconnect these wells on the Mount Roberts property just for the summer season. And DES issues that approval on an annual basis. And I think that this letter also provides detail on the fact that the Company is now requiring, for the 2012 season, this more extensive permitting process to be undertaken. I think there was an exhibit brought in early in the hearings that the company introduced that details the permitting process that they're currently undergoing. But I believe that 3/31/12 expiration relates to the emergency use of those wells going back to last summer. And I see heads nodding at the Company table, so...

Q. Thank you.

MR. RICHARDSON: LWR Exhibit 14 is the document that Mr. Naylor referred to, I believe, that the Company submitted.

CMSR. SCOTT: Thank you.

Q. (By Cmsr. Scott) Okay. Moving on. You recommend -- and I think you kind of hit on this with Commissioner Harrington. You recommend in your prefiled testimony that the Company sell -- my recollection is the Company is trying to make the case and is saying that nobody would buy in the current situation. You indicated, if I remember right from this morning, there are potentially a couple buyers. So, again, I'm just reiterating for myself and trying to catch up from this morning's break.

So, do you agree that the -- with the Company, then -- sounds like you disagree, obviously -- that there would be no buyer who would take on this company?

A. As I indicated this morning, we, the Staff, understands that at least one company currently has had interest in discussing purchase of the Company's systems. I would suggest -- and I have no knowledge of this specifically -- but I would suspect that an interested buyer would make an offer for purchases of the assets of the company and not the stock of the company.

Q. Interesting. Thank you.

We talked earlier about the State Revolving Loan Fund, the SRF, and we -- in fact, I had asked Mr. Mason about it when he was testifying. What is your opinion on why the Company didn't move ahead with the ARRA and SRF loan money?

A. Well, I can only go by what the Company has indicated in these hearings, that it was unwilling to take on loans that were required to be paid back over a term shorter than the expected composite depreciation life of the associated assets. And I understand that. That's an issue that other small companies face. I think that situation is made worse through the Company's financial circumstances, that it simply doesn't have the free cash flow to make up that difference. It does -- utilities have in their rates a flow of depreciation dollars that they can use, typically, and return on equity in their rates that they may use for cash flow purposes. But this company is obviously in a bad cash flow situation. So I think that's primarily the reason. And the Company's also indicated that the owners were unwilling to provide a personal guaranty for the loans. So...

Q. In your experience, is there, for want of a better word, a better deal out there than what was offered in those ARRA loans and the SRF? Is there something better that a company could take advantage of?

A. No, no. Particularly the ARRA loan, because the ARRA loans came with a certain percentage of loan forgiveness, such that the Company would deploy the funds for capital improvements but would not have to repay the principle balance. I forget in this particular case what percentage of the loan was to be forgiven. But in my view, it's a missed opportunity.

Q. You also recommended that the Company hire some professional business management, I think?

A. I have made that recommendation previously, yes.

Q. Should they do that, how, in your expectation, would they basically pay for that additional financial burden, if you will?

A. Well, the Company has relied on consultants for a good deal of its financial work and its costs relating to interacting with the

Public Utilities Commission. So, certainly, some of that could be reduced, if not eliminated, but certainly reduced, such that it would help to pay for a business manager. But I don't think that recommendation really addresses the issue of access to capital, which I've talked about previously.

Q. Thank you. In Lakes Region Exhibit 12, which is the 07-105 settlement agreement, there's already mentioned some language in there regarding continued managerial and financial ability was a concern in their -- I guess my short answer -- I'm not sure you need to look at the exhibit for this -- that was done in May of '08. In your opinion, has -- regarding the financial and managerial ability of the company, has it gotten better or worse since 2008, since that order was signed?

A. Well, I think the financial capabilities of the Company continue to deteriorate because of its operating losses and its severe cash strain. What we've seen in their accounts payable was a reflection of that. And I think, as I testified earlier, I think the Company has made some good progress in its managerial approach. We've given the Company the credit that it deserves for the work that it's done, and it has resolved a number of the issues that it was facing three or four years ago. So I think the Company has improved. And I think the other parties, in addition to Staff, in this docket have recognized that.

Q. Getting closer to the end here, for me, anyways.

Can you give me an idea of -- give us an idea of -- well, let me ask you this: Do you feel there's significant capital that hasn't been ROE-requested in the rate base yet that the Company's expended?

A. Well, the rate proposal that's before you now has a test year of 2009. So it would bring the Company's rates to a level that would include recovery of all plant in service through the end of 2009.

In addition, if I recall correctly, Mr. Laflamme's testimony also presents settlement -- a proposed step adjustment for capital improvements placed in service in 2010. So the rates that Staff is proposing certainly bring the Company's recovery up to a much more recent time.

Q. And will the rate increases requested alone fix, in your opinion, the Company's utilities -- your concerns about the utility?

A. No, they won't, because the customer rates really don't provide the capital investment that the Company needs for improvements. It's not the purpose of utility rates to provide investment capital. The investors are required to acquire capital and deploy it and then seek recovery of it through rates.

Q. And my last question -- and I'm kind of retreading some ground we captured earlier -- but on the potential for a sale, I guess it's implied in your earlier statements, but I want to hear it more directly. So you feel -- it's your opinion that the Company would be attractive for somebody to buy; there's value that somebody would want?

A. Yes, I think so. Yes.

Q. Thank you.

INTERROGATORIES BY CHAIRMAN IGNATIUS:

Q. Mr. Naylor, a few other questions.

When Mr. Richardson was asking you about ARRA funding and the difficulty of the loan period over which it would be -- the payback might be further than the length of the assets -- do I have that right -- and he said -- he asked -- this is a terrible question. What's happened to my brain? Let me begin again.

Have you been asked to give an opinion on whether moving from a 40-year to a 30-year life would be a good idea for an ARRA/SRF loan?

A. I have not been asked that. But I don't --

Q. Do you have a view on whether that's a good idea or bad idea?

A. Well, it would certainly help with the cash flow mismatch. All of this depends on what the proceeds of the SRF loan are used for.

Let's take, for example, an SRF loan that is required to be paid back over 20 years. Let's say all those funds are used to invest in assets which have a service life of 20 years. That would give you a perfect cash flow match. It's only when the assets are, on a composite basis, are carrying a service life greater than the loan term that you get the cash flow mismatch. So, certainly a 30-year life would be helpful.

The caution, of course, with the SRF program, as I indicated earlier, the funds are competitive, and it's -- and there's no guaranty for any project that the Company submits, or any company submits, it will be funded by the SRF. It's very competitive.

Q. There were also a number of questions about how the small companies tend to result in more violations than the larger companies do. In your experience looking at water companies, is it unusual or is it the norm that a company have repeated notices of violation?

A. Well, I think you have to look at each of the notices. You have to look at the letters of deficiency and make some determination as to from what they arise. Is it through poor maintenance? Is it, you know, lack of attention? Is it lack of investment? Or are they just things that develop from, you know, an aging process for these systems? It's really difficult to say exactly, you know. Sort of in a direct answer to your question, I'm not really sure. I mean, I think it just depends on the circumstances. I think it's fair to say that with some of the difficulties this Company has had in the last three or four years, they have a reason from aging -- the process, if you will, declines in the yield of the wells that are serving the community water system. Those are things that are going to happen through no fault of the utility. The problem, of course, then becomes does the utility have access to the capital it needs to remedy the situation? Often you're looking at real estate prices for a utility to acquire new land for well development. We're talking about current prices for land and all the costs that go with developing new sources or what have you. So it can be a combination of factors. But certainly the aging of these systems is a significant issue.

Q. It sounds, then, from what you've just said, if much of the problem the Company is facing is because of the systems that it inherited and the inability to obtain capital to make significant improvements, that it's not a question of the managerial capabilities of the Company; it really is a financial crisis with these aging systems. Is that fair?

A. Yes.

Q. Then what leads you to recommend sale of the Company rather than some rate plan to -- you know, say a series of step increases with each new investment to bring the Company forward? If it's not a management issue on the part of the Company, then why is a different owner going to do a better job?

A. Because that owner will have, presumably, access to the capital needed -- reasonably priced capital needed. There's going to be significant lag time from the time the capital is in hand until the projects are finished and regulatory approvals are sought for recovery of those investments.

You've got -- I mean, the needs of these systems have gotten to the point where I believe it's just beyond the capability of this company. The Company has struggled mightily over the past three or four years financially to put in place another million dollars or so in fixed plan, and it's facing another million to a million and a half, maybe even two million in the next four to five years. It's just a burden that I don't see where the solution comes from.

And Staff testimony was provided in October, and the Company filed testimony in December and, in my view, did not provide anything that gives me any assurance that it has a financial plan to address the needs that these water systems have.

Q. If there were to be a sale below the rate base level, what would that mean from an accounting perspective? You said you thought an owner -- a new buyer might be interested in the assets but not the stock. How would you play out a sale, assuming that it comes in at less than value -- book value?

A. Well, the impact on the purchaser?

Q. Both the purchaser, the shareholders and the customers.

A. The purchaser would put the assets on its books at the price it paid for them. Presumably, if that means a write-down of the value of the assets, then they would be required to write down the value, because a utility owner can only earn on the level of its investment.

For the shareholders, they would obviously incur a loss. For customers, ultimately, I guess, receiving service from the original assets before any additional improvements are made, the rate base would be reduced to the level of the purchaser's investment.

Q. Well, that wouldn't happen unless there was a regulatory proceeding to reduce it; is that right?
A. Correct.
Q. And if the sale were above the book value of the assets, what would happen?
A. For the purchaser, they would only be permitted to earn a return on the book value of the plant as it existed at the time of the sale. They would not be permitted to earn on the excess -- often referred to as an "acquisition premium." And obviously for the shareholders, they would have a gain on their investment.
Q. And for the customers, any change?
A. No change.
Q. The affiliate agreements that -- the agreement terms that have been introduced have different rates to be paid when the service company uses a utility employee and when the utility uses a service company employee. Do you recall that?
A. Yes, I do.
Q. Have you seen terms like that in other

affiliate agreements?
A. No, I haven't. And it's probably as much because I have not seen affiliate agreements where the utility is providing services to an affiliate. The ones I've seen are the utility receiving services from an affiliate.
Q. This is Exhibit 10, LRW 10, I'm referring to. So this two-way exchange of services is the unusual situation?
A. Yeah, it's unusual. I don't really have a problem with it. I think we understand the close relationship of these two entities. And this is not new. This goes back a number of years. LRW Water Services has provided service to the utility for quite some time.
Q. Can you help me understand the logic of why the rates are so different if the compensation rates -- if the service company uses a utility employee, the service company pays the utility $19 per hour, under Appendix A of Exhibit 10.
A. Yes.

Q. And when the utility uses the service company, the utility pays the service company $50 per hour. Why is that discrepancy logical?

A. I don't think it is, to be honest with you. I don't -- I don't agree with it, and I don't recommend the Commission approve this agreement with these terms. I don't -- I don't understand the logic. I know the Company tried to give some explanation for it. It just seems to me that if you look at what R.S.A. 366 requires for the filing of utility affiliate agreements, it requires them to be reasonable. And I think the Commission has interpreted that over the years in a way that suggests the terms and conditions of an affiliate agreement should simulate an arm's-length transaction. And I don't think that this meets that test.

Q. You heard testimony that the Company needs to have people available at all times for an emergency and, if someone's out, a backup, if someone unable to be at work, in case there's some sort of water emergency. Do

you recall that?
A. Yes, do.
Q. Is that the case for all of the water companies that you've reviewed?
A. That the utilities are required to be able to respond to a customer call at all hours? Yes. Yes.
Q. And if I recall, the question suggested that in order to have that backup, you need to kind of overstaff and have some people who may be -- the word "idle" was used -- really had nothing to do at certain times, just to be certain that they are available if they are needed. Do you recall that?
A. I do.
Q. Is that the norm, in your understanding of how water utilities design the level of staffing they need?
A. I think it's fair. I agree with the suggestion that the utility needs to have that capacity in terms of personnel. You know, most of the small water companies we deal with now have a contract operator that -- you know, a company that's in

business to provide service to water systems. Mr. Mason' company provides this type of service, his own company, the LRW Water Services. So you need to have people available for handling emergency calls. So it's not unusual.

Q. But couldn't you put that extra staffing over on the services side rather than the utility side?

A. Yup, I think you could in this particular case since the companies are so closely intertwined.

Q. Those are all my questions. Thank you very much.

CMSR. HARRINGTON: I just have one other question that came up as a result of some of the previous questions.

INTERROGATORIES BY CMSR. HARRINGTON:

Q. Just so I get this clear, Mr. Naylor, on the document that's attached to your testimony, Staff Advocate 11, there's a DES -- or I don't know the official name for it. It's a letter, I guess. It says, "By March 31st, 2012, the water system shall seek and get final permanent approval for these wells as new community water supply wells following the small community well siting testing rules..."

Then there was LRW Exhibit 14, which appears to be a schedule that says, "Revised Mount Roberts Schedule Proposal," and it has dates going out to May 31st for the submission of the final report for siting. Attached to that is an e-mail from DES to Lakes Region saying, "DES approves the revised schedule that LRWC intends to follow to add up to 40 gallons per minute to the Paradise Shores/Suissevale water system."

Is it your understanding that this e-mail superceded the letter and allows -- gets rid of the March 31st deadline, and I guess stretches it out to some time after May 31st?

A. I don't believe that's the case. I think what the Company's application process is intended to do now is to establish and receive approval for use of these wells for the peek period this coming summer. Any prior use which was considered an emergency basis expires -- still expires March 31st of '12. I believe that's the case.

Q. And what about -- okay, it does say that. "Approval for use of these emergency wells expires March 31st, 2012."

But then, the next sentence says by March -- and this is, in fact, bolded, the date -- "By March 31st, 2012, the water systems shall seek and get final permanent approval for these wells."

To the best of your knowledge, is that going to happen by the 31st, which is just a few days away?

A. That's not my understanding, based on the communication that I have seen. That the Company is working with DES now, and has worked with DES to establish a schedule for completing the work that they need to complete for these approvals that they are seeking for this coming summer.

Q. But do you know of any waiver from the requirements in that August 1st letter from DES other than the e-mail that was attached to LRW Exhibit 14?

A. No, I don't.

Q. Okay. And in that exhibit there is also -- it says "one item for clarification," and it talks about the referenced removal of the need for LRWC to arrange for ownership/ control of the well. I'm not going to read the whole thing that goes on to say that. But it says, at least temporarily, it's all right not to have this. And then it concludes with, "As such, please be advised that any source approval issued by DES for use of these proposed wells shall include a condition that the well site ownership/ control rule requirement is met within a specified time frame and that this e-mail" -- this is underlined -- "does not issue a waiver to LRWC from meeting rule's requirement."

Do you know of any plan that Lakes Region Water has for complying with that -- i.e., getting permanent ownership of the Mount Roberts property?

A. I don't know what the current plan is. I know that's been a topic of discussion, but I'm not sure what the plan is at this point.

Q. Thank you.

CHAIRMAN IGNATIUS: Ms. Thunberg, any redirect?

MS. THUNBERG: Yes, briefly.

REDIRECT EXAMINATION BY MS. THUNBERG

Q. Mr. Naylor, you engaged in some question and answering between Commissioner Harrington about LRW Exhibit 28, and it was entitled "LRW Company Renovations from January 1st, '09 to Present." Do you remember that document?

A. Yes.

Q. And do you recall the question asking what capital additions are in rates?

A. Yes, I do.

Q. Is it fair -- is the following sentence fair, that the 2009 capital additions are in rates, to the extent that they are reflected in a temporary rate type of a situation, and that 2010 additions are not currently in rates because they will be subject to a step?

A. Yes, the step you're referring to is what Mr. Laflamme has proposed in his testimony. Correct.
Q. Yes, the step that I'm referring to is the one that is referred to by Mr. Laflamme. Thank you for that clarification.
There was another question from Commissioner Harrington. Your response, I believe, forgot a word "not" in it. And your response had said, "It is my position that the Company's lack of access to reasonably priced capital will lead to adequate and reasonable service." Is there supposed to be a "not" in that sentence?
A. There's supposed to be a "not" in there. That's correct.
Q. Thank you. You were asked a few questions regarding changes in rate design, and I have a follow-up. Would changes in rate design get Lakes Region out of its dire financial condition, in your opinion?
A. No.
Q. You were shown on cross by the Company a series of e-mails with lists of violations.

Do you recall those exhibits?
A. Yes, I do.
Q. Had you -- do you know, of the violations that were discussed, how many were for -- were specific to Lakes Region Water Company?
A. No, not off the top of my head, no.
Q. Were you able to discern whether these numbers reflected any repeat violators?
A. No.
Q. And you had not had any discovery on violation numbers of water systems from DES; correct?
A. No.
Q. You had been asked about -- from OCA about the possibility of the Company -- would the Company benefit from having a management-expertise person. Do you recall that questioning from OCA?
A. Yes, I do.
Q. Has Lakes Region Water Company had such a position proposed in its rate case?
A. I don't recall. I'm not sure. We've heard from Mr. Montville earlier in the proceeding, and he has provided the Company

with some financial services. But as far as an additional employee in-house, that has not been proposed.

Q. Thank you. You were asked some questions regarding the Company's reply testimony. And have you reviewed that reply testimony?

A. Yes.

Q. Does any of the reply testimony change your opinion in your October testimony?

A. No.

Q. Have you -- you were asked some questioning regarding having an opinion on SRF financing. That was from Chairman Ignatius. Do you remember that question?

A. Yes. Yes, I do.

Q. Have you ever offered a recommendation to the Commission regarding Lakes Region's request for SRF funding?

A. Yes.

Q. And was that, subject to check, Docket No. 09-098?

A. Yes. And I believe that was the ARRA funding, yeah, in 2009.

Q. And what was your recommendation?

A. Staff recommended that the Commission grant its approval for Lakes Region to enter into that loan agreement.

MS. THUNBERG: That's it for redirect. Thank you.

CHAIRMAN IGNATIUS: Thank you.

Mr. Naylor, you're excused. Thank you.

Mr. Laflamme? Mr. Speidel, is that our last piece of business?

MR. SPEIDEL: I believe so. Yes. I'd like to call Mr. Laflamme to the stand if possible.

CHAIRMAN IGNATIUS: Please do.

(Discussion off the record.)

CHAIRMAN IGNATIUS: Back on the record.

(Whereupon, JAYSON LAFLAMME was duly sworn and cautioned by the Court Reporter.)

JAYSON LAFLAMME, SWORN

DIRECT EXAMINATION BY MR. SPEIDEL

Q. Okay. Mr. Laflamme, could you please state your full name and your place of employment.

A. Jayson Laflamme, and I work in the Gas and Water Division of the Public Utilities Commission.
Q. Okay. And what would you say that your area of professional expertise is?
A. Accounting and finance.
Q. Very good. I will present a document to you shortly.
MR. SPEIDEL: I have styled this as Staff Exhibit No. 1, and I would ask that this be marked as such.
CHAIRMAN IGNATIUS: So marked for identification.
(Staff 1 marked for identification.)
Q. Mr. Laflamme, do you recognize this document?
A. Yes. This is my testimony submitted in Docket DW 10-141 and DW 11-021, dated October 14, 2011.
Q. Now, Mr. Laflamme, if you'd do us a favor and just speak a little bit closer to the mic or pull it closer to you. Thanks. Very good.
Now, was this testimony prepared under

your own supervision and control?

A. Yes.

Q. And would you say that this testimony, the subject matter of this testimony, was within the area of professional expertise that you mentioned?

A. Yes, it was.

Q. Do you have any corrections or other line edits to your testimony to make today?

A. No.

MR. SPEIDEL: I have no further questions of this witness. Thank you.

CHAIRMAN IGNATIUS: So, for cross of Mr. Laflamme, I think we'll have the Company, then Suissevale, OCA, and the Staff Advocates.

Mr. Richardson?

MR. RICHARDSON: Could I request to go after Suissevale, because I'd like to hear what they have, since we are adverse parties, as it were. That's what we've done so far in the case.

CHAIRMAN IGNATIUS: Okay. I

don't know if Mr. -- okay. I'm not sure who's adverse to Staff.

But Mr. Patch, any problem with that?

MR. PATCH: No, that's fine. I only have a few questions, anyway.

CROSS-EXAMINATION BY MR. PATCH

Q. Mr. Laflamme, you heard me ask Mr. Naylor this morning a couple of questions about the capital -- total capital assets of the Company right now. Were you here for that?

A. Yes, I was.

Q. I mean, when I ask about total capital assets, that's -- would you agree that that would be an equivalent of a rate base, essentially?

A. Pretty much, yes.

Q. And in your testimony -- I'm looking at beginning on Page 10 -- there's a discussion about rate base, Lines 19 and 20. You refer to the Company showing the test year average rate base as 2.4 million, basically; is that correct?

A. That's correct.

Q. And then a couple lines lower it says the overall test year rate base proposed by the Company is 2.6 million; is that correct?
A. That's correct.
Q. And then over on top of the next page, your -- or Staff's rate base proposal is 2.3 million, approximately.
A. Yes.
Q. And the questions I had for Mr. Naylor were with regard to sort of the impact of the Company's proposal for -- well, first of all, I had a proposal that was submitted in this case with regard to a step adjustment that involved over a million dollars in basic investment in capital projects that they said were required; is that correct? Do you recall that?
A. Yes, initially they had a request for a step adjustment for the Mount Roberts property.
Q. Well, Mount Roberts, I think, was 1.5 million, wasn't it? And that was a separate one.
A. Yes.
Q. And then the other list of projects was -- I

think totalled over a million, independent of Mount Roberts; is that correct?
A. In their initial filing?
Q. Not in their initial filing. I think it was something that was submitted as an attachment to, I believe, Mr. Mason's testimony in December. Does that sound correct?
A. Yes, yes.
Q. So if all of those projects had been undertaken, that would have been about two and a half million dollars that would be added to rate base, which would basically approximately double.
A. Yes.
Q. I asked Mr. Naylor, as well, about revenues from Mount Roberts. And I think on Page 31, Mr. Naylor recalled generally what those figures were. But just to tie them down a little bit tighter, on Page 31 of your testimony -- actually, it's not Page 31. Sorry. It's Page 18 of your testimony, on Line 22, you had indicated that the 2010 revenues from POASI were, in fact, $125,978;

is that correct?
A. That's correct.
Q. And then in 2009, a couple lines above that, it was adjusted to $128,561; is that correct?
A. Yes.
Q. Okay. So, just to put some numbers around the questions that I asked Mr. Naylor, I just wanted to make sure the record was complete on that. That's all the questions I have on that. Thank you.

CHAIRMAN IGNATIUS: Thank you. Mr. Richardson?

MR. RICHARDSON: I'm confused. Is there a reason why we've switched? The only reason is I want to avoid at all possible having a request for re-cross. And I'm mindful that the OCA is going to -- has requested that Mr. LaFlamme's rates be those adopted by the Commission. So I was hoping I could follow --

CHAIRMAN IGNATIUS: All right. I misunderstood what you were asking before.

Any opposition? Ms.

Hollenberg?

MS. HOLLENBERG: No.

CHAIRMAN IGNATIUS: I think who goes first and second is not always entirely clear. But that's fine with me.

MR. RICHARDSON: I know. And I really wanted to -- I want to just ask once and then never have to ask for a recross, because I know I won't get it, and I want to get out of here quickly.

MS. HOLLENBERG: Did you get that, Susan?

CHAIRMAN IGNATIUS: Ms. Hollenberg.

MS. HOLLENBERG: Thank you. I have no questions.

MR. RICHARDSON: Oh, okay. Put on my dunce cap.

CHAIRMAN IGNATIUS: I think you're it. There's no more putting it off.

CROSS-EXAMINATION BY MR. RICHARDSON

Q. Mr. Laflamme, this case started off with the Company requesting a 40.74-percent rate increase; is that right?

A. For permanent rates, yes.

Q. That's right. Yes. Sorry.

And the temporary rates were 18.5 percent -- 18.51 percent, an increase of $143,964. I'm looking at Page 3, Line 9, I believe, of your testimony.

MR. SPEIDEL: Could you please repeat that, Mr. Richardson, and speak into the microphone?

Q. (By Mr. Richardson) On Page 3 of your testimony, Line 9, I think you note that the Commission approved temporary rates of 18.51 percent.

A. Yes.

Q. And you are recommending for your permanent testimony essentially the same rates, 18.50 percent. And that's, I believe, on Line 20 of Page 3.

A. Yes. The dollars are just a shade higher --

Q. Yeah.

A. -- for permanent.

Q. So, essentially, your permanent rate recommendation is less than half of what the Company requested originally for permanent rates.

A. Yes.

Q. Now, it's obviously the Commission's role to determine what an adequate rate is; right?

A. Yes.

Q. Okay. And under the statute, would you agree with me that -- and I believe it's 378:27 and its companion, 28 -- that rates have to be sufficient to yield not less than a reasonable return?

A. Yes.

Q. Okay. And in doing that, it's the Commission's job to consider both factors that could decrease the requested rates, as well as factors that might increase them.

A. Yes.

Q. Now, let me ask you about the rate of return. And I believe in your testimony, on Page 5, you state that the Company applied a 9.75-percent rate of return on equity, which is consistent with other equity returns approved by the Commission in recent dockets involving small water utilities; is that right?

A. That sounds -- that sounds right.
Q. Yeah. But that 9.75-percent number, that's also the same return on equity that the Commission and Staff has recommended for the state's largest public water utility; right? Pennichuck?
A. Yes.
Q. Now, do you agree with me that ultimately -- for purposes of the record, I'll give you a citation, but it's PSNH, 130 NH 265 (1988), on Page 275. And I'll represent to you that -- and you can tell me if you agree -- that states that a just and reasonable rate is one which reflects, among other things, a rate of return commensurate with the returns on investments in other enterprises having corresponding risks.
A. That sounds familiar.
Q. Okay. And is that your understanding of what the mission is in setting a rate of return on equity?
A. Yes.
Q. Okay. Do you believe that Pennichuck Water Works and Lakes Region have corresponding

levels of risk?
A. I think they have --
MR. SPEIDEL: Mr. Richardson, how is your question germane to this proceeding specifically, in terms of you're asking Mr. Laflamme for an off-the-cuff opinion on a very technical question. Could you give us maybe a little more background about that?
MR. RICHARDSON: Sure. I'll withdraw the question, and I'll just approach it in another way to get to it quickly.
CHAIRMAN IGNATIUS: All right.
Q. (By Mr. Richardson) In your testimony -- and I'm jumping ahead here. Let's see. I got to find in my notes.
You recommended that, I believe on Pages 8 to 9, that the rate of return on equity for paid-in capital, I believe, be reduced from 9.75 percent to 6 percent.
A. On only a portion of what the Company was proposing for paid-in capital.
Q. And so --

A. The majority -- I recommended the majority of owner's equity would remain at 9.75 percent.

Q. So, did you take into account in setting a rate of 6 percent, that Lakes Region Water has a correspondingly higher risk associated with it because it's a small water utility?

A. No, that wasn't my -- that wasn't my thought process. It was the fact that the cost of debt for the Company had been of concern to the Commission for going on 10 years. And based on the fact that the Company had declined low-cost debt through SRF and ARRA, and instead opted to appear to be opting to meet its financing needs through shareholder loans and equity infusions, and those -- and the source of those shareholder loans and equity infusions appear to be a loan that was taken out by the shareholders at an extremely low cost, my point was that it seemed inequitable to the customers that they should be subject to that high cost of debt/owner's equity.

Q. But aren't you blending concepts? Because

the cost of debt is -- assuming it's prudent -- is whatever the cost of debt is, and the cost of equity is an entirely different concept that is meant to incorporate the risks that the investors are exposed to when they invest money into a company like Lakes Region Water.
A. I think in this case, and I think the Company has admitted itself in its own testimony, that it sees shareholder debt and shareholder equity as essentially the same.
Q. But my question is, given that Mr. St. Cyr's testimony is requesting a rate increase that's less than what was noticed, less than the 40.74, whether the Commission should consider the level of risk that Lakes Region faces -- or that an investor in Lakes Region Water Company faces?
A. I think it needs -- I think the Commission needs to consider in this case a number of factors, including risk --
Q. Okay.
A. -- and others.
Q. So risk is appropriate to consider then.

A. Yes.
Q. Okay. So, now let me get, then, to the SRF or ARRA issue. You understand that the Company would be earning less than what it would be required to repay the note if it had moved forward with the ARRA loan. Is that your understanding?
MR. SPEIDEL: Maybe you could specify a time frame for that. Is that before the current rate proposal's enactment or afterwards?
Q. (By Mr. Richardson) Mr. Laflamme, you understand that, if the Company were to have accepted the ARRA money, it would have been required in year one to repay the note at a greater rate than it would be earning off of the underlying assets; right?
A. When you talk about "rate," I don't quite understand what you mean by "rate."
Q. Well --
A. Are you talking about the difference between depreciable assets and the payback or -- I don't understand.
Q. The Company earns, when it invests money

using ARRA funds, when it invests that in a physical asset, it earns a return based on the cost of that asset; right?

A. Yes.

Q. And that's over what the life of the asset is, which might be 40 or 50 years.

A. Correct.

Q. And you agree with me that that presents a problem for the Company if the note for the SRF funds is over a 20-year period; right?

A. Yes.

Q. So there's a shortfall.

A. There's a difference between the depreciation period and the payback period.

Q. And that creates a revenue shortfall, right, for the Company?

A. Yes.

Q. So, given the Company's limited earnings, what do you think it should have done? I mean, what would a prudent choice have been for the Company, given the position it was in?

A. I think the -- it highlights the fact that the Company is in a difficult financial position and has been -- as has been said, other companies have been able to take advantage of SRF loans and ARRA funding. But because of the financial circumstances that the Company finds itself in, I think it would be -- it may have been difficult for the Company to have -- to embark on this loan.

Q. And I don't want to go over things that we've already covered at some length in this hearing. But you were here, obviously, when I asked Mark Naylor about the challenges facing small water utilities. And did you agree with his position that these challenges are face -- are ones that Lakes Region Water faces?

MR. SPEIDEL: I'd like to object to this question because it's a little bit beyond the scope of Mr. Laflamme's testimony.

CHAIRMAN IGNATIUS: Mr. Richardson, do you have a response?

MR. RICHARDSON: Well, he's -- I'm trying to get at the reason why he's lowered the Company's return on equity. And the point I'm trying to drive at is that it wasn't a decision made by the Company to refuse it. It was more that circumstances due to the nature of the systems it operated forced it in that direction.

CHAIRMAN IGNATIUS: Well, why don't you try to ask that a little more directly than you did a moment ago.

MR. RICHARDSON: Okay. I apologize. It's my -- my question-phrasing is often difficult, and I'm guilty for that.

Q. (By Mr. Richardson) But Mr. Laflamme, do you understand what I'm trying to get at, that this Company didn't really have much of a choice, given that it's operating 17 systems with an average of less than 100 customers each? It didn't have a lot of flexibility built in to accommodate a shortfall in revenue for the ARRA funds.

A. I have no idea. I can't answer that question.

Q. (By Mr. Richardson) Okay. Do you have your testimony in front of you?

A. Yes.

Q. I'm looking at Page 7, Line 8. And I'd just like -- in order to move this quickly I'll read you, starting at Line 10 on Page 7. You stated, "It is Staff's recommendation that the Commission should grant approval of this debt." And is that the debt that's in the 11-021 docket?

A. I believe it is.

Q. Okay.

A. Yes.

Q. And you go on to state, "Based on its analysis of these prior year issuances, Staff believes that the loans were prudent towards enabling LRWC to provide a safe and adequate supply of water to its customers. Further, where these loans were used to purchase various items of plant and equipment, and Staff believes that these additions were prudent and reasonable and that the acquired assets were both used and useful to the Company in its operations. Lastly, the terms associated with each of the loans appear to be reasonable and will

not adversely impact customer rates." Do you still agree with that testimony today?
A. Yes.
Q. So, I'm having trouble reconciling then. Obviously, if the Company's in financial difficulty trying to operate its systems, and the debt that it's going out and is acquiring is reasonable, why should we reduce the Company's rate of return on equity because it would have been unable to pay the ARRA funds? I mean, aren't we punishing the Company for having insufficient revenues, and the punishment is to reduce the revenues?
A. I think it's recognizing the fact that the cost of debt -- the Company's cost of debt has been a concern to the Commission for almost 10 years; and notably, the cost of debt to the Company's shareholder has been a concern of the Commission for a number of years. And instead of reducing that -- those loans to shareholders, the Company, by refinancing that debt with other debt, the Company has increased -- seems to be

increasing its reliance on financing from shareholders at a high cost of debt.

Q. But at the end of the day, I guess where we end up using this approach is we're reducing the Company's return on equity. And doesn't that only exacerbate its financial situation?

A. I think it -- I think it sends a message to the Company that it needs to look for alternative sources of financing that are -- that are lower in order to meet the Commission's charge, indicated 10 years ago, that it needed to reduce its reliance on shareholder debt.

Q. Hmm-hmm. But in order to get to that point, doesn't the Company need to increase its earnings so that it's able to essentially deal with the revenue shortfall that low-cost debt like SRF funds might produce?

A. Could you repeat the question?

Q. Well, in order to solve the problem, ultimately what the Company needs is greater earnings so that it can afford to make the decision to accept ARRA funds over the short term in order to execute the project at a lower cost over the long term. Isn't that true?

A. I think greater earnings would help. But I don't think it's limited to that. I think that the Company is in a position where it has lack of access to affordable financing. Greater earnings would help, but I don't think that's the complete answer.

Q. Well, if greater earnings would help, isn't it also true that reduced earnings would make the problem worse?

A. Yes.

Q. You talk about the net operating loss issue. And I believe that's on Page 29 of your testimony. Okay. I guess the question was on the prior page. I'm just trying to bring myself -- oh, okay. Yes.

You state there -- I'm trying to find the -- okay. Here it is at Line 4. "As discussed previously, Staff is proposing a marginal tax rate of zero percent be applied for both state and federal income taxes. Further, Staff is proposing that the pro forma state and federal income tax expense proposed in the Company's filing of $47,158 should be eliminated because it is not anticipated that LRWC will owe income taxes for the foreseeable future due to the availability of net operating loss carryforwards that can be used to offset future taxable income."

And in effect, I mean, if I boil this down to its simplest, isn't what the net result of this is, is that you've recommended that we reduce the Company's revenue in the future because it lost money in the past?

A. No. That's too simplistic. The recommendation is that the Company has incurred net operating loss carryforwards, I believe, stemming from the year 2008. Those net operating loss carryforwards are available for the Company to use in future tax years to offset future taxable income. Therefore, it's Staff's analysis that the magnitude of those net operating loss carryforwards -- I believe it's around

$230,000 for federal, and it's more than that for state -- that those net operating loss carryforwards would make it possible for the Company not to recognize income taxes in future tax years. So therefore, if the Company isn't going to be paying income taxes in the future, it should not be recovering -- it should not be receiving rate recovery for income taxes if it's not going to be paying income taxes in future years.

Q. But doesn't that reduction really hurt Lakes Region Water's ability to correct its financial situation, because that comes -- I mean, it's basically a $47,000 reduction in its revenue requirement?

A. No, because the Company isn't going to pay $47,000 in taxes. So if it's not going to pay $47,000 in taxes, then why should it be getting rate recovery for $47,000 it's not going to be paying.

Q. But that brings us back to my question, because the reason why it's not going to be paying that money is because it lost money in the past. So, in other words, the Company lost money in 2008 or '07, hypothetically, and so we're going to reduce its earnings in 2009.

A. The revenue requirement is based on the test year. What happened in the past has no impact. What the Company lost in the past has no impact on the revenue requirement for ratemaking purposes, only to the extent of its impact on future taxable income.

Q. Do you have Steve St. Cyr's testimony in front of you, by any chance? This would be LRW Exhibit 5.

CHAIRMAN IGNATIUS: This is his reply testimony?

MR. RICHARDSON: Yes.

A. I believe I do.

Q. (By Mr. Richardson) I can get you a copy.

A. I think I have it. This is the testimony that was dated December 12th, 2011?

Q. That's correct. I need to pull out my own copy so I can follow along with you.

So let's turn to Page 5 -- excuse me -- Page 4, Line 13. Excuse me. A little higher up. Actually, I'm looking at Line 11. Do you see where it reads -- Mr. St. Cyr states, "After much discussion, the Company has accepted the need to reduce test year expenses for the pension and health insurance expenses. However, with the Company's acceptance of the reduction, the PUC Staff did not make a corresponding adjustment to retained earnings."

And my question is, first, do you agree that there was no adjustment for retained earnings as a result of the elimination of pension and health insurance?

A. Yes.

Q. Okay. And I think that there was a data request on this. I'd like to show you your response. And maybe I could just ask you.

You agree that a response is -- excuse me -- that an adjustment is necessary?

A. That Staff wouldn't oppose that adjustment, no.

Q. Let's see. I've got Data Request 1-8. Let me get you a copy and I'll have Tom distribute the extras.

A. Okay. I think I have it right here.
Q. You do? Okay.
MR. RICHARDSON: What should the number of this exhibit be?
THE CLERK: LRW 31.
MR. RICHARDSON: So I'd like to mark this as LRW 31.
(LRW 31 marked for identification.)
CHAIRMAN IGNATIUS: Mr. Richardson, because time is limited, the witness has already said he agrees the adjustment is appropriate.
MR. RICHARDSON: Okay.
CHAIRMAN IGNATIUS: I thought the exhibit was going to put actual numbers to it, but it doesn't. So the document may confirm what he already said, but he's already testified to it.
MR. RICHARDSON: Okay. Sure.
Q. (By Mr. Richardson) Have you reviewed Mr. St. Cyr's testimony and the adjustments he --
A. From December?
Q. Yes. And do you agree with the adjustment

that he's recommending for the elimination of the net operating loss -- or excuse me -- for the pension expense?

A. It was my understanding that the Company was basically agreeing with Staff's position that the pension payments to the shareholders, along with the health insurance premiums paid on behalf of the shareholders, should be eliminated as test year expenses. And I believe Mr. St. Cyr is indicating that, based upon the elimination of those items as expenses, that retained should be increased by that amount. And Staff does not oppose that adjustment.

Q. Okay. And so if you look at -- and that adjustment, I think, is shown on Exhibit 5, on Page 10, Column 4. You see where it says D is retained earnings. And then there's a note D that states it's reflect -- "to reflect additional retained earnings due to elimination of pension and health insurance." So that would be the adjustment that you would agree to.

(Witness reviews document.)

CHAIRMAN IGNATIUS: I'm sorry. Did you --

A. Yeah, staff would not oppose an addition to retained earnings in the amount of $56,829.

Q. (By Mr. Richardson) Okay. And if we go to Page 19 of LRW Exhibit 5, and I'm looking at Column 6, Mr. St. Cyr has calculated a tax liability in Column 6 of $68,732. Do you agree with that?

A. Do I agree that it's there on Page 19, or do I agree with the adjustment?

Q. Do you agree with the adjustment?

A. No, I don't.

Q. Well, you understand -- have you had a chance to review Mr. St. Cyr's adjustments to 2009, and I believe the 2010 annual reports, and the Company's earnings therein? I think that's in LWR [sic] Exhibit 9.

(Witness reviews document.)

A. I believe that they were adjustments that were made by the Company to the 2010 annual report.

Q. Yes.

A. Have I reviewed those?

Q. Yes.
A. Briefly.
Q. Okay. But I guess what I'm trying to get at is why don't -- if you agree that these are to be treated as retained earnings, and I believe what Mr. St. Cyr has done here is he has used the retained earnings to eliminate the Company's prior net operating loss --
A. You're referring to the adjustments to the 2010 annual report.
Q. Yes, that's right. Doesn't that then create a future tax liability?
A. Not necessarily. What's not -- what the Company didn't provide was a copy of the amended returns that went along with its prior year adjustments. So, I think until Staff can see the amended returns, I don't think I can make a determination on whether that creates a future tax liability or not.
I should also add that there's several moving parts within the Company's corporate tax return. And making such a determination is difficult, given the number of moving parts that are a part of the Company's

corporate tax return.

Q. So when I asked you before if you agreed with Mr. St. Cyr's adjustments and you said no, I think it probably would have been better to say that you don't know if those are correct at this point.

MR. SPEIDEL: Well, Mr. Richardson, I'd like to object to that line of questioning because, for starters, Mr. Laflamme is not responsible at the present time for auditing the 2010 annual report as filed. And moreover, I believe that Chairman Ignatius had ruled on the fact that that annual report is not at issue in this proceeding, even though it was marked for identification for informational purposes. So I just wanted to put that out there, and I was wondering if perhaps it would be fruitful to move on to other questions.

CHAIRMAN IGNATIUS: I'm not sure I recollect finding that the annual report is not at issue in the proceeding. But let's stay focused on what the question and answer is here.

As I understood it, you had asked Mr. Laflamme if he agreed with what I heard was one particular adjustment having to do with the --

MR. RICHARDSON: Income tax liability.

THE WITNESS: Pension and health insurance.

CHAIRMAN IGNATIUS: Pension and health insurance. Not income tax liabilities, but pension and health insurance being taken out and then retained earnings would go up. And Mr. Laflamme said, yes, he thought that was appropriate. And then the next discussion was about a different number, about income tax liability. So maybe you're just quicker than I am at connecting the dots or drawing, or we're missing something here. But I didn't hear Mr. Laflamme say he was accepting all of the adjustments that Mr. St. Cyr had made, but one particular recommendation to adjust the retained earnings upward made sense to him.

MR. RICHARDSON: Understood. And my question was trying to get at that precise gap, which is whether Mr. Laflamme meant in his earlier answer that it wasn't that he disagreed with the adjustment to net operating income, it was that he meant to say that he didn't have all the data that he needed. That was the nature of my question.

CHAIRMAN IGNATIUS: All right. Well, why don't we -- you have one figure of $47,158, and you were asking should retained earnings be increased. Is it to be increased by that amount, or was it a different number? That's where I got lost on the path.

Q. (By Mr. Richardson) Mr. St. Cyr [sic], I won't profess to be able to ask the question any better than the Chair just stated it. Could you answer that question?

A. I'm sorry.

Q. Do you know -- do you agree that the retained earnings increases by, was it 47,000?

CMSR. HARRINGTON: I thought

it was 56,000.

A. My recollection was 56,000 and some-odd --

CHAIRMAN IGNATIUS: That was my mistake. I pulled the wrong number from the testimony.

Q. (By Mr. Richardson) Okay. And so you agree that the Company has to go back and adjust its tax returns for the prior years to reflect the treatment of those pension expenses as income; right?

A. Okay. You're -- the $56,000 figure was -- pertained to the test year. And so you're asking me if it's appropriate for the Company to go back to years prior to the test year and make those adjustments -- to make adjustments to pension payments and health insurance payments?

Q. I'm not trying to make this complicated. You've suggested that that expense needs to be treated as income. And so the Company has to do that. And that has consequences to what its earnings would be in the prior years; right?

A. In actuality, it would be a reduction of expense that would increase income and therefore increase retained earnings.

Q. That's right. Okay. And that increase in retained earnings offsets any net operating loss carryforward.

A. Not necessarily.

Q. Well, it's applied against it; right?

A. Not necessarily. Again, we're talking about a tax return that has several moving parts. And I should say that not only do the tax returns reflect net operating loss carryforwards, but they also reflect Section 179 carryforwards, Section 1231 loss carryforwards, all of which, again, goes into the moving parts of a corporate tax return. And based on the information that we have, it's uncertain what the effect on the net operating loss carryforward would be.

Q. But I understood, when I asked you before, that you knew that Mr. St. Cyr had made an adjustment to effectuate that, and you stated that you just didn't have the information necessary to state whether or not you believed Mr. St. Cyr had done it correctly.

A. I don't have -- no. I don't have the information that would indicate -- based on those adjustments that were proposed by the Company, it's difficult to determine what the effect on net operating loss carryforward will be, and we would need to see the actual amended returns in order to make that determination.

Q. Have you seen anything in Mr. St. Cyr's testimony that suggests he did it inappropriately?

A. Based on the limited analysis I have -- that I've done on what the Company's submitted, I don't have any basis to say whether he did it correctly or incorrectly.

CHAIRMAN IGNATIUS: Mr. Richardson, don't truncate what you're doing on this questioning, but if you're at a stopping point -- whenever you're at a stopping point on the adjustment to income tax, we're going to take a break and work on this other order for a few minutes. So --

MR. RICHARDSON: Okay. All right. Why don't we -- we can take a break right now. I don't have much more to go.

CHAIRMAN IGNATIUS: All right. I'm hoping 15 minutes is all it's going to be. Thank you.

(Whereupon a brief recess was taken at 3:27 p.m. and resumed at 3:43 p.m.)

CHAIRMAN IGNATIUS: I apologize for the delay. We had something with a deadline today that had to go.

So, Mr. Richardson, you were questioning Mr. Laflamme; is that right?

MR. RICHARDSON: Yes. And I think we've reached a little bit of an impasse on the net operating loss carryforward issue. What I would like to do is, I believe Mr. Laflamme indicated that he wouldn't be comfortable agreeing or disagreeing with Mr. St. Cyr's adjustments without seeing the underlying tax returns, perhaps among other things. I have the tax returns here, and I'd like to provide those to him and make a record request that he provide -- he state whether or not he agrees with the Company's treatment of the -- or of the reduction of the net operating losses as a result of the pension expense.

CHAIRMAN IGNATIUS: Well, and I don't know if you've discussed with the other parties. I think they would all have a right to see it. We could either do it through two record requests, one being the amended return and one being responses to it or something. I don't know --

MR. RICHARDSON: I have these. I can do it either way. I can either give them to Staff, in which case I'll have to get another copy and send to the service list, or I can scan them and e-mail them to the entire service list, and we can just proceed with a record request, with the Commission's leave.

CHAIRMAN IGNATIUS: Ms. Thunberg?

MS. THUNBERG: I'm dying to object here. Sorry. I would like to remind the Commission that the pension expense changes were in LRW Exhibit 9, which was marked but was not part of cross-examination, because at the time this came in on the eve of the hearing. And Chairman Ignatius, you had commented that the Commission does not like surprises and stated that this 2010 amendment to the annual report would not be part of the merits hearing. So, Staff Advocates did not subject Mr. St. Cyr to any cross or anything. So now, to hear that there's a whole line of questioning on this tax issue about the pension expense that's in the 2010 annual report, I see this document that we objected to early on being drawn in. And I guess my objection is we're going to need to give it the weight that it deserves because we have not had discovery on it. It's new information, and we haven't had it as part of a merits hearing.

CHAIRMAN IGNATIUS: Well, let me make sure I understand. I thought that, apart from whether the amended annual report is in or out -- and I confess, I've forgotten saying that it is out, but everyone else seems to remember that, so maybe I really did say that -- that the issue of the adjustments that Mr. St. Cyr made in his reply testimony of December 12th, 2011, which the Company's marked as Exhibit 5, those have been in the record -- those have been available to everyone for a number of months and you could have checked those out. So I don't know that it's a new issue that only arises from the amended annual report. I'm not following, Ms. Thunberg, why you find the issue objectionable. I don't know why you need to refer to that document in order to address the question of does Mr. Laflamme agree or disagree with Mr. Mr. St. Cyr's adjustments that he made in his testimony. Isn't that the question? Does he agree with Mr. St. Cyr's adjustments?

MR. RICHARDSON: Yes, that is the question. And I agree with you. The disadvantage we're at is that I don't know what Mr. Laflamme's adjustments would be or if he would agree with those the Company made. And I believe he stated that he needed to see the tax returns.

MR. SPEIDEL: I have an independent objection on that basis, actually, Chairman Ignatius and Commissioners. To begin with, I think there is troubling policy implications to requesting of a Commission Staff member what amounts to a private opinion or a private interpretation of an element of accounting treatment and tax law in the context of a hearing cross-examination question. This hasn't been something that Mr. Laflamme has been willing to revise in terms of the treatment of this line item in his testimony. He stood on that testimony. But to cart in documents for Mr. Laflamme to opine upon on a direct single-Staff-person basis would be irregular. For instance: The water team works on a collaborative basis, and there's a great deal of collaborative decision-making and thought processes. And to ask Mr. Laflamme, in his own personal capacity, in the context of a hearing request, would be inappropriate for such a weighty issue.

I also believe that we should allow Mr. Laflamme to stand on his position that he has insufficient information to grant Mr. St. Cyr's accounting treatment a clean bill of health or a total endorsement and leave it at that, instead of having to goose the witness repeatedly on that point. And I think Ms. Thunberg might have some other statements, but that's my limited position on this matter.

MR. RICHARDSON: May I?

CHAIRMAN IGNATIUS: Yes.

MR. RICHARDSON: I simply note that the data response from Staff is that they felt that an accounting treatment change was appropriate. Mr. St. Cyr has made one. The only testimony that we have is that Mr. Laflamme doesn't know whether or not that's appropriate. But right now, the only testimony in the case is that Mr. St. Cyr has suggested what he believes to be the appropriate treatment in his testimony.

If we don't make this a record request, as far as I'm concerned, I'm happy to leave it at that, because it's the only testimony on what the treatment should be.

CHAIRMAN IGNATIUS: No, that's incorrect. You have a witness who says he's not sure that that's right. So don't -- let's not overstate what's been said.

MR. RICHARDSON: No, no, I'm not trying to argue the case. What I'm trying to point out is that I believe this is for the benefit of everyone to get at what the right number should be. It's not -- it's not an attempt to bring something in at the eleventh hour.

CHAIRMAN IGNATIUS: I do have some concerns about, first of all, scope and the expanding creep of this docket, that with each new exhibit come more exhibits to explain the last one, as well as tax filings that may not be necessary or appropriate if we're trying to deal with the 2009 test year. I'm not inclined to go any further on the tax submission that Mr. Richardson requests. I do think the record's very unclear about the relationship between the 56,000-some figure on retained earnings and Mr. St. Cyr's recommendation of a $68,700 adjustment to net operating income. And as much as people keep telling me those are related to each other, it would be nice to understand how those two figures relate.

But can we do it as directly as we can about simply the adjustments that Mr. St. Cyr recommends, Mr. Laflamme's interpretation of them, and see if we can get through this?

Q. (By Mr. Richardson) Mr. St. Cyr -- Mr. Laflamme, if the Company were to eliminate the net operating loss, do you agree that this judgment goes away?

A. The adjustment to eliminate the income tax expense?

Q. That's right.

A. If the Company were to eliminate --

Q. The net operating loss. If the net operating --

A. And then we're left -- uncertain. We're left with then having to determine what the appropriate level of income tax would be.

Q. Okay. Let me ask you a question. Year-end rate base. I want to -- your response to LWR Data Request 1-6, do you have that in front of you? I'll probably mark it as an exhibit.

A. Yes, I have that in front of me.

Q. Okay. Thank you.

MR. RICHARDSON: I'd like to mark this response to LRWC 1-6.

CHAIRMAN IGNATIUS: This is for identification as LRW 32?

THE CLERK: Correct.

(LRW 32 marked for identification.)

Q. (By Mr. Richardson) Now, in -- on the second page -- well, first, at the beginning, you respond to the question, "Do you agree that the Company's investment in plant during 2009 is not fully reflected in your determination of plant in service and rate base due to the 13-month average -- i.e., only 6/13 of an investment made in July 2009 is reflected in the rate base?" And then I see your response to that Question A is "Yes."

A. Yes.

Q. And then it becomes more nuanced in response to Question B because you explain that a company is -- earns a return on assets after they're retired? Is that --

A. Yes.

Q. -- in effect what I read?

A. If they are not fully depreciated and they are retired, yes.

Q. So if they are fully depreciated, then there's no retirement adjustment. Strike that.

So, on the second page, you're asked the question -- or you respond to the question, "Would you [sic] consider including the 2009 additions to plant because such additions are non-revenue-producing additions?" And then there's a citation to the Unitil Energy Systems case. And you say there's two criteria that need to be met, first, relative to full cost inclusion rate base of so-called "non-revenue-producing assets." Now, let's stop with that piece of the puzzle.

Do you know the total number of customers that the Company had during the test year?

A. I believe it was a little over 1600 customers.

Q. And by how much did that increase during the test year?

A. Not certain.

Q. Would it surprise you that there were, I believe, fewer than 20 customers added by the end of 2010?

A. By the end of 2010?

Q. But as far as you know, have there been significant additions of customers at any time in the last three or four years for this company?

A. To the best of my knowledge, I would say no.

Q. Okay. So then, we're likely in the position where any capital additions made in 2009 would be non-revenue-producing; right?

A. As of the end of 2009?
Q. Yes.
A. Uncertain.
Q. Well, the step increase -- the step adjustment that you made for 2010, those are fully included in rates; right? Those assets --
A. Yes.
Q. But the 2009, whether or not it's appropriate to treat those as fully in rates -- in other words, year-end rate base as opposed to test year average -- is dependent, first, on whether or not they are non-revenue-producing.
A. Right.
Q. Okay. And if they are -- if there is essentially no addition to customers, then there's no additional revenues that are being produced by those assets; right?
A. Probably not. But who's to say that there were certain plant additions. The customer impact isn't -- hasn't been realized yet.
Q. Okay. Did you see Mr. -- you have Exhibit 5, LWR Exhibit 5 in front of you?

A. That's Mr. St. Cyr's --
Q. Yes.
A. -- rebuttal testimony?
Q. Yeah.
A. Yes.
Q. And I'd like you to turn to Page 3, Line 8, where Mr. St. Cyr says -- sorry. Let me know when you have that.
A. Page 3, Line 8?
Q. Yes.
A. Yes.
Q. I believe it says -- let me turn to it -- that the Company's investments consist largely of non-revenue-producing improvements. "It is our understanding that the Commission has approved similar treatment in other cases, such as Unitil Energy Systems," and then there's a citation.
Now, you received this testimony before; right?
A. Yes.
Q. Okay. Back in December.
A. Right.

Q. All right. Did you undertake any efforts to evaluate whether or not Mr. St. Cyr's statement was correct?
A. The Company didn't provide any information by which we could look at and evaluate to know whether or not that statement was correct.
Q. But presumably we've been through a rate case, and the investments in capital have been audited and should be known to the Commission at some level; right?
A. Yes.
Q. Did you attempt to ascertain -- or why wouldn't you want to attempt to ascertain the answer to that question, whether they were revenue-producing?
A. This was reply or rebuttal testimony. There was no opportunity for data requests to investigate what was in the reply testimony.
Q. Doesn't the Commission have a list of capital improvements that are made during the year? I mean, aren't the Company's books audited as part of the whole process?
A. Yes. I would say normally -- and I'm

speaking with regards to other utilities, that are given non-revenue-producing -- approved for non-revenue-producing treatment for assets. Normally they provide the Commission with a list of projects that were done during the test year, with a description of what that -- what those projects were, as well as a reason for why a particular project should be considered to be non-revenue-producing. The Company's initial filing did not contain any testimony or schedule with regard to the Company's 2009 capital projects.

Q. But the environment in which the Company operates, and the fact that its customers haven't increased in any significant sense, is certainly a strong indication that there's no additional revenue associated with the type of improvements the Company's making; right?

A. You're asking me to make a determination based on past experience and probabilities. If the Company had simply provided a list of capital projects, why -- the nature of those projects and why they should be classified as non-revenue-producing, then I think those answers would have been very apparent.

Q. Let me ask you the same question. I expect I'll get the same answer. But I mean, we've been reviewing the types of improvements that the Company has to make -- that it needs to make. We've talked about improvements in wells. We've talked about improvements in the distribution system. I mean, we've seen that even in the NOVs, the types of improvements that the Company has to make. I can't think of one that is either not needed for DES compliance or, two, is going to add any additional customers. Can you think of any examples that we've heard of so far?

A. No. Again, it's -- I don't think that the Company should be given an automatic pass on whether a particular asset is deemed to be non-revenue-producing -- should be given non-revenue-producing treatment. I think the burden of proof is on the Company to prove that point.

Q. Well, let me ask you a general question about this case, because the thing that strikes me, having not been involved in the whole case, but we had an initial filing back in, I guess, June of 2010 -- does that sound right?
A. If you say so, yes.
Q. And so then the case goes, and there's a number of technical or settlement discussions that go on for a period of time. And I'm not going to ask you about the substance of any of those. But that went on for maybe a year or something like that?
A. Probably.
Q. And we come out of that process, and we learn Staff's position. In fact, your testimony gets filed in October. And now, you know, we have to react to that. I mean, the company hasn't had a lot of opportunity to have discovery -- or hasn't had the normal amount of discovery for Staff's testimony, by the same token; right?
MR. SPEIDEL: I don't believe that this question is within Mr. Laflamme's

area of expertise.

CHAIRMAN IGNATIUS: And I'm uncertain, because you just produced a data request that was made based on Mr. Laflamme's testimony --

MR. RICHARDSON: Yes.

CHAIRMAN IGNATIUS: So I don't follow your question.

Q. (By Mr. Richardson) But my question is, Mr. Laflamme, there's been a pretty limited opportunity to evaluate this case for all the parties, based on the way it's played out through the regulatory process. Would you agree with that?

MR. SPEIDEL: Again, the same grounds for objection.

CHAIRMAN IGNATIUS: Do you have a response?

MR. RICHARDSON: I think it's a fair question. I can reword it if the Commission would like.

MR. SPEIDEL: Well, it's not about whether it's a fair question or not a fair question. It's just is Mr. Laflamme equipped to opine on the length of the proceeding. And again, I imagine there are certain segments of the proceeding, such as settlement discussions, that were more attorney-centric rather than analyst-centric. So...

CHAIRMAN IGNATIUS: I'm going to allow the question. I am going to remind you it's now ten after four.

So, go ahead and answer the question, Mr. Laflamme, if you have a view on the amount of discovery in this case.

A. My personal opinion is that the discovery in this case has been more than adequate for every party.

Q. (By Mr. Richardson) Mark Naylor -- and I'll summarize his testimony on -- Pages 3 and 4 talks about a test year accounts payable of $350,000. And I believe by the end of 2010 he states that it's $471,000. Do you agree with that?

A. Accounts payable at the end of 2010 was $471.278.

Q. Okay. So what's curious to me is -- do you

have the Commission rules in front of you?
A. No, I don't.
Q. You're familiar with Rule PUC 1604.09, adjustments to test year?
A. Generally. I don't have it in front of me.
Q. I have it written here. But it's in my cross-examination outline, so I probably shouldn't hand that to you.
But I'll represent to you that it reads that a utility shall make adjustments and projections to reflect what the utility reasonably anticipates for the following... and it says "all items of unusual magnitude which occurred during the test year but which are not expected to recur beyond the test year," and "all items which are fixed, determinable, and likely to occur in the future, but which did not occur in the test year."
So, do you agree, in a general sense -- I mean, subject to check -- that that's the rule that governs what adjustments you make or you don't make?
A. Yes. If it's in the rules, then I agree.

Q. Yeah. So as you're evaluating the Company's rates and you're making adjustments up and down -- mostly down -- I mean, we're half at what the Company initially requested -- why wouldn't you look at the $471,000 in accounts payable and evaluate whether or not there was a need, or there was something about the Company's test year revenues that was insufficient? I mean, doesn't that suggest to you that the Company's rates were inadequate during the test year and that something needs to be done to account for that?

A. I don't think I'm in a position to state why the Company's accounts payables are at the level that they are at at the end of the test year or even following the test year. That would just be conjecture on my part.

When Staff evaluates where the rates should be for a water utility, the Staff looks at the test year, what is required by the utility to meet its expenses, to meet its operating expenses for the test year. It also looks at any known and measurable changes to those operating expenses in the twelve months following the test year.

To bring in and evaluate the magnitude of the Company's accounts payable balance is -- would be unique in our normal evaluation of where a company's rates should be. And also, those expenditures, as the Company has indicated, a lot of those expenditures may be rate-case-related. They may be for -- they may be for past construction. It's difficult to -- it would be difficult to determine the prudency of those accounts payable. So, our evaluation, for the most part, just pertains to the Company's test year and no immeasurable changes in the 12 months following.

Q. So I guess what philosophically troubles me a little bit is, if we've adjusted the Company's future revenue due to a net operating loss carryforward, why wouldn't we adjust the Company's revenue for the fact that its rates -- assuming they've been insufficient in the past -- that it's going to need revenue to repay some of the debts

that it incurred related to -- obviously,
capital projects are treated differently and
rate case expenses are treated differently.
But to the extent we have a known and
measurable issue within the test year, why
wouldn't we evaluate that and then pro forma
the requirement for the company to repay its
payables?
A. Traditional ratemaking doesn't include
any -- it normally doesn't include any
consideration for the Company's past
accounts payables. The goal is to achieve a
rate level that will be able to pay for the
company's normal, ongoing operating expenses
and also provide a return on rate base.
Accounts payable, I would -- that would
be -- that would be problematic, I think,
from Staff's point of view. Any inclusion
of some provision to cover the Company's
past accounts payables.
Q. Well, I don't mean --
A. And if I might add, those -- if our
ratemaking was done appropriately in the
past, then the Company's accounts payables

should be taken care of by previous rates. And if they are not, then it's up to the Company to come in and request rate relief if it's finding that it's not meeting its bills.

Q. But haven't we created a paradigm, where the Company is losing money in the past, so we say it's not going to incur a tax liability in the future, that reduces its revenue, which exacerbates its losses?

How is the Company supposed to, within the traditional ratemaking paradigm, get out of this situation? I mean, we're looking at less than half of what the Company has requested for rates being recommended by Staff.

A. Well, I'd first like to address the issue that you've brought up with regards -- and I think you're alluding to the Company's net operating loss carryforward. And it appears to me that the Company believes that it should -- there should be a tax provision in rates, just for the simple fact that there should be a tax provision in rates in order to make -- in order to have a higher revenue requirement. And that's not Staff's view with regards to the purpose of a tax provision in rates.

If the Company isn't going to be incurring an income tax expense in the foreseeable future, then it's Staff's position that the Company should not be -- that the rates should not include a tax provision. I mean, you have the -- the Company won't be incurring that expense, so what would be the harm to the -- what would be the harm to the Company for not including in rates revenue for an expense that the Company is not going to incur?

Q. But let me ask you this. I mean, the goal of ratemaking is -- I mean, as I understand the Commission's precedence, it's not so much the form of the ratemaking or the particular procedures or how it's been done in prior cases. Ultimately what the statute calls upon this Commission to do is to find rates that shall be sufficient to yield not less than a reasonable return. And this company has never been able to earn a return, at least in recent years as we've heard, what I would consider its allowed rate of return operating these assets.

A. My response to that is that over a number of years, it's been confirmed in a number of cases there's been a methodology that's been developed in order to come up with just and reasonable rates for the company and its customers. And if I -- correct me if I'm wrong, but what I hear you saying is that you're indicating that we should go outside the box to come up with an alternative form of ratemaking that may not necessarily result in just and reasonable rates for the customers and the company?

Q. I don't think so. I think what I'm trying to suggest is that rates sufficient to yield not less than a reasonable return is the box. I mean, that is what the legislature asked this Commission to balance. And so if the system isn't working, if the traditional methods aren't getting us there, and the Company -- I mean, you would agree the

Company hasn't earned its allowed rate of return in quite some time.

A. Generally I would agree with that. But it's not -- there's no guaranty that the Company will earn its allowed rate of return.

Q. Absolutely. But I mean, we've heard testimony from Mr. Naylor and from others, you know, that the Company's making progress to improve the performance of its system. But, I mean, it's going to take money to do that. And a lot of the problems the Company's experiencing are due to the nature of operating small water systems. And let me give you an example with why I say that.

The Mount Roberts -- well, you heard, and I believe you indicated in response to Attorney Patch, that the Mount Roberts project plus the other capital that the Company needs is essentially going to double the Company's rate base. I don't know over what period those projects get done, but that's -- I mean, isn't that the type of situation that begs an evaluation of whether or not the system that is being applied complies with the statute, whether it meets the goals set by the legislature for how rates have to be set?

A. You're making -- you're asking me to make an evaluation of an issue that I'm not sure it's appropriate that that evaluation should be made in this case. There's a number of circumstances -- a number of reasons involved as to why the Company is in the position that it's in. I'm not sure that I can say that this is the case to make that evaluation or not. All I know is that there's a traditional methodology in place for arriving at rates that are just and reasonable for both the Company and its customers. And my testimony utilizes that methodology which has been affirmed by this Commission in a number of cases.

Q. But if the methodology isn't specified by statute or by rule, then what the Commission ultimately has to do is find a way to reach at the result that the legislature's indicated, which is not less than a reasonable return.

A. All I can reply to that is I would ask that you, Attorney Richardson, would look at Commission Order No. 2776 and in Docket DR 91-212, EnergyNorth Natural Gas, Incorporated. And the Commission takes up this very issue in that and affirms a 13-month rate base average with a test year, with changes made that are 12 months beyond the test year. And the Commission affirmed that methodology with regards to ratemaking in the state of New Hampshire.

Q. And that was a natural gas case?

A. Yes.

Q. But this -- I mean, you've already stated in response to the data request that a different methodology might be appropriate here if the Company demonstrates -- or perhaps if the record demonstrates that the assets are non-revenue-producing.

A. I would ask you to clarify what "different methodology" you're --

Q. Well, the year-end rate base is appropriate, where --

A. That particular methodology has been

approved by this Commission in previous cases.

Q. Yes. You're talking about the year-end methodology has been approved.

A. For non-revenue-producing assets.

Q. Yes.

A. And I've also indicated the criteria that needs to be met by the utility in order to be allowed that treatment.

Q. Thank you, Mr. Laflamme.

CHAIRMAN IGNATIUS: Anything further? All right. Thank you. I think then --

MS. THUNBERG: Staff Advocate, I believe, is next.

CHAIRMAN IGNATIUS: Yes.

MS. THUNBERG: Chairman Ignatius, at the break, Staff Advocates and the parties got together and are proposing that we submit written closings rather than do oral closings today, to save time. And this would include a record request deadline of March 30th for the Company to submit its outstanding record requests. And then the next proposal is that written closings be due April 6th, be submitted in hard copy to the Commission and electronically to the parties, and have a 10-page, double-spaced limit. And if any other attorney -- if I've misrepresented the proposal, please step in.

MR. RICHARDSON: I don't have my phone on, but that's Friday, a week from this Friday?

MS. THUNBERG: Yes. Those dates, April 6th and March 30th, are Fridays, yes.

MR. RICHARDSON: That's what we discussed.

CHAIRMAN IGNATIUS: I think that's fine. I think I did have a question about record requests, if we're going to do that before finishing cross-examination.

The Staff Advocates had wanted a record request held -- and I haven't responded to it yet -- for the ability to react to the information contained, I think in Request 6, which was the notices of violation, the status through DES. And I think Staff Advocates asked could they reserve -- have the opportunity somehow to go through the response and file anything in reaction to it. I don't know if that has to be a record request or in the form of -- well, I guess it would be in order to have that on the record. And then your timing, can we work that in if it were March 30th for a record request from the Company and Mr. Hodgdon -- that was No. 7 was to him -- and then reserve No. 8 for any party who wants to respond to the identification of outstanding DES issues, if they think there's something improper about the listing? It's not going to turn into rebuttal record requests and several more record requests. So, I think there's just two shots. And hopefully everyone will find no need to have to respond to it because the Company will be clear in where things stand.

So, is that acceptable to everyone, if we have No. 8 reserved for anyone, not just the Staff Advocates, but anyone who feels they need to file something in addition to the response to the No. 6 record request, which is the DES status report?

MS. THUNBERG: I'm just unclear on the deadline of that.

CHAIRMAN IGNATIUS: I did it wrong. I have my number wrong. The DES status of NOVs, LODs, whatever it might be, was No. 5, not 6. No. 6 was the notices of any actions that any vendors to the company may have taken, or statements regarding litigation or action for unpaid bills. I don't think we need responses to that. So I would leave that be.

So, we have outstanding No. 5, which is the status of any NOVs, LODs, whatever; No. 6, the notices that may have been received, and hopefully there will be a letter saying there are no such things of any actions on unpaid bills; No. 7, a statement from Mr. Hodgdon confirming or stating otherwise regarding the e-mail that was submitted as LWR Exhibit 30; and then hold No. 8 for anyone to respond to the

Record Request No. 5. And the deadline for that, I think can we make it Tuesday, April 2nd -- 3rd. Is that right?

(Record Requests 7 and 8 reserved.)

CMSR. SCOTT: April 3rd.

CHAIRMAN IGNATIUS: Right. Tuesday, April 3rd, for any response in No. 8. And then briefing on the 6th, if people want until the following Monday, that's not a problem with us. But...

MS. HOLLENBERG: And just for clarity, I guess we were contemplating just doing a closing statement. But we don't oppose briefing by other parties.

CHAIRMAN IGNATIUS: I'm not sure there's a difference. But if it sounds better to do it in the form of a closing, let's have the closing.

MS. HOLLENBERG: Okay.

CHAIRMAN IGNATIUS: All right. The Staff Advocate questions for Mr. Laflamme.

MS. THUNBERG: Thank you.

CROSS-EXAMINATION BY MS. THUNBERG

Q. Mr. Laflamme, you recommend a permanent rate increase and a step increase in rates for the Company; is that correct?

A. Yes.

Q. And is it fair to characterize your recommendations of a permanent rate increase and step increase as "only giving Lakes Region half of what it asked for"?

A. I would say no.

Q. Can you explain why?

A. Well, included in the Company's original filing, the Company proposed that, if memory serves correctly, $192,000 for 2010 asset additions. As it turned out, the Company only, in actuality, had $97,405 in 2010 asset additions.

(Ms. Hollenberg leaves proceedings.)

A. So, part of the decrease was -- the reason for part of the substantial decrease is that the Company's 2010 plant additions weren't as much as originally anticipated.

And then the other big adjustment which has been discussed quite a bit is the

Company was seeking a substantial amount for income tax provisions. And as has been discussed, Staff opposes an income tax provision for the Company to be reflected in its rates at this time.

Q. Thank you. Are you familiar with the concept of reconciliation of temporary and permanent rates?

A. Yes.

Q. And you understand temporary rates are currently in effect; correct?

A. Yes.

Q. And your permanent rate increase recommendation is roughly similar to temporary rates; correct?

A. Just a shade higher.

Q. Can you please explain? Will there be a need to reconcile temporary and permanent rates?

A. Yes.

Q. And do you expect the Company to make a recommendation -- make a filing requesting reconciliation and proposing certain surcharges to effectuate the reconciliation?

A. That's normally the procedure, yes.
Q. Thank you. Have you seen Record Request No. 2, which was the updated accounts payable?
A. Yes.
Q. And would you agree that your proposed revenue requirement is not intended to pay for specific amounts of past debts identified in this accounts payable total?
A. Yes.
Q. And how does a regulated utility typically pay for outstanding accounts payables?
A. Usually some type of outside financing may be necessary. Or if the company has either revenues that are more than anticipated, or its expenses are less than anticipated and it has a surplus of cash, that may -- which it may decide to use to pay off past payables.
Q. Do you have an opinion on the financial ability of Lakes Region Water Company to pay off the accounts payable total listed on this record request?
A. I guess my opinion would be that, given the

magnitude of the accounts payable as indicated by the Company, I would say that it would probably need some form of outside financing in order to pay off its payable debts.

Q. Does your proposed revenue requirement pay for or include the criminal fines?

A. No.

Q. Would you consider the accounts payable that's shown on this Record Request 2 and either the total of 322 some-odd thousand or 506 some-odd thousand -- I mention those two because there's been some testimony earlier about whether it included rate case expenses or not. The question is would either one of those balances be a drag on the cash flow of this utility?

A. Definitely.

Q. I'd like to have you -- do you have your testimony in front of you?

A. Yes.

Q. I'd like you to turn to Page 39, please. And I have some questions regarding the unapproved debt that's depicted on Page 39.

A. Yes.
Q. And does your revenue requirement include this unapproved debt?
A. Yes, it does.
Q. And prior to the rate case for this hearing, had Lakes Region sought approval for any of these loans listed?
A. From most of them -- for those particular loans, no.
Q. Have you reviewed the final audit report in this proceeding?
A. Yes.
Q. And was failure to seek approval of loans a repeat audit find?
A. Yes, it was.
Q. Do you recall the Company's -- when the Company last had its rate case? Subject to check, would 2005 sound about right?
A. Yes.
Q. Were most of these loans incurred after the Company's last rate case?
A. Most of them, I believe they were, yes.
Q. And would I be able to tell the loan date by the Date of Issue column?

A. I believe, yes.
Q. Okay. You prepared this schedule; correct?
A. Yes.
Q. Okay. And the Date of Issue, you got those dates as the date of the loan; is that correct?
A. That is my belief, yes.
Q. Does your testimony opine on whether the unapproved debt is in the public good?
A. I believe so, yes.
Q. Please explain.
A. I think I indicate in my testimony -- I don't exactly use the words "public good." But I believe that I indicate that the loans will result in -- that the loans were prudent and reasonable and that they would not have an adverse impact on customer rates.
Q. Thank you. Does your proposed revenue requirement pay any specific principle and interest payments on these loans?
A. Other than -- well, through the depreciation expense.
Q. Would you agree that your proposed revenue

requirement is not intended to pay for any future capital investments -- any specific future capital investments?

A. Not of a substantive magnitude, no.

Q. Under traditional ratemaking, where do regulated utilities typically get the proceeds for funding significant capital investments?

A. Usually through outside financing.

Q. Moving on, do you know whether the Company is current in paying its Commission assessments?

A. I am not aware of that.

Q. Do you know if the Company paid its Commission assessments during the test year?

A. It accrued that expense. I don't know if that's actually been paid. I'm not certain.

Q. As part of your job responsibilities here with the Commission, do you review rate case expenses?

A. Yes, I do.

Q. And do you expect the Company to file for recovery of its rate case expenses?

A. That's the normal proceeding, yes.

Q. I'd like to turn our attention back to Record Request 2.
A. Yes.
Q. At the bottom there's a section entitled "Rate Case Vendors." Do you see that?
A. Yes.
Q. There's an entry, the Braver Group -- that's B-R-A-V-E-R Group. Do you see that?
A. Yes.
Q. Have you seen anything in the rate case relating to the Braver Group?
A. I don't recall, off the top of my head, no. There could be. I just don't recall that particular name.
Q. Let me ask it a different way. Are you aware of whether the Braver Group participated in the rate case?
A. They may have. I don't really recall the -- if it's who I think it is -- I don't recall the name of the company specifically.
Q. Okay. Now, you understand that this proceeding is regarding four consolidated dockets?
A. Yes.

Q. And if any of these rate case vendors did work on either the affiliate agreement, finance docket or receivership docket, would they qualify as rate case expenses?
A. My opinion would be no.
Q. If there's a question as to whether the vendors listed under Rate Case Vendors actually did work for the non-rate case docket, would it be accurate to label these vendors as rate case vendors?
A. If they did -- if their work was restricted solely to non-rate case dockets, that's what you're asking?
Q. Restricted or if they did work on the non-rate case dockets.
A. My opinion would be that only work that's relative and germane to the rate case would be recoverable for rate case expenses.
Q. Sorry to jump back and forth, but if I could draw your attention to the testimony, Page 47.
A. That's my testimony?
Q. And I'm going to revisit the line item regarding property taxes on that schedule.

Are you there?
A. Yes. It's Schedule 3 of Attachment JPL 1.
Q. Yes. Thank you.
The amount that's shown here has been adjusted in consideration for Lakes Region's property tax bills for 2010; is that correct?
A. That is correct.
Q. And that is adjustment No. 45 noted here on this schedule?
A. Yes.
Q. So if I have you turn to Page 50, and it lists Adjustment 45, it shows that there was an adjustment to increase the property tax expense to include -- or to account for the level of property taxes the Company would be paying in 2010; is that correct?
A. That's correct.
Q. And that bump-up was in the amount of $3,179; is that correct?
A. Correct.
Q. Now, on Record Request No. 2, on the accounts payable, I draw your attention to the payments that are to the City of

Laconia, Town of Campton, et cetera. Do you recall testimony earlier in this proceeding that these amounts are for property taxes?
A. I believe so, yes.
Q. And that these are amounts that are presently -- or as of March 9th, 2012 were then unpaid property taxes?
A. Yes.
Q. And these unpaid property taxes, you don't adjust your revenue requirement to property tax line item to account for these old bills, do you?
A. No. It's the property -- property tax expense in my proposed revenue requirement reflects the property taxes that were -- well, in this case, since they are adjusted, those property tax bills that were incurred in 2010.
Q. Okay. So how does a company like Lakes Region pay back property taxes then, if it's not included in your revenue requirement proposal? Or perhaps it is. How would Lakes Region pay for these back property taxes?

A. The property taxes that are reflected in the revenue requirement are associated with expenses incurred during the test year. Back property taxes would be included in the Company's accounts payable. And the rates that the -- the Company's rates would not necessarily -- would not necessarily go towards paying back property taxes.
Q. Okay. Do you recall from the final audit report whether Lakes Region had unpaid property taxes in the 2009 test year?
A. Yes, I believe they did.
Q. Otherwise, I was going to refresh your recollection and have you turn to Page 25 of the audit report.
A. Yes.
Q. If Lakes Region does not pay the back taxes that are shown on Record Request 2, do you know what the consequences would be?
A. Yes.
Q. Do you have any -- what is the basis of your understanding or knowledge of what the consequences would be?
A. Previous experience in paying property taxes

myself and also being a former tax collector for the Town of Littleton, New Hampshire.

Q. So, in the near future, with your experience with property taxes, do you suspect these -- if they are unpaid, remain unpaid, whether these amounts will increase?

A. Yes, because initially past-due property taxes carry with them an interest rate of 12 percent per anum.

Q. Are there any late fees?

A. Not initially. But if the property taxes go as far as tax sale, then there are fees associated with property taxes that have -- that are subject to tax liens, and the interest rate goes up to 18 percent.

Q. Thank you. You had some -- I just want to pick up on questioning regarding losses and how a company can pay for losses.

Do you have an opinion on whether it is the Company's responsibility to monitor its losses and seek timely rate relief to cover any losses?

A. I believe it's part of the management duty of a utility to constantly monitor the

amount of revenue it's receiving versus the expenses that it's incurring, and it's the responsibility -- it's part of the management responsibility for the utility to come in and seek timely rate relief from the Commission.
Q. Once a company accrues a certain level of losses, is it difficult to use the tool of traditional ratemaking to get out of that kind of financial hole?
A. I would say yes.
MS. THUNBERG: Thank you. That ends Staff Advocates' cross.
CHAIRMAN IGNATIUS: Thank you. Commissioner Harrington, questions?
CMSR. HARRINGTON: Yeah.
INTERROGATORIES BY CMSR. HARRINGTON:
Q. Couple questions on this asset additions on Page 31 of the testimony, beginning with -- this had to do with the step increase.
Now, since the Mount Roberts property was pulled out, what exactly is being included in this step increase as an asset addition? Just generally.

A. Well, there's a description of the assets that are included in the step increase on Page 62 of my testimony. And there's a listing by fixed asset account of what's included in the step increase --

Q. That answered my question, so we can move along here.

A. Okay.

Q. There was -- I don't remember the chart number, but you showed a bunch of loans that weren't included in the unapproved debt, I guess.

MS. THUNBERG: That's Page 39 of the testimony, just to help out.

CMSR. HARRINGTON: Thank you.

Q. (By Cmsr. Harrington) I'm just trying to -- there was some testimony on this. So these loans were taken out before the test year, in the case of most of them, and they weren't included in previous rate increases or rate cases or whatever?

(Witness reviews document.)

A. I guess there would be a question with regards to the financing for the Mustang excavator, which was taken out on June 2nd of 2004. And as indicated, the last rate proceeding was -- had an '05 docket and probably an '04 test year, subject to check. And I guess there's a possibility that that may have -- that may have been included in that '05 docket and possibly given not specific, but maybe tacit approval through the rates that were approved in that particular rate case.

Q. So is it normal for a water utility to go that amount of time? Because it looked like they incurred quite a bit of unapproved debt here that wasn't in rates until this present case. Is that the normal time, or do most people incurring that level of debt have reapplied in a shorter period of time?

A. I think -- well, the Commission rules call for the utility to seek approval for long-term debt. So, from that perspective, no, not normal. But in a number of -- for a number of smaller utilities, there is a habit of waiting until the next rate proceeding before seeking Commission approval. It's not in accordance with Commission rules, but it seems to be a practice that a number of utilities have.

Q. And would that be due to the cost of the rate proceeding?

A. That may be a factor.

Q. Okay. And you mentioned long-term debt. So, is it safe to assume, then, that a loan for a 2007 Silverado is considered long-term debt?

A. Yes.

Q. Couple of other quick questions.

The practice being used here is that the capital improvements are being financed through shareholder loans to the company because they appear not to be able to raise the money any other way. They can raise it for vehicles and stuff, but not for capital improvements in the plants, it sounds like. Is that a normal practice? Do you know of any other water utility that has shareholder loans that finance their capital improvements?

A. I would say it's not customary. It's

normally through bank financing.
Q. And that would be indicative of the not-so-good financial shape of the company?
A. Yes.
Q. Okay. There was a lot of discussion over the previous meetings and days between the SRF loan terms and the depreciation time frames, that capital improvements to the plant would be depreciated over 40 years and the loan terms were 20 years, maybe possibly going to 30. It has been mentioned, though, that other utilities have taken advantage of these SRF loans. How do they get around that, you know, 20-year term of the loan versus the 40-year depreciation?
A. I would say that it would be -- it's possible due to the financial flexibility of those particular companies. Also, it depends upon the composite depreciation rate, if there's a number of assets with varying depreciation rates --
Q. So, not everything has a 40-year depreciation rate is what you're saying.
A. That is correct.

Q. Okay. And just dealing with this question of accounts payable, I'm still trying to get this straight. Now, I think what I heard was the way to avoid running up this very sizable bill here -- if you don't take the rate case vendors into account, a quarter of a million dollars -- would be to request more rate relief from the Commission on a more-often basis?

A. Yes.

Q. Okay. But now we have a company that, for whatever reason, didn't do that. So how do they go about recouping? Assuming these -- I'm going to think that things like property tax are probably a pretty legitimate charge. It's kind of hard to -- how do they go about -- going forward, how do they get their money back? How do they collect that?

A. Are you talking about the Company specifically or in general?

Q. Well, I guess in general, how would a company that has accounts payable of a quarter-million dollars, some of which is over 90-day-old property taxes that you said interest is building up on those and those bills are getting larger.

A. Right.

Q. How do -- what's the approach they would use to get --

A. I believe that's where outside financing would have to come in, either in the form of from a bank or shareholder financing.

Q. So they would get outside financing to pay the bills and then seek approval from the Commission for that financing and then try to get the financing into rates, the cost of the financing? I mean, they have to be able to repay the loan. What's the source of revenue to repay the loan if they were to get outside financing?

A. That would -- I guess that would come in the form of maybe the return on rate base.

Q. I mean, you understand what I'm trying to get at here.

A. Right.

Q. Because it sounds like they're kind of in a Catch-22.

A. Exactly.

Q. In order to pay the bill, they need to borrow money, and in order to borrow money, they need to show they have a revenue stream to make the repayments on the loans. I'm trying to figure out what's the potential revenue stream for repayment on the loans.
A. Other than the Company tightening its belt and doing the best it can --
Q. Basically, you don't -- you're not aware of a good way to approach that problem then.
CMSR. HARRINGTON: Okay. That's all I have. Thank you.
CHAIRMAN IGNATIUS: Commissioner Scott.
CMSR. SCOTT: Thank you.
INTERROGATORIES BY CMSR. SCOTT:
Q. Back to your testimony, Page 8. You start talking about, again, reclassified paid-in capital, and you suggest 6-percent rather than 9.75 percent.
A. Yes.
Q. If I understood right, the basis of that, it sounded like it was the failure of the Company to accept the SRF and ARRA loans; is

that correct?

A. Yes. And I think I indicated in my testimony that there was a seeming reluctance on the part of the Company to seek lower cost of financing. And so they seem to be more inclined to borrow from the shareholders at a high percentage rate rather than to seek alternative lower-cost financing.

Q. So, implied in that is the Company's asserted -- the utility's asserted that the risk for the SRF and the ARRA loans is too high. Implied in that is that you disagree with that?

A. I think it has been stated earlier that there are other utilities who are able to take advantage of SRF financing, ARRA money. The Company, for a number of reasons, is in a position where its financial flexibility is compromised.

And I do think that the Company brings up a good point with regards to the disparity between the depreciation rates and the payback period. But it's not proven impossible for other water utilities to be able to accept those loans and pay them back.

Q. And if those loans didn't exist, for instance, would you still have the same opinion of the 6 percent versus the 9.75, if those weren't available to anybody?

A. I would say -- I would say I would be -- I would still be inclined to maybe put about the 6 percent rate, given the fact that it began as a shareholder loan financing at the same 9.75 percent. And as indicated in the -- as indicated in my testimony, a lot of the money that was used that was injected into the Company --

(Ms. Thunberg leaves the proceedings.)

A. -- from the shareholders was from a home equity loan that they took out. And I believe the interest rate on that was, if memory serves, 2.3 percent. So there seemed to be a large disparity between the financing rate that the shareholders had to pay the money back at and what they were charging the utility.

Q. Thank you. Earlier, I think in other days, there was testimony to the effect that the Company hasn't earned even the allowed rate of return. Is that your understanding also, in the past?
A. Yeah, I would generally agree with that, yes.
Q. Why do you think that is?
A. Well, some of it is due to the struggles that the Company has had having to make a lot of capital improvements. Those capital improvements go into rate base. And so there's a lag. There's a natural lag between when a company gets rates and having to -- and whether those rates are adequate to -- for it to meet its return on investment. And also, I think, you know, decision -- certain decisions that have been made by the Company have also contributed to its inability to meet its rate of return. Not seeking -- possibly not seeking timely rate relief, the drag that's on the Company's -- the expenditure drag that's on the Company and so on and so forth.

Q. Thank you.

CMSR. SCOTT: That's all.

CHAIRMAN IGNATIUS: Thank you.

Couple of questions, Mr. Laflamme.

INTERROGATORIES BY CHAIRMAN IGNATIUS:

Q. The rate of return that you worked with in your analysis was 9.75 to start?

A. Yes, that was the rate of return, the rate proposed by the Company, and was consistent with rates of return for water utilities approved by the Commission.

Q. And you saw in Mr. Montville's testimony a suggestion of what he called "a minimum of 12-percent return on equity." Have you ever seen anything like that for a water company?

A. I can't say that I have, no. Not for a New Hampshire-regulated utility, no.

Q. That's what I meant by my question. Thank you.

And then you made an adjustment for just that one item of taking some common equity. Additional paid-in capital you brought down to 6 percent; correct?

A. Yes.

Q. And am I right that the impact, the financial impact of that is $134,000 being treated at the 6-percent level? I'm looking at Page 38 of your testimony.

(Witness reviews document.)

A. Yes. There's 190 -- a conversion of a $190,855 shareholder loan, and it was reduced by certain pension and health insurance payments made to and on behalf of the shareholders.

Q. If ultimately there were a decision to change that 6-percent treatment and give it the 9.75-percent treatment, what would the financial impact to the company be?

A. That would... I did some rough calculations in that regard. And it would result, if I'm reading my notes correctly, a revenue requirement -- with 9.75 percent for all equity, the rate of return would be 8.35 percent. The revenue requirement, including the permanent increase and the step, would be $947,659, or 20.81-percent increase.

Q. All right. And your recommendation you said to Mr. Scott a moment ago is not to switch that back into the 9.75 percent, because even apart from the ARRA funding, there was another source of funding that you felt that the Company was being charged too high, given the reality of the loaned funds.

A. There was indication that the Company -- that the shareholders were receiving money through a home equity loan. The Company was asked what the interest rate of that home equity loan was, and the Company's response was that it was somewheres in the vicinity of 2.3 percent.

Q. And so your -- well, I won't go into that.

Let me ask you about Exhibit LRW 32, which was your data response to their Question 1-6. And it had to do with 2009 plant additions and things that are non-revenue-producing assets. The last sentence of your response said, "If the Company can demonstrate that certain 2009 plant additions meet such criteria, Staff would be willing to consider their inclusion in rate base at full cost." Is that

correct?
A. That is correct.
Q. Did you receive anything from the Company seeking to demonstrate that those two standards had been met?
A. No, I did not.
Q. You understand today that they are -- that the Company is asserting that they do meet the requirements of being non-revenue-producing assets and being required by a mandate of regulatory authority or other directive; is that right?
A. Yes.
Q. If an adjustment were made to allow for 2009 plant additions that currently aren't in your calculations because of the use of the 13-month average rather than the end year -- end-of-year basis, do you know the amount of money at stake?
A. Yes. Again, based on my calculations, and this also -- I should say it also includes a 9.75 return on equity, on all equity. So I'll say that from the get-go. It includes that -- the rate of return would be

8.39 percent. The revenue requirement for both permanent increase and the step would be $951,204, 21.27-percent increase total.

Q. And that includes using 9.75 for everything.

A. Correct.

Q. And it includes both the -- all of the 2009 additions and the 2010 adjustments that you recommended as a step increase.

A. That is correct.

Q. You ran the numbers. Do you recommend those adjustments, or you're just a good witness who's anticipating how my questions might go?

A. That would be the latter. I was anticipating that question, and so that would not be my recommendation.

Q. All right. So your recommendation is still to have the split in how the return on equity is done, for the bulk of it at 9.75 and the smaller amount at 6 percent; correct?

A. Yes.

Q. And you would still keep the 2009 rate -- excuse me -- plant additions calculated using the 13-month average and not make that further adjustment?

A. I think, as I indicated in my response, I think Staff would be open to recognition of the 2009 plant additions under non-revenue-producing status, provided that the Company can show that it meets the criteria for non-revenue-producing status.

Q. What else would it need to produce that it hasn't already done?

A. In terms of other utilities who were approved for treatment of non-revenue-producing test year plan, what's usually provided is a description of the projects that were undertaken by the utility, as well as a description of why those particular projects qualify under the definition of "non-revenue-producing assets."

Q. Is it more complicated if they don't produce additional revenue, that they're necessary for plugging leaks or upgrading broken equipment, that sort of thing?

A. I think a short but adequate response would suffice.

Q. And the second criterion, that it be mandate of some regulatory or other directive, is it that both tests must be met, or one or the other?

A. It's usually both. Both criteria need to be met, that there needs to be -- that they don't result in additional revenues to the Company, and the improvements that are made is the result of some type of regulatory mandate. I would say in this case, given the fact of the needed capital improvements by the utility, I think there could be some flexibility in that particular requirement, given the overall need to make capital improvements to the utility as a whole.

Q. So you don't have a concern that the 2009 plant additions that are left out, if you will, using the 13-month rate base approach, were additions that really didn't need to be done. It's not a concern that the Company did the wrong thing.

A. I think we -- I don't know that I would be willing to go that far. I think that's the reason that we need maybe a fuller description of the particular projects that were undertaken by the utility so that Staff could evaluate the prudency of those particular additions.

CHAIRMAN IGNATIUS: One moment.

(Discussion off the record.)

CHAIRMAN IGNATIUS: I'm going to make a record request, then, that the Company submit a description of the 2009 assets that are non-revenue-producing, that are otherwise not being reflected in Mr. Laflamme's methodology, and responding to the statement that they are "meeting a mandate of some regulatory authority or other directive" be included in Record Request No. 9.

(Record Request 9 reserved.)

CHAIRMAN IGNATIUS: That's all my questions. Thank you for your help. I think Commissioner Harrington has one.

CMSR. HARRINGTON: Sorry to say, but I do have one more follow-up question.

INTERROGATORIES BY CMSR. HARRINGTON:

Q. This has to do with the financing. Mr. Naylor stated a number of times that the biggest concern he has with this company is with its ability to access capital at a reasonable price and that there's been a lot of discussions on the ARRA loans and the SRF loan and the mismatch between the terms of the loan and the terms of depreciation, which everyone at least has shown some appreciation to the Company's position on that. And now we come to this loan that the shareholders made to them, and you said, at least in part, that because they got a home equity loan at a very low rate, two-point-something percent in order to finance it, that somehow -- I guess I got the implication that somehow by charging the Company a higher rate -- and what was the rate they were charging the Company?

A. Nine point seven five.

Q. -- the 9.75 percent, that that wasn't correct or something.

But my question is: Isn't that the

only place that they could borrow money, based on what we're hearing from Mr. Naylor, you know numerous times? You know, they couldn't go out in the marketplace to borrow money. So if the only one that will loan it to them is charging them 9.75 percent -- I'm not sure if it makes a difference what the source of that money comes from, whether it's a home equity loan, a bank account, they got it buried in their backyard -- I mean, I'm not sure. Why does that make a difference?

A. I think, as I indicated, I think there has been -- there's been a long-running concern by the Commission about the cost of the debt that the utility has been able to procure. And in a previous order, as I think I've indicated in my testimony, the Company was charged to lower their cost of debt. And they were successful at doing that, but that was eight or ten years ago. But since that time, the cost of debt has become again a concern to the Commission.

Q. But other than the SRF loans, what would be -- what we're being told is no one would loan them money. So if no one loans you money at 5 percent, you have no money, as compared to someone who is willing to presumably go for the risky situation if no one's going to loan you money. So, getting at -- I don't know what the marketplace rate would be for a high-risk company during this time. But it sounds as if 9.75 percent may be what you'd have to pay, or higher rates, given the very high risk associated with the company.

A. Well, as I indicated in -- oh, strike that.

I think the concern is just the closeness of the relationship, and are the shareholders -- I guess there's a concern of are the shareholders somehow using the situation to their advantage. I guess that would be a concern.

Q. Okay. That answers my question.

A. And then -- okay.

CHAIRMAN IGNATIUS: Mr. Speidel, any redirect?

MR. SPEIDEL: Yes, I just have

one question.

REDIRECT EXAMINATION BY MR. SPEIDEL

Q. Mr. Laflamme, you've heard a number of questions and a number of statements, inquiries from all directions today. Would you still be able to reaffirm the conclusions and the recommendations that you make within your prefiled written testimony, dated October of 2011?

A. Yes.

Q. Thank you.

MR. SPEIDEL: No further questions. Thank you.

CHAIRMAN IGNATIUS: Thank you. Then you may be excused.

I think we have left to see if there's objection to striking the identification and making all of the proposed exhibits full exhibits in the record. And I think there may be a few in dispute.

So, are there any that people would object to making full exhibits?

MR. NAYLOR: The Staff

Advocates continue to have a concern with respect to LRW 9, which I believe is the updates provided by the Company earlier this month to their 2010 annual report. I think it's clear from the testimony provided that the Company's intention with respect to refiling some of its 2010 annual report was for the purpose of then demonstrating that it was entitled to income tax expense. And we heard Mr. Richardson refer to amending their tax returns due to the late filing of that material. Staff Advocates continue to object to that material being entered.

CHAIRMAN IGNATIUS: And this is -- is this an update that has been filed with the Commission as part of the official filing of the annual report? Is it available through other means already?

MR. NAYLOR: The materials that were a part of LRW 9 were filed, at least by my knowledge, electronically. The cover letter was addressed to myself, indicating that the Company was providing updated, revised pages to its 2010 annual report. And those refiled pages are, at least at the moment, marked for identification as LRW 9.

CHAIRMAN IGNATIUS: But it hasn't been filed with the Commission as the formal, "Please replace my annual report with this changed one"? Or is it?

MR. NAYLOR: I'm not sure if they have been filed in paper copy or otherwise with the Commission. But I don't think that there's any special requirements for companies to file their annual reports. I think it's acceptable that they be sent to me or to Ms. McKeen, who handles the distribution of the blank copies to the utilities and so forth. Typically, the Gas and Water Division maintains the record of which companies have filed annual reports and so forth, and we maintain those records in our area. So I'm not sure there's necessarily a formal -- a more formal process for filing.

CHAIRMAN IGNATIUS: All right.

Mr. Richardson, do you have a

response to Mr. Naylor's objection?

MR. RICHARDSON: I do. I mean, this all originated with the Company agreeing to accept information that was in Staff's testimony, the recommended treatment of the pension expense. We filed the treatment in December. In Steve St. Cyr's testimony, you know, once the testimony was filed, it came on the Company to -- it had to amend its tax returns, which it's done. It had to amend its annual report, because obviously changing its income I think requires the Company to do that. And we knew we were going to be filing our --- the Company's annual report as part of this case, that it would have to be updated, you know, to reflect the changes that were made.

I don't -- I believe the Company's intent was to do as Mr. Naylor, and I believe as you suggested, which is that this was intended to replace the pages. And I think that's perhaps what it says. I don't know.

But it's really -- I think

that we're on a mission to try to, you know, get to the correct number. And that's all this is intended to do. If the Commission, you know, were to reject the Company's treatment of the pension expense, you know, we'd have to amend this report again. I mean, it is what it is. And I don't have much more that I can say about it. Obviously, we understand the parties' concerns about this being filed on March 2nd. That can be used to evaluate the weight of it. It's just the change that we felt was necessary as a result of the treatment that the Company agreed to.

CHAIRMAN IGNATIUS: Mr. Eckberg, you wanted to speak to this?

MR. ECKBERG: Yes. I would like to say that the OCA shares Staff Advocates' concern about the information in Exhibit LRW 9. It's not immediately clear to us why the Company is providing amended pages to its 2010 PUC annual report, when it's our understanding that the amounts under discussion relate to the 2009 test year. There may be adjustments that need to be made to the 2009 annual report.

Also, it's not immediately clear why adjustments to the 2009 pension amounts which are being reclassified, and perhaps 2010, require the Company to amend its 2007 and 2008 federal tax returns, as the Company states in its March 2nd letter.

So I think there's a number of questions that are raised by this information, and we really have no answers to those questions at this point.

CHAIRMAN IGNATIUS: All right. We're going to take this one under advisement.

Are there any other exhibits that there is dispute on or people think they should not be made full exhibits?

MR. RICHARDSON: If I could state for the record, I've just spoken with Mr. Mason. And the Company had filed a motion to strike the Suissevale testimony. And at this point, we don't see any need for the Commission to rule on that. We propose that the Commission accept all of the exhibits offered by all the parties and give them the weight that they are due.

CHAIRMAN IGNATIUS: All right. Thank you.

I do have a question about one exhibit, LRW 16. It involved an environmental services rule that you began to address, Mr. Richardson, and then we broke one evening. And when we came back a week later, you didn't pick it up again. It was the Env-Ws 363 "Capacity Assurance for Existing Public Water Systems."

MR. RICHARDSON: Oh, I think that the record should probably reflect that I don't believe Suissevale is subject to that rule. In light of that, I'd still like to keep the rule there because there were questions in a general sense about what the planning was that Suissevale did. But certainly the rule itself is a moot point.

CHAIRMAN IGNATIUS: Mr. Patch.

MR. PATCH: I did a little bit of research on that rule after that was presented, and that rule is not even a valid rule; it's been superseded by other rules. I think the language in the new rules are different. So I just think, you know, there were no questions asked about that. I think I objected at the time that it was brought forward. I didn't even realize it was still being marked as an exhibit. But for that reason, I would object to it. And I would just ask, perhaps, that the Commission, you know, have somebody on Staff research that, because I think the rule that Mr. Richardson handed out is just not even a valid rule.

MR. RICHARDSON: I would -- I don't feel strongly about whether this rule gets in or not. I do -- I have gone back and evaluated at length the rule that was in effect during the 2003 to 2006 period, and I'd be happy to provide that. It provides essentially the same language. But what happened was in 2008 the law was changed, so the rule no longer applied to Suissevale. And to be honest, I wasn't aware of the letter that DES has already made that they were not a public water system. So I think between, you know -- I'm happy if the Commission wants to strike that exhibit. It's not really going to matter either way.

CHAIRMAN IGNATIUS: All right. We'll take that under advisement as well.

Are there any other evidentiary matters to address? If not, I think what we have left is just to repeat the agreed-upon plan of action going forward, which is responses to discovery -- excuse me -- record requests be made by this Friday, March 30th, with the exception of No. 8, which is in reserve for any party to respond to Record Request No. 5 regarding DES-related compliance issues. That response to No. 8 would be due close of business Tuesday, April 3rd. And closing -- written closings be submitted no later -- I offered if you wanted to go to Monday. I'm not sure if people ever nodded on that one -- Monday, April --

MR. NAYLOR: Nine.

CHAIRMAN IGNATIUS: --

April 9th. Is that right?

MR. ECKBERG: My recollection was Friday, April 6th. But it's not my closing statement, so perhaps I'm in error.

CHAIRMAN IGNATIUS: The parties had agreed to the 6th. I was trying to be nice and ruin your weekend for you, but...

MR. RICHARDSON: You know, these things always sound easier to do than they end up being. I would have no objection to the 9th. We did discuss the 6th internally amongst ourselves.

CHAIRMAN IGNATIUS: Let's make it the 9th then. If you get it in ahead of time, that's good, too.

All right. If there's nothing else, I appreciate everyone's indulgence. This has been a long -- a series of long days, and I've kept you longer than normal after I know everyone's been working hard and we all get a little bit weary. So, thank you for your indulgence. And we stand adjourned, with all of these taken under advisement.

(Whereupon the Day 4 Afternoon Session was adjourned at 5:40 p.m.)

C E R T I F I C A T E

I, Susan J. Robidas, a Licensed Shorthand Court Reporter and Notary Public of the State of New Hampshire, do hereby certify that the foregoing is a true and accurate transcript of my stenographic notes of these proceedings taken at the place and on the date hereinbefore set forth, to the best of my skill and ability under the conditions present at the time.

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

____

Susan J. Robidas, LCR/RPR
Licensed Shorthand Court Reporter
Registered Professional Reporter
N.H. LCR No. 44 (RSA 310-A:173)