

1
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STATE OF NEW HAMPSHIRE

PUBLIC UTILITIES COMMISSION

March 6, 2013 - 9:12 a.m.
Concord, New Hampshire

DAY 1

NHPUC MAR19'13 AM 9:54

RE: DW 13-041
LAKES REGION WATER COMPANY, INC.:
Petition for Emergency Rates.

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

Sandy Deno, Clerk

APPEARANCES: **Reptg. Lakes Region Water Company, Inc.:**
Justin C. Richardson, Esq. (Upton & Hatfield)

Reptg. Property Owners Association at
Suissevale, Inc.:
Douglas L. Patch, Esq. (Orr & Reno)
(To monitor only)

Reptg. Residential Ratepayers:
Rorie E. P. Hollenberg, Esq.
Stephen Eckberg
Donna McFarland
Office of Consumer Advocate

Reptg. PUC Staff:
Marcia A. Brown, Esq.
Mark Naylor, Director/Gas & Water Division
Jayson Laflamme, Gas & Water Division
Robyn Descoteau, Gas & Water Division

Court Reporter: Steven E. Patnaude, LCR No. 52

ORIGINAL

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21
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23
24

I N D E X

PAGE NO.

WITNESS PANEL:	THOMAS A. MASON	
	JOHN W. DAWSON	
	STEPHEN P. ST. CYR	
Direct examination by Mr. Richardson		23
Cross-examination by Ms. Hollenberg		33
Cross-examination by Ms. Brown		99, 138
Cross-examination by Mr. Laflamme		134
Interrogatories by Cmsr. Harrington	148, 169, 195	
Interrogatories by Chairman Ignatius		168, 180
Interrogatories by Cmsr. Scott		173, 197
Redirect examination by Mr. Richardson		198

E X H I B I T S

EXHIBIT NO.	DESCRIPTION	PAGE NO.
1	Direct Testimony of Thomas A. Mason, including attachments	26
2	Direct Testimony of John Dawson, including attachments	26
3	Direct Testimony of Stephen P. St. Cyr, including attachments	26
4	LRWC responses to PUC Staff Data Requests	27
5	LRWC responses to OCA data requests	27
6	LRWC Accounts Payable Aging as of 02/27/2013	31
7	Handwritten chart titled "LRWC Tax Filings"	59
8	RESERVED (Record request for documentation related to Board of Directors' vote re: distributions made to the shareholders)	94
9	LRWC Analysis of Federal and State Carry-Forwards	142
10	RESERVED (Record request for delineation of the different components of the \$123,000 figure...)	190
11	Staff response to Data Request LRWC 1-8 in DW 10-141 (10-31-11)	216
12	IRS Publication 538 entitled "Accounting Periods and Methods"	219
13	IRS Publication 542 entitled "Corporations"	219

P R O C E E D I N G

CHAIRMAN IGNATIUS: Welcome, everyone.

I'd like to open the hearing in Docket DW 13-041, which is Lakes Region Water Company's Petition for Emergency Rates. Lakes Region is a regulated public utility serving over 1,600 customers. It filed, on February 4th, 2013, a Petition for Emergency Rates, seeking an increase sufficient to allow it to make estimated tax payments incurred in 2012, and tax liabilities going forward. And, said that, if the rates weren't approved, "its financial condition will deteriorate and its ability to continue to provide service to the public will be impaired."

We issued an order of notice on February 15th calling for a hearing this morning. And, we have received notice from the Office of Consumer Advocate of its intention to participate. We also know that the Staff of the Commission stated it needed information developed before the hearing. And, as I understand it, that's been going on between the date of the order of notice and today. At least I hope so. That's what was called for in the order of notice. And, the order also requested to be notified of any petitions to intervene no later than March 1st. I'm not aware of any other intervenors, though there may be some late intervenors

1 today we'll hear about. And, publication of the order of
2 notice was required. And, as I understand it, we have an
3 affidavit of publication received. Well, I don't see it
4 in the record of things in the file. Do you have it,
5 Sandy?

6 MS. DENO: We have it, but we just don't
7 have the hard copy. We have it electronically.

8 CHAIRMAN IGNATIUS: Okay. That it was
9 published not on the date that the order called for, but
10 was published on a Sunday, rather than the date, the
11 Friday asked for, as I understand it. Is that correct?

12 MR. RICHARDSON: That is correct.

13 CHAIRMAN IGNATIUS: All right. So, with
14 all of those preliminaries out of the way, let's take
15 appearances, and then talk about the order of proceedings
16 this morning.

17 MR. RICHARDSON: Thank you. Good
18 morning, Chair. Justin Richardson, of Upton & Hatfield,
19 here on behalf of Lakes Region Water Company. With me at
20 counsel table I have Mr. St. Cyr; President of Lakes
21 Region Water, Tom Mason; John or "Jake" Dawson, as he goes
22 by, who is the Company's manager. I also have behind me
23 Mr. Norm Roberge, who OCA has requested be available for
24 questioning today. He's the Company's accountant. And,

1 also, just for informational purposes for the Commission,
2 Mr. Timothy Fontaine, who the Company has just yesterday
3 requested in 10-141 be approved as the financial manager
4 that the Commission provided for in that order. Because
5 this hearing is not noticed under 10-141, we won't be
6 asking for a ruling on that today. But I thought I would
7 alert the Commissioners that he was here.

8 Also in the room is the Company's owner,
9 Barbara Mason, who's in the last row, and as well as Tom
10 Mason's sister, who is a member of the Board of Directors.

11 CHAIRMAN IGNATIUS: Thank you.

12 MR. PATCH: Good morning. Doug Patch,
13 of the law firm of Orr & Reno, for the Property Owners
14 Association at Suissevale, Inc. We were aware of the
15 filing, Mr. Richardson sent us a copy of the filing, we
16 didn't find out about this hearing until yesterday, when
17 Staff notified us and Consumer Advocate. And, we have not
18 filed a petition to intervene. Based on what we've seen
19 so far, we don't think that we have the need to file that.
20 We're here to monitor today.

21 We understand there's been some
22 discovery exchanged. We haven't, you know, we weren't
23 privy to that. So, at some point, we would like to
24 receive copies. But, anyway, you know, I'm not asking to

1 intervene, I'm just saying we're here to monitor.

2 CHAIRMAN IGNATIUS: All right. As to
3 discovery, I guess, I don't know if you discussed that
4 with other parties, and whether they're agreeable to that
5 or not.

6 (Atty. Richardson handing documents to
7 Atty. Patch.)

8 CHAIRMAN IGNATIUS: Looks like a big
9 stack of something just got passed over. Okay.
10 Ms. Hollenberg.

11 MS. HOLLENBERG: Good morning. Rorie
12 Hollenberg, Stephen Eckberg, and Donna McFarland, here for
13 the Office of Consumer Advocate.

14 MS. BROWN: Good morning, Commissioners.
15 Marcia Brown, on behalf of Staff. And, with me today is
16 Mark Naylor, Jayson Laflamme, and Robyn Descoteau. Thank
17 you.

18 CHAIRMAN IGNATIUS: Good morning. Do we
19 have any other procedural matters to take up before we
20 begin with presentation of evidence? Mr. Richardson.

21 MR. RICHARDSON: Thank you, madam
22 Chairman. The only issue is the publication of the order
23 of notice. Unfortunately, in the -- during the discovery
24 period, the Company was obviously focused on those

1 responses. And, unfortunately, the deadline, when it was
2 submitted to the Manchester Union Leader for publication
3 couldn't be met by the 22nd. What I did advise the
4 Company to do was to make additional publications they
5 could, and so they posted or published the notice on the
6 Manchester Union Leader's website, so that would run as an
7 advertisement, in addition to the publication that
8 occurred on Sunday in the newspaper that's in the
9 affidavit of publication that was mailed out or mailed to
10 the Commission on Monday.

11 You know, the Company certainly doesn't
12 have objections to late intervention, if there is a party
13 that didn't receive notice. And, I just wanted to note
14 that for the record, that the Company had gone out and
15 provided that additional notice by the Web publication.
16 It was also published on the Company's website on the
17 22nd.

18 CHAIRMAN IGNATIUS: Thank you. I
19 appreciate that. Anything further on this?
20 Ms. Hollenberg.

21 MS. HOLLENBERG: Actually nothing
22 further on the affidavit issue. We consulted with the
23 Company before the filing. And, we were aware that it was
24 going to be a couple of days late and did not oppose that.

1 I do have another procedural issue that
2 I wanted to mention, though, if this is an appropriate
3 time?

4 CHAIRMAN IGNATIUS: Please go ahead.

5 MS. HOLLENBERG: Thank you. I think
6 that it would be very helpful at the beginning of this
7 hearing for the Commission to clarify what we're doing
8 today, and that is specifically that the Company has
9 presented its request in a form that is akin to a
10 temporary rate request. And, they are seeking approval of
11 the emergency rates, with a reconciliation of those rates
12 once permanent rates are determined in a 2013 rate case.
13 And, for me, it would be a very different approach today,
14 if this were a "temporary" emergency rate hearing, as
15 opposed to a merits hearing on emergency rates. I think I
16 would have -- I may have less -- I may have less
17 questions, if I knew that the rate was reconcilable. My
18 issue with that is that the statute that allows the
19 Commission to reconcile rates speaks to the typical
20 distribution rate case, where you have temporary rates and
21 permanent rates. Those statutes, I believe it's -- I
22 can't think of the citation off the top of my head right
23 now. But -- so, they're usually used in conjunction in a
24 base rate case. And, I guess I'm not confident, it would

1 be helpful to have a sense of whether or not the
2 Commission thinks that these rates would be reconcilable.
3 Thank you.

4 CHAIRMAN IGNATIUS: Thank you. And,
5 your argument that it would make a difference in how the
6 case goes forward today?

7 MS. HOLLENBERG: Well, typically,
8 temporary rate hearings are ones that are expedited,
9 they're usually -- I think the statute actually speaks to
10 having a less of an intensive investigation of the basis
11 for the rate. So, it seems to me that it would be a
12 lesser threshold standard for approval. And, it would
13 just be -- and, I think that the Company's position is
14 that that is an appropriate way to proceed today. I hope,
15 you know, Mr. Richardson can correct me if I'm wrong, but
16 I do think it's a pretty important issue that should be
17 resolved at the outset. Thank you.

18 CHAIRMAN IGNATIUS: All right. Why
19 don't we go around and then come back to Mr. Richardson.
20 Ms. Brown, do you have a comment on that?

21 MS. BROWN: I'll start from the top. To
22 the extent that Suissevale changes their monitoring status
23 to intervention status, Staff will not oppose that,
24 because the Property Owners at Suissevale have been a past

1 participant in proceedings regarding Lakes Region.

2 Staff does not object to the hearing
3 going forward today, even though the affidavit of -- the
4 publication occurred a couple of days late, because of the
5 emergency nature of this proceeding.

6 With respect to the issue that OCA has
7 raised, Staff understands that this proceeding was noticed
8 for "emergency rates", under 378:9, not as a temporary
9 rate proceeding in conjunction with a permanent rate
10 proceeding. Staff understands the Company's
11 reconciliation request to pertain to the property tax
12 amount -- or, not the "property tax", the income tax
13 liability that it will incur. Because it's Staff's
14 understanding that that exact amount is not known at this
15 time, but that the Company will reconcile its \$100,000 and
16 some odd change request for payment for its taxes, it will
17 true that up later when the exact amount is known. So, as
18 far as reconciliation, Staff was not -- or, yes,
19 reconciliation, Staff was not seeing this proceeding as
20 being a temporary/permanent rate reconciliation type of a
21 proceeding. It was emergency rates, but that the tax
22 payment needed to be reconciled. Thank you.

23 CHAIRMAN IGNATIUS: Thank you. Mr.
24 Richardson.

1 MR. RICHARDSON: Thank you. The Company
2 set forth in its position -- its petition, excuse me, the
3 basis for proceeding. And, what we'd like to do is have
4 the Commission approve an emergency rate request, as set
5 forth in our petition, that will allow the Company to
6 avoid losses going forward, in other words, to stabilize
7 the situation. 2012 has come and gone, and the Company
8 will be filing its tax return shortly. But what we're
9 really concerned about, from an emergency standpoint, is
10 the ongoing liability for 2013. We believe, and I
11 apologize I don't have the citation for you, but, if you
12 look at the case of *Appeal of Milford Water Works*, which
13 stems from a Commission decision in the 1980s, I believe
14 in the mid '80s, and the Supreme Court said that the
15 authority to approve something includes the authority to
16 impose conditions.

17 That's also the holding from the 2010
18 *Pennichuck Water Works* case, in which the Court recognized
19 in that case, under a statutory provision, the authority
20 to impose reasonable conditions. The Company is willing
21 to stipulate to that, that authority. And, what we'd like
22 to do is to have the reconciliation, either as part of
23 this proceeding or as part of the Company's permanent rate
24 case, or both, as the Commission determines, reconciled to

1 the actual tax liability that the Company will incur.
2 And, that means that it could be the 173,000 that Mr. St.
3 Cyr has set forth and explained he believes is necessary
4 to recover in rates, or it could be zero.

5 The Company doesn't really have an
6 interest in the outcome, as long as the correct amount is
7 reached. Because, if it's determined that our tax
8 liability is zero for 2012, then we're not incurring any
9 financial losses at all. But we believe that the actual
10 tax liability is going to be about \$100,219. And, so,
11 that's what Mr. St. Cyr has explained the Company needs to
12 recover through its rates. Because that revenue is
13 taxable, you have to, unfortunately, obtain more in rates
14 in order to pay the tax.

15 So, we think that the Commission has the
16 authority to, as part of its authority to approve
17 emergency rates, to order that they be reconciled or
18 adjusted to what the actual tax liability is, in this
19 proceeding or a rate proceeding. And, we're willing to
20 stipulate to that.

21 CHAIRMAN IGNATIUS: Thank you. I guess
22 we can take a few questions. We're going to get into all
23 the evidence and the factual statements you just made in a
24 moment. But, Commissioner Scott.

1 CMSR. SCOTT: Back to the Office of
2 Consumer Advocate. I was curious, I understand your
3 reading of the "reconciliation" language. When I read
4 378:9, the "emergency" language, it specifically says we
5 can "only authorize the public utility to temporarily
6 alter". So, would you not see -- be able to read that as
7 a temporary rate?

8 MS. HOLLENBERG: I can try -- I don't
9 have the statute in front of me right now. Let me just--
10 (Atty. Brown handing document to Atty.
11 Hollenberg.)

12 MS. HOLLENBERG: Oh, thank you. I
13 apologize. I guess the temporariness, though, is
14 different than the reconciliation. You know, the fact
15 that it would be set temporarily doesn't necessarily
16 equate to reconciling backward. And, that's my question.
17 And, I don't necessarily have a preference one way or the
18 other. It was just something that I thought would be
19 helpful to understand. And, frankly, you know, each
20 person seems to have a little bit of a different spin on
21 it. So, I'm glad that I have an opportunity to hear
22 everybody's comments.

23 CMSR. SCOTT: Thank you.

24 MS. HOLLENBERG: Does that answer your

1 question? Thank you.

2 CHAIRMAN IGNATIUS: Commissioner
3 Harrington.

4 CMSR. HARRINGTON: Yes. In the filing
5 the Company made, just so we're clear, Mr. Richardson, it
6 appears what you're saying right now is that you're
7 requesting emergency rates in the amount of the actual tax
8 liability, and it says that was taxable, so it has to be
9 -- go up to adjust for that. But that's what you're
10 looking for, to cover the 2000 -- whatever the 2012 taxes
11 are, you're looking for some emergency rates to do that.

12 And, in your filing, on Page 3, in
13 Section 7, it says "in order to allow the Company to pay
14 federal and state income taxes incurred in 2012, plus
15 interest, and on a going-forward basis subject to
16 reconciliation in its next permanent rate case." What
17 exactly is it you expect to be reconciled in the next
18 permanent rate case?

19 MR. RICHARDSON: Thank you, Commissioner
20 Harrington. The reason for that discrepancy, and I'm glad
21 that you picked up on it, is that what Mr. St. Cyr has put
22 and presented for schedules to be approved by the
23 Commission will only address the Company's going-forward
24 tax liability. 2012 has come and gone, the taxes weren't

1 paid. So, they're going to accrue, you know, the
2 liability is on the Company's books, and it's accruing
3 interest. We think that will need to be addressed as part
4 of the permanent rate case. And, I didn't want to, by not
5 mentioning in this proceeding, you know, let go of that or
6 cause the Commission to believe that we weren't seeking
7 that. However, from an emergency standpoint, what I think
8 is appropriate to do is to prevent further losses from
9 causing the Company's financial position from
10 deteriorating.

11 So, Mr. St. Cyr's schedules will cover
12 the Company's tax liability the moment this Commission
13 approves it, will reconcile to actual. At some point,
14 either in this proceeding or in the rate -- or a permanent
15 rate case, where I think it would probably make more sense
16 to do that, we will ask for or try to address "how do we
17 deal with 2012, now that it's already happened and it
18 hasn't been paid?"

19 CMSR. HARRINGTON: And, I think you've
20 confused me more, I'm sorry. I'm still -- what tax years,
21 I mean, it says here you're looking to "adjust its rates
22 on an emergency basis...in order to pay the taxes incurred
23 in 2012, plus interest." Now, you're saying, those are
24 already on the books, and you're not -- what is it you're

1 requesting the emergency rate increase to deal with?

2 MR. RICHARDSON: The Company's present
3 tax liability that it's incurring today, based on its
4 income in 2012, that's expected to continue in the future.
5 So, we're asking you to do that. We don't have the
6 benefit of the Company's actual 2012 tax return, only the
7 estimate of what the liability is. And, we're asking the
8 Commission to essentially allow the Company to increase
9 its rates, so that it can pay estimated taxes. Right now
10 its rates, from the last rate case, do not include any
11 state or federal income taxes. The Company's incurring
12 liability for those taxes based on its 2012 financials,
13 and we need to address that. We need to stop this from
14 getting worse.

15 CMSR. HARRINGTON: Okay. So, let me
16 just see if I've got this correct then. You've acquired a
17 tax liability from earnings in 2012. And, now that
18 liability is coming due, you have to start making payments
19 on this. And, you don't have the income flow to do it.
20 So, you want rates adjusted so you can start to make
21 payments on that. Now, if the total amount of payments
22 due on your 2012, let's just make up a number, were \$100,
23 in your estimation, you want to set emergency rates based
24 on that \$100 that needs to be paid out over some timeframe

1 in 2013. And, then, if it turns out the actual is 96 or
2 it's 104, that's what would get reconciled in the next
3 permanent rate case. Do I have that correct?

4 MR. RICHARDSON: That is correct.

5 CMSR. HARRINGTON: Thank you.

6 MS. HOLLENBERG: Except one -- you're
7 talking about 2013, not 2012.

8 CMSR. HARRINGTON: I was talking about
9 the 2012 tax liability.

10 MS. HOLLENBERG: Which I -- oh, I'm
11 sorry.

12 CMSR. HARRINGTON: No, let me just, the
13 2012 tax liability, which they're going to pay in 2013.

14 MS. HOLLENBERG: It's my understanding,
15 from what the Company just said, that they're basically
16 letting go of the 2012 tax liability at this time, until
17 the next rate case, and that they're looking only to
18 recover 2013 going forward.

19 CHAIRMAN IGNATIUS: Yes. Let's ask
20 Mr. Richardson, because I heard two completely
21 contradictory statements from you. One was, "2012 has
22 come and gone, it's not the issue. We're only talking
23 about the future." And, then, you said, "and then, when
24 we figure out what 2012 is, we'll deal with that in

1 another proceeding." And, yet, your answers to
2 Mr. Harrington seemed to be -- say "we're talking today
3 about 2012 liability." So, if you can clarify that at the
4 outset, and then we'll move to evidence.

5 MR. RICHARDSON: Absolutely. So, the
6 Company has incurred tax liability that's unpaid, based on
7 2012. Based on what we estimate those, what we estimate
8 the tax liability to be is \$100,219, that the Company
9 should have paid in 2012 that was not included in rates.
10 That's the basis for Mr. St. Cyr's prefiled testimony.
11 That's what the Company should have in rates. Now, we're
12 asking the Commission to approve that on an emergency
13 basis going forward.

14 Now, we still have to deal with what
15 happened in 2012 with it being unpaid. But I'm not sure
16 that, once we've -- the purpose of an emergency rate
17 proceeding is to stabilize the situation, to prevent the
18 Company's financial situation from deteriorating. We're
19 not trying to get money without adequate discovery,
20 without, you know, appropriate reconciliation to what the
21 actual tax liability is.

22 So, what I am suggesting is is that, as
23 part of our request today, we're alerting the Commission
24 to the fact that 2012 has not been paid. But the specific

1 relief we're asking for in this proceeding is to give us
2 revenue sufficient to pay the Company's tax liability that
3 it's incurring today. We'll deal with 2012, either as
4 part of this proceeding, when it's concluded, or part of
5 the permanent rate case to be filed based on the 2012 test
6 year. Once you've got the annual reports, once you've got
7 the actual returns, we'll then be in front of the
8 Commission, either as part of this case or as part of the
9 next rate case, to say "we need to recover the liability
10 that was unfunded coming out of the Company's last rate
11 case." Because, if we don't, that tax liability is
12 actually going to continue to cause the Company's payables
13 to be high. The Company is going to have to balance, "do
14 we pay vendors or do we pay the IRS?" And, you know, it's
15 in a very precarious situation because of that.

16 But the purpose of this proceeding
17 today, as Mr. St. Cyr has shown in his schedules, is to
18 get the Company's tax liability paid going forward.

19 CHAIRMAN IGNATIUS: I'm sorry, I am
20 completely lost by that explanation. So, I think, rather
21 than -- let's put you on the stand and let's get started,
22 because I think all the description of what is or isn't
23 happening is only preliminary to actual sworn evidence.
24 So, let's --

1 CMSR. HARRINGTON: Can I just ask one
2 follow-up question? I'll make it pretty quick. If you
3 were -- let's just say some rate relief was granted. And,
4 here's \$10 in ratepayer money to cover what your emergency
5 is. Who are you going to give the \$10 to? What payment
6 are you going to make?

7 MR. RICHARDSON: The Company would use
8 the money to pay the IRS, to make estimated tax payments
9 on what it's incurring today.

10 CMSR. HARRINGTON: So, you would make it
11 on 2013 estimated taxes, not to cover your 2012 tax
12 liability that you've already incurred?

13 MR. RICHARDSON: The tax accountants
14 may, you know, kind of move it backwards. But what we're
15 trying to do is prevent the tax liability from increasing.
16 We want to stabilize it.

17 CMSR. HARRINGTON: This isn't working.
18 I'm sorry. You're just going to have to get people up
19 there.

20 CHAIRMAN IGNATIUS: Let's have testimony
21 on the stand please.

22 MR. RICHARDSON: Thank you. If I may,
23 as procedural matter, I had intended to show -- to bring
24 the Company's operations and ownership witnesses,

1 Mr. Mason and Mr. Dawson, on first to adopt their
2 testimony, followed by Mr. St. Cyr to address the rate and
3 tax issues. Staff has requested that they all testify at
4 the same time. The Company doesn't have a strong feeling
5 either way. We're just trying to do this as orderly as
6 possible. So, we'll proceed as the Commission prefers.

7 CHAIRMAN IGNATIUS: Ms. Brown.

8 MS. BROWN: I have kind of an objection
9 for going forward with the hearing at this point, separate
10 from how the panel is set up out on the witness box.
11 Staff had conducted discovery on the belief that the
12 crisis was payment of the 2012 taxes. If the crisis is
13 payment of the 2013 taxes, our discovery would have been
14 different. So, I'm just registering that Staff is
15 somewhat handicapped now that we know that the crisis is
16 now the 2013 payment of taxes, rather than 2012. I just
17 note that. We'll do our best in the cross-examination of
18 the witnesses. Thank you.

19 CHAIRMAN IGNATIUS: I'd like to go
20 forward. The Petition itself asks for "recovery of
21 estimated federal and state income taxes incurred in 2012,
22 and that it expects to incur going forward." So, I think
23 the Petition stated both areas. I still am a little
24 baffled by the explanation of what's Mr. Richardson's

1 description. But I think we ought to just start really
2 hearing evidence and understanding what the tax situation
3 is, what the cash flow situation is, and what, if
4 anything, the Commission should do.

5 So, why don't we begin. And, I think,
6 if it's all right with everyone, that we put everyone on
7 as a panel from the Company, that's fine with us.

8 MS. HOLLENBERG: I actually, just to
9 give my position, I think it's helpful to us asking
10 questions, because it enables us to direct the questions
11 to the panel, and whomever is best suited to answer it, as
12 opposed to trying to figure out which questions are more
13 appropriate for which witness. Thank you.

14 CHAIRMAN IGNATIUS: All right. Thank
15 you. So, why don't you seat your three witnesses.

16 (Whereupon *Thomas A. Mason,*
17 *John W. Dawson,* and *Stephen P. St. Cyr*
18 were duly sworn by the Court Reporter.)

19 **THOMAS A. MASON, SWORN**

20 **JOHN W. DAWSON, SWORN**

21 **STEPHEN P. ST. CYR, SWORN**

22 **DIRECT EXAMINATION**

23 BY MR. RICHARDSON:

24 Q. Good morning. Please state your names and business

1 addresses for the record.

2 A. (Dawson) John W. Dawson. "Business address" you said,
3 Justin?

4 Q. Yes.

5 A. (Dawson) The business address is Lakes Region Water
6 Company, 420 Governor Wentworth Highway,
7 Moultonborough, New Hampshire 03254.

8 A. (Mason) Thomas Mason, Lakes Region Water, 420 Governor
9 Wentworth Highway, Moultonborough, 03254.

10 A. (St. Cyr) And, Stephen P. St. Cyr, 17 Sky Oaks Drive,
11 Bidderford, Maine.

12 Q. And, please state your positions in this proceeding?

13 A. (Dawson) I'm John Dawson. I'm the Manager or
14 Supervisor of Lakes Region Water Company.

15 A. (Mason) Thomas Mason, President, Lakes Region Water.

16 A. (St. Cyr) And, Steve St. Cyr. I'm the Company's
17 consultant for rate and tax matters.

18 Q. Thank you. And, just to cut to the chase, you've all
19 prepared testimony in this case. I'm going to show you
20 those documents. I'd like you to adopt them as your
21 testimony in this proceeding.

22 MR. RICHARDSON: For the benefit of
23 anyone here, I have copies of all of these documents. I
24 can provide them.

1 CHAIRMAN IGNATIUS: Thank you. While
2 you're distributing anything. Anyone need one? Show of
3 hands if you need anything? Looks like people have them.
4 Let me just note for the record, I meant to before, that
5 we are proceeding under the emergency rate statute, which
6 is RSA 378:9, rather than the temporary rate statute,
7 378:27.

8 (Atty. Richardson and Atty. Hollenberg
9 distributing documents.)

10 MR. RICHARDSON: So, for clarity in the
11 record, what I'd like to do, and I've previously given
12 some of the parties an exhibit list, what I'll do is
13 premark Mr. Mason's testimony as "LRW Exhibit 1",
14 Mr. Dawson as "Exhibit 2", Mr. St. Cyr as "3".

15 BY MR. RICHARDSON:

16 Q. And, do the witnesses have those documents in front of
17 them?

18 A. (Mason) Yes, we do.

19 A. (St. Cyr) Yes.

20 A. (Dawson) Yes.

21 Q. And, do those testimonies, are they true and accurate
22 to the best of your knowledge and belief?

23 A. (Dawson) Yes.

24 A. (St. Cyr) Yes.

1 A. (Mason) Yes.

2 Q. Okay. And, do you adopt those as your testimony in
3 this case?

4 A. (St. Cyr) Yes.

5 A. (Dawson) Yes.

6 A. (Mason) Yes.

7 Q. Now, Mr. Mason, I understand that your testimony
8 includes a list of payables, and I understand that has
9 been updated. And, I guess what I'd like to do is --

10 MR. RICHARDSON: Let me do this. Before
11 we get into that, let me give you your data request
12 responses, which I'll mark as "Staff" -- or "LRW Exhibit
13 4" and "LRW Exhibit 5".

14 CHAIRMAN IGNATIUS: And, while you're
15 distributing those, we will mark the three testimonies for
16 identification, Thomas Mason "Number 1"; John Dawson
17 "Number 2"; and Stephen St. Cyr "Number 3".

18 (The documents, as described, were
19 herewith marked as **Exhibit 1**, **Exhibit 2**,
20 and **Exhibit 3**, respectively, for
21 identification.)

22 (Atty. Richardson and Atty. Hollenberg
23 distributing documents.)

24 CHAIRMAN IGNATIUS: And, Mr. Richardson,

1 you're asking that the large packet, response to Staff
2 data requests, be marked for identification as "Exhibit
3 4"?

4 MR. RICHARDSON: That is correct.

5 CHAIRMAN IGNATIUS: And, the smaller
6 stack, response to OCA data requests, be marked as
7 "Exhibit 5"?

8 MR. RICHARDSON: Also correct.

9 CHAIRMAN IGNATIUS: Is there any
10 objection from anyone on any of these markings?

11 MS. BROWN: None from Staff.

12 MS. HOLLENBERG: No thank you.

13 CHAIRMAN IGNATIUS: All right. So,
14 we'll mark those for identification as described.

15 (The documents, as described, were
16 herewith marked as **Exhibit 4** and
17 **Exhibit 5**, respectively, for
18 identification.)

19 MS. HOLLENBERG: Excuse me. I just
20 wanted to raise, and I apologize for not mentioning this
21 to counsel, I do believe there are some personal Social
22 Security numbers in the responses to Staff's data
23 requests. That may need to be kept under wraps until they
24 can be properly redacted.

1 CHAIRMAN IGNATIUS: If that's the case,
2 we certainly would want to have those redacted and not
3 make public.

4 MS. HOLLENBERG: And, specifically, it's
5 is Staff 1-1 and Staff 1-2. I apologize, I should have
6 mentioned this before.

7 CHAIRMAN IGNATIUS: These are because
8 they're part of the tax returns?

9 MS. HOLLENBERG: Yes, ma'am.

10 CHAIRMAN IGNATIUS: All right. So, I
11 appreciate you thinking about that. We should -- I think
12 it's fine right now, we don't need to read those into the
13 record. There is no way they will be used this morning.
14 We should substitute the pages before we're done with
15 redacted pages that block out the Social Security numbers.
16 And, we can do that later in the day or in the next couple
17 of days. Thank you for thinking that, Ms. Hollenberg.

18 MR. RICHARDSON: Thank you.

19 BY MR. RICHARDSON:

20 Q. I'd like to ask the witnesses if you adopt those
21 responses as true and accurate to the best of your
22 knowledge and belief?

23 A. (St. Cyr) Yes.

24 A. (Mason) Yes.

1 A. (Dawson) Yes.

2 Q. Finally, one last issue, and I'll direct this to
3 Mr. Mason, because I believe your testimony included a
4 list of payables as of December 2012. And, I'd like to
5 show you what I'll mark as "LRW Exhibit 6", which I'll
6 represent to you is a February 27th, 2013 update.

7 (Atty. Richardson and Atty. Hollenberg
8 distributing documents.)

9 BY MR. RICHARDSON:

10 Q. Mr. Mason, is that list, which we've marked for
11 identification as "LRW Exhibit 6", is that true and
12 accurate to the best of your knowledge and belief?

13 A. (Mason) Yes. Yes, it is.

14 MR. RICHARDSON: At this point, I
15 believe it would be appropriate to make the witnesses
16 available for cross-examination or questions from the
17 Commission, as you see fit. Thank you.

18 CHAIRMAN IGNATIUS: All right. Before
19 we go to questioning, let me just ask. Exhibit 6 looks
20 like an accounts payable statement dated February 27,
21 2013. And, I don't know if this has been shared with
22 other participants prior to this morning or if they're
23 seeing it for the first time right now?

24 MR. RICHARDSON: I know we discussed

1 sharing it with them. I can't recall. I know I sent it
2 out yesterday. I can't recall if there's been another
3 iteration that's been distributed. The only way this
4 differs, I believe, from what's in evidence is that it
5 contains a column on the left-hand side, which shows the
6 payables as of "3/9/12", which was a response to the
7 information provided to the Commission in the 10-141 case.
8 And, then, the next column over, that's labeled "2/27/13",
9 just shows the current status.

10 CHAIRMAN IGNATIUS: All right.

11 MS. HOLLENBERG: And, in response to
12 your question, we did receive it yesterday. It was late
13 in the day, but we did receive it.

14 MS. BROWN: Staff has a question,
15 because we didn't see this until this morning, because it
16 came in after hours last night. But we had an e-mail that
17 contains two attachments, one was 11 pages, one was 2.
18 Which one have you marked for "Exhibit 6"?

19 MR. RICHARDSON: There's a summary
20 sheet, that is the first two pages, that provides an
21 overview, and that is the shorter of the documents. And,
22 then, the remainder is the detailed breakdown, and that's
23 the remaining pages. So, this is both of those combined
24 into a single exhibit.

1 And, the point of offering this is
2 really only for informational purposes. This doesn't, I
3 think, materially change anything that's in the testimony.
4 It's just to give the most recent information for the
5 Commission.

6 CHAIRMAN IGNATIUS: Thank you. And,
7 this was prepared by who?

8 MR. RICHARDSON: You'd have to ask the
9 Company that.

10 CHAIRMAN IGNATIUS: All right. I'm
11 asking the Company. Who prepared this?

12 WITNESS ST. CYR: It was prepared by the
13 Company's accountant, Norm Roberge.

14 CHAIRMAN IGNATIUS: Okay.

15 WITNESS ST. CYR: From the Company's
16 books and records.

17 CHAIRMAN IGNATIUS: Thank you. All
18 right. Then, we'll mark this for identification as
19 Exhibit 6.

20 (The document, as described, was
21 herewith marked as **Exhibit 6** for
22 identification.)

23 CHAIRMAN IGNATIUS: And, obviously, if
24 there are questions about the numbers or why things are

[WITNESS PANEL: Mason|Dawson|St. Cyr]

1 appearing the way they do, that would be something that
2 Mr. Roberge, who's here, could answer today. So, although
3 I assume that, although Mr. Roberge prepared the document,
4 am I correct that the Company witnesses are familiar with
5 the information contained in it and can speak to it?

6 WITNESS MASON: Yes. We actually print
7 one of these every other day. It's part of our computer
8 system, and it updates every other day for us. And, we
9 look at it every other day. So, it's a standard document
10 for us.

11 CHAIRMAN IGNATIUS: Good. Thank you.
12 All right. Then, why don't we begin with questioning.
13 Ms. Hollenberg.

14 MS. HOLLENBERG: Thank you. Good
15 morning, gentlemen.

16 WITNESS ST. CYR: Good morning.

17 WITNESS DAWSON: Good morning.

18 WITNESS MASON: Good morning.

19 MS. HOLLENBERG: I can say at the outset
20 that I don't believe I have any questions for Mr. Dawson.
21 So, I believe most of my questions will be directed to
22 Mr. Mason and Mr. St. Cyr. And, if I could just direct
23 them to you both, and have you choose which is the best
24 person to respond, that would be helpful. Thank you.

{DW 13-041} [RE: Emergency Rates] {03-06-13/Day 1}

CROSS-EXAMINATION1
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BY MS. HOLLENBERG:

Q. I guess initially, though, I will start with you, Mr. Mason. The request for emergency rates, we got into this a little bit at the beginning of the hearing. You state in the Petition that it's for the purpose of paying "estimated federal and state income taxes incurred in 2012", is that correct.

A. (Mason) Yes, it is.

Q. As well as the taxes that the Company "expects to incur going forward"?

A. (Mason) Correct.

Q. So, the Company is seeking an annual -- something akin to an annual revenue increase, is that correct, at this time?

A. (St. Cyr) Yes.

Q. Thank you. And, this is an 18 percent increase in the rates, the current rates, is that correct?

A. (St. Cyr) That's correct.

Q. Thank you. The Company expects at this time to file a rate case in 2013. Could you tell me the status of that expected filing please.

A. (Mason) We plan on, as soon as we get our books closed, or not "books closed", but the annual report in, then

1 we'll evaluate. We anticipate right now, or we are
2 99.9 percent sure that we'll be coming forward with
3 another rate case, because of things like Mount Roberts
4 and the capital improvements that we have done in the
5 last two years.

6 Q. Do you have a sense of the timing of the filing of the
7 rate case?

8 A. (Mason) I would say sometime in the spring. I'm hoping
9 May.

10 Q. Okay. Thank you. Going back to the request for the
11 emergency rates and the discussion this morning about
12 the reconciliation of those rates, Mr. St. Cyr, could
13 you please describe what the Company's expectations are
14 of that reconciliation?

15 A. (St. Cyr) The Company expects, when it files its actual
16 tax return, that there will be a difference between
17 what is reported in -- reported on the tax return
18 versus what we have submitted. And, the Company is
19 prepared to reconcile those two amounts.

20 Q. So, is it correct that the Company is proposing today
21 to use a 2012 amount as a proxy for the taxes, the tax
22 expense? And, then, once you have the actual 2012 --
23 the estimated 2012. And, once you have the estimated
24 2013, you'll reconcile? I guess I don't know the --

1 I'm sorry, this is a confusing question. Let me try
2 and rephrase it. You're asking for the Commission to
3 approve an amount that is equal to the estimated 2012
4 taxes, correct?

5 A. (St. Cyr) The Company is asking the Commission to
6 approve an amount based on 2012, that will be
7 incorporated in rates on a permanent basis, that will
8 allow it to pay taxes going forward.

9 Q. And, is it the 2012 estimated amount that you want the
10 amount set at, the tax expense set at?

11 A. (St. Cyr) I think, from a practical standpoint, what
12 will actually take place, is the Company will file its
13 2012 tax return, with an amount that indicates what the
14 tax liability will be. At that point, the Company
15 doesn't anticipate having the cash to pay that
16 liability. So, it would expect to either file with the
17 return or file shortly after that a form that would
18 allow it to pay its 2012 tax obligation on an
19 installment basis. And, then, --

20 Q. Excuse me. I'll actually let you continue. Go ahead,
21 I'm sorry.

22 A. (St. Cyr) And, then, assuming that the -- or, as the
23 Company has proposed, with the incorporation of its
24 emergency in -- emergency rates in place, it then

1 begins to collect the money from customers, based on
2 that emergency rate increase. Well, those monies would
3 be used in part to pay the 2012 tax and, in part, to
4 begin to set aside estimated taxes for 2013.

5 Q. Mr. St. Cyr, what -- I guess my question was a little
6 different. I appreciate the information. You're
7 asking the Commission to approve an amount, based on
8 what? What is that amount?

9 A. (St. Cyr) The amount is based on what it expects to
10 incur in 2012. That amount is grossed up for the
11 revenue associated with that, in order to pay not only
12 the tax, but then the increase in the revenue.

13 Q. So, you are -- you have estimated your 2013 tax
14 liability, and that is the basis for the amount you're
15 asking for approval?

16 A. (St. Cyr) We have not estimated our 2012 tax liability
17 -- 2013 tax liability. We're using what we expect our
18 2012 tax liability to be as the basis for an adjustment
19 in rates.

20 Q. Which will then be used to pay 2013 taxes?

21 A. (St. Cyr) It would be -- it would be used to pay a
22 combination of the outstanding liability from 2012, and
23 estimated payments for 2013.

24 Q. And the -- okay. Thank you. And the reconciliation of

1 that amount, could you explain that to me. So, you'll
2 have -- you'll have an amount in your rates going
3 forward that's equal to what you're expecting your 2012
4 tax liability to be. And, then, what will be
5 reconciled?

6 A. (St. Cyr) To the extent that the actual tax liability
7 is different than the tax liability that we're -- we
8 have submitted as part of this proceeding, the Company
9 is prepared to adjust that up or down.

10 Q. And, when you talk about actual tax liability, are you
11 referring to 2012, 2013 or something else?

12 A. (St. Cyr) I'm referring to 2012.

13 Q. Okay. Would you agree that that would almost put the
14 Company in a position it would have been had those tax
15 expenses been -- oh, strike that. Sorry. You have
16 both, Mr. Mason and Mr. St. Cyr, you both participated
17 in rate cases at the Commission before, correct?

18 A. (St. Cyr) Yes. That's correct.

19 A. (Mason) Yes.

20 Q. And, typically, would you agree that the Commission
21 typically processes rate cases within a 12-month
22 period? Typically?

23 A. (St. Cyr) Yes. Typically, that's true.

24 Q. With some exceptions. So, would you both agree that it

1 could be a number of months before you would, under the
2 Company's proposal to do the reconciliation, that you
3 would be -- it could be up to 12 months that that would
4 occur? Is that what your proposal is?

5 A. (St. Cyr) I don't know as we made a specific proposal.
6 But I would anticipate that, as soon as the tax return
7 is completed, that it would be filed with the
8 Commission. And, that the Company would, you know,
9 make that reconciliation -- make that difference known
10 and have a proposal for reconciliation upon, you know,
11 its filing of the tax return with the Commission.

12 Q. Okay. That's helpful to know. Because I do believe or
13 it was my impression that the Company was seeking to
14 have the reconciliation done in conjunction with its
15 next rate case. And, if that's not filed until the
16 spring, and it may not be processed for a number of
17 months, it could be some time before that
18 reconciliation would occur. And, that's not what
19 you're proposing, is that correct?

20 A. (St. Cyr) Well, I think the Company has said that it's
21 prepared to reconcile it, whether it's in this
22 proceeding or a rate case. It would -- it's prepared
23 to do it either way, whichever really works.

24 Q. Okay. That's a new statement of the Company, though,

1 and I'll just let the record speak for itself. Thank
2 you. Who estimated the -- who did the estimation of
3 the income tax liability for 2012?

4 A. (St. Cyr) Mr. Roberge did the actual calculation, and I
5 reviewed it and agreed with it.

6 Q. Thank you.

7 MS. HOLLENBERG: Excuse me for one
8 moment.

9 BY MS. HOLLENBERG:

10 Q. If I could just take you both back a little bit to the
11 Company's last rate case. And, I think the people in
12 this room generally know what occurred in that rate
13 case, but if we could just kind of cover that, and you
14 talk about it in your testimony. We did just conclude
15 a rate case last year, which was DW 10-141, correct?

16 A. (St. Cyr) That's correct.

17 Q. And, in that case, the Company received a 21.5 percent
18 increase in its revenues, is that correct?

19 A. (St. Cyr) Yes.

20 Q. And, that was based on a 2009 test year?

21 A. (St. Cyr) An adjusted 2009 test year, yes.

22 Q. And, it include a step adjustment for certain capital
23 expenditures?

24 A. (St. Cyr) That's correct.

1 Q. And, after that approval in July of 2012, the Company
2 received -- also received approval to recover
3 recoupment of the difference between temporary and
4 permanent rates, correct?

5 A. (St. Cyr) That's correct.

6 Q. And, they also received -- and that was in an amount of
7 approximately \$52,000, subject to check?

8 A. (St. Cyr) 53,616, subject to check.

9 Q. Thank you. Thank you. And, that was to be collected
10 over 12 months, correct?

11 A. (St. Cyr) Yes, that's correct.

12 Q. And, the Company also received approval to recover
13 approximately \$152,000 of rate case expenses, correct?

14 A. (St. Cyr) That is also correct.

15 Q. As well as approximately \$81,000 in a deferred asset to
16 be activated, I guess, for lack of a better word, in
17 the next rate case, is that correct?

18 A. (St. Cyr) Yes. That is correct.

19 Q. Thank you. The Company asked for recovery of tax
20 expense -- income tax expense in that last case, did it
21 not?

22 A. (St. Cyr) Yes, we did.

23 Q. And, the Commission -- that request was opposed by the
24 Staff and the OCA, correct?

1 A. (St. Cyr) Yes, that's correct.

2 Q. And, the Commission ultimately decided that it would
3 not include in the calculation of the Company's revenue
4 requirement an allowance for income tax expense, is
5 that correct?

6 A. (St. Cyr) That's correct.

7 MR. RICHARDSON: Madam Chair, if I may
8 just ask the OCA a question? I don't recall that the OCA
9 opposed the request. Am I incorrect or --

10 MS. HOLLENBERG: My recollection is that
11 we filed testimony, you'll have to excuse me, because I
12 came in late to that case. But my recollection is that
13 OCA also filed testimony that opposed the inclusion in the
14 calculation of the revenue requirement of income tax
15 expenses.

16 MR. RICHARDSON: Okay. Thank you.

17 BY MS. HOLLENBERG:

18 Q. So, the hearing in the permanent rate case was in the
19 Spring of 2012, right?

20 A. (St. Cyr) Yes.

21 Q. And, it was at that time or just before that time that
22 the Company filed an amended 2010 Annual Report,
23 correct?

24 A. (St. Cyr) That's correct.

1 Q. And, that annual report made some adjustments to 2010.

2 And, could you describe those adjustments please.

3 A. (St. Cyr) Yes. The adjustments were primarily for the
4 reclassification of what was initially pension, health,
5 and interest expense to return on capital.

6 Q. And, the Company explains in its filing that it made
7 those adjustments to the annual report on account of
8 testimony filed by Staff in October of 2011, correct?

9 A. (St. Cyr) Well, the Company made the adjustments
10 because the -- what it had originally described as
11 "pension", "health care", and "interest expense" were
12 no longer valid expenses. And, as a result, it changed
13 the way in which it accounted for those transactions.

14 Q. So, the Company chose to reclassify those expenses and
15 recast them in the annual report, and they also chose
16 to reclassify those expenses in several tax -- several
17 prior tax returns, correct?

18 A. (St. Cyr) I don't think "chose" is the right word. But
19 what was initially presented by the Company as an
20 expense was later determined not to be a valid expense.
21 When the Company accepted Staff and OCA's position that
22 such transactions weren't appropriate expenses, it
23 didn't -- in its view, it didn't have a choice. It
24 wasn't something it decided to do or not to do. It was

1 obligated to reclassify those transactions.

2 Q. Thank you. Actually, you do -- the Company does use
3 the word "obligated" to adjust its earnings and revise
4 its tax returns for prior years in its filing. And,
5 Mr. Mason, you actually, in your testimony, on Page 9,
6 you state "I personally asked the Company's accountant
7 and others to evaluate whether the Company could
8 lawfully avoid amending its tax returns or avoid its
9 2012 federal or state income tax liability.
10 Unfortunately, once the Company accepted Staff's
11 recommendation to reclassify", and it says
12 "persuasive", I'm not sure if that's correct, "and
13 other expenses as income, and its shareholder loans as
14 equity, it had no other legal alternative but to amend
15 its prior returns, which resulted in its net operating
16 losses" carry-forwards, which isn't there, "and other
17 deductions being exhausted in 2011." Did I read that
18 correctly?

19 A. (Mason) That's correct. Yes.

20 Q. Who did you consult with to determine your obligation
21 to adjust your earnings and revise your tax returns?

22 A. (Mason) I talked to Steve and Norm, both. Those are
23 the two people that, you know, my people that do those
24 types of things.

1 Q. Okay. And, what other legal alternatives did the
2 Company consider?

3 A. (Mason) None.

4 Q. Okay. So, did the Company ask for the money back from
5 the shareholders?

6 A. (Mason) No.

7 Q. Did the Company consider booking the expense as below
8 the line?

9 A. (Mason) No.

10 Q. Mr. St. Cyr, do you agree that, if they had booked the
11 expense below the line, that would have reduced the
12 Company's earnings?

13 A. (St. Cyr) I guess, just to pick up on what Mr. Mason
14 said, I do believe there was some discussion in-house
15 about whether to treat the transaction above the line
16 versus below the line. And, the determination was made
17 that, if it wasn't a valid expense, then it didn't seem
18 appropriate to put it either above or below did line.

19 Q. So, you did -- you both are familiar with a Department
20 of Corrections fine in a criminal case involving the
21 Company, correct?

22 A. (St. Cyr) Yes.

23 A. (Mason) Yes.

24 Q. And, do you recall that that fine was not included for

1 the purposes of setting rates in DW 10-141, is that
2 correct?

3 A. (St. Cyr) That's correct.

4 Q. And, do you recall that the Company treated that as an
5 expense below the line?

6 A. (St. Cyr) Yes. I do recall that.

7 Q. Thank you. Do you know what the monthly fine payment
8 was for that fine?

9 A. (Mason) Roughly \$3,000.

10 Q. And, is it correct that the Company, excuse me,
11 finished paying the fine in October of 2012?

12 A. (Mason) Yes.

13 Q. Did the Company consult with the IRS about its
14 obligation to amend its tax returns?

15 A. (St. Cyr) No, it did not.

16 Q. Has the Company consulted with the IRS since it's
17 amended its tax returns about making payments on the
18 2012 tax?

19 A. (St. Cyr) It has not. At this point, the return hasn't
20 been filed and the obligation is unaware to the IRS.

21 Q. Okay. Thank you. Could the Company -- strike that.
22 Did the Company perform any analysis, at the time that
23 it made the changes to its tax returns, about the
24 consequences of doing that? I guess, a formal

1 analysis? Anything that you documented?

2 A. (St. Cyr) I guess I'm not really sure, by the term
3 "analysis". The Company was aware, at the time in
4 which it was amending both the annual reports and the
5 tax returns, that the result of that would increase
6 income.

7 Q. I guess I was wondering if the Company at that time
8 also analyzed other impacts that the change would have,
9 in terms of its expected capital investment in the next
10 year or anything -- did the Company consider anything,
11 in terms of how and when it was going to do this
12 amendment?

13 A. (St. Cyr) I don't specifically remember. As we made
14 the adjustments to the PUC annual report and the tax
15 return, we were certainly aware of the impact of that,
16 both on the balance sheet and the income statement, and
17 its impact on the Company's financial position in
18 general.

19 Q. Uh-huh. Okay. Thank you. You did mention, I believe
20 one of the witnesses mentioned that it had -- that the
21 Company had consulted with the Staff about the
22 amendment to the 2010 Annual Report. Could you talk
23 about that please.

24 A. (St. Cyr) Yes. I think the consultation was primarily

1 around the need to file individual amended annual
2 reports versus filing one amended report that included
3 the cumulation of the adjustments over the years.

4 Q. Uh-huh.

5 A. (St. Cyr) And, after consultation with the Audit Staff,
6 it was determined that one -- the filing of one amended
7 annual report, the 2010 Annual Report, would be
8 appropriate.

9 Q. So, who did you consult with of the Commission Staff
10 please?

11 A. (St. Cyr) That was Mr. Roberge talking with Mr. Hodgdon
12 from the Audit Staff.

13 Q. Thank you. Yes.

14 A. (St. Cyr) The PUC Audit Staff.

15 Q. Thank you.

16 MS. HOLLENBERG: One moment please.

17 BY MS. HOLLENBERG:

18 Q. Who amended the tax returns?

19 A. (St. Cyr) Mr. Roberge would have done the actual
20 amending of the tax return.

21 Q. Thank you. Can you explain the amendments to the 2008
22 and 2009 tax returns, relate to the pension and
23 healthcare expense issue that came up in the rate case.
24 The 2007 amendment relates to recasting or

1 recategorizing certain debt to equity. Can you explain
2 why that was done?

3 A. (St. Cyr) These were amounts that the Masons had
4 provided to the Company to fund probably mostly capital
5 improvements, but some operations. They would have
6 been reflected on the books initially as a liability.
7 There would have been interest accrued on that
8 liability. And, at some point, those obligations were
9 converted to additional paid-in capital. So, the
10 amendments would have been related to the
11 reclassification of the liability to additional paid-in
12 capital.

13 Q. And, that -- and, just for my understanding, that debt,
14 do you recall what rate that debt earned, in terms of a
15 return?

16 A. (St. Cyr) I believe the rate was the cost of equity. I
17 want to say 9.75 percent.

18 Q. So, there wasn't a change in terms of the return that
19 they would have earned by recategorizing, is that
20 correct? Either way, they earned 9.75, right? Or 9.
21 -- the ROE?

22 A. (St. Cyr) Yes. I think that's true, yes.

23 Q. But it did have an impact of increasing, by converting
24 from debt to equity, and reversing the interest

1 expense, you increase income, correct?

2 A. (St. Cyr) By reversing the interest expense, you would
3 increase income, yes.

4 Q. And, in reversing -- and, in increasing income, the
5 Company used up a portion of its net operating loss
6 carry-forwards, which were the basis for Staff's and
7 the OCA's recommendation about tax expense in the last
8 rate case, is that correct?

9 A. (St. Cyr) That, and the pension and health. It wasn't
10 just the interest, it was really the three expenses.

11 Q. And, by making these changes for these associated
12 expenses, the Company used up its -- or, the position
13 of the Company is that it used up its net operating
14 loss carry-forwards and its Section 179 deductions
15 during the 2011 tax year, is that correct?

16 A. (St. Cyr) Well, each year it would have used a portion
17 of whatever was available during that year. And, then,
18 to the extent that there was additional net operating
19 losses or Section 179 deductions, that would have been
20 carried to the next year and then used in that year.

21 Q. Uh-huh.

22 A. (St. Cyr) And, it was all used up in 2011.

23 Q. Okay. Thank you. That's a much better way of
24 explaining what I just said. The Company has incurred

1 interest expense on the 2012 tax liability? You expect
2 that?

3 A. (St. Cyr) We do expect that. I don't know as we have
4 recorded that just yet. But we do expect that the
5 non-payment of the tax would incur both penalties and
6 interest.

7 Q. And, do you know what the rate, I mean, what are we
8 looking at, in terms of the amount of interest and
9 penalties? What's that?

10 A. (St. Cyr) I don't know what that would be offhand, no.

11 Q. Okay. Thank you. I asked you earlier if you had
12 contacted the IRS about to seek advice, and you had
13 said "no". And, I wondered, I'm asking now just to
14 close out the question, if you sought any advice about
15 the amendments to the returns or your tax liability
16 with the New Hampshire Department of Revenue
17 Administration?

18 A. (St. Cyr) We did not.

19 Q. Thank you. Mr. Mason, if I could have you turn to
20 Page 7 of your testimony please.

21 A. (Mason) Yes.

22 Q. At Lines 10 to 13, if you could just -- you state
23 there, "On December 12th, 2011, the Company filed
24 testimony and schedules that sought an allowance for

1 federal and state income taxes that the Company
2 expected to incur in 2012." Did I read that correctly?

3 A. (Mason) Yes, you did.

4 Q. And, then, you state "The issue was an important one as
5 the Company estimated at that time that it would incur
6 \$68,000 in tax liability based on its book income." Is
7 that correct?

8 A. (Mason) Yes.

9 Q. And, the Company at that time, in December 2011, had
10 yet to amend its tax returns for 2007 to 2009, is that
11 correct?

12 A. (Mason) I believe so, yes.

13 Q. So, at that point, the Company estimated it would owe
14 68,000 in tax liability, but also at that point the
15 Company had over \$200,000 of federal carry -- net
16 operating loss carry-forwards, correct?

17 A. (Mason) Yes.

18 Q. And, it also had over 200,000 in state net operating
19 loss carry-forwards, is that correct?

20 A. (Mason) Actually, on both those numbers, I don't know
21 the exact number. I should probably rephrase that.

22 Q. I believe it's in -- I just have to find it in my notes
23 here.

24 A. (Mason) That might be a better question for Steve. Do

1 you know the answer to that, Steve?

2 Q. Okay.

3 MS. HOLLENBERG: If I could approach the
4 witness?

5 CHAIRMAN IGNATIUS: Please.

6 MS. HOLLENBERG: It's a collaborative
7 effort this morning, isn't it? That's so nice.

8 BY MS. HOLLENBERG:

9 Q. Mr. Mason, if I could just have you look, this is
10 testimony that was filed by Mr. Laflamme in the last
11 rate case, 10-141.

12 MS. HOLLENBERG: And, Justin, do you
13 want to take a look at it? Sorry.

14 WITNESS MASON: Sure.

15 BY MS. HOLLENBERG:

16 Q. So, on Page 10 of that testimony, --

17 A. (Mason) Yes.

18 Q. -- I believe it states the amount of net loss
19 carry-forward. So, it says "In its response, the
20 Company stated that its federal net operating loss
21 carry-forward was \$228,981, and its state net operating
22 loss carry-forward was 200,069" -- I'm going to say
23 that --

24 A. (Mason) 269,000.

1 Q. "\$269,600", is that correct?

2 A. (Mason) Yes. That's what it says. I don't know that
3 that's correct, though.

4 Q. So, would you --

5 A. (St. Cyr) Just in terms of, I'm looking at the 2009
6 Federal Income Tax, and it specifically states on the
7 tax return the available NOL carry-forward from prior
8 years is \$228,981, just as Mr. Laflamme indicated in
9 his testimony.

10 MR. RICHARDSON: Madam Chair? I'm happy
11 to give as much leeway as possible to all the parties who
12 want to ask questions. But I would ask that, if the
13 parties know they're going to use exhibits on cross, that
14 they make a copy available to me, because I missed what's
15 happened. I don't know how I could use it on redirect.
16 I'm going to have to find the document to look at it. I
17 think, you know, I'm happy to proceed, and I want to get
18 to the merits of the issue. But, you know, at some point,
19 if the cross is going to go through documents, I think
20 it's fair to ask that the documents be -- that copies be
21 made available.

22 CHAIRMAN IGNATIUS: It is a fair
23 request. And, it looks like maybe some copying is
24 underway.

1 MS. HOLLENBERG: Yes. We're going to
2 make a copy. I apologize. I did take for granted, I
3 thought that the new procedure at the Commission was, so
4 long as it's filed in the proceeding, but I forgot that
5 this is a separate proceeding. So, I did not bring
6 copies. And, it looks like the Staff does have some
7 additional copies. So, if I need to ask a question about
8 it, I can redo that question, if that's helpful?

9 MR. RICHARDSON: No. No, that's fine.
10 But, if someone has the document, does Staff have a copy
11 of it?

12 MS. BROWN: Staff has a copy of the
13 entire document, but I thought what was only relevant were
14 the -- what is the amount of the carry-forwards, which
15 were both identified in Mr. Laflamme's testimony, and also
16 in the tax returns, I thought Mr. St. Cyr had cited, which
17 is already marked as Exhibit 4. Is that correct, Mr. St.
18 Cyr?

19 WITNESS ST. CYR: Yes. In fact, the
20 2009 tax returns are provided in response to Staff 1-1.
21 And, the amounts cited in the testimony are on those tax
22 returns.

23 CHAIRMAN IGNATIUS: So, Ms. Hollenberg,
24 just so I understand, because I didn't follow all the

1 numbers. The number in the Exhibit 4, are you seeking to
2 bring out an additional number that's somehow different
3 from that, from the 2009 carry-forward?

4 MS. HOLLENBERG: No. I actually was
5 just looking for an agreement that there was over \$200,000
6 of net operating loss carry-forwards for both state and
7 federal purposes, as of December 2009. That was really
8 the only question I had. And, I was attempting to
9 inartfully draw that out from the witness.

10 CHAIRMAN IGNATIUS: So, it sounds like
11 both the Company's witness and the Staff testimony from
12 the prior case both confirmed for you that it was over
13 \$200,000. It may be that we don't need a lot more on that
14 document. You weren't challenging either of those
15 numbers, you were just trying to show a kind of ballpark
16 of where they were, over \$200,000?

17 MS. HOLLENBERG: Yes, ma'am. Yes. And,
18 I apologize, it's December 2011 that these net operating
19 loss carry-forwards existed.

20 CHAIRMAN IGNATIUS: Thank you.

21 WITNESS ST. CYR: Actually, those
22 existed at December 31, 2009.

23 BY MS. HOLLENBERG:

24 Q. Okay. And, what was the status at December 2011,

1 before the tax returns were amended?

2 A. (St. Cyr) The 2011 tax return was not amended. The
3 last tax return to be amended was 2009.

4 Q. I understand that. But would that not be based upon
5 the amended returns? I'm trying to get a look at what
6 2000 -- so, you hadn't filed 2011 taxes as of the day
7 that you amended your 2007, 2008, 2009?

8 A. (St. Cyr) That's correct.

9 Q. Okay.

10 A. (St. Cyr) And, just to answer the earlier part of that
11 question, is there would not have been any net
12 operating losses available, or what was available for
13 2011 was utilized during 2011. So, at the end of 2011,
14 there is now nothing more available for future years.

15 Q. What was available -- what was, in December of 2011,
16 what was the last tax return that was available?

17 A. (St. Cyr) That would have been December 2010. At
18 December 31, 2011, the Company would not have filed its
19 2011 return until some number of months later. So, at
20 that time, the only -- the most recent tax return would
21 have been the 2010 return.

22 Q. Actually, in the filing, the Company states that it
23 filed its 2010 in May of 2012. So, now, I'm very
24 confused.

1 CHAIRMAN IGNATIUS: And, let's be really
2 clear. When we talk about filing returns, we have the
3 initial returns and we have amended returns. And, so,
4 there may be some confusion over which filings we're
5 talking about.

6 MS. HOLLENBERG: If I could just have a
7 minute please? Thank you.

8 MR. RICHARDSON: If I may state my
9 understanding, I believe the 2010 return did not need to
10 be amended, because it wasn't filed until after 2011.
11 And, yes, Mr. Roberge is nodding his head. So, what
12 Mr. St. Cyr had said about the 2010 return being available
13 at that time, it was actually filed shortly after
14 December 2011. So, the 2009 was the last return to be
15 amended. The 2010 was simply filed late.

16 CHAIRMAN IGNATIUS: Let me ask this. If
17 this is going to be an ongoing issue, where it makes a
18 difference when things were filed, and I don't know if it
19 is, but, if that's important, I'd like during a break for
20 somebody to develop just a chart of dates, of initial
21 filing, amended filing, for those that were amended, and
22 then subsequent ones that were filed. This is the kind of
23 thing that doesn't do well on cross-examination. And,
24 yet, it may be fairly straightforward, it's just a matter

1 of sitting quietly and making a chart. We're about to go
2 to a break anyway. So, maybe somebody can pull that
3 together before we resume.

4 MR. RICHARDSON: We can do that.

5 CHAIRMAN IGNATIUS: Thank you. Would
6 this be a time to take a break or are you close to being
7 concluded?

8 MS. HOLLENBERG: This is a good time to
9 take a break.

10 CHAIRMAN IGNATIUS: Okay. Then, why
11 don't we do it. It's almost 10:30. We will resume at
12 10:45.

13 (Recess taken at 10:29 a.m. and the
14 hearing resumed at 10:54 a.m.)

15 CHAIRMAN IGNATIUS: All right. We're
16 back after a break. And, Ms. Hollenberg, your questioning
17 the witnesses, yes?

18 MS. HOLLENBERG: Yes. Thank you.

19 MR. RICHARDSON: If I may, before we
20 begin?

21 CHAIRMAN IGNATIUS: Please.

22 MR. RICHARDSON: I had the Company
23 prepare the list of returns, when they were filed, when
24 they were amended. I've provided that to all the parties.

1 I suggest we offer it at this point, just to make sure I
2 do it before we forget.

3 CHAIRMAN IGNATIUS: Sure. That was very
4 quick work. I appreciate that.

5 MR. RICHARDSON: I'll represent that
6 this is taken off of the returns that are marked in
7 response to Staff 1 and 2 that are in LRW Exhibit 4.

8 CHAIRMAN IGNATIUS: All right.

9 MR. RICHARDSON: And, I'll provide that
10 to the Commission now, unless there's an objection.

11 CHAIRMAN IGNATIUS: So, we'll mark that
12 for identification as "Exhibit 7".

13 (The document, as described, was
14 herewith marked as **Exhibit 7** for
15 identification.)

16 CHAIRMAN IGNATIUS: So, this is a
17 handwritten listing of Lakes Region Water Company's tax
18 filings 2007 through '11, the original filing date, and
19 the amendment filing date, for those that had amendments
20 filed. And, this was prepared by Mr. Richardson, with
21 input from the tax returns that are in the Exhibit 4?

22 MR. RICHARDSON: That's correct, except
23 Mr. Roberge prepared it.

24 CHAIRMAN IGNATIUS: Thank you.

1 MR. RICHARDSON: It would have taken
2 considerably longer if I had attempted to do it. One
3 other just house cleaning -- housekeeping matter. I
4 neglected to introduce the Company's 2011 Annual Report,
5 which I thought might be helpful for just completing the
6 record. I was going to do that as "Exhibit 7". I have it
7 here. I don't know if any -- I mean, I don't plan to use
8 it, I don't know if any of the parties need it. But I
9 thought it might help the Commission, if it needed that
10 information, to make it part of the record.

11 CHAIRMAN IGNATIUS: And, that was filed
12 with the Commission when?

13 MR. RICHARDSON: That would have been
14 about the same time as the 2011 tax return, I believe May
15 23rd.

16 CHAIRMAN IGNATIUS: Of 2012?

17 MR. RICHARDSON: Sorry. 2000 -- 2012,
18 May 23rd, 2012.

19 CHAIRMAN IGNATIUS: Any response from
20 OCA or the Staff?

21 MS. HOLLENBERG: I don't have any
22 objection to it being marked as an exhibit.

23 MS. BROWN: Staff has no objection. I
24 don't think we're going to be using it though.

1 MS. HOLLENBERG: I don't either.

2 CHAIRMAN IGNATIUS: You think you will
3 not be using it, but no objection?

4 MS. BROWN: Correct.

5 CHAIRMAN IGNATIUS: All right. I guess
6 I just wonder, putting it in the record, no one's opposed
7 to it, but towards what end? Why don't we see if there's
8 issues that arise that really need reference to it.

9 MR. RICHARDSON: Okay.

10 CHAIRMAN IGNATIUS: Thank you.

11 Ms. Hollenberg.

12 MS. HOLLENBERG: Thank you.

13 BY MS. HOLLENBERG:

14 Q. Let's try this again. One quick question before going
15 back to you on the questions I had right before we
16 broke. Either for Mr. Mason or for Mr. St. Cyr. What
17 was the basis of your conclusion that the Company was
18 obligated to amend its tax returns?

19 A. (St. Cyr) Yes. The basis was that the Company no
20 longer had a valid expense that it used for both book
21 and tax purposes. And, because it no longer had a
22 valid expense, it was then obligated to amend both the,
23 you know, internal financial statements, the PUC annual
24 reports, and the tax returns.

1 Q. And, what is your basis for understanding that they
2 were obligated? Do you have -- is there a law? Is
3 there a rule? Is there a policy? Is there something
4 that you looked to to make that recommendation?

5 A. (St. Cyr) I guess I can't specifically point to a law,
6 *per se*. The common practice is that, if an error is
7 discovered subsequent to the filing of a tax return,
8 then, you know, you're required to amend the tax
9 return. You know, we can argue whether this was an
10 error or not, and I guess I think of it in terms of
11 more of a reclassification. But, in our view, it was
12 material, and we no longer had a valid expense, and we
13 really had no choice but to amend the tax returns.

14 Q. Okay. Thank you. Okay. The Commission now has before
15 it what's been marked as "Lakes Region Water Exhibit
16 7". Do you have that in front of you? It's the
17 timeline, for lack of a better description, of the
18 filings of the different tax returns?

19 A. (St. Cyr) Yes, I do.

20 Q. And, I was asking you before we left, before we broke,
21 I was talking to you about a specific period of time,
22 which is December 2011. We are in the midst of the
23 rate case at that point in time. At that point in
24 time, Staff has -- Staff and the OCA have filed

1 testimony saying that the Company has over \$200,000 in
2 state net operating loss carry-forward and over
3 \$200,000 in federal net operating loss carry-forward,
4 is that correct?

5 A. (St. Cyr) Yes.

6 Q. As of December 2011, the last filed tax return is the
7 2009 tax return, is that correct?

8 A. (St. Cyr) That's correct.

9 Q. That is before the 2007, 2008, and 2009 tax returns
10 have been amended, is that correct?

11 A. (St. Cyr) That's correct.

12 Q. Around this time, in December, the Company filed a
13 response -- responsive testimony in the rate case to
14 the Staff and the OCA's position about income tax
15 expense, is that correct?

16 A. (St. Cyr) Yes.

17 Q. And, in that -- and, at that time, in December of 2011,
18 based on the 2009 tax return, the Company had enough
19 net operating loss carry-forward to cover its taxes
20 going forward in the next year, is that correct?

21 A. (St. Cyr) That's correct.

22 Q. So, it was -- so, at that point in time, even though
23 the Company estimated a certain amount of tax liability
24 for 2010, the net operating loss carry-forwards would

1 cover that at that time?

2 A. (St. Cyr) I think that's true, yes.

3 Q. In the responsive testimony in 10-141 that the Company
4 filed in December of 2011, the Company expected at that
5 time that they would owe income taxes, estimated that
6 it would owe approximately \$68,000 in income tax, is
7 that correct?

8 A. (St. Cyr) Yes. That's correct.

9 Q. The 2010 tax return was filed after the amendments to
10 2007, 2008, and 2009, correct?

11 A. (St. Cyr) That's correct.

12 MS. HOLLENBERG: And, one moment please.

13 Thank you.

14 CHAIRMAN IGNATIUS: Take your time.

15 BY MS. HOLLENBERG:

16 Q. You -- the Company provided, in response to discovery,
17 copies of its 2007, 2008, and 2009 amended tax returns,
18 correct?

19 A. (St. Cyr) Yes.

20 Q. As well as providing copies of the original 2010 and
21 2011 tax returns, correct?

22 A. (St. Cyr) Correct.

23 Q. And, those were -- that has been marked as "Lakes
24 Region Water Exhibit 4" in this docket?

1 A. (St. Cyr) That's correct.

2 Q. I want to ask you about, you made a statement in your
3 testimony about how, for the 2010 return, you had
4 incorporated the changes made in the amendments for
5 2007, 2008, and 2009. Do you recall that? I can
6 direct you to your testimony, too.

7 A. (St. Cyr) I recall that.

8 Q. One moment please. So, I was referring to your
9 testimony at Page 4, Lines 8 to 9. I apologize. I'll
10 be right with you. And, if you could please turn, I'd
11 like to actually look at two different pages, I'd like
12 to look at Page 88, which is in LRW Exhibit 4, the
13 Company's response to Staff 1-1, and it's Schedule L
14 for the -- for the amended 2009 tax return. And, once
15 you get there, let me know and I'll give you another
16 page to look at.

17 CMSR. HARRINGTON: Excuse me, that was
18 Page 88?

19 MS. HOLLENBERG: Yes. Exhibit 4,
20 Page 88.

21 **BY THE WITNESS:**

22 A. (St. Cyr) I have Page 88 in front of me.

23 BY MS. HOLLENBERG:

24 Q. Okay. And, then, if you could go to Staff 1-2, and

1 look at Page 6, which is Schedule L for the 2010 return
2 please. If I could have you look on both of those
3 pages at Line Number 18, which is "other current
4 liabilities".

5 A. (St. Cyr) I'm having trouble finding the second page.
6 If you just could help me?

7 Q. Sure. It's response to Staff 1-2.

8 A. (St. Cyr) 1-2.

9 Q. And, it's Page 6. And, it's Page 6, which is the
10 Schedule L from the 2010 tax return.

11 CHAIRMAN IGNATIUS: Is that in --

12 WITNESS ST. CYR: Okay. And, Schedule L
13 being the balance sheet.

14 MS. HOLLENBERG: It's in Exhibit 4 as
15 well. Both of the pages are in Exhibit 4. One is a part
16 of Staff 1-1, the Page 88, and one is a part of Staff 1-2,
17 which is the Page 6. Do you have those?

18 WITNESS ST. CYR: I believe I have that,
19 yes.

20 MS. HOLLENBERG: Okay.

21 BY MS. HOLLENBERG:

22 Q. And, if we could look at Line 18, please, of the 2009
23 amended return, which is the Page 88. And, you will
24 see there that the ending balance there is

1 "\$4,400.52" [\$4,452?]. Do you see that?

2 A. (St. Cyr) No.

3 Q. In the column, in the last column, there's a
4 handwritten notation. It says "\$4,452"?

5 A. (St. Cyr) The Page 88 that I'm looking for, I do not
6 believe is the same page you're looking at. If you
7 wouldn't mind just approaching and --

8 Q. Sure.

9 A. (St. Cyr) -- let me see what you're looking at.

10 Q. Sure. And, to be clear, I didn't understand, I think
11 that the copies of these that went out may have been
12 Bates stamped. And, so, there are several -- there are
13 a couple of different page numbers. And, the 88 page
14 number that I'm referring is handwritten. Okay?

15 MR. RICHARDSON: And, I apologize. I
16 realized at about 9:00 last night that all of the
17 responses, which were Bates stamped electronically, for
18 some reason, in the middle, the page numbers are cut off.
19 Once it gets up to about Page 100, you can see half of
20 them there. I have no idea what happened.

21 CHAIRMAN IGNATIUS: That's okay. We'll
22 figure it out.

23 WITNESS ST. CYR: I'm on Schedule 11
24 [Schedule L,] the balance sheet for 2009, according to the

1 amended tax return.

2 BY MS. HOLLENBERG:

3 Q. Thank you. And, on Line 18, do you see the number on
4 the far right column that is "\$4,452"?

5 A. (St. Cyr) I do see that number, yes.

6 Q. And, if you could look at the Page 6 of 2-1, Staff 2-1
7 in Exhibit 4. And, look at that line. So, that's the
8 ending balance for 2009 you just talked about, the
9 4,452. And, if you could look at the beginning balance
10 in Line 18 on the 2010 tax return. Do you see that it
11 says "80,910"?

12 A. (St. Cyr) I do see that, yes.

13 Q. Why would that be different?

14 A. (St. Cyr) Offhand, I don't know. That's something that
15 we could certainly provide. I'm looking at the total
16 for the balance sheet is the same. So, offhand, I
17 don't know why that particular beginning balance would
18 be different than the ending balance. We could
19 certainly provide that, if that's necessary.

20 MS. HOLLENBERG: Okay. I guess at this
21 point there are a few other discrepancies that I would
22 like to identify with the witness, and then perhaps the
23 Company could take a record request to respond, if
24 Mr. Roberge is not able to do that today.

1 CHAIRMAN IGNATIUS: All right. And,
2 your final point about Mr. Roberge, he is here, and so
3 perhaps he can explain that at another point.

4 MR. ROBERGE: Yes.

5 MS. HOLLENBERG: Not yet. Thank you.

6 MR. ROBERGE: Okay.

7 MS. HOLLENBERG: Thank you so much.

8 CHAIRMAN IGNATIUS: But, if you do have
9 some others along those lines, make sure that,
10 Mr. Roberge, you're keeping track of what the issues are.
11 And, then, when it's appropriate, we'll get you to go
12 through them as --

13 MS. HOLLENBERG: That will be great.
14 Thank you.

15 BY MS. HOLLENBERG:

16 Q. So, we talked about Line 18. I'd like to talk about
17 Line 19 next, "Loans from shareholders". In the
18 amended 2009 return, this is zero. And, in the 2010,
19 this is Line 19, 2010, it's -- the beginning balance is
20 "\$190,855". Do you see that?

21 A. (St. Cyr) I do.

22 Q. And, again, no understanding at this point in time why
23 there would be a discrepancy?

24 A. (St. Cyr) Not specifically, no.

1 Q. Thank you. And, Line 23 please, "additional paid-in
2 capital". In the amended, in Schedule L of the amended
3 2009 tax return, that amount is reflected as
4 "\$1,063,556", correct?

5 A. (St. Cyr) Correct.

6 Q. And, in the beginning balance of 2010, that is
7 reflected as "\$942,080", correct?

8 A. (St. Cyr) That's correct. In fact, as I look at all
9 three of those amounts, it looks like the amended
10 amounts on the 2009 tax returns weren't carried forward
11 to the beginning balances of the 2010. It looks like
12 the reclassification.

13 Q. Okay. And, if you could also, I guess I won't do it, I
14 won't specifically go through the last three, but I
15 would ask you to also look at Line 25, and, in Schedule
16 M, Lines 8 and Lines 1.

17 A. (St. Cyr) Okay. We can do that. Although, I guess I
18 would point out, the fact that the beginning balances
19 may be different wouldn't change, you know, what the
20 tax would be on this return or the utilization of any
21 NOLs or Section 179 deductions.

22 Q. Okay. If the Company could, though, at some point
23 provide an explanation of why they're not different and
24 what impact they would have on the differences between

1 the two, and the fact that they're not -- that the 2009
2 information has not been incorporated into the 2010, if
3 we could have an explanation of what impact that has on
4 the future tax years. Thank you.

5 CHAIRMAN IGNATIUS: We won't reserve a
6 record request.

7 MS. HOLLENBERG: Okay.

8 CHAIRMAN IGNATIUS: Let's see if
9 Mr. Roberge can address that later. And, if not, we'll
10 see if we need anything further.

11 MS. HOLLENBERG: Thank you.

12 MR. RICHARDSON: I thought the witness
13 answered the question of what the impact would be. Did I
14 misunderstand or --

15 CHAIRMAN IGNATIUS: He did speak to
16 that. I think Mr. Roberge also, I assume you were going
17 to follow up with him, as the one who prepares it, on
18 whether there's any impact of the difference. But, you're
19 correct, Mr. St. Cyr said it wouldn't make any difference.

20 MS. HOLLENBERG: I think what he said
21 was, and the record will speak for itself, but was
22 something to the effect that "it wouldn't impact the net
23 operating loss carry-forward or the Section 179", how
24 those were handled. But I was asking if there were other

1 -- I was wondering if there were other impacts. And, I
2 can address that with Mr. Roberge, if he does explain
3 that. Thank you.

4 CHAIRMAN IGNATIUS: Thank you.

5 BY MS. HOLLENBERG:

6 Q. Mr. St. Cyr and Mr. Mason --

7 MS. HOLLENBERG: One moment please.

8 BY MS. HOLLENBERG:

9 Q. I guess I'll ask you this, but I'll ask Mr. Roberge.
10 Is it your sense, even though, I mean, you have yet to
11 look into this really thoroughly, but would there be
12 amendments to 2009 -- '10 and 2011 tax returns if -- as
13 a result of these discrepancies?

14 A. (St. Cyr) Assuming that the ending balances are
15 correct, I would say "no". There would be no material
16 impact on the return, and it wouldn't require -- and it
17 wouldn't require us to file an amendment, no.

18 Q. Assuming the end balances are the same?

19 A. (St. Cyr) That's correct.

20 Q. Thank you. Mr. St. Cyr or Mr. Mason, is it an accurate
21 statement to say that the Company used earnings in 2011
22 and 2012 to pay for capital investments?

23 A. (Mason) Yes.

24 Q. And, is it a fair characterization of the Company that

1 -- the Company's position that it was because of this
2 use of earnings for capital investment that the Company
3 didn't have money to pay its taxes, its estimated
4 taxes?

5 A. (Mason) The taxes were never in rates. So, I don't
6 think that -- we chose to take and reinvest the money
7 that we earned into our plant, which is what all small
8 utilities do, as far as I know.

9 Q. You chose to make investment in capital -- you chose to
10 make investment in capital, as opposed to paying the
11 estimated taxes, is that correct?

12 A. (Mason) Well, we have to, you know, we have to be
13 compliant with the DES. So, we have to reinvest money
14 that -- and where that comes a lot of times is from the
15 earnings of the Company. Whether we pay taxes or not,
16 there was no taxes in the rates to ever pay the taxes.

17 Q. You had --

18 A. (St. Cyr) Just to add to that, I would just say, at
19 that time, you know, we were still arguing for an
20 increase in rates to include taxes. So, you know, we
21 knew that there was no provision in rates for taxes,
22 and we were still arguing for that to be included.
23 And, had we been successful, we then might have been
24 able to use that additional money to pay the 2000 --

1 whatever the tax was.

2 Q. I'm not judging how you used your money. I'm just
3 looking for confirmation from you that you used your
4 earnings to make capital investment during 2011 and
5 2012, right?

6 A. (St. Cyr) Yes.

7 Q. And, you didn't make tax payments in 2012, correct?

8 A. (St. Cyr) That's correct.

9 Q. Okay. You make -- there's a question, Mr. Mason, in
10 your testimony, if you turn to Page 9 please.

11 A. (Mason) Yes.

12 Q. At Line 21, the question states "Why didn't the Company
13 use earnings from its allowed rate of return to make
14 estimated tax payments?" And, your response is "The
15 Company has consistently earned well below a sufficient
16 return", is that correct?

17 A. (Mason) Yes.

18 Q. In your testimony, on Page 10, Lines 3 to 9, do you
19 provide some information about the Company's rate of
20 return for 2007 through 2010, is that correct?

21 A. (Mason) Right. Yes.

22 Q. And, you would agree that the Company earned more than
23 its authorized rate of return -- return on equity in
24 2011, correct?

1 A. (Mason) Yes. Hang on just a second. In 2011, it would
2 be "yes".

3 Q. Okay. And, your return -- your authorized return on
4 equity is what?

5 A. (Mason) It's 8.425.

6 Q. Is that the return on equity or the rate of return?

7 A. (Mason) Oh, I'm sorry, 9.75 is the return on equity.

8 Q. Okay. Thank you. And, if I could just approach, or
9 ask you to look at Exhibit Staff -- or, Lakes Region
10 Exhibit 4. And, if you could look at the Company's
11 response to Staff 1-3 please.

12 CHAIRMAN IGNATIUS: Is that Page 161, I
13 think?

14 MS. HOLLENBERG: I don't actually have
15 a --

16 CHAIRMAN IGNATIUS: It would be Tab 3 in
17 the packet?

18 MS. HOLLENBERG: Yes.

19 CHAIRMAN IGNATIUS: Thank you.

20 MS. HOLLENBERG: Thank you.

21 BY MS. HOLLENBERG:

22 Q. And, this question, Staff 1-3, asks for the Company to
23 provide its actual rate of return for 2012. And,
24 Attachment 1-3 provides that calculation. And, if you

1 look at the fourth and third line from the bottom, the
2 actual rate of return is listed as "8.717", and your
3 authorized rate of return is "8.425", correct?

4 A. (Mason) Yes.

5 Q. So, and I apologize, I was talking about return on
6 equity before. But you would agree that, in both 2011
7 and 2012, the Company earned more than its authorized
8 rate of return?

9 A. (Mason) In raw data. And, what happened was --

10 Q. Excuse me, just "yes" or "no", and then I'm happy for
11 you to explain.

12 A. (Mason) Okay. Yes, we did.

13 Q. Thank you.

14 A. (Mason) And, the reasoning is that we had rate
15 recoupment that increased the money that came in in
16 2012 by about \$45,000. That impacted the amount of
17 money in the rate of return, because this is just raw
18 data. So, the actuality is, we did not. You know, if
19 you have all that data, it's not quite the same. And,
20 you know, yes, that's my answer.

21 Q. Can you tell me, during this period of time when you
22 had earnings above your authorized rate of return, and
23 you were using those earnings to make capital
24 investments, why did the Company not seek outside

1 financing, either debt or equity? Or, did the Company,
2 I guess is the better question?

3 A. (Mason) No, we didn't.

4 Q. Okay. And, why is that?

5 A. (Mason) We -- Well, equity, definitely we didn't. As
6 far as the banks, we have talked to them about
7 refinancing some of the notes. But, again, they're
8 pretty hard to -- they don't consider us a great risk.
9 So, even the bank that holds the notes today wasn't
10 really interested in rewriting them.

11 Q. When did you speak with the banks and which banks did
12 you speak with?

13 A. (Mason) I talked with CoBank, I've talked with the bank
14 that has the notes now, which is TD BankNorth -- Bank,
15 TD Bank. And, those are the two that I've contacted.

16 Q. Okay. And, when about was that?

17 A. (Mason) TD Bank, I mean, I talk to all the time. We've
18 been talking about this for, you know, for a year.
19 CoBank I recently contacted, and we now have a packet.
20 We haven't actually gotten anything from them yet. We
21 started the process of talking to them.

22 Q. Did you have any investments, capital investments that
23 were required by DES that you weren't able to
24 accomplish because you didn't have access to financing?

1 A. (Mason) No.

2 Q. And, what is the Company's status with DES at this
3 point in time?

4 A. (Mason) Jake would probably know better than I would.

5 Q. Okay. Let's -- yes, thank you.

6 A. (Dawson) At this point in time, it's very good. The
7 only outstanding LOD that we have, which is
8 semi-corrected, is the Mount Roberts, which I think
9 everybody in this room is aware of. Other than that,
10 there hasn't been any issues. And, the Company's
11 performance with the DES has improved significantly
12 over the past couple years.

13 Q. Speaking of Mount Roberts, thank you for that answer,
14 you talk, Mr. Mason, on Page 3 of your testimony, about
15 receiving permission from DES in July of 2012 for a
16 small production well on the Mount Roberts property.

17 A. (Mason) Correct.

18 Q. And, you talk about the possibility or you reference
19 the possibility of needing a large production well,
20 depending on what Suissevale decides, in terms of its
21 continued agreement, service agreement with the
22 Company, is that correct?

23 A. (Mason) Yes.

24 Q. And, could you tell me what the status of those

1 discussions are please?

2 A. (Mason) The status, Doug Patch --

3 MR. RICHARDSON: Hold on. By agreement,
4 discussions with Suissevale that the Company's had since
5 the last rate case are confidential. I have no objection
6 to him answering the question, but I think Suissevale is
7 here and ought to be allowed to weigh in on that as well.
8 I think, if the Company is going to answer anything about
9 what the discussions are, that they, in order to live up
10 -- I mean, they have obligated themselves to do that and
11 their water supply agreement requires that discussions be
12 confidential. So, I'm a little nervous about volunteering
13 the information.

14 CHAIRMAN IGNATIUS: And, I appreciate
15 your stopping it before we get down that road. I had a
16 question even before confidentiality, as to the relevance
17 of this inquiry?

18 MS. HOLLENBERG: Yes. I can strike
19 that. I was, because the Company had mentioned it, and
20 because it has a possibility of impacting the Company's
21 financial position, you know, I was interested in
22 inquiring about the status of where we're at with that.
23 But I imagine it's something that we'll cover in the rate
24 case. So, I can let it go now.

1 CHAIRMAN IGNATIUS: That would be my
2 guess. You might ask if the Mount Roberts situation is an
3 element of what the Company is claiming to be causing
4 emergency conditions. And, if the answer is "no", then I
5 think it's -- we move on.

6 MS. HOLLENBERG: Okay. I think I'll
7 just withdraw the question. Because, if I'm correct, if
8 the Mount Roberts property situation does not have
9 anything --

10 WITNESS MASON: No.

11 MS. HOLLENBERG: It won't impact your
12 emergency rate request?

13 WITNESS MASON: No.

14 MS. HOLLENBERG: Okay. Thank you.
15 Thanks.

16 BY MS. HOLLENBERG:

17 Q. Mr. Mason, could you please turn to Page 12 of your
18 testimony.

19 A. (Mason) Yes.

20 Q. Lines 10 to 12, you reference "Recovery of the above",
21 meaning the 2012 unbilled permanent rate recoupment and
22 rate case expenses, --

23 A. (Mason) Yes.

24 Q. -- "is expected to reduce the Company's outstanding

1 payables from \$642,350.49 as of December 11, 2012 to
2 \$449,646.52, which is reduction of \$57,169.13." We get
3 a different difference. Can you tell us how you derive
4 your \$57,000 difference, between those two numbers?

5 A. (Mason) Hmm. I'm not really sure.

6 Q. Okay. Perhaps that's something that they can --

7 A. (Mason) Yes, we can also figure that out.

8 Q. -- get back to us.

9 A. (Mason) I'm sorry.

10 CHAIRMAN IGNATIUS: Yes. I guess I'd
11 want to know, is it just a typing goof, a math goof, and
12 that the important part is not what the reduction is, but
13 what the base numbers are. If those, the two numbers in
14 Line 11, if those are accurate, we can all do the math and
15 figure out what the number in Line 12 should be. But, if
16 we don't know if the two figures in Line 11 are accurate,
17 then that makes a big difference.

18 MS. HOLLENBERG: And, Ms. Brown has been
19 very helpful to me in pointing out that, in your
20 Attachment 4, Mr. Mason, at Page 27, it appears that the
21 real difference between the two numbers is stated there,
22 it's approximately -- it's "\$192,703.97". And, those two
23 numbers, the beginning number and the end number,
24 Commissioner Ignatius, are also reflected there on Page

[WITNESS PANEL: Mason|Dawson|St. Cyr]

1 27, in that first -- fifth column. The Company can
2 confirm that, if that would be okay.

3 CHAIRMAN IGNATIUS: Thank you.

4 MS. HOLLENBERG: Thank you so much. I'm
5 almost done. Thank you.

6 CHAIRMAN IGNATIUS: Okay. I think
7 they're still taking a look at that.

8 MS. HOLLENBERG: Okay.

9 CHAIRMAN IGNATIUS: So, before we move
10 on. Mr. Roberge, the court reporter isn't getting this,
11 I'm afraid.

12 WITNESS MASON: Can we put that on our
13 questions list --

14 CHAIRMAN IGNATIUS: Sure.

15 WITNESS MASON: -- to answer?

16 CHAIRMAN IGNATIUS: But are we in
17 agreement that the figures in Line 11 are accurate, and
18 it's just a math goof or a typing goof in Line 12? I'm
19 getting a nod, a "yes" from Mr. Roberge.

20 WITNESS MASON: Yes.

21 CHAIRMAN IGNATIUS: So, let's take a
22 look, just to confirm that. If need be, if there's
23 anything different, unless we hear otherwise, we'll assume
24 that the numbers in Line 11 are accurate. And, we're less

{DW 13-041} [RE: Emergency Rates] {03-06-13/Day 1}

1 concerned about the 57,000 number, that just looks like a
2 mistake.

3 MS. HOLLENBERG: Yes. Thank you.

4 BY MS. HOLLENBERG:

5 Q. Mr. Mason, if I could have you look at Exhibit 2A
6 please, of your testimony, at Bates Page 18.

7 A. (Mason) Okay.

8 Q. The middle column, at the top, is titled "Restated
9 12/31/2006". Can you tell me what the words -- what's
10 meant by the word "restated"?

11 A. (Mason) Sounds like a "Steve" question.

12 A. (St. Cyr) Yes. I think that probably refers to the
13 amended amounts that we adjusted.

14 Q. Okay. Thank you. And, also, again on Exhibit 2A --

15 A. (St. Cyr) I'm sorry.

16 Q. Sure.

17 A. (St. Cyr) This is 2006, would have been before the
18 amendments. My recollection is that the Company filed
19 its annual report, and there, upon review by Staff,
20 there may have been some questions raised, and the
21 Company responded. And, as a result of that process,
22 the Company then made some adjustments and restated its
23 annual report for that year. It's exactly what would
24 have taken place.

1 Q. Okay. So, it's a restatement for the PUC?

2 A. (St. Cyr) That's correct.

3 Q. Okay. Thank you. Also, in that same exhibit, Pages 18
4 to 19, the amount on Page 18, under 12/31 -- under the
5 column "12/31/2007", do not agree with the amount on
6 Page 19, under "12/31/2007". Could you explain why
7 these don't agree and if they should agree please?

8 A. (St. Cyr) They should agree. And, I don't have an
9 explanation. It looks like there are some minor
10 differences in accumulated depreciation.

11 Q. At this time, you don't have an explanation for that?

12 A. (St. Cyr) No, I don't.

13 Q. Okay. Thank you. Mr. St. Cyr, in your testimony, at
14 Page 3, Lines 4 to 9, please. Do you see that it says
15 "Commencing in 2008 the Company recorded the pension
16 and health expenses for the Masons as follows:" And,
17 then, there's a table showing amounts for 2008 through
18 2010. Do these amounts in this table include both
19 pension and health insurance or health expenses?

20 A. (St. Cyr) Yes.

21 Q. I'm going to show you -- I'd like to have you look at
22 testimony -- oh, you have that now, okay -- filed by
23 Staff in the rate case, DW 10-141. And, do you have
24 that? I'll give that to you. And, if I could ask you

1 to turn to Page 8, Lines 8 to 11.

2 A. (St. Cyr) Did you say "Page 8"?

3 Q. Yes.

4 A. (St. Cyr) Lines 8 to 11?

5 Q. Yes. And, do you see there, as of December 31, 2009,
6 the balance of this shareholder loan was "\$190,855"?

7 A. (St. Cyr) I do see that, yes.

8 Q. Okay. And, the shareholder loan we're talking about is
9 the loan -- what loan is that?

10 A. (St. Cyr) This would have been an accumulation of
11 amounts that the Masons had provided to the Company,
12 you know, up to December 31, 2009.

13 Q. Okay. And, then, it says "However, Staff has reduced
14 this amount by \$56,829, to \$134,026, for pension and
15 health insurance payments paid by the Company to its
16 shareholders during the test year." Did I read that
17 correctly?

18 A. (St. Cyr) Yes, you did.

19 Q. Could you turn to Exhibit 4, Staff 1-1, Page 83. This
20 is -- whoops. Just to make sure we're on the same
21 page, the top of the page says "Part II Explanation of
22 Changes to Items in Part I", is that correct?

23 CHAIRMAN IGNATIUS: I'm sorry. Ours are
24 copied in a way where the top is blocked, it didn't come

1 through. So, are you on Page 82 --

2 MS. HOLLENBERG: It's 83 --

3 CHAIRMAN IGNATIUS: I'm sorry.

4 MS. HOLLENBERG: -- of Staff 1-1. And,
5 it looks like --

6 CHAIRMAN IGNATIUS: A handwritten page?

7 MS. HOLLENBERG: Yes.

8 CHAIRMAN IGNATIUS: All right.

9 MS. HOLLENBERG: Yes.

10 CMSR. HARRINGTON: First, does it open
11 "The Company negotiated"?

12 MS. HOLLENBERG: Yes, sir. Yes.

13 CMSR. HARRINGTON: Thank you.

14 BY MS. HOLLENBERG:

15 Q. And, if you look in the summary of the changes to the
16 2009 federal income tax return, and I believe that
17 that's the middle column. And, it's the third entry in
18 that column, "Page 1-Line 23 Pension". And, it states
19 that the amount of the change is "\$53,389". Why is
20 that number different from the number that Staff
21 reduced the amount to? So, Staff reduced the amount to
22 \$56,829, and you changed it in the return to or the
23 Company change it in the return to "\$53,389"?

24 A. (St. Cyr) Offhand, I don't know what that difference

1 is. I would say, in the big picture, they're
2 substantially the same number.

3 MS. HOLLENBERG: One moment please.

4 BY MS. HOLLENBERG:

5 Q. I guess the point that I'm trying to ask you about is
6 that you have one number in testimony, which is on Page
7 3 of your testimony, which is the \$52,000 number. And,
8 then, the tax returns, at Page 83 of Staff 1-1, which
9 is in Exhibit 4, had a \$53,000 number. And, the
10 testimony in 10-141 from Mr. Laflamme had a \$56,000
11 number. So, I'm just trying to figure out why we have
12 three different numbers?

13 A. (St. Cyr) And, I can't really speak to the number
14 that's in Mr. Laflamme's testimony, although I have no
15 reason to think that that isn't based on something that
16 he had probably provided by the Company. And, then,
17 the amounts that are different on -- I would assume the
18 amount identified on the tax return, it indicates on
19 that specific line item "Pension", "Line 23 Pension
20 53,386" [53,389?]. So, we were eliminating the
21 pension. It's possible that there might be a minor
22 difference in some of the lines that wasn't taken into
23 consideration. And, again, I would say, in the big
24 picture, they're all the same number.

1 Q. Okay. But you don't know why they're different?

2 A. (St. Cyr) I --

3 Q. "Yes" or "no" please. Thank you.

4 A. (St. Cyr) No. I don't know why they're different.

5 Q. Thank you. Mr. St. Cyr, if you could turn to Page 3 of
6 your testimony again, at Lines 12 to 15. And, once
7 you're there, if you'd let me know please. Thank you.

8 CMSR. HARRINGTON: What was the page?

9 MS. HOLLENBERG: Page 3, Line 12 to 15

10 of Mr. St. Cyr's testimony.

11 WITNESS ST. CYR: I'm there, yes.

12 MS. HOLLENBERG: Thank you.

13 BY MS. HOLLENBERG:

14 Q. Do you agree that it states "While the Company recorded
15 the pension, health and interest expenses on the book
16 and reported such information on its internal financial
17 statements, PUC Annual Report and tax returns, the
18 expenses were not reflected in the Company's then
19 existing rates." Did I read that correctly?

20 A. (St. Cyr) You did.

21 Q. Could you please explain what is meant by "internal
22 financial statements"?

23 A. (St. Cyr) This is what the Company would generate
24 in-house, you know, from its accounting system.

1 Q. Does the Company keep more than one set of internal
2 financial statements?

3 A. (St. Cyr) No. It would only vary by the date of the
4 financial statements.

5 Q. And, do the Company's internal financial statements
6 differ from the statements that it files with
7 regulatory entities?

8 A. (St. Cyr) No. It would be -- it would form the basis
9 of what the annual report and the tax returns are based
10 on.

11 Q. Thank you. Mr. St. Cyr, you responded to Staff 1-5 in
12 this docket, which is found within Exhibit 4. If you
13 would turn to Attachment 1-5a please.

14 CHAIRMAN IGNATIUS: And, is that, I know
15 you don't have a numbered copy, but I believe that would
16 be Page 166?

17 MR. RICHARDSON: Yes.

18 WITNESS ST. CYR: That's the page I
19 have.

20 MS. HOLLENBERG: Thank you.

21 BY MS. HOLLENBERG:

22 Q. And, what I would like to ask you about -- okay, one
23 moment please. I actually have the wrong reference.
24 Sorry. Okay. I apologize. Could you look at Staff

1 1-4 please, and the attachment to that. A little more
2 than halfway down we have a section entitled "Financing
3 Activities".

4 A. (St. Cyr) Yes.

5 Q. And, the third item from the bottom is a decrease in
6 additional paid-in capital in 2012 of "\$123,356", do
7 you see that?

8 A. (St. Cyr) I do.

9 Q. Could you explain what that money was used for please.

10 A. (St. Cyr) This is money that pertains to the 2011 and
11 2012 that went to the Masons as a return on capital.

12 Q. And, when was that paid to the Masons?

13 A. (St. Cyr) It would have been paid throughout 2011 and
14 '12.

15 Q. And, does the Company have documentation related to
16 those payments to the Masons?

17 A. (St. Cyr) It would, yes.

18 MS. HOLLENBERG: I would ask that that
19 -- that the Company be directed to provide information
20 that it has related to that paid-in capital reduction
21 please?

22 CHAIRMAN IGNATIUS: Let's find out what
23 that -- what it is you're really asking for. Whether it's
24 just a portion of business records, with certain lines

1 isolated as this one is, or whether it's a particular
2 document that's more explicit?

3 MS. HOLLENBERG: I guess, off the top of
4 my head, you know, it would be helpful maybe to see if
5 there are minutes of a board meeting or shareholder
6 approval, some sort of documentation related to the
7 decision that was made to make this payment to the
8 shareholders.

9 CHAIRMAN IGNATIUS: All right. So, not
10 just an accounting entry, but actual sort of backup
11 statement explaining?

12 MS. HOLLENBERG: Yes.

13 CHAIRMAN IGNATIUS: Mr. Richardson, any
14 response?

15 MR. RICHARDSON: I don't know, you know,
16 if there is a board meeting or what minutes there are,
17 I've not reviewed them. We could certainly try to find
18 that information. It may be, if I understand, you know,
19 the line of questioning, it may be easier for the Company
20 to just provide a breakdown of what those payments are,
21 you know, from its accounting system. And, we could do
22 that fairly quickly. We might even be able to do it
23 today, but I'll turn to -- yes, we could do that today
24 during a break.

1 CHAIRMAN IGNATIUS: That sounds like
2 that's partially responsive, but not entirely. That it
3 would be the details on the accounting entries, but not
4 the -- I think you're looking for any specific
5 authorization or explanation for the --

6 MS. HOLLENBERG: Distribution.

7 CHAIRMAN IGNATIUS: -- payment at all.
8 I mean, I don't know if you've asked the witnesses if
9 they're aware of that to begin with?

10 MS. HOLLENBERG: Oh, I did ask a
11 question just that "were the records available?" And, Mr.
12 St. Cyr said he thought that there were, and that's the
13 only thing that I did ask. But I could be more specific
14 about it.

15 CHAIRMAN IGNATIUS: Yes. I mean, was
16 there a vote of the Board of Directors? Is he aware of
17 any of that sort of authorization?

18 BY MS. HOLLENBERG:

19 Q. And, I guess I would direct it to both Mr. Mason and
20 Mr. St. Cyr. Did the Board of Directors authorize
21 these payments to the shareholders?

22 A. (Mason) I'm sure they did, yes.

23 Q. Okay. Do you have minutes and any kind of records
24 related to that vote?

1 A. (Mason) Yes.

2 Q. Okay. And, would the Company be willing to provide
3 those to the parties?

4 A. (Mason) Yes.

5 Q. Okay. And, those distributions were made during -- Mr.
6 St. Cyr said they were made during 2011 and 2012. Were
7 there different decisions made by the Board to make
8 different distributions or was it a single decision
9 that was made to make distributions over a course of a
10 period of time? Does that make sense?

11 A. (Mason) Yes. Yes, I don't know the answer to that.

12 Q. Okay. You don't know if there were one or more votes
13 for the distributions?

14 A. (No verbal response).

15 Q. Did the Company decide at one point in time to
16 distribute a certain amount of money over a period of
17 time or did the Company make different decisions over
18 the period of time to distribute money?

19 A. (Mason) No, I'm sure it was just one decision.

20 Q. Okay. And, do you know what the basis of the decision
21 was?

22 A. (Mason) A certain amount of the equity coming back to
23 my mother, because of, you know, without the pension,
24 without anything, with my dad passing away, that she

1 needs to still survive.

2 Q. Thank you.

3 CHAIRMAN IGNATIUS: Should we reserve an
4 exhibit, it sounds like, if you're done with those
5 questions?

6 MS. HOLLENBERG: I have one other
7 question, but, yes.

8 CHAIRMAN IGNATIUS: Related to this?

9 MS. HOLLENBERG: Yes.

10 CHAIRMAN IGNATIUS: All right. Go
11 ahead.

12 BY MS. HOLLENBERG:

13 Q. Do you know if the payments are expected to continue or
14 have the payments been made?

15 A. (Mason) I believe they stopped back in Septemberish of
16 2012.

17 MS. HOLLENBERG: Thank you. Yes, if we
18 could reserve an exhibit number for the documents related
19 to the shareholders' vote and approval of these, this
20 distribution, whether or not it's one or more decisions
21 please.

22 CHAIRMAN IGNATIUS: All right. So, that
23 would -- let's reserve Exhibit Number 8 for that.

24 **(Exhibit 8 reserved)**

1 MS. HOLLENBERG: I just have a couple
2 more. One moment please. Excuse me for one moment
3 please.

4 (Short pause.)

5 MS. HOLLENBERG: I just had one last
6 question, I believe.

7 BY MS. HOLLENBERG:

8 Q. And, that is, since Mr. Mason, Senior's death, have
9 there been changes to the ownership of the Company?

10 A. (Mason) No. Just I'm sure it's all going to my mother,
11 in the legal aspect, yes.

12 Q. And, is it true that at this point the -- was the
13 ownership transferred to a trust?

14 A. (Mason) Yes.

15 Q. So, now, your mother isn't a direct owner, she's a
16 beneficiary of a trust that owns the interest in the
17 Company, is that correct?

18 A. (Mason) Well, the Trust, I'm not 100 percent sure of
19 this, but I believe the Trust has been around since
20 around the mid '90s.

21 Q. Okay. And, so, it's been in trust then for a number of
22 years, and that didn't change? It's continued to be in
23 a trust, but now she's the sole beneficiary, because
24 your dad --

1 A. (Mason) Correct.

2 Q. Okay. Thank you. Are there any other beneficiaries of
3 that Trust?

4 A. (Mason) No.

5 Q. And, who is the trustee?

6 A. (Mason) I don't know that information.

7 MS. HOLLENBERG: Okay. Just one more
8 minute. Oh, I did have one other question.

9 BY MS. HOLLENBERG:

10 Q. The Company referenced in its Petition, you know,
11 needing to stop continuing operating losses. And, if I
12 could ask you to look at Exhibit 4, which is the
13 responses to the data requests, and specifically if you
14 could look at Staff -- okay, if you could look at Staff
15 1-3. And, if you could, this is your 2012 preliminary
16 actual rate of return calculation. Could you show me
17 where there are operating losses --

18 CMSR. HARRINGTON: Excuse me, could you
19 give us the page you're talking about in Exhibit 4?

20 MS. HOLLENBERG: Sure. It's Page 161.

21 BY MS. HOLLENBERG:

22 Q. Could you -- the Company has made assertions that it
23 needs to "stop operating losses", "stop the bleeding",
24 "go forward", "make payments on its tax returns". Can

1 you show us where there are operating losses, that the
2 Company is experiencing operating losses according to
3 its actual rate of return calculation?

4 A. (St. Cyr) If you don't mind just pointing me to the
5 reference?

6 Q. Sure. I was asking --

7 A. (Mason) Yes.

8 Q. It's Page 161 of Exhibit 4, which is --

9 A. (St. Cyr) No, I'm talking about the reference to the
10 "operating losses".

11 Q. Oh, sure. If you could look at, on the Company's
12 Petition, at Page 4, in Paragraph 4 [10?]. And, if you
13 don't have a copy of that, I can provide it to you.

14 MR. RICHARDSON: I'm sorry, what exhibit
15 are we looking at now?

16 MS. HOLLENBERG: It's not an exhibit.
17 It's the Company's Petition. But, if you want, --

18 MR. RICHARDSON: Okay.

19 MS. HOLLENBERG: -- we can make it an
20 exhibit. I didn't think that I --

21 CHAIRMAN IGNATIUS: It's in the file.
22 We don't need to make it an exhibit.

23 MS. HOLLENBERG: Okay.

24 CHAIRMAN IGNATIUS: And, I think the

1 page number is actually 162, which is the back, the
2 response to the Question 1-3.

3 MS. HOLLENBERG: Just one moment please.

4 BY MS. HOLLENBERG:

5 Q. It's actually -- so, the Petition, Page 4, Paragraph
6 10. And, if you could read the last sentence please.

7 A. (St. Cyr) "This requires that the Commission approve
8 emergency rates sufficient to pay the Company's
9 going-forward tax relief, plus interest on its
10 outstanding 2012 tax liability, in order to stop the
11 continuing operating losses of the Company."

12 Q. And, then, I had asked you to look or Mr. Mason to look
13 at Page 162 of Exhibit 4, and to direct us to where
14 those operating losses are reflected.

15 A. (St. Cyr) I think the reference in the Petition is more
16 a reference to the tax returns and the net operating
17 losses that existed. And, when he talks about
18 "stopping the continuing operating losses of the
19 Company", that's -- it's in reference to a period of
20 time in which the Company had net operating losses.

21 Q. So, the Company -- it's not the Company's assertion
22 today that the Company has net operating losses or
23 continuing net operating losses?

24 A. (St. Cyr) The Company is no longer, in 2000 -- the

1 Company no longer has net operating losses.

2 MS. HOLLENBERG: Okay. I have no other
3 questions. Thank you for your time this morning. Thank
4 you, gentlemen.

5 CHAIRMAN IGNATIUS: Thank you. We will
6 go to questioning by the Staff. It's almost noon. I
7 think my hope is that we go till 12:30 or so, and then
8 take a lunch break. Ms. Thunberg -- Ms. Brown.

9 MS. BROWN: And, thanks to OCA for
10 asking a lot of the questions that Staff was otherwise
11 going to ask. So, it will be fairly quick.

12 BY MS. BROWN:

13 Q. Let's see. Mr. St. Cyr, I'm going to pick on you, if
14 you don't mind. And, --

15 A. (St. Cyr) I do mind.

16 CHAIRMAN IGNATIUS: I don't think you're
17 allowed to mind.

18 BY MS. BROWN:

19 Q. Could I please have you turn to, it's Staff -- it's
20 Exhibit 4. And, it's the Company's response to Staff
21 1-3 that you had provided. And, I believe -- I don't
22 have a page numbered copy, but I believe it's been
23 referred to as Page 161.

24 A. (St. Cyr) 162 -- well, the response is 161 and the

1 calculation is 162.

2 Q. Thank you. Thank you. So, going back to the question
3 about the actual rate of return, the 8.717, I think
4 we've already established -- or, would you agree the
5 Company has overearned for 2012?

6 A. (St. Cyr) I guess I think of it in terms of the Company
7 realizing its authorized rate of return.

8 Q. Well, with this exhibit, Attachment 1-3, have you not
9 calculated that the Company earned an actual rate of
10 return higher than it's authorized?

11 A. (St. Cyr) I did calculate that, yes.

12 Q. Okay. Now, on the \$211,000 figure for net operating
13 income that's above the actual rate of return, is it
14 correct that that net operating income provides for
15 paying taxes on a proforma basis? Or, I'm sorry, if I
16 could strike that question and rephrase it. This
17 \$211,000 figure, that's after, that's net operating
18 income after providing for paying taxes on a proforma
19 basis, correct?

20 A. (St. Cyr) That's correct.

21 Q. So, would you agree that this response to Staff 1-3
22 demonstrates that the rates are producing revenues
23 sufficient to cover the expected income taxes?

24 A. (St. Cyr) I guess if you wouldn't mind re-answering

1 that -- asking that question again please.

2 MS. BROWN: Can I just have the
3 stenographer reread the question. Is that convenient?

4 (Whereupon the court reporter read back
5 the last question asked.)

6 **BY THE WITNESS:**

7 A. (St. Cyr) I know that the rate that's in place doesn't
8 have the -- doesn't have a provision for the federal
9 and state taxes. So, I would say "no". The rate does
10 not -- isn't sufficient in order to cover the federal
11 and state taxes.

12 BY MS. BROWN:

13 Q. I believe, Mr. St. Cyr, the Petition requests emergency
14 rates to allow recovery of \$100,219 in estimated
15 federal and state income taxes incurred in 2012. I'm
16 reading from the Petition, Paragraph 1. Do you have
17 the Petition in front of you?

18 A. (St. Cyr) I do not have it in front of me.

19 Q. Well, I guess you -- I think you also have that figure
20 in your testimony. So, let me go to that page.

21 MS. BROWN: I've just been provided a
22 copy of the Petition. If I could just show it to the
23 witness?

24 CHAIRMAN IGNATIUS: Of course.

1 MS. BROWN: Thank you.

2 (Atty. Brown handing document to Witness
3 St. Cyr.)

4 BY MS. BROWN:

5 Q. So, Mr. St. Cyr, I'm just drawing your attention to
6 whether it accurately stated that the request in this
7 proceeding is for emergency rates to cover what's known
8 or estimated to be \$100,219 in federal and state income
9 taxes incurred in 2012?

10 A. (St. Cyr) That's correct.

11 Q. So, I'm going back to Discovery Response 1-3, and we
12 just discussed that the net operating income is
13 \$211,781, correct? That's the right number?

14 A. (St. Cyr) That's the right number.

15 Q. And, so, my question is, if you have net operating
16 income showing in excess of \$200,000, why can't the
17 Company pay 100,000 in 2012 income taxes?

18 A. (St. Cyr) Well, as I stated earlier, first of all, the
19 current rates don't include an estimate for federal and
20 state taxes. This 211,718 [\$211,781?] is what the
21 Company needs in order to pay principal and interest on
22 its loan, what it needs to pay return on capital, you
23 know, what it needs to pay investment in plant. That's
24 what this particular amount is used for.

1 Q. Well, let me approach it differently. Didn't the
2 Company pay health and pension expenses before its last
3 rate case without a line item in rates for those
4 specific expenses?

5 A. (St. Cyr) I guess, if you don't mind repeating the
6 question for me please. I'm sorry.

7 Q. If I ask it a different way, approaching this, when you
8 have revenues and what the Company pays out -- or pays
9 with those revenues, isn't this similar to a situation
10 where, if the Company had to pay health and pension
11 expenses before its last rate case, it paid those
12 expenses without having a specific line item for those
13 expense, correct?

14 A. (St. Cyr) Yes, if I can answer it this way. The
15 Company does have health insurance for its employees
16 reflected in rates.

17 Q. Are you finished before I move on?

18 A. (St. Cyr) I guess.

19 Q. Okay. I guess what I'm hearing you say then is, you
20 couldn't pay property -- or, income taxes out of this
21 \$211,781 figure, because you didn't have a line item
22 for income taxes in the rate case, is that correct?
23 When I say "you", I mean the Company.

24 A. (St. Cyr) I'm saying that the rate doesn't include

1 federal or state taxes. And, that the money that the
2 net operating income that's referred to in this exhibit
3 is designed to pay is essentially a return of -- a
4 return on the investments that the Company has made,
5 and that would include, you know, principal and
6 interest on the debt, and a return on capital to the
7 shareholders. That's what this amount is designed to
8 do in the rates that exist today.

9 Q. I understand the ratemaking philosophy and how you
10 determine what an appropriate income -- revenue
11 requirement should be. But I'm looking at this net
12 operating income on this schedule, knowing that that
13 money can go to certain expenses, whether they are a
14 separate line item in a rate case or not. Would you
15 agree that the \$200,000 could go to things that are
16 either line itemed in a rate case revenue requirement
17 or other things that aren't, such as like the felony
18 payment?

19 A. (St. Cyr) It could go to any of those and more. It can
20 go to, you know, investment in capital, which it did.
21 It can go to the principal and interest on the loan.
22 This money is essentially what's available after the
23 Company has paid its expenses, and it's what's
24 available, you know, to work with.

1 Q. So, going back to a question --

2 MR. RICHARDSON: Could I move to strike
3 the last comment about the "felony payment"? I just feel
4 that that is, you know, kind of throwing in things that
5 are not material to what's happening here. And, if there
6 were -- obviously, the Company was assessed a penalty. I
7 think it was back in 2007 or '08, or whenever that was,
8 but it's really got only marginal bearing on this case, to
9 the extent that it was finally paid off in 2012. And, I
10 just don't think that that's, you know, kind of
11 appropriate to insert it into the record in that way.

12 CHAIRMAN IGNATIUS: Ms. Brown.

13 MS. BROWN: I don't mean to -- or, Staff
14 doesn't mean to raise it to be inflammatory. It is a
15 below -- the felony fine payment was a below-the-line
16 expense that the Company did meet. Similarly, the pension
17 expense was not something that was included in the revenue
18 requirement, and the Company agreed to that. But pension
19 or, as in this case, paid-in capital is somehow being
20 paid. So, I'm not trying to raise the felony fine as
21 inflammatory. It's an example of something that has been
22 paid that hasn't been in rates.

23 CHAIRMAN IGNATIUS: I think the
24 explanation makes sense. I'm going to allow the question

1 or not strike the reference. But I think we do want to be
2 sure that that is the reason why any of that should be
3 raised, and that we're not talking about operation issues
4 today, we're not talking about any sort of behavior in the
5 past that may have given rise to that. That's long ago
6 addressed and now resolved. So, I won't strike it, but
7 let's move on.

8 MS. BROWN: Thank you.

9 BY MS. BROWN:

10 Q. Mr. St. Cyr, if the Company has a tax liability in
11 2012, does the IRS require it to make estimated
12 payments in 2013?

13 A. (St. Cyr) No. You asked, "if it had a tax liability
14 for 2012, is it required to make estimated payments in
15 2013 for the 2012 tax liability?"

16 MS. BROWN: I would like to defer to an
17 analyst to clarify that question.

18 (Atty. Brown conferring with Mr. Naylor
19 and/or Mr. Laflamme.)

20 MS. BROWN: Okay. My analyst thinks you
21 may have misunderstood the question. So, let me rephrase
22 the question.

23 BY MS. BROWN:

24 Q. When, this is about this company or it could be

1 companies in general, when you have a corporate tax
2 liability in any given year, IRS requires that company
3 to make estimated payments for the next year following
4 that. Would you agree? I can ask it a different way?

5 A. (St. Cyr) Actually, if you don't mind asking it a
6 different way.

7 Q. Because Lakes Region Water Company is expected to have
8 a 2012 tax liability, will the IRS require it to make
9 estimated payments toward its 2013 tax liability?

10 A. (St. Cyr) Yes. In fact, I would say the Company should
11 have been making estimated payments, once it realized
12 it had a tax liability in 2012, it should have been
13 making estimated payments during 2012 for that year.

14 Q. I'm not sure if we reserved a record request or if
15 we're going to get this after the break, a dollar
16 amount associated with penalties and interest for
17 making late payment of taxes. Mr. St. Cyr, do you
18 recall when the Company was going to produce that
19 information to us?

20 A. (St. Cyr) I believe I was asked if I knew what they
21 were, and I do not know what the penalties and interest
22 were. There was no request for that or a record
23 request set aside as I recall.

24 MS. HOLLENBERG: I don't recall asking

1 for that, but I don't oppose the Staff asking for that.
2 Thank you.

3 CHAIRMAN IGNATIUS: Well, I'd like to
4 know what exactly Staff is asking for, so we have clarity
5 on whether it's appropriate and that it's clear what needs
6 to be produced?

7 MS. BROWN: Madam Chairman, the
8 questions pertain to "what is the crisis?" "What is the
9 dollar amount of the crisis?" And, we have the \$100,000
10 estimated taxes, plus the tax on the revenue. So, it
11 brings it up to 173,634. But, if there's additional
12 interest and penalties that the Company also needs to pay,
13 that it believes should be in its emergency rate request,
14 I think we should have that clarified. Whether it's
15 through a record request or if they want to supplement the
16 Petition, I think it's important to get that information
17 somehow on the record.

18 CHAIRMAN IGNATIUS: Mr. Richardson.

19 MR. RICHARDSON: If I may, this goes
20 back to the issue at the beginning of the hearing, which I
21 think I managed to confuse everyone. So, I'm apologizing
22 for going back into it. But the way we've structured our
23 request is to essentially provide for the expected ongoing
24 tax liability that the Company is incurring today, based

1 on what we believe the numbers for 2012 show.

2 We're then proposing to reconcile 2012,
3 once we have the actual return filed. I mean, at this
4 point we could calculate what the interest would be on the
5 taxes, if and when we file the return, assuming the return
6 is exactly as it is now. We haven't reached the deadline
7 for filing the return, which I expect is going to happen
8 at the end of this month.

9 What I would suggest that we do, and
10 this goes to, I think, how I see the structure of this
11 case, is we're really asking for recovery of what the
12 Company's tax liability is going forward on an emergency
13 basis. And, then, either at the end of this case, or at
14 the end of the permanent -- as part of the permanent rate
15 case, resolving the 2012 issue. I don't think it makes a
16 lot of sense to put recovery of interest of a 2012 past
17 liability into an emergency request, when we're basically
18 going to have to figure out how much it is, how are we
19 going to recover it over time. I don't think that that's
20 something that we've asked for here. What is in Mr. St.
21 Cyr's schedules is just the going-forward tax liability to
22 prevent that liability from making the Company's financial
23 situation worse.

24 CHAIRMAN IGNATIUS: In the rate case

1 that Mr. St. Cyr said he expected to be filed perhaps in
2 May, or maybe Mr. Mason said, what's the test year going
3 to be?

4 MR. RICHARDSON: 2012.

5 CHAIRMAN IGNATIUS: In light of that,
6 Ms. Brown, is there a reason for developing information
7 about potential penalties and interest on the 2012 tax
8 obligation for today's proceeding?

9 MS. BROWN: I would say "yes". Only
10 because I still am not clear of this change from the
11 Petition, because Staff sees in the Petition that there is
12 a 2012 tax liability out there. And, in Paragraph 1, the
13 Company is looking for emergency rates to cover that, and
14 they propose a certain percent increase for rates,
15 customer rates to cover that. And, I understand from
16 Attorney Richardson that they also want the emergency
17 rates to cover the future 2013 expenses.

18 I think Staff still wants to have the
19 information on 2012 in the record, because, if those
20 payments are going to be coming due in 2013, and the rates
21 are to cover that, what's the sequencing of that payment,
22 assuming that the payment is part of this "crisis"
23 argument, and is the right relief sought? Is there a
24 clear nexus that the rate relief is going to be there for

1 the payments, the tax payments when they come due?

2 So, I have a few questions on 2012, not
3 very many. But, if I could continue with those questions,
4 and then move onto 2013?

5 CHAIRMAN IGNATIUS: Well, do we need to
6 first answer your request for a record request for
7 penalties and interest? I assume you're asking for what
8 the Company anticipates will be the penalties and interest
9 for 2012 tax obligations that won't be paid on time in
10 2013?

11 MS. BROWN: Correct. Correct. Because
12 I'm still -- Staff is still trying to see if the relief
13 requested is going to produce the revenues in time for the
14 payments of the taxes. Staff understands that the income
15 tax liability is the crisis that it's in for emergency
16 rates for. And, we're just trying to get a handle of
17 what's the exact amount of this tax liability? When is it
18 coming due? Are the payments from receipts from customer
19 rates going to cover it? Just trying to get a bigger
20 picture.

21 CHAIRMAN IGNATIUS: All right. Why
22 don't we go through those questions first. And, then, if
23 need be, we'll come back to a record request.
24 Mr. Richardson.

1 MR. RICHARDSON: If I may. We don't
2 have an objection to the record request in itself. What I
3 was concerned about is is that I don't want there to be a
4 misunderstanding about what we're requesting coming out of
5 this hearing today.

6 CHAIRMAN IGNATIUS: All right. Let's
7 let the witnesses go ahead and answer the questions. I'm
8 concerned that we're not making as much progress as we
9 should. So, let's go ahead and let's focus on what they
10 know, what they don't know. And, if there are things that
11 they're not able to answer that are relevant, we'll
12 reserve a record request. But let's try to avoid that as
13 much as possible and seek what we can from the witnesses.

14 MS. BROWN: Okay.

15 BY MS. BROWN:

16 Q. Mr. St. Cyr, I assume you will be involved in filing
17 for the rate case?

18 A. (St. Cyr) I assume so, too.

19 Q. Do you know at this point will the Company be
20 requesting recovery in rates for any of the penalties
21 and interest on the 2012 income taxes?

22 A. (St. Cyr) I don't know that.

23 Q. So, it's possible it may not request in rates recovery
24 of interest and penalties on the 2012 tax liability?

1 A. (St. Cyr) We just haven't had that discussion as it
2 pertains to what the Company intends to file or not
3 file.

4 Q. Okay. Mr. St. Cyr, and we've covered data response --
5 Data Request 1-3 and the Company's response with the
6 actual rate of return of 8.717. Do you recall that?

7 A. (St. Cyr) I do.

8 Q. You just testified that the Company will use a 2012
9 test year. So, my question to you is, if the Company
10 is earning above its authorized rate of return in 2012,
11 is 2012 a good test year?

12 A. (St. Cyr) I think partly what's driving the rate
13 increase is the addition of Mount Roberts. That's
14 probably the primary driver. We would adjust revenue
15 and expenses as, you know, as we are aware of what
16 those will be in 2013.

17 Q. Are Mount Roberts anticipated capital expenditures or
18 is this capital -- are these capital improvements that
19 have already been made?

20 A. (St. Cyr) This would be the Company's acquisition of
21 Mount Roberts, and the reflection of such acquisition
22 in -- onto the Company's books in plant and in rate
23 base.

24 Q. Has the acquisition happened or is it prospective?

1 A. (St. Cyr) It would be prospective.

2 Q. With respect to 2013 income taxes, Mr. St. Cyr, do you
3 know when those payments -- estimated payments will be
4 due?

5 A. (St. Cyr) Estimated payments for 2013 would be due
6 April 15th, June 15th, September 15th, and
7 December 15th.

8 Q. Were you involved in developing -- oh, yes, you were
9 involved in developing the proposed rates. Sorry. I
10 was going to ask if you were, but forgot that was in
11 your testimony. When recommending the proposed
12 emergency rates, did you factor in payments being due
13 on these particular months for the 2013 taxes?

14 A. (St. Cyr) The Company calculated an annual -- an
15 additional annual revenue requirement. So, depending
16 on when such a proposal would be approved, there is the
17 potential for money to be available during those dates.

18 Q. Okay. Understood. The Company looked at it on an
19 annual basis. Staff has a question about, does the
20 Company think it's going to have enough funds to pay
21 these tax payments in April, June, September, and
22 December?

23 A. (St. Cyr) As we sit today, the answer would be "no".

24 CHAIRMAN IGNATIUS: I'm sorry. I feel

1 like there was a question with one set of assumptions and
2 an answer with a different set of assumptions. So, before
3 we go on, and I probably -- maybe I just misunderstood,
4 was the question, "when you developed the proposed
5 increase for this Petition today, were you including in
6 those rates sufficient money to cover 2013 tax
7 obligations?" That's what I thought the question was.

8 MS. BROWN: And, I can't remember if I
9 asked it that way, and then simpler, of whether there
10 would be cash variable to make these payments regardless
11 -- I guess I'll just leave it at that.

12 CHAIRMAN IGNATIUS: If the Petition were
13 approved, is there -- would there be adequate funds
14 available to make 2013 tax obligations to meet those?
15 And, I thought your answer was "no, there wouldn't be."
16 So, something's not right here.

17 WITNESS ST. CYR: I think, as I tried to
18 explain earlier, I guess what I envision happening is,
19 once the Company files its tax return, it will have a tax
20 obligation to which it will be not able to pay. If the
21 Commission were to approve rates as the Company proposed,
22 that creates a stream of revenue that the Company will
23 have available to pay taxes. Now, at that point in time,
24 throughout the year, we will have the 2012 obligation that

1 we have to take care of and the ongoing 2013. Assuming
2 the 2013 were the same level of expenses as 2012, then
3 there would not be enough revenue. You know, we're
4 creating an annual amount of revenue to pay for an annual
5 amount of tax expense. And, we can't possibly pay for two
6 years out of that one year's worth of revenue stream.

7 CHAIRMAN IGNATIUS: Thank you.

8 BY MS. BROWN:

9 Q. Mr. St. Cyr, when I asked you about deadlines for
10 paying taxes, does that apply to just the federal or
11 does it also include the state?

12 A. (St. Cyr) The estimated tax deadlines would be the same
13 for state as they are for federal.

14 Q. Thank you. Earlier Staff, or OCA had covered this,
15 too, in a Staff data request, Staff had asked why or if
16 the Company had contacted the IRS to discuss payment of
17 the 2012 taxes, and I believe you testified that the
18 answer today was "no". Do you recall that?

19 A. (St. Cyr) I do recall that, yes.

20 Q. Could you please explain why?

21 A. (St. Cyr) I would say that's not really the norm. You
22 know, it's the Company's responsibility to file its tax
23 returns. You know, it does consult outside tax counsel
24 to do that. The onus is on the Company to make the

1 filing and to take a position. It would not be normal
2 for us to approach the IRS or the Department of Revenue
3 to ask a question. We would take a position, which we
4 did, and take an action. And, then, to the extent that
5 the federal or state authorities believe that our
6 position is inconsistent with their own regulations,
7 then, you know, they would pursue that with the
8 company.

9 I can tell you, from my own experience,
10 that trying to deal with the Internal Revenue Service
11 on any tax matter is really difficult. And, I can also
12 tell you finding the right people within the right
13 regulatory agency is really difficult, too. This
14 company cannot walk into, say, the Manchester District
15 Office with a tax question related to its corporate
16 books. It's possible that an individual could walk
17 into a local office and get a response. But, where you
18 would get a response for a corporate tax matter would
19 certainly come from out-of-state, probably
20 out-of-region. And, even in those circumstances, the
21 Company would have to take the position and make its
22 case for whatever that position is. So, it would not
23 be normal for the Company or any company to contact the
24 IRS in a matter similar to what we're facing here.

1 Q. Thank you for that explanation. With respect to the
2 2013 taxes, and your statement that it will be
3 difficult or you won't be able to pay timely, is there
4 any way to contact, like, Department of Revenue and
5 work out a payment arrangement to delay any payments or
6 I guess accommodate a revenue stream or a cash stream
7 and ability to pay?

8 A. (St. Cyr) I mentioned earlier that the IRS has a form,
9 I can't recall the form offhand, but it's an
10 installment plan, an installment payment plan. And,
11 the Company would either file that with the filing or
12 shortly after. But it would definitely enter into some
13 kind of an arrangement with the Internal Revenue
14 Service to pay the 2012 tax.

15 Q. Could the Company have sought a installment payment
16 plan in lieu of filing for emergency rates?

17 A. (St. Cyr) I guess I wouldn't think that would be the
18 norm either. You know, the Company, you know, at this
19 point hasn't filed its tax returns. So, it wouldn't
20 make sense to file an installment plan ahead of time,
21 although I think I may be straying a little bit. I
22 would say "no" to the question about whether an
23 installment plan would be an alternative to emergency
24 rates.

1 Q. I realize I'm closing in on 12:30. Mr. Mason, I just
2 want to identify a typo that I believe is in your
3 testimony. And, I'd just like to have your concurrence
4 that this should be -- this word should be changed.
5 It's on Page 8. This came up in OCA's discussion with
6 you. If you could turn to Page 8, Line 20. In the
7 middle of that sentence, it says "persuasive". Did you
8 mean to put "pension" there?

9 A. (Mason) Yes.

10 Q. Thank you.

11 A. (Mason) Yes. Exactly.

12 Q. Mr. Mason, let's see, Page 13. On Line 7 on your
13 testimony, Page 13, you state "the Company is
14 effectively unable to seek debt or equity financing".
15 Do you see that?

16 A. (Mason) Yup. Yes.

17 Q. Can you please state why the Company is unable to get
18 equity?

19 A. (Mason) To get equity? Because there's none available
20 right now from anybody.

21 Q. Thank you. With respect to debt financing, have any of
22 the lenders you've spoken to in the past year cited the
23 fact that the Company did not have a tax expense in its
24 revenue requirement as the reason why it would deny

1 financing?

2 A. (Mason) Just a general balance sheet is what generates
3 what we hear. I'm sure, you know, TD BankNorth is well
4 aware of the tax problem, because of, you know, the
5 ongoing conversations I have with them. They're just
6 reluctant to loan in general.

7 Q. Okay. So, if you could just turn to Page 5, Lines 4
8 through 6, I just want to make sure Staff isn't reading
9 something into this that it otherwise wouldn't. The
10 sentence says "The omission of revenues to pay its
11 \$100,000 tax liability adversely impacts the Company's
12 ability to provide service, obtain financing to
13 implement its capital plans." That's the sentence I'm
14 looking at. Do you have that?

15 A. (Mason) Yes.

16 Q. So, are you not -- are you saying or not saying that,
17 because you don't have a tax expense in your revenue
18 requirement, that that is the reason why you can't get
19 financing?

20 A. (Mason) It will be part of the reason.

21 Q. Only part. Okay. Thank you. Has any lender cited the
22 Company's inability to pay taxes as a reason for
23 denying financing?

24 A. (Mason) We've never gotten that far.

1 Q. Okay. Thank you. Mr. Mason, on Page 10 of your
2 testimony, you make reference to capital improvements
3 made in 2011 and '12.

4 A. (Mason) Uh-huh.

5 Q. And, those amounts are 113,000 and change and then
6 115,000. Do you see those --

7 A. (Mason) Yes.

8 Q. -- rounded figures?

9 A. (Mason) Yeah.

10 Q. Did those funds to pay for the capital improvements
11 come out of cash coming from customers paying their
12 bills?

13 A. (Mason) Yes.

14 Q. Was that the only way the Company could pay for these
15 capital improvements?

16 A. (Mason) Well, it's the way we did pay for them. I
17 don't know if it's the only way.

18 Q. But you did not have that --

19 A. (Mason) Yeah. It's the only way. I'll restate that.

20 Q. Well, I don't want --

21 A. (Mason) The money has to come from -- we plow every
22 dime back into the Company, or most of it. The vast
23 majority of it goes back into the water company, for
24 capital improvements.

1 Q. Okay. I also don't want to leave you with feeling, in
2 answering my questions, that you're boxed in.

3 A. (Mason) No.

4 Q. And, so, my question, follow-up question would be, you
5 did not pay for the capital improvements through debt
6 financing because you were unable to -- the Company was
7 unable to get financing? Would that be accurate?

8 A. (Mason) I don't -- debt financing, to me, at the
9 present time, is not realistic, unless we can get the
10 depreciation equal with the length of the notes. It
11 just doesn't work, for me.

12 Q. Thank you.

13 A. (Mason) When somebody asks you to put up your house as
14 collateral, and the one guarantee you get is you won't
15 have enough money to pay the note, it becomes undoable.

16 MS. BROWN: Chairman Ignatius, I'm
17 cognizant that it's 12:30. I can still keep going with
18 issues, or I can break at this point and try to streamline
19 my questions?

20 CHAIRMAN IGNATIUS: About how much more
21 do you think you will have?

22 MS. BROWN: An hour.

23 CHAIRMAN IGNATIUS: All right. Then,
24 let's take a break. It's 12:30 now. Let's resume at 1:30

1 please.

2 (Lunch recess taken at 12:30 p.m. and
3 the hearing resumed at 1:38 p.m.)

4 CHAIRMAN IGNATIUS: So, we're back from
5 a lunch break. Thank you, everyone. And, our witnesses
6 are getting settled. Ms. Brown, you were in the midst of
7 questioning. Is there anything before we start up again
8 that we need to put on the record or update?

9 (No verbal response)

10 CHAIRMAN IGNATIUS: Good. All right,
11 please continue.

12 MS. BROWN: Thank you for the break.
13 Staff was able to clarify or streamline some of its
14 questions, so it should be less than an hour.

15 BY MS. BROWN:

16 Q. Mr. Mason, just a general question to you. The
17 financial information that's contained in your
18 testimony, what were the sources -- or, actually, what
19 people did you rely on for that financial information?

20 A. (Mason) Steve St. Cyr and Norm Roberge.

21 Q. Did you do any financial calculations yourself or did
22 they provide the calculations?

23 A. (Mason) They provided them.

24 Q. Okay. Thank you. Mr. Mason, on Pages 11 and 12 of

1 your testimony, you talk about how the Company's
2 financial condition has changed since its last rate
3 case, and you discussed payables.

4 A. (Mason) Okay.

5 Q. And, if you see that, if you could just turn, I guess,
6 to Page 12 at this point.

7 A. (Mason) Yes.

8 Q. For these payables, will any of the emergency rate --
9 funds from the emergency rates be used to pay down
10 these payables?

11 A. (Mason) No.

12 Q. Aside from income taxes?

13 A. (Mason) Yes. Well, income taxes, yeah. That's what
14 we're here for.

15 Q. Does the Company have a plan to pay down the non-tax
16 payables?

17 A. (Mason) We've had a plan. We meet on every Friday, we
18 go through things. We've reduced it considerably.
19 Other than we've spent a fortune on lawyers,
20 accountants, and people like that.

21 Q. Okay.

22 A. (Mason) As far as general vendors, we've made huge
23 gains on, you know, our vendors, our supply vendors,
24 things like that.

1 Q. When you talk about the vendors, and in your testimony
2 I believe you state that you've accepted vendors to
3 accept less payment for their services. Do you
4 remember that?

5 A. (Mason) We haven't. We haven't done anything with
6 that. Everything that's shown is what their bill is.
7 It's hard to negotiate with a vendor very much, if you
8 don't have any way of paying them.

9 Q. I'm sorry, I was thinking of Mr. St. Cyr's testimony.
10 My apologies. Mr. St. Cyr, on Page 7 of your
11 testimony, you state that "The Company is not" -- or,
12 "is already not paying its vendors on a timely basis
13 and is requiring certain vendors to take lesser amounts
14 for services provided." That's on Lines 3 through 5,
15 Page 7. Do you recall that?

16 A. (St. Cyr) I see the statement, yes.

17 Q. Is that still accurate, given Mr. Mason's testimony
18 just a moment ago?

19 A. (St. Cyr) Well, certainly, the "paying of its vendors
20 on a timely basis" is accurate. I think there has been
21 some discussion in-house about requiring less amounts
22 from certain vendors. But, apparently, that hasn't
23 taken place at this point.

24 Q. Mr. Mason, would you like to add, clarify this

1 sentence, the second part of the sentence?

2 A. (Mason) The second part of --

3 Q. Which is "requiring certain vendors to take lesser
4 amounts for services provided." Is that -- where is
5 that discussion? Is it still in-house or have you
6 approached vendors?

7 A. (Mason) We have not approached vendors. The only
8 vendors that are out there in any distance that are
9 approachable are accountants, lawyers, and Mr. St. Cyr,
10 I guess I don't know where he fits in. But those are
11 the main big vendors. Everybody else is pretty well in
12 decent shape.

13 Q. Should we strike this second part of the sentence then,
14 everything after "and"?

15 A. (St. Cyr) Yes. You may strike it.

16 Q. And, so go a line of questioning. Thank you.

17 MR. RICHARDSON: I'm sorry to interrupt,
18 but could I just get the page number, so I can note in my
19 copy what we just struck?

20 MS. BROWN: Yes. Exhibit 3, Page 7,
21 Line 4 through 5, everything from "and" through
22 "provided". So, what is being stricken is "and is
23 requiring certain vendors to take a lesser amount for
24 services provided."

1 MR. RICHARDSON: Thank you.

2 BY MS. BROWN:

3 Q. Mr. St. Cyr, I do want to ask you a question about the
4 paid-in capital. I'm sorry, I got confused on where I
5 was looking. On Exhibit 4, response to 1-4, statements
6 of cash flow, we've had prior testimony concerning the
7 "\$123,356" decrease in additional paid-in capital. So,
8 I draw your attention, Mr. St. Cyr and Mr. Mason, to
9 that. I just want to continue on with some of the
10 questions OCA had asked. I know, Mr. Mason, you stated
11 earlier what this went to. But did this also -- could
12 this have been considered a "dividend"? Either
13 Mr. Mason or Mr. St. Cyr?

14 A. (St. Cyr) It was a return on capital. I should say a
15 "return of capital".

16 Q. Was that in the form of cash?

17 A. (St. Cyr) Yes.

18 Q. Over 2011 and 2012, correct?

19 A. (St. Cyr) Yes. 2011, 2012.

20 Q. So, it was --

21 CHAIRMAN IGNATIUS: Excuse me. I was
22 fussing with papers, I apologize. What's the figure
23 you're talking about right now? I've got the page, but
24 what are you referring to?

1 MS. BROWN: I will draw your attention
2 to the "2012" column, two-thirds of the way down, under
3 "Financing Activities", there's "Additional paid-in
4 capital in Cap- ital", and the dollar amount is "\$123,
5 \$356 [\$123,356?].

6 CHAIRMAN IGNATIUS: 123,000?

7 MS. BROWN: Yes. Thank you. So, that
8 is the figure.

9 CHAIRMAN IGNATIUS: Thank you.

10 BY MS. BROWN:

11 Q. So, this was not a dividend, that's what you -- you had
12 said it was "not a dividend"?

13 A. (St. Cyr) The Masons have put in over a million dollars
14 over a number of years. And, this is a return of some
15 of that money that they have put in.

16 Q. So, if it's -- can you please explain the difference
17 between "return of capital" and a "dividend"?

18 A. (St. Cyr) Sure. A "return of capital" would be a
19 return of the money that was provided to the Company by
20 the Masons. A "dividend" would be, you know, some
21 stated amount, akin to interest on a loan. This would
22 be, essentially, a payment of dividend for the funds
23 invested. That would be considered a return on the
24 investment that they made. The Masons have never

1 received a return on the investment. They have just
2 now started receiving a return of that investment.

3 Q. Now, there are IRS -- or, there are legal regulations
4 governing dividend distributions, is that correct,
5 Mr. St. Cyr?

6 A. (St. Cyr) Yes.

7 Q. Are there legal authorities governing "return of
8 capital"?

9 A. (St. Cyr) If there are, I'm not aware of what they
10 might be.

11 Q. Have you -- do you conduct a number -- or, participate
12 in a number of rate cases before this Commission?

13 A. (St. Cyr) I do.

14 Q. Have you seen in those other rate cases something
15 called "return of capital"?

16 A. (St. Cyr) I can't recall seeing that, no.

17 Q. Could this return -- could this 123,356 gone to pay
18 taxes? And, I guess this could be either you, Mr. St.
19 Cyr, or Mr. Mason.

20 A. (St. Cyr) I suppose. It's money that, you know, is
21 used to pay obligations of the Company.

22 Q. If the Company had not released this additional paid-in
23 capital, would its financial condition have been better
24 as of today?

1 A. (St. Cyr) Yes.

2 Q. I know you said that you're not aware of any legal
3 authorities governing return of capital. Prior to
4 making these distributions under additional paid-in
5 capital, did the Company consult legal advice?

6 A. (St. Cyr) I don't know the answer to that question.

7 A. (Mason) I don't believe so.

8 Q. I don't know that it was clear earlier in the testimony
9 on whose decision it was to provide Mrs. Mason with
10 this paid-in capital. And, I ask that question right
11 now. Whose decision was it to make disbursements
12 through paid-in capital to Mrs. Mason?

13 A. (Mason) The Board.

14 Q. Mr. Mason, in your testimony, do you remember, on Page
15 7, making a statement that, as of December 12, 2011,
16 the Company was aware that it would incur about 68,000
17 in tax liability?

18 A. (Mason) Yes.

19 Q. Do you have an opinion as to whether it was prudent, in
20 light of knowing there was a \$68,000 tax liability in
21 December 2011, to continue making paid-in capital
22 payments in 2012?

23 A. (Mason) Can you say that again?

24 Q. Do you -- I'll rephrase it. Knowing there was a

1 potential \$68,000 tax liability, and you knew that,
2 according to your testimony, as of the end of 2011, do
3 you think it was prudent to make payments to Mrs. Mason
4 in 2012?

5 A. (Mason) Yes.

6 Q. And, can you please explain why?

7 A. (Mason) Because she invested the money, it was her
8 money. She invested it over years. And, at this point
9 in her life, when she's 83 years old, she still needs
10 to, you know, survive. And, you know, in hindsight,
11 she probably shouldn't have invested it.

12 A. (St. Cyr) Maybe if I could just add to that. And that
13 the rates also provided for a return on capital, a
14 return on and a return of capital were built into
15 rates. There was no provision built into rates for
16 federal or state taxes.

17 Q. There was no provision for a pension, correct, built
18 into rates?

19 A. (St. Cyr) That's correct. There's no provision for
20 pension built into rates.

21 Q. How does -- how do these distributions differ from a
22 pension?

23 A. (St. Cyr) Well, in terms of the return of the capital,
24 again, this is money that the Masons invested. And,

1 it's essentially the Company returning that money back
2 to them. With respect to a pension, I guess there's a
3 number of ways in which pensions could be funded. You
4 know, it could be an obligation of the Company, it
5 could be an obligation, you know, that the Company
6 provided sources, provided funds for that's not an
7 obligation of the Company going forward. I guess there
8 are those kind of differences anyway.

9 Q. Mr. St. Cyr, how are dividends back to shareholders
10 normally paid out of?

11 A. (St. Cyr) Dividends are usually a reduction to retained
12 earnings.

13 Q. So, why wouldn't it be appropriate to make payments to
14 Mrs. Mason under dividends from retained earnings, than
15 from making payments from additional paid-in capital?

16 A. (St. Cyr) I don't -- to some extent, you know, that's a
17 management decision. It seems to me a return of the
18 capital is a more reasonable decision than trying to
19 provide for a return on that investment than returning
20 the capital.

21 Q. Mrs. Mason is not currently an employee of the Company,
22 is that correct?

23 A. (St. Cyr) That's correct.

24 Q. And, she was not an employee in 2012 and '11 during

1 these payments, is that accurate?

2 A. (St. Cyr) That's correct.

3 Q. And, Mr. St. Cyr, in your tax area of expertise, are
4 pensions usually something that's funded during the
5 working career of an employee?

6 A. (St. Cyr) Usually it's funded, yes.

7 Q. And, this question to Mr. Mason or Mr. St. Cyr. Would
8 you consider paying Mrs. Mason through paid-in capital
9 is essentially giving priority to equity shareholders
10 over vendors on the payables list?

11 A. (St. Cyr) I think, you know, this is a company that's
12 struggling to pay its bills in general. So, it
13 struggles every day to -- when it decides whether to
14 pay one expenditure or another. You know, it decides
15 between operating expenses, capital investments, return
16 on capital, vendors, it makes those decisions pretty
17 regularly. And, it's always a balancing act between
18 the cash that's available and the requirements for that
19 cash.

20 Q. Mr. St. Cyr, sorry to still pick on you, but there was
21 a discussion about amended tax returns. OCA had walked
22 you through some potential inconsistencies from 2009
23 and 2010. Do you recall that?

24 A. (St. Cyr) Yes, I do.

1 Q. Did you have a chance to look at the amended returns
2 over the break?

3 A. (St. Cyr) I did not.

4 Q. Okay. If Staff were to tell you that there was
5 approximately 45,000 in carry-forward in 2012, do you
6 have an opinion on that?

7 A. (St. Cyr) I would say that that's not true.

8 MS. BROWN: At this point, Staff has
9 found this error. And, I think it would be most efficient
10 if Mr. Laflamme walked Mr. St. Cyr through the amended tax
11 returns that were filed in response to Staff's data
12 requests, just so we can get that --

13 CHAIRMAN IGNATIUS: I'm not sure I'd
14 characterize it as an "error". But it's fine for
15 Mr. Laflamme to walk some questions through, and we can
16 make sense of it after we've heard the answers.

17 MS. BROWN: Okay. And, this bears on
18 whether they think the Company has exhausted its
19 carry-forward or not. So, Mr. Laflamme.

20 BY MR. LAFLAMME:

21 Q. Yes. I guess I'd first like to draw your attention to
22 the 2008 return as originally filed.

23 CMSR. HARRINGTON: Excuse me, could you
24 give us page numbers?

1 MR. LAFLAMME: Exhibit 4. And, as soon
2 as I get to it, I'll give you a page number. I have
3 Page 33 of Exhibit 4. Staff -- the response to Staff 1-1.

4 CMSR. HARRINGTON: And, this is on the
5 backside of a piece of paper that says "2008" on it? So,
6 it's on the other side of that?

7 MS. BROWN: Yes.

8 BY MR. LAFLAMME:

9 Q. And, according to the 2008 return as originally filed,
10 the 2008 tax year generated a net operating loss of
11 "\$228,981". Would you agree with that?

12 A. (St. Cyr) Yes.

13 Q. And, then, turning to Page 52 of the response to Staff
14 1-1, that net operating loss carry-forward was reduced
15 by \$56,098, to an amount of "\$172,883". Would you
16 agree with that?

17 A. (St. Cyr) Yes.

18 Q. All right.

19 CMSR. HARRINGTON: Excuse me. Could you
20 give that number again, because ours are kind of chopped
21 off here a little bit?

22 MR. LAFLAMME: \$172,883.

23 WITNESS ST. CYR: And, what was the
24 amount that it was reduced by? Fifty-six?

1 MR. LAFLAMME: \$56,098. Yes, Line --
2 Line 28.

3 BY MR. LAFLAMME:

4 Q. And, then, going forward to 2009, the return, as
5 originally filed, indicated that there was no income or
6 loss for 2009. This is on Page 65 of Staff 1-1.
7 Again, Line 28.

8 A. (St. Cyr) Yes.

9 Q. And, then, moving forward again, to Page 84 of Staff
10 1-1, that amount was -- Line 28 was amended to now
11 reflect taxable income of "\$11,554"?

12 A. (St. Cyr) I see that amount, yes.

13 Q. Resulting in the use of \$11,554 of the net operating
14 loss carry-forward from the prior year?

15 A. (St. Cyr) I see that amount, yes.

16 Q. So, according to my calculations, after amending the
17 2007, 2008, and 2009 returns, my calculations show that
18 the Company had a carry-forward of \$161,329. Would you
19 agree with that?

20 A. (St. Cyr) I guess, if you can provide me with the
21 calculation, I can certainly take a look at it. I
22 don't see that offhand, no.

23 Q. Okay. So, according to my calculations, the Company
24 had a net operating loss carry-forward at the end of

1 2009 of \$161,329, and Staff can provide the
2 calculations for that.

3 If we move ahead to the -- to the
4 response to --

5 MR. RICHARDSON: Just could the witness
6 be allowed to agree or disagree with that?

7 MS. BROWN: Yes. And, I realize this is
8 part testimony. I mean, Staff has -- I realize we just
9 have this one copy. We could approach Mr. St. Cyr and see
10 if we agrees with Mr. Laflamme's calculations that he's
11 read into the record.

12 CHAIRMAN IGNATIUS: Well, let me ask
13 this. You've read some conclusions into the record of
14 your calculations. Can you just step us through? You've
15 showed us a couple different numbers. But if, on Page 52,
16 the net operating loss carry-forward was down to
17 "172,882", is that correct?

18 MR. LAFLAMME: 172.883.

19 CHAIRMAN IGNATIUS: 883. And, then,
20 from that, did you subtract the 11,000 --

21 MS. BROWN: -- 554 dollars.

22 CHAIRMAN IGNATIUS: All right. And, is
23 that what gets you to the "161,321"?

24 MR. LAFLAMME: "161,329", yes.

1 CHAIRMAN IGNATIUS: 329, thank you. All
2 right. So, whether Mr. St. Cyr can follow those
3 calculations and would agree with whether those are
4 appropriate, I think you can ask him about that. And, if
5 he disagrees, then you can testify when you're on the
6 stand about the work you did on those numbers.

7 BY MR. LAFLAMME:

8 Q. Would you agree that, after the 2009 amended return,
9 the net operating loss carry-forward was "161,329"?

10 A. (St. Cyr) I guess I would agree with the math. But it
11 would certainly be better for us if you simply provided
12 that, provided the calculations that led to the
13 conclusions, so that we can go ahead and take a look at
14 it, than agree or disagree, rather than me trying to do
15 that as you present the numbers.

16 BY MS. BROWN:

17 Q. I guess my question is, at this point, is it accurate
18 to say that you are -- the Company is not in a position
19 to dispute whether this or to comment on whether Staff
20 has identified a typo or calculation error or that this
21 is -- that the Company disputes these changes ought to
22 be made?

23 A. (St. Cyr) I think that's fair, yes.

24 MS. BROWN: Okay. So, I think maybe

1 it's better to offer Mr. Laflamme as a witness later to
2 explain that.

3 CHAIRMAN IGNATIUS: Well, I'm concerned
4 about where we're going here. What I just got from this
5 was Mr. Laflamme made a mathematical -- just a
6 subtraction, that even I can do, and taking the Company's
7 numbers, and subtracting another one of the Company's
8 numbers, and reaching a result that is, if I'm following
9 correctly, is completely at odds with the Company's
10 representations about its status of its net operating loss
11 carry-forward.

12 If that's the case, what are we doing
13 here? I mean, I don't know what, if you're questioning
14 the math, get out a calculator right now and do it. If
15 you're questioning the voracity of the numbers, which are
16 in your own filing, then we ought to take a break and you
17 ought to talk to your counsel and decide why we're
18 spending time doing this, because all we have to rely on
19 here are the numbers you have presented. And, I'm really
20 troubled that there's now a suggestion that you're not
21 sure that your own numbers are accurate on a critical
22 piece of evidence.

23 So, why don't we take a break for a
24 minute.

1 MR. RICHARDSON: May I interject?

2 Because I actually would like to hear where this line of
3 questioning is going. Because, I mean, the Company has
4 said all along that, you know, we're looking for ways to
5 avoid this tax liability, because we have, you know, we're
6 not doing this out of love to send money to the IRS. I'm
7 only at the point where I've heard this line of
8 questioning up to 2009, if I believe, and we're not yet at
9 the 2012 tax liability. So, I'd like to hear, unless I
10 misunderstood, I'd like to see how we get there, before
11 we, you know, before we, you know, call this thing off, I
12 guess is what I'm --

13 MS. BROWN: And, Staff is happy to
14 caucus with the Company and intervenors offline to resolve
15 this issue, too, and report back to the Commissioners
16 after the break.

17 MR. RICHARDSON: And, we've, I mean,
18 from the get-go, I mean, I've tried to say that we are
19 going to reconcile this to actual tax liability, precisely
20 so, you know, these types of discussions can take place.
21 I mean, and what I've just heard is, you know, the first
22 time I've heard it, as the Commission has as well, so.

23 CHAIRMAN IGNATIUS: Sure. Let's take a
24 break. Fifteen minutes. Thank you.

1 (Whereupon a recess was taken at 2:17
2 p.m. and the hearing resumed at 2:43
3 p.m.)

4 CHAIRMAN IGNATIUS: All right. We've
5 come back from a break to let people work through a couple
6 of the questions that were coming up in the testimony.
7 And, who do we turn to first?

8 MS. BROWN: I thought the Company was
9 going to offer a position, but --

10 MR. RICHARDSON: I certainly can, if
11 that would help us move more quickly. I mean, essentially
12 what, from talking to the witness, and I don't want to
13 speak for the witness, but, you know, there is -- I
14 believe we're at the point where we realize there may be
15 an adjustment to the Company's actual tax liability for
16 2012. But I don't believe we've eliminated it. And, so,
17 we're still hoping to proceed. And, obviously, we came
18 into this knowing that things might change, and that's why
19 we asked for it to be reconciled.

20 So, with that, I'd just as soon get
21 through these witnesses, so we can get redirect, get
22 things done, and then decide how to proceed, once the
23 witnesses are done.

24 CHAIRMAN IGNATIUS: Well, okay. I think

1 we -- we need some certainty in understanding what the
2 numbers are going to be looking like. And, maybe that's
3 what continuing with Staff questioning would develop?

4 MS. BROWN: Staff will be happy to ask a
5 few questions. I'd like to offer as an exhibit the
6 calculations we were talking about prior to the break.

7 CHAIRMAN IGNATIUS: All right. And, is
8 that something that all the parties have seen?

9 MS. BROWN: Yes. We discussed it during
10 the break.

11 CHAIRMAN IGNATIUS: All right.

12 MR. RICHARDSON: We have no objection.

13 CHAIRMAN IGNATIUS: All right. Thank
14 you. Then, let's mark that identification as "Exhibit 9"?

15 MS. DENO: Yes.

16 (The document, as described, was
17 herewith marked as **Exhibit 9** for
18 identification.)

19 BY MS. BROWN:

20 Q. I'd like to hand you a document, Mr. St. Cyr, and have
21 you describe it for the record.

22 A. (St. Cyr) Yes. The document is labeled "Analysis of
23 Federal and State Tax Carryforwards". It was prepared
24 by Mr. Laflamme, on behalf of Staff.

1 Q. Did you have a chance to review this document over the
2 break?

3 A. (St. Cyr) I did.

4 Q. And, do you have any opinion to offer on behalf of the
5 Company in response to this document?

6 A. (St. Cyr) I think there, having reviewed this with
7 Mr. Roberge and Mr. Laflamme, I would say that it does
8 appear to be accurate. And, the Company would just
9 like to be able to, you know, look at some of its
10 worksheets back in the office to confirm it. But, on
11 the surface, we believe that this is accurate. And,
12 there is the potential for an additional amount of
13 carry-forward that could be used against the 2012
14 taxable income.

15 And, I guess the only other thing I
16 would point out is that this is a reduction, the
17 "44,899" is a potential reduction in taxable income and
18 not in the tax obligation. We did a rough calculation,
19 at 39 percent, there's a potential reduction in the
20 federal tax liability of \$17,500. And, unfortunately,
21 we didn't really have a chance to go through the New
22 Hampshire components, and, again, subject to check with
23 our own worksheets, at this point I have no reason to
24 believe that this isn't accurate.

1 MS. BROWN: I forgot what exhibit number
2 we attributed this to. Was it 9?

3 CHAIRMAN IGNATIUS: Yes.

4 BY MS. BROWN:

5 Q. Mr. St. Cyr, as a result of Exhibit 9, does the
6 Company, and, actually, maybe perhaps this question
7 should be more appropriately directed to Mr. Mason, is
8 the Company going to change the relief sought in its
9 Petition?

10 A. (Mason) Change the number? Is that what you were
11 asking?

12 Q. Are there any changes to the Petition and the relief
13 requested in the Petition as a result of Exhibit 9?

14 A. (St. Cyr) I'll answer that. At this point, I would say
15 "no". That, to the extent that the Company does
16 subsequently agree with these amounts, then these
17 amounts would be subject to the same reconciliation
18 that the Company has been saying it would do all along.

19 Q. Okay. I'd like to change the subject. Mr. St. Cyr,
20 would you agree that Staff never told Lakes Region to
21 reclassify the pension and other expenses as income?

22 A. (St. Cyr) I don't think there was a direct order from
23 Staff or some communication with Staff requiring us to
24 do that.

1 Q. And, would you also agree that Staff never recommended
2 Lakes Region reclassify its shareholder loan as equity?

3 A. (St. Cyr) I don't know as Staff recommended that. But,
4 in my recollection of the capital structure that was
5 proposed by Mr. Laflamme, and approved by the
6 Commission, specifically provided for the conversion of
7 that shareholder loan to additional paid-in capital.
8 So, while there wasn't a direct order, per se, there
9 was a reflection of that transaction in the capital
10 structure proposed by Mr. Laflamme and approved by the
11 Commission.

12 Q. Mr. St. Cyr, would Mr -- I'll move on. Mr. St. Cyr, on
13 Page 11 of your testimony, Lines 21 and 22, you state
14 "the Company plans to seek recovery of costs to prepare
15 and present this emergency rate filing." Do you
16 remember that testimony?

17 A. (St. Cyr) I do.

18 Q. Do you know under what authority the Company is seeking
19 what essentially is rate case expenses?

20 A. (St. Cyr) I'm not familiar with the specific authority.
21 The Company is treating this the same way it would
22 treat any expenditure incurred in pursuing a rate
23 increase.

24 Q. Mr. St. Cyr, with respect to the 2012 taxes, are those

1 due on next Friday, March 15th?

2 A. (St. Cyr) Yes. I would actually say they were due
3 earlier. But, with the filing of the tax return, they
4 would certainly be due at that point, yes.

5 Q. Where would the money come from to pay that?

6 A. (St. Cyr) At this point, the Company doesn't have the
7 money to pay that.

8 Q. With respect to the crisis that's described, the
9 financial crisis that's described in the testimonies as
10 a reason why the Company is seeking emergency rates, is
11 this crisis, in your opinion, permanent? Temporary?

12 A. (St. Cyr) You know, it's been ongoing for a long time.
13 At this point, it's not over. And, I would like to
14 think that it's "temporary". But I just know that the
15 -- particularly the capital requirements of the Company
16 going forward, you know, really don't go away. So, I
17 would be reluctant to say that "it's over."

18 Q. I'd like to have you comment, Mr. St. Cyr, on how this
19 rate -- emergency rate request for -- on account of
20 taxes is different from the Company having asked for
21 taxes in the last rate case?

22 A. (St. Cyr) I guess maybe the big difference is that
23 there is now a tax obligation associated with the tax
24 expense. Where previously those tax expenses could

1 potentially have been offset by other deductions.

2 Q. Mr. St. Cyr, you discussed needing "to amend the
3 returns because of an invalid expense". Do you
4 remember that testimony?

5 A. (St. Cyr) I do.

6 Q. An invalid expense, for ratemaking purposes here at the
7 Commission, does not necessarily mean that it's an
8 expense that requires an amendment to the return.
9 Would you agree with that?

10 A. (St. Cyr) I'm not sure I would agree with that. You
11 know, if an expense isn't recognized by the Commission
12 and isn't recognize on the books of the company, I know
13 of -- I don't know of a specific basis that would then
14 allow me to recognize that as an expense on the tax
15 return.

16 Q. Okay. Let me ask it a different way. Have you been
17 involved with prior utilities that have had expenses
18 that weren't allowed in rates?

19 A. (St. Cyr) Yes.

20 Q. And, did those expenses necessitate a amendment of
21 income tax returns?

22 A. (St. Cyr) I guess I'm trying to think of a specific
23 example.

24 Q. I can give you one.

1 A. (St. Cyr) Okay.

2 Q. And, I hate to go back to fines and penalties. If
3 fines and penalties were not allowed as expenses as
4 part of ratemaking, would those, for instance,
5 necessitate amending tax returns?

6 A. (St. Cyr) The penalties would not have been recognized
7 on the tax returns either. They're not an allowable
8 deduction.

9 Q. Okay.

10 A. (St. Cyr) I would say, with respect to interest, it
11 would depend on the magnitude of the expense, I think,
12 the amount of the expense.

13 Q. I used a bad example, but I'll move on.

14 MS. BROWN: Staff has completed its
15 cross-examination. Thank you.

16 CHAIRMAN IGNATIUS: Thank you.
17 Questions from Commissioners? Commissioner Harrington.

18 CMSR. HARRINGTON: I'll try to make this
19 as expeditious as possible. So, whoever is the most
20 appropriate person should just answer any of these
21 questions please.

22 BY CMSR. HARRINGTON:

23 Q. On your Exhibit 6, which is an expense list, it lists,
24 among other things, "Total State of New Hampshire

1 Property and Other Taxes" owed "31,153". Are these --
2 is this amount included in the amount of taxes that
3 you're trying to pay with the emergency rates? Because
4 these are identified as "property taxes", and you talk
5 about "federal and state income taxes".

6 A. (St. Cyr) These are state and local property taxes, and
7 are not the taxes that we're requesting.

8 Q. Okay. So, there would be, even if you get the
9 emergency rate increase, you still have a liability, as
10 of the end of February, of "31,153.75" to the State of
11 New Hampshire for "Property and Other Taxes", is that
12 correct?

13 A. (St. Cyr) That's correct.

14 Q. Okay. And, on the same Exhibit 6, going up a little
15 bit further, it talks about "Total Property Taxes",
16 which is the property taxes you owe to municipalities.
17 This is "43,109.74". Is that included in the amount
18 that you're seeking to pay with the emergency rates?

19 A. (St. Cyr) No.

20 Q. Okay. And, so, that's another 43,109.74 that you're
21 going to have to -- that you have liability for. How
22 are you planning on paying those two bills?

23 A. (Mason) We work on them on a regular basis, almost a
24 weekly basis, to pay them, to catch up on all our

1 property taxes. We've caught up on a lot of our
2 payables, and some of the property taxes are still
3 outstanding. But we'll get, you know, we'll definitely
4 have them paid up, you know, sometime during late
5 spring.

6 Q. And, does that include the almost \$20,000 that's over
7 13 months in arrears?

8 A. (Mason) Yes.

9 Q. But the fact that you had the \$20,000 that you haven't
10 been able to pay off for over a year, that does not
11 constitute a need for emergency rates, then, I assume,
12 correct? Since you didn't request them?

13 A. (Mason) No.

14 Q. On the taxes for, going back to the income taxes,
15 there's been some discussions a couple of times on this
16 and I'm trying to get it straight. I'm assuming, and
17 tell me if I'm right or wrong, that during the course
18 of 2012 that the Company was supposed to or should have
19 paid estimated quarterly income taxes to the federal
20 government, is that correct?

21 A. (St. Cyr) That's correct.

22 Q. And, those payments were not made, is that correct?

23 A. (St. Cyr) That's correct.

24 Q. So, what happens as a result of not making those

1 payments? Are there penalties, interest or both?

2 A. (St. Cyr) There's both.

3 Q. Okay. And, getting back to the Petition, the amount
4 talks about "recovery of \$100,219 in estimated federal
5 and state income taxes". And, then, there was talk of
6 that money would then become -- the emergency rates
7 would become taxable income, so that would be taxable,
8 it would add to it, so it would, in fact, go up. But
9 there is nothing in that amount that you're requesting
10 in emergency rates to cover either the penalties or the
11 interest associated with the quarterly taxes not made
12 in 2012, is that correct?

13 A. (St. Cyr) We did not specifically ask for that, no.

14 Q. Okay. So, it's not in there. Okay.

15 A. (St. Cyr) It's not in there.

16 Q. Now, you said you've made no arrangements or had no
17 conversations with the IRS over the money that's owed
18 to them, is that correct?

19 A. (St. Cyr) Yes, that's correct.

20 Q. And, going to Exhibit 7, it appears that this isn't the
21 first time that there's been delays in filing taxes.
22 As you stated earlier, taxes are due on March 15th of
23 the following year. In 2007, you filed your taxes on
24 September 15th of the following year. On 2008, you

1 filed them on December 21st of the following year.
2 2009, you filed them on 11/4 of the following year.
3 2010, you filed them May 23rd, of not the following
4 year, but the year after that. So, you have a history
5 of paying your income taxes quite late, is that
6 correct?

7 A. (St. Cyr) Yes. I think, during most of those years, if
8 not all of them, that there was no tax payment actually
9 made. And, there is an automatic extension of six
10 months the Company can utilize in order to file the tax
11 return. These dates are basically the dates they were
12 filed.

13 Q. Okay. So, there was no liability, so there was no
14 penalty associated with it?

15 A. (Witness Mason nodding in the affirmative).

16 Q. Okay. Good. And, I realize, to some extent, this
17 circumstance has changed at least somewhat due to the
18 advent of the Exhibit 9. But I'm trying to figure out
19 what the philosophy or what the strategy was that the
20 Company had. You came in and you said the emergency
21 rates were going to be based on only collecting what
22 you estimated to be the 2012 tax liability, and then
23 they'd be reconciled on the 2012 actual taxes. But
24 that you were going to use that money, not only to pay

1 the estimated or the taxes, whatever they were for
2 2012, but you -- somehow you would have to address the
3 interest that we just spoke about that you've already
4 incurred, the penalties you've already incurred, the
5 fact that now the total payment is not being made by
6 March 15, so, I'm assuming there will be additional
7 penalties and additional interest, and you were going
8 to make the 2013 quarterly payments. How is this
9 possible and what exactly is your plan, because I
10 haven't heard one yet?

11 A. (St. Cyr) I think, again, going back to, you know, sort
12 of the Fall of 2012, the Company was still pursuing
13 recognition of the tax expense in the prior rate case.

14 Q. Excuse me, if I could. You're going backwards in time.
15 I'm not trying to look for a justification of how we
16 got to the situation. We get to a situation where we
17 have interest owed on -- and penalties associated with
18 non-payment of 2012 quarterly -- estimated quarterly
19 taxes. I don't know -- I really don't want to discuss
20 why that happened, you just said that it did happen.
21 We know there is going to be additional penalties and
22 interest associated with not making the complete
23 payments of your taxes that are due on the 15th of
24 March. Again, we don't need the whys, if that's going

1 to happen. As you go forward, you're going to be
2 making payments to pay off those -- all those things we
3 just mentioned. You also just said that you were going
4 to be making payments of the 2013 quarterly estimated
5 taxes, so as to not incur additional fees or penalties
6 and fines on that, penalties and interest on that.

7 So, what I'm trying to do is, it seems
8 like you're asking for a half a pie and you want it to
9 pay off a whole pie. So, maybe I don't understand
10 accounting that well, but can you explain how this is
11 going to work, because I don't get it?

12 A. (St. Cyr) I think the strategy behind the initial
13 filing was to stabilize the situation. And, the
14 Company determined, in its attempt to stabilize it, it
15 would ask for an annual increase in revenue based on
16 its 2012 obligation. You're right in that that really
17 is a half a pie. That's only going to solve part of
18 the problem. But, to solve the whole problem, the
19 Company would have to ask, essentially, for two years
20 worth of tax. And, it just didn't seem like that was
21 the right strategy going into the emergency rate
22 proceeding. That the Company wanted to sort of
23 stabilize its tax situation in the first place, perhaps
24 reconcile it to the extent that there were differences,

1 and then to work out whatever else needed to be done in
2 a rate case, rather than in an emergency proceeding, is
3 probably the overall strategy that attempts to get us
4 at least something that's stabilized and something that
5 the Company can work with.

6 Q. So, okay, if I'm hearing this then, and this is the
7 part I guess that troubles me, that you haven't had any
8 agreement with this proposed solution with the IRS.
9 Because it would seem, if the emergency rate was
10 granted, you're going to have to go to the IRS and say
11 "we can pay you some of what we owe you from interest
12 and penalties from 2012 not making our payments, we can
13 pay you some of our income tax that we owe due on the
14 15th of March of this year, and we can make some of our
15 2013 quarterly estimated taxes, but we can't come close
16 to paying all of that. And, it's going to be done over
17 the next year." So -- but that has to agree with the
18 IRS somehow saying or has to go along with the IRS
19 agreeing to make that type of a settlement, because it
20 will allow you to make those payments, right?

21 A. (St. Cyr) Well, it's difficult going to the IRS before
22 we've actually filed a tax return and indicate what our
23 tax liability is. The IRS is, as I understand it,
24 flexible with respect to the period over which payments

1 may be paid. So, while we're sort of looking at an
2 annual amount, depending on, you know, whatever
3 circumstances at the time and you know the cash
4 available, we could arguably ask for a longer period to
5 pay some of the tax.

6 Q. And, as far as what the next step is, then you -- am I
7 correct in assuming you'll come in with a permanent
8 rate increase that will use 2012 as the test year, so
9 that it will include revenues to pay for 2013 taxes?
10 Or, otherwise, we're going to be a year from now and
11 you're still going to owe a lot of taxes, right? Where
12 is the rest of that money coming from?

13 A. (St. Cyr) Yeah. I think the short answer is "yes".
14 Probably within the permanent rate increase request,
15 the Company would look to adjust, you know, the actual
16 amount, and then reconciliation of that amount, and
17 whatever else may be required.

18 Q. Okay. So, I'm not trying to put words in your mouth,
19 but I'm just trying to figure out, what you're
20 requesting is emergency rate increase that will get you
21 enough revenues so you think you can cut some type of a
22 deal with the IRS to hold them at bay until you can get
23 permanent rate increases to address the tax liability
24 issues?

1 A. (St. Cyr) Yes.

2 Q. Okay. All right. And, again, the 19,000 in property
3 tax that's at least 13 months, and possibly longer, you
4 don't see that as a crisis?

5 A. (Mason) No. We make deals with the -- we've been to
6 all the towns, and we have an agreement with them to,
7 you know, get them caught up over the next six months,
8 probably less than that.

9 Q. And, there are no tax liens on your property for any of
10 the towns?

11 A. (Mason) No.

12 A. (Witness Dawson shaking head in the negative).

13 Q. Okay.

14 MR. RICHARDSON: Can I, for the record,
15 just state that what Commissioner Harrington just
16 explained was what I was trying to say at the beginning of
17 this hearing. And, I'm glad to have heard him explain
18 what I wanted to say at the beginning, because that really
19 is the Company's position and what we've had in our minds
20 in conceiving this case.

21 BY CMSR. HARRINGTON:

22 Q. And, just again going back to Exhibit 6, which is the
23 Accounts Payable, there is an amount of slightly over
24 \$71,000 that's over three years old. That doesn't

1 constitute an emergency that needs to be addressed
2 prior to the money that you, as you said, you don't
3 even know how much you owe the IRS yet? I'm looking at
4 the second page of that. It says "Total All Payables",
5 extreme right-hand corner "Over 3 Years", "\$71,014.97".

6 A. (Mason) They seem to be a makeup of Lewis Engineering
7 and Ransmeier & Spellman, which was a law firm that we
8 used to use. As far as Lewis Engineering goes, we --
9 they recently went bankrupt. So, I'm not really sure
10 what's going to happen with that.

11 Q. I see why, if they don't get paid.

12 A. (Mason) Well, they knew that that was a deal that we
13 had structured with Bruce Lewis over a period of time.
14 That was originally part of the ARRA funding, and it
15 got all put off for a period of time. And, then, his
16 -- it's a long story, but there's some bankruptcy
17 problems.

18 Q. If we jump ahead to bills that are 13 to 24 months
19 overdue, it's 200 -- a little over 210,000. Again,
20 those don't impose any threat to the Company where
21 emergency rates are necessary, I guess?

22 A. (Mason) The majority of them are all in the room;
23 Steve, Norman, and other accountants.

24 Q. Okay.

1 MR. RICHARDSON: Madam Chair, with leave
2 of the Commission, I hate to interrupt, but there's a very
3 significant legal issue that's buried in the question that
4 Commissioner Harrington just asked. And, that is, because
5 the Company uses an accrual method of accounting, any
6 forgiveness of amounts that are owed causes the Company to
7 recognize gain when that forgiveness occurs. And, so, the
8 Company has been, and I've been willing to negotiate, as
9 other vendors are. But, because of the Company's tax
10 liability issues, any agreement that we would reach to
11 forgive a debt, where the statute of limitations has
12 already expired and recognize that on its books, would
13 cause the Company to, ironically, accrue a tax liability
14 in the year in which that was -- took place. And, so,
15 part of this exhibit was structured with that in mind.

16 Because I recall, in the last rate case,
17 Commissioner Harrington asking those very types of
18 questions. How many of these payables are real? And,
19 there are payables there that I think the Company, and in
20 the Lewis case, for example, could recognize that the
21 statute of limitations has expired on them, they might be
22 settled for pennies on the dollar. But that would cause
23 the Company to incur an immediate tax liability and worsen
24 the circumstances in which it has -- which had brought it

1 before the Commission to today.

2 CMSR. HARRINGTON: Didn't we just make a
3 change a little bit while ago to someone's testimony
4 saying that the Company was not negotiating with its
5 vendors to try to reduce payments? Now, you're telling me
6 that they are. I mean, we just struck out some testimony
7 somewhere, I don't know exactly where it was, I can't
8 remember. Was it Mr. St. Cyr's testimony?

9 MR. RICHARDSON: And, I think that's
10 part of the reason, at least from a -- from a tax
11 liability standpoint --

12 MS. HOLLENBERG: Page 7.

13 MR. RICHARDSON: -- I advised the
14 Company that they really can't be -- that there are tax
15 liabilities associated with restructuring a lot of these
16 payables, even if the vendors themselves, and I'm on this
17 list as well. I mean, there are things shown as owed
18 Upton & Hatfield that we've, even in meetings with Staff,
19 have indicated a willingness to forgo. But the problem we
20 face right now is that causes the Company to incur a tax
21 liability. And, I apologize for derailing your questions,
22 but I wanted that issue to be brought into the discussion.

23 CMSR. HARRINGTON: So, the good news is,
24 some of the vendors may forgive the debt, but, as soon as

1 they do, then it becomes taxable income, and the IRS won't
2 forgive that taxable income. That's the bad news?

3 MR. RICHARDSON: That's correct.

4 BY CMSR. HARRINGTON:

5 Q. Okay. All right. And, there was some question
6 earlier, and why not a temporary rate increase on this,
7 instead of emergency filings, when you've already said
8 that the emergency rate increase is not going to
9 address the -- not even -- forget about all these
10 questions we just talked about with owing property
11 taxes and vendors and so forth, but, even the taxes you
12 owe the State of New Hampshire, other than property
13 taxes, and I guess the Business Enterprise Tax,
14 probably mostly, and the federal income tax, it's not
15 going to address those, only by a small amount. So,
16 you're going to have to come back with some other
17 method of doing that. Why not use temporary rate
18 increases, instead of emergency rate increases?

19 A. (St. Cyr) I would defer to counsel.

20 Q. Okay. All right.

21 A. (Mason) Yes.

22 Q. We'll wait on that one. Okay. There was a question by
23 the OCA to Mr. St. Cyr, and it was on response to the
24 original filing, referencing a particular Supreme Court

1 case, on Page 3. But, basically, it came to the extent
2 that whether the Company was -- had net operating
3 losses. And, I believe you answered, Mr. St. Cyr, that
4 the Company no longer had net operating losses?

5 A. (St. Cyr) I believe that was a statement in Mr. Mason's
6 testimony. And, yes, I said that there were no longer
7 net operating losses available.

8 Q. Okay. And, when you say that, does that include -- how
9 does the taxes that you owe from 2012 and estimated
10 quarterly tax payments for 2013 fit into that?

11 A. (St. Cyr) Well, the net operating losses, you know, if
12 they existed, they could be used to offset any taxable
13 income. And, we're saying that there -- they don't
14 exist anymore, so there's nothing to offset the taxable
15 income, which creates the tax.

16 Q. Okay. I guess maybe I'm just a little confused on this
17 terminology.

18 MS. HOLLENBERG: Excuse me, Commissioner
19 Harrington?

20 CMSR. HARRINGTON: Yes.

21 MS. HOLLENBERG: If I could just, the
22 question that I had asked was based on the Petition that
23 the Company filed. It was Page 4 of the Petition. I
24 believe that's what you're asking about.

1 CMSR. HARRINGTON: Yes.

2 MS. HOLLENBERG: And, it was a statement
3 that the Company was experiencing "continuing operating
4 losses", just to point you to where we were talking about
5 that.

6 CMSR. HARRINGTON: Yes.

7 BY CMSR. HARRINGTON:

8 Q. This is -- this, I think, is from the Supreme Court,
9 where it says "the minimum of emergency relief to which
10 the Company is entitled is a sum --

11 (Court reporter interruption.)

12 BY CMSR. HARRINGTON:

13 Q. "The minimum of emergency relief to which the company
14 is entitled is a sum which will put a stop to the
15 continuing operating losses of the company", and goes
16 on from there. And, then, the Petition says "This
17 requires that the Commission approve emergency rates
18 sufficient to pay the Company's going-forward tax
19 relief, plus interest on its outstanding 2012 tax
20 liability, in order to stop the continuing operating
21 losses of the company." And, now, you're saying that
22 "there is no continuing operating losses of the
23 Company." So, I'm a little confused. Does that mean,
24 not including the tax liability, there's no operating

1 loss, but, if you put the tax liability in, there is an
2 operating loss? Because that seems to be the heart of
3 your case, as to why you need the emergency relief.

4 A. (St. Cyr) The statement to "stop the continuing
5 operating losses for the Company", that's cited on Page
6 4 of the Petition, is a reference to the net operating
7 losses that existed and were accumulated from 2007 to
8 2009, and then utilized in 2010 and '11. So, the
9 reference to "stop the continuing operating losses" is
10 what that references to.

11 Q. So, there's no longer any operating losses to stop as
12 of today, as we sit here right now?

13 A. (St. Cyr) Yes.

14 Q. And, I guess my question would be, when you make that
15 statement, where does the tax liability that you have
16 fit in?

17 A. (St. Cyr) In 2012, the Company has the liability, it's
18 recorded on its books, and has set up a liability.
19 It's recognized the tax expense and set up a liability
20 as of 12/31/2012.

21 Q. So, maybe we can talk in non-technical accounting terms
22 here. You don't have an operating loss for 2012, but
23 you have this liability for taxes. If you put them
24 together, do you have a negative balance? I'm trying

1 to see, is the amount you owe in taxes more than the
2 amount you -- well, what's -- your operating gain, I
3 guess, the opposite of an operating loss?

4 A. (St. Cyr) I guess I'm -- I'm just searching for sort of
5 an exhibit that I could point to. I guess I would
6 point, hopefully, this will help, I'm looking at the
7 Company's data response to 1-5. The response is 165.
8 And, I'm specifically looking at the "Statement of
9 Operation and Retained Earnings", this is on Page 167.
10 The very first column, "Preliminary Actual 2012", this
11 includes the recognition of expense. You've got the
12 two line items, "Provision for income tax - current",
13 "Provision for income tax - deferred". And, with the
14 inclusion of those tax expense, the Company would
15 realize a net income of \$142,617. And, the net income
16 would indicate that there -- the Company doesn't expect
17 a net operating loss, but that those -- the money
18 that's generated from that income is what's used to,
19 you know, pay for capital improvements, return on
20 capital, you know, the reduction of the liabilities.
21 There's a lot of cash requirements in order to, you
22 know, utilize that income.

23 Q. But you have already included the \$97,949 of tax
24 liability from 2012 in the calculation that got you a

1 net income of 142,617, correct?

2 A. (St. Cyr) That's correct.

3 Q. Okay. Again, I'm not an accountant, please don't be
4 offended by my question. How do you get to the fact
5 then that you need emergency rates to pay your 2012
6 taxes, if, after you account for paying for them, you
7 have them listed here, you take them into account, you
8 end up with 142,000? Am I just missing something in
9 the way this chart reads?

10 A. (St. Cyr) Actually, maybe a better chart to look at
11 would be the statement of cash flow, and this is on
12 Page 164. And, this starts with the net income we just
13 talked about. And, this is the net income that's
14 available for all of the Company's cash requirements.
15 And, you know, there are some changes to operating
16 accounts that, if you look at the line item that says
17 "Net Cash Provided by Operating Activities", the
18 Company essentially has \$480,000 to work with,
19 including that net income of 142,000. Well, how does
20 it utilize those funds? It utilizes those funds by
21 purchasing plant, by paying principal and interest on
22 the loan, by returning capital to the shareholder.
23 And, the net result is the "cash at the end of the
24 year", the very last number is the "11,303".

1 Q. And, does the -- are the 2012 taxes addressed someplace
2 in this column that we just went over on Page 160 --

3 A. (St. Cyr) It would be netted in the "Net Income"
4 number, the "142,617".

5 Q. One hundred -- I'm sorry. Oh, up the top, "Net
6 Income". So, if it's already in there, then why do you
7 need emergency rates to account for it, if, after you
8 account for it, and you make all these other payments,
9 you're left with \$11,000 at the end of the year,
10 \$11,303?

11 A. (St. Cyr) And, we haven't paid that, even though we've
12 recognized the expense. We have the liability and we
13 have \$11,303 to pay that particular expense.

14 Q. But it's already accounted for when you come up with
15 the \$142,617, isn't it?

16 A. (St. Cyr) Yes. The expense is accounted for, but the
17 expense hasn't been paid for.

18 Q. Well, I could spend -- I'm just showing my naiveté on
19 accounting. I'll have to have someone explain that to
20 me, because I clearly don't understand what you're
21 talking about. It seems like you're counting it twice,
22 but I'm sure I'm probably wrong on that. There was a
23 couple other questions. Oh, while we were on that page
24 there, that Page 164, there was the additional paid-in

1 capital of 123,356 for 2012. Is there any intent of
2 making another payment similar to that in 2013?

3 A. (Mason) No.

4 Q. So, then, we can take that as absolute, there will not
5 be a payment of that amount in 2013?

6 A. (Mason) Correct.

7 Q. Won't be two dollars less or 50 cents more or --

8 A. (Mason) No. No.

9 Q. No additional paid-in capital payments period?

10 A. (Mason) Right.

11 Q. Okay. And, last, I'm getting to the end here, --

12 BY CHAIRMAN IGNATIUS:

13 Q. While you're searching, let me just be sure we're
14 clear, because this "paid-in capital" and a "decrease
15 in paid-in capital" are two different things?

16 A. (Mason) I meant a decrease in it.

17 Q. Okay. And, I think Commissioner Harrington's
18 question --

19 CMSR. HARRINGTON: Sorry.

20 BY CHAIRMAN IGNATIUS:

21 Q. -- would there be any more paid-in, which would presume
22 from your mother to the Company; we're talking about
23 the opposite. Any expectation of any "return of
24 capital", as Mr. St. Cyr called it, from the Company to

1 Mrs. Mason?

2 A. (Mason) Right. And, that's no. That's still "no".

3 CMSR. HARRINGTON: Thank you, Chairman.

4 That helps. I didn't realize I had that backwards.

5 Wouldn't be the first time I screwed up accounting terms,
6 I'm sure.

7 BY CMSR. HARRINGTON:

8 Q. The last question I want to address is the whole
9 concept of "why this is an emergency?" Because we
10 really haven't seen -- we see an awful lot of things
11 here, I see \$600,000 plus that you owe vendors, and
12 that's not an emergency. And, see 70,000, some of it
13 is owed for over three years, and that's not an
14 emergency. I see \$43,000 in property taxes, some of
15 which is over 13 months old, \$20,000 of it, and that's
16 not an emergency. I see 31,000 of "other taxes", non
17 -- not "income taxes", as you refer in the Petition,
18 that's owed to the State of New Hampshire, and that's
19 not an emergency. So, I'm trying to figure out what
20 makes this particular amount an emergency.

21 And, if you -- going through your
22 testimony, I'm just going to kind of flip through, this
23 is Mr. Mason's testimony. And, on Page 4, for example,
24 you say your rates "are insufficient to prevent

1 financial condition from deteriorating"...without
2 revenues to pay its existing and accrued tax liability
3 in its rates, the Company's already difficult financial
4 condition will deteriorate." And, these are the type
5 of words that are used throughout the testimony. And,
6 on Page 12, "will cause its financial condition to
7 deteriorate and render its efforts to reduce payables
8 ineffective."

9 And, I could go on, but I'm not going
10 to, other than in the "Conclusion" section of your
11 testimony, on Page 14, where you say "The absence of
12 any allowance for Federal and State income taxes in
13 2012 has caused the Company's financial condition to
14 deteriorate, despite significant progresses having been
15 made to improve operations and regulatory compliance."

16 And, never once do I see the words from
17 the statute, which talks about "an emergency exists",
18 and, you know, there's some type of a crisis here. Can
19 you explain exactly what the crisis is that is so bad
20 that you couldn't wait, for example, to file temporary
21 rates associated with a permanent rate case, which you
22 said "there's a 99.9 percent chance you're going to
23 filing in the spring"?

24 WITNESS MASON: Justin, do you want to,

1 or do you want me?

2 MR. RICHARDSON: You were asked the
3 question, so --

4 WITNESS MASON: Okay.

5 **BY THE WITNESS:**

6 A. I believe it all -- it's unfunded taxes is what the
7 issue is. And, what we can't afford to do is, we're
8 trying to pay down our payables. We're working very
9 hard to. You know, we have a huge payable list. And,
10 a lot of it revolves around the last rate case and the
11 period of time we're going to collect that. Plus other
12 things that are out there that they have to pay, I
13 mean, sooner or later. And, what's happened is, it's
14 going to add another \$100,000 on the top of that fee,
15 you know, on top of the money that we're talking about
16 that we're going to owe the government that's going to
17 be unfunded by the customer. That is the major
18 emergency.

19 BY CMSR. HARRINGTON:

20 Q. Okay. But you didn't feel it was necessary to go to
21 the IRS and say "Look, here's our situation. We're
22 going to file temporary rates. We're going to ask for
23 a permanent rate case. We should be getting additional
24 revenues to cover this. Here's why we don't have the

1 money. And, when we get that, the ultimate solution is
2 the permanent rate case. And, therefore, can you make
3 some kind of a payment structure so we can meet our
4 obligations over time, without getting into any
5 trouble." You didn't think that was necessary or
6 worthwhile trying?

7 A. (Mason) I didn't think it was -- it would work. You
8 know, this has been a really busy year. I mean, we've
9 had the rate case. We got done with the rate case. We
10 got, you know, the results from it in the end of July,
11 the first of August. Then, we had a rehearing, and, in
12 September or maybe early October, we found out that
13 wasn't going to fly. And, it all revolves around these
14 taxes. And, then, at that point, we were dealing with
15 rate recoupment, and filing all the stuff we needed to
16 for rate recoupment. And, looking for a financial
17 manager and all these different things that were out
18 there. And, you run out of time to, you know, to -- I
19 never even thought about calling the IRS and saying,
20 you know, "you guys mind if I don't pay you?" It just
21 never even dawned on me. We didn't even know that --
22 you know, we knew we were going to have a tax problem,
23 you know, at the end of the rate case, basically,
24 because it was -- we just knew that. It's just grown

1 and grown since then.

2 Q. But, if I'm correct, based on the previous discussions,
3 that, if you were to get the amount that you're
4 requesting in emergency rates, it would still mandate
5 that you go to the IRS and work out a payment
6 schedule?

7 A. (Mason) Correct. Correct.

8 Q. Because, even with the rates granted in full, there's
9 no way you could pay your taxes on time?

10 A. (Mason) Correct. And, both, you know, the people that
11 I rely on, Norman and Steve, both said that, you know,
12 that wasn't anything we should deal with until after we
13 actually file the tax return.

14 CMSR. HARRINGTON: Thank you. That's
15 all the questions I have at this time.

16 CHAIRMAN IGNATIUS: Thank you.
17 Commissioner Scott.

18 CMSR. SCOTT: Good afternoon. Again,
19 same rules, whoever feels best to answer these questions,
20 please do so.

21 BY CMSR. SCOTT:

22 Q. I want to go back to the "return of capital" discussion
23 a little bit. And, if I understood right, the
24 statement was made that there was an "obligation" to do

1 this, that's why the payment was done. And, if I
2 understood right also, and I'll let you say "yes" at
3 the end of this, so the court reporter can get it,
4 rather than nodding your head. If I understood right,
5 you mentioned there was -- somebody mentioned there was
6 an obligation of a million dollars to be paid back, is
7 that correct?

8 A. (Mason) No, no, no. There's been a ton of money that
9 my parents have put in. And, in the last five years,
10 they've put in over a million dollars. There's no
11 obligation to pay that all back. When my dad was sick
12 and, you know, pretty much, in the rest home and
13 everything else, my mother needed money. And, so, we
14 made arrangements to get her some money with return of
15 capital for a period of time, until she got, you know,
16 that he passed away and things got better. And, at
17 this point, she doesn't need that.

18 Q. So, that would imply, if there was a payment made for
19 return of capital, again, a term I'm not familiar with,
20 there is some documentation of this obligation that
21 it's being paid against?

22 A. (Mason) Excuse me?

23 Q. How do -- where is it carried, this obligation that you
24 were paying this return of capital back to?

1 A. (St. Cyr) Well, it's reflected on the balance sheet on
2 a line item called "additional paid-in capital". And,
3 when the Company makes the payment to Barbara, then the
4 amount of additional paid-in capital gets reduced by
5 whatever the amount is that was paid to her.

6 Q. So, somewhere there's a documented obligation that
7 needs to be paid against that's somewhere in the
8 documentation?

9 A. (St. Cyr) It's reflected on the Company's balance
10 sheet, and represents the accumulation of funds
11 contributed by the Masons over a period of time.

12 Q. So, what's the remaining obligation then?

13 A. (St. Cyr) If you go to Schedule -- I'm sorry, this is
14 the Company's response to Staff Data Request 1-5. On
15 the very -- this is Page 166. The amount, as of the
16 end of 12/31/2012, is "\$955,248". This is second half
17 of the page, first category "Stockholders' Equity", the
18 line item "Additional Paid-in Capital", and the
19 balance at December 31, 2012 is the "\$955 --
20 \$55,248" [\$955,248].

21 Q. Okay. So, I understood it right, "900,055, not 955?"

22 A. (St. Cyr) \$955,248.

23 Q. Right. Thank you. I thought I heard --

24 A. (Mason) He did it. He said that.

1 Q. I thought I heard "\$955" you said.

2 A. (St. Cyr) I'm sorry.

3 Q. So, is that -- that's an obligation that remains to be
4 paid then?

5 A. (St. Cyr) It's equity that the -- this is equity that
6 the sole shareholder has invested in the Company over
7 time. There isn't a set obligation, *per se*.

8 Q. Yes, I'm just trying to -- what I'm trying to get at is
9 the legal mechanism by which you make a payment for
10 return of investment, how does that work? I understood
11 the Board of Directors voted to do that. I also
12 understand the mechanism by which that happens. So,
13 were these effectively loans to the utility, with
14 conditions by which it would be paid back? Is that
15 the --

16 A. (St. Cyr) This was money invested, you know, by the
17 Masons, you know, that the Company utilized. There
18 isn't a specific -- it's not like a loan, where there's
19 a specific term or a specific amount that's paid. It's
20 money they have invested that, you know, arguably could
21 be paid at any time, provided there was cash available
22 to do that.

23 Q. I'll move on then, I think. But, thank you. Back to
24 the determination whether this is an emergency or not.

1 What would happen if we were not to approve this, this
2 filing?

3 A. (St. Cyr) The Company would not have the cash to pay
4 the tax and would have another expense or expenditure
5 that, you know, it juggles from period to period to
6 make a determination as to, you know, when and if it
7 could get paid.

8 Q. And, I think, and I apologize, I don't know who
9 mentioned this, there was some talk about a potential
10 or in the past you have made use of a six-month
11 extension for the IRS, is that correct?

12 A. (St. Cyr) Yes. This is an automatic extension that any
13 company can take advantage of. It doesn't extend the
14 time in which the obligation should be paid. If that
15 obligation exists, then it exists whether you file a
16 return in March or in September. But companies do have
17 the option of filing six months on an automatic basis.

18 Q. So, again, you've articulated, the hope is by May, if I
19 remember correctly, you'd have a rate case in before
20 us?

21 A. (Mason) Yes.

22 Q. I understand that doesn't happen overnight, but what
23 would be the harm of including all this in the normal
24 sequence of events?

1 A. (St. Cyr) I think the harm or the concern that the
2 Company would have is that it would -- at that point it
3 would be too late to address the 2012 tax obligation
4 that, you know, we would be preparing a rate case based
5 on 2012 test year, but it would be going forward. And,
6 I think the Company felt like they needed something,
7 you know, ahead of that in order to attempt to, you
8 know, address really the obligation that exists today.

9 Q. Okay. And, this is probably for Mr. St. Cyr, but,
10 again, whoever wants to answer it. Well, no, it is for
11 Mr. St. Cyr, I think. Is it -- now, I want to discuss
12 a little bit more the line of questioning regarding the
13 amended tax returns and the reason for that. And, if I
14 -- I just want to make sure I understand you correctly.
15 Are you saying, or at least in this case, that the
16 general accounting principles for ratemaking, compared
17 to for what you would file for IRS, are basically one
18 in the same, and that's why you felt an obligation to
19 amend the tax return?

20 A. (St. Cyr) Yes. The tax code does provide for certain
21 exceptions, where you can treat something differently
22 for tax purposes. Depreciation is probably the most
23 common item, where the cost basis would be the same,
24 but the amount that you can recognize for tax purposes

1 is on a much more accelerated basis. It could be
2 either the whole amount or it can be an accelerated
3 amount, much quicker than you could recognize for book
4 purposes. There are no specific exceptions related to
5 the transaction that the Company did that would allow
6 us to treat that, you know, those transactions
7 differently for tax purposes. And, so, in part,
8 because of that, the Company felt the obligation to
9 amend the returns.

10 Q. Okay. And, my last question for now is, if we were to
11 grant this, your request, would that fix what you're
12 calling an "emergency"? Would that fix the crisis?

13 A. (Mason) It would fix the tax. Yes, it would. I mean,
14 we're still, you know, we're still going to be taking a
15 while to pay off all of our payables. I mean, we're
16 definitely working on them and getting them paid off.
17 That's going to take another probably a year to do.

18 CMSR. SCOTT: Thank you.

19 CHAIRMAN IGNATIUS: Mr. Dawson, you've
20 been sitting so quietly. I think it's time to give you a
21 few questions, --

22 WITNESS DAWSON: Excellent.

23 CHAIRMAN IGNATIUS: -- so you know it
24 was worth coming today.

1 BY CHAIRMAN IGNATIUS:

2 Q. In your prefiled testimony, you described some
3 improvements to the Company and changes that have been
4 beneficial for the operations, which are great to read.
5 I do want to ask you, though, to pinpoint any
6 investments made, not over the last few years, which
7 your testimony does, but specifically since the last
8 rate case, conclusion of the rate case. So, since
9 September I think is when the order on rehearing was
10 done. So, really, the very last quarter of 2012, were
11 there investments made --

12 A. (Dawson) In 2000 -- yes, there was. In the last
13 quarter of 2012, we worked in the Deer Cove pump
14 station, replumbed the entire pump station, upgraded
15 some pumps, upgraded some controls that were older than
16 me. And, we've also done some water conservation
17 compliance for Hidden Valley, as far as meter
18 calibration. And, also been working on a new and
19 improved Capital Management Program during that time.
20 Because that quarter of the year is typically our
21 quieter time, other than freezing houses, but there's a
22 lot of office time that time of year.

23 Q. Do you have a monetary value for the investments that
24 were made? Is that something that you -- you track and

1 can identify the last quarter?

2 A. (Dawson) I wouldn't feel comfortable giving you a
3 specific number. I don't know exactly.

4 Q. Were the Deer Cove pump station improvements things
5 that were mandated by DES?

6 A. (Dawson) No.

7 Q. How about the water -- you said a "water compliance"
8 and "meter calibration", and I didn't get the rest of
9 the details, were those things that were mandated by
10 DES?

11 A. (Dawson) It was. Yes, it was.

12 Q. So, tell me a little bit more about what those were and
13 what DES was requiring of you?

14 A. (Dawson) Basically, part of our water conservation plan
15 in Hidden Valley, which was started in 2008, because
16 of, basically, it gets adopted when a new well goes on
17 line. And, part of that plan is to look at a water
18 audit in your water systems and to figure out where up
19 might be able to improve your water audit. Part of
20 that water audit is, obviously, meter calibration, it's
21 a big number in the pie. So, working with Derek
22 Bennett at the DES, we decided that the meters were of
23 the age that they needed some level of calibration done
24 to them. So, I basically, after a couple meetings, we

1 sat down and decided to take 10 meters, which is
2 roughly 10 percent of the meters in that system, and
3 calibrate them, and which we have done. And, then, the
4 next step after that, which I have not yet completed,
5 because Derek's on vacation, will be to determine how
6 we're going to move forward from there.

7 Q. All right. And, the "Capital Management Program" I
8 think you referred to, is that something that was
9 mandated by DES?

10 A. (Dawson) It is not. It's highly encouraged. I've been
11 working with Adam Torrey, who was in here, for a while,
12 I would say it's been close to a year I've been working
13 with Adam. But we just finally found a better process,
14 I think, to handle that, now that I have some office
15 time.

16 Q. All right. Thank you.

17 A. (Dawson) No problem.

18 Q. Mr. Mason, in your testimony, you had said that,
19 because of the tax problem, "the Company has been
20 unable to earn a sufficient return, reduce its
21 payables, and maintain its financial condition."
22 That's at the bottom on Page 5.

23 A. (Mason) Yes.

24 Q. If you haven't paid your taxes, then how is it that the

1 lack of revenue for taxes has caused you to be unable
2 to earn a return or reduce payables?

3 A. (Mason) Well, that's probably not really the right
4 wording of that. Whereabouts are you looking at?

5 Q. Your testimony, Page 5, the bottom three lines, 21
6 through 23.

7 A. (Mason) I think it just means going forward. What we
8 talked about was that, if we had to pay those, we're
9 going to have to slow down in paying our payables.
10 And, at the minute, we don't have a tax liability, or,
11 actually, we do now, by the end of the year. But I
12 think what I was trying to get at was that, we're going
13 to have to pay the government somehow. And, we're also
14 really trying to pay off these payables that have been
15 out there so long. You know, it was going to impact
16 being able to do that.

17 Q. And, in fact, your calculations for 2012 show that you
18 have earned -- met your authorized rate of return and
19 slightly exceeded, yes?

20 A. (Mason) Well, it's a little -- it's a little deceiving.
21 There's \$43,000, I believe, that was rate recoupment,
22 when we started our rate case in 2010, that came in in
23 2012. So that, we really need to back that \$43,000 out
24 of that data. It's not backed out. So, it's actually

1 money that should have come in in 2010, that came in in
2 2012, which will lower the rate of return a little bit.
3 You know, and the raw calculations, I think we
4 overearned by \$7,000, or something like that. It's not
5 a huge overearnings. But there is \$43,000 that's in
6 there that isn't really part of that.

7 Q. All right. Thank you. Mr. St. Cyr, can you help me
8 understand, in the rate of return calculation, and I'm
9 looking at Page 162, I think it is, of Exhibit 4. It's
10 in Tab 3. Do you have that?

11 A. (St. Cyr) Yes.

12 Q. If you look in the middle of the page, in the far left
13 column, there's "Prepaid Taxes" and "Accrued Taxes".
14 What do each of those categories include?

15 A. (St. Cyr) The "Accrued Taxes" would include the taxes
16 for federal and state income taxes that are the subject
17 of this proceeding. The "Prepaid Taxes", that's likely
18 to be local property taxes. These would be property
19 tax bills that came in in the fall that pertain to the
20 period October 1 through March 31st. To the extent
21 that the Company paid them in 2012, then they would
22 recognize a prepayment for the portion that relates to
23 2013.

24 Q. So, a payment that crosses over two years, a portion

1 would be allocated -- well, it's not allocated, it
2 would all be recognized in as an expense in 2012, even
3 though some of it goes to 2013? Or, are these 2011
4 payments going to 2012?

5 A. (St. Cyr) It's the property tax that pertains to 2012
6 gets recognized in 2012. To the extent that the
7 Company paid a bill that pertains to 2013, January,
8 February, March of 2013, those amounts is what would be
9 included in "prepaid taxes".

10 Q. And, when you have accrued taxes in brackets, that
11 "98,500" figure, what does that mean in working through
12 the calculations here?

13 A. (St. Cyr) That's a reduction to rate base. In other
14 words, the top portion of the calculation is a
15 calculation to determine what rate base is. And,
16 accrued liabilities or accrued taxes is a reduction to
17 rate base. It's recognition that the Company hasn't
18 paid those taxes, so it shouldn't earn a return on
19 something that it hasn't paid for yet.

20 Q. You had said before, I think in looking at this exhibit
21 actually, this Page 162, that the net operating income
22 that's shown really is identifying cash available that
23 can be used for multiple purposes. And, as you put it,
24 money used to pay the obligations of the Company, is

1 that right?

2 A. (St. Cyr) The specific reference to "cash" may not be
3 exactly appropriate, but, yes. Basically, this is
4 after the Company has paid its operating expenses or
5 recognizes its operating expenses, this is funds that
6 are available supposedly to pay principal and interest
7 on loans and return on and of capital.

8 Q. And, when you're making that calculation of what's
9 available after paying recognized obligations, that's
10 not the phrase you just used, but something like that,
11 does that include the tax obligations?

12 A. (St. Cyr) This amount does, yes.

13 Q. All right. So, although the payment hasn't been made,
14 reaching that \$211,000 figure is assuming tax
15 obligations have been met for the year, correct?

16 A. (St. Cyr) It's assuming that the tax expense has been
17 recognized. And, I guess I would -- it's clearer, or
18 at least for me, on Page 167. Again, if you look at
19 the first column, the amount that we're talking about,
20 "net operating income", is "\$211,777". A couple lines
21 up above that is the recognition of the expense that is
22 the subject of this proceeding. And, what it doesn't
23 include, the 211, as you drop further down the line,
24 you can see the interest expense comes out of that

1 money, that's interest mostly on the debt. But, then,
2 in addition to that, you know, if you drop to the "Net
3 Income" line, then that "net income" line, at least in
4 theory, is what's available to pay principal on the
5 loans, to return capital, to make investments in plant.
6 It's all of those things that this net income is
7 supposed to provide for.

8 Q. Well, what troubles me is we work through this, where
9 you have an identification at the top of the page of a
10 provision for income taxes, that sort of presumes that
11 money's kind of spoken for, that it's understood that
12 those are obligations that have to be met, and the
13 money is identified to be able to do that. And, then,
14 when you get to the net income, after all of those
15 obligations have been met, we then hear from you "well,
16 we need to use this net income to pay the income taxes,
17 as well as all of the other expenses of the Company."
18 And, I tell you, it baffles me. Why is it that, by
19 identifying it up at the top, providing for income
20 taxes, and then having a net figure after those income
21 tax obligations have been anticipated, that we're left
22 with insufficient income to pay the income taxes?

23 A. (St. Cyr) Well, it's more "insufficient cash" than it's
24 "insufficient income". You know, what we're doing on

1 this statement is recognizing the expense, but this
2 statement doesn't represent, you know, what the cash is
3 available in order to pay, not only that expense, but
4 the other expenditures. And, that's -- sometimes I've
5 been kind of flipping back between this and the cash
6 flow statement. The cash flow statement is perhaps a
7 better indication of the Company's cash position, and,
8 you know, the cash that it has available and what it's
9 doing with that cash.

10 Q. The payment that was made to Mrs. Mason, what you
11 called "return of capital", was that made in cash?

12 A. (St. Cyr) Yes.

13 Q. And, you had said, Mr. St. Cyr, that the rates coming
14 out of the rate case provided for what you called
15 "return of capital". Where is that found?

16 MR. RICHARDSON: Ms. Chairman, I'm sorry
17 to interrupt, and I've heard this happen several times.
18 And, I don't want my silence to be construed as agreement.
19 I thought, working with Mr. Roberge and I thought working
20 with Mr. St. Cyr, that I was told that the return of
21 capital was not made in cash. It was a mixture of cash
22 and services that were purchased by Barbara Mason. And, I
23 --

24 CHAIRMAN IGNATIUS: Well, your witness

1 testified otherwise. So, if you need to -- I don't know
2 what you want to do. But --

3 MR. RICHARDSON: I think after this
4 witness testifies, I may have to confer with Mr. Roberge
5 and try to correct the record. And, I'm just worried that
6 we're digging ourselves deeper and deeper into that -- in
7 that point. And, I just wanted to alert the Commission
8 that that's an area where at least I'm uncertain. And, I
9 am not sure that the answer that the Commission has heard
10 is correct at this point.

11 CHAIRMAN IGNATIUS: All right.

12 WITNESS ST. CYR: If I may just comment?
13 The additional paid-in capital is a net number. It
14 represents cash payments made to Barbara during 2011 and
15 2012. There were also services that Barbara purchased
16 from the Company for work that was done for her
17 personally. There was money that came in from her to pay
18 for those services. And, then, there was the money that
19 went from the Company to her for the return of capital.
20 And, it's really a net of three or four different
21 transactions. The substance of the amount is payments to
22 her over the 2011 to 2012 period.

23 CHAIRMAN IGNATIUS: All right. I would
24 like to ask then that we reserve a record request for an

1 accounting of the various components of that \$123,000
2 figure, which sounds like you can do. And, it may even be
3 in the record somewhere already, if somebody wants to
4 point me to it. Otherwise, we can reserve Exhibit 10 for
5 that.

6 MS. BROWN: Madam Chairman, I thank you
7 for the clarification, because that's one point we were
8 talking during OCA's questioning about potentially
9 reserving a record request. And, I couldn't remember if
10 the Clerk had recorded that we were or if we weren't,
11 because the discussion was around what comprised those
12 payments and was there a Board authorization. So, at this
13 point, Staff, if there is going to be a record request, if
14 it hasn't already been made, we would also like to ask for
15 more than just what payments were and when they were made.

16 CHAIRMAN IGNATIUS: Well, I think we
17 reserved number 8, as I recall, for the minutes of any
18 Board meeting, any authorizations.

19 MS. BROWN: Thank you.

20 CHAIRMAN IGNATIUS: So, let's use 10 for
21 a delineation of the different components of that, what
22 shows as reduction in paid-in capital of 123,000 and some
23 amount.

24 **(Exhibit 10 reserved)**

1 BY CHAIRMAN IGNATIUS:

2 Q. And, Mr. St. Cyr, when you said that some of it is for
3 services performed, I hope I didn't get this wrong,
4 performed by the Company for Mrs. Mason, is that
5 correct?

6 A. (St. Cyr) I believe I said "purchased", Mrs. Mason
7 purchased the services from the Company.

8 Q. So, purchased but -- and paid for or purchased, but
9 didn't pay, because it was a form of a return of monies
10 she put into the Company over the years?

11 A. (St. Cyr) This is purchased and paid for.

12 Q. Then, why would that reduce -- why wouldn't that be
13 income to the Company, rather than reducing paid-in
14 capital-capital?

15 A. (St. Cyr) Offhand, I don't know. I think -- I want to
16 say it was sort of all netted through this particular
17 account.

18 CHAIRMAN IGNATIUS: All right, so, a
19 delineation of that in Exhibit 10 will be helpful. Thank
20 you.

21 BY CHAIRMAN IGNATIUS:

22 Q. You had also said, Mr. St. Cyr, that "the rates coming
23 out of the rate case concluded this summer provided for
24 return of capital." And, I didn't know what you were

1 referring to. Can you help explain that?

2 A. (St. Cyr) The rates that the Company received reflect a
3 rate of return. And, the rate of return is applied to
4 rate base. And, the rate of return, in theory anyway,
5 is what the Company has available to pay its debt and
6 pay its shareholders. So, when I said that, you know,
7 "there was money provided", I'm talking about the rate
8 of return that's applied to rate base that is generally
9 used to pay principal/interest on debt and
10 shareholders.

11 Q. You're not saying that coming out of the rate case
12 there was a delineation of a 123,000 payment to
13 Mrs. Mason, are you?

14 A. (St. Cyr) No, I'm -- no.

15 Q. Mr. Mason, when the rate case order came out and the
16 denial of the motion for rehearing, which focused
17 heavily, if not exclusively, on the question of the
18 taxes, did you appeal that to the State Supreme Court?

19 A. (Mason) No.

20 Q. So, when you knew that there was no more opportunity
21 for changing the order on provision for rate case
22 expenses, did you start setting aside money to meet
23 your tax obligations?

24 A. (Mason) No.

1 Q. Why not?

2 A. (Mason) Well, it was a discussion Justin and I had
3 about, you know, where we go after that, you know, when
4 we didn't get the rehearing. And, what we started to
5 talk about at that point, which wasn't until, you know,
6 when was that, sometime in September, I believe, or
7 maybe even early October, of, you know, what our
8 choices were. And, the choice that we thought made
9 sense was the one we're doing right now. With advice
10 from, you know, from -- it was a decision that we made
11 together that this was the direction we were going to
12 go. We thought it was the right choice. Maybe it
13 wasn't. I don't know.

14 Q. I'm sure you recognize a certain frustration on my
15 part, and I apologize for getting impatient at various
16 points. But, as I see it, what you've described as an
17 "emergency", is not an "emergency" under the statute,
18 and is -- appears to be of your own making. And, I
19 know the Company is in terrible straits financially.
20 But there is no surprise that the tax bill comes due.
21 There couldn't be anything clearer than "taxes are
22 coming". You may not know the exact amount, but you've
23 got all sorts of estimates in the financial records of
24 what you anticipated.

1 A. (Mason) Well, that's the same argument we used with the
2 rate case.

3 Q. Right. And, if you know from -- if you read the orders
4 why it was that we denied that, and, so, having not
5 prevailed on that question, I'm just surprised the
6 Company spent money on other things. They may be
7 important things, but, for a company that's got all
8 sorts of accounts payable, to not set money aside for
9 taxes, and then come in and tell us it's "an
10 emergency", is -- I'm baffled by it. So, I guess, I'll
11 wait and let you respond.

12 A. (Mason) Well, I guess, I mean, I guess what I'm
13 concerned about is what do we do with the payables? I
14 mean, part of the order was to "try to pay down your
15 payables". And, that's what we've really tried to do
16 is pay down our payables. And, basically, in kind of
17 one fell swoop you're adding \$100,000 worth of tax
18 liability to us that we're going to have to pay to
19 Uncle Sam. And, I don't know, you know, I mean, maybe
20 the right choice was to go to the Supreme Court. I
21 don't know. But that's a bill that, you know, we have
22 to pay, and it's unfunded by anything.

23 Is there another way? I guess I should
24 ask this. Is there another way that, if we went for a

1 regular rate case, would that include -- would we be
2 leaving that \$100,000 out there? In other words, being
3 that it was a bill from 2012, with a 2012 test year,
4 and would that be included? Could we collect that?
5 Or, would that just be "That's before, and sorry about
6 luck. We'll go forward from today"? I guess I'm
7 confused about that.

8 CHAIRMAN IGNATIUS: All right. I have
9 no other questions. Are there any -- I'm sorry,
10 Commissioner Harrington.

11 CMSR. HARRINGTON: Just one quick
12 follow-up question, for Mr. Dawson. We haven't forgot
13 about you, you see.

14 BY CMSR. HARRINGTON:

15 Q. On Page 9 of your testimony, on the top of the page,
16 you say "Simply put: If the Company had used \$100,219
17 in customer revenues to make estimated tax payments in
18 2012, the Company would have been unable to operate its
19 systems." So, we're talking about, if they had used
20 the money to make the estimated tax payments last year,
21 is what we're talking about here, correct?

22 A. (Dawson) Correct.

23 Q. Okay. Now, let's move ahead to this year. With the
24 knowledge, and you may not be able to answer this, so

1 please feel free not to, because I know it's kind of a
2 difficult question. But we now seem to have come to
3 the conclusion that the tax liability is \$17,500 less
4 than that. And, we've heard here that, regardless of
5 what it is, it's going to be paid off over the course
6 of a year with some arrangement yet to be described
7 with the IRS, because it's not going to be a lump-sum
8 payment. So, if those payments were made, say, \$40,000
9 was deferred to the -- in 2013 to payment of taxes in
10 lieu of going to other places, would that -- would you
11 still make that same statement, you would be unable to
12 operate the system or --

13 A. (Dawson) It would definitely negatively affect the
14 quality of service, without a doubt. I mean, there's
15 capital improvements that have to be made. You know,
16 whether we want to make them or not, they have to be
17 made. Whether they're mandated or not, we have to move
18 forward. And, if any amount of money that's taken away
19 from the operations of Lakes Region Water Company's
20 water systems is going to negatively affect service.

21 CMSR. HARRINGTON: All right. Thank
22 you. That's helpful.

23 CHAIRMAN IGNATIUS: Commissioner Scott.

24 CMSR. SCOTT: One, one more follow-up.

1 Thank you.

2 BY CMSR. SCOTT:

3 Q. Obviously, today's the 6th of March. No matter how we
4 rule on your request, if I understood right, the 15th
5 you're going to be doing a tax filing, is that correct?

6 A. (Mason) I believe so.

7 Q. Will there be any payment made with that?

8 A. (Mason) I doubt it.

9 Q. And, you've also talked about reconciliation after you
10 do file your taxes. You're ten days -- nine days away
11 from that day you're saying you're going to file. Is
12 there new information you're waiting for or you just
13 haven't put the taxes together yet or --

14 A. (Mason) Just the final detail. Just going over them,
15 making sure we're right. I mean, obviously, we spent a
16 lot of time, we thought we spent a lot of time on what
17 we did. You know, the final details will be done, and
18 then we'll be able to file.

19 Q. But it just occurs to me again, assuming you get what
20 you're asking for, that to come back again to reconcile
21 something that you're that close to finishing, wouldn't
22 be necessarily a good use of all your time and our
23 time, does that make sense?

24 A. (Mason) Yes.

1 CMSR. SCOTT: Thank you.

2 CHAIRMAN IGNATIUS: Mr. Richardson, any
3 redirect?

4 MR. RICHARDSON: Yes. Thank you.

5 **REDIRECT EXAMINATION**

6 BY MR. RICHARDSON:

7 Q. Mr. St. Cyr, I want to walk you through some items in
8 the cash flow statement. So, if you have Staff -- the
9 responses to Staff 1 -- actually, let's start with 1-3.
10 And, you see in that document, there's net operating
11 income of "\$211,781".

12 CHAIRMAN IGNATIUS: Let's be clear,
13 that's not the cash flow statement, correct?

14 MR. RICHARDSON: I'm sorry, yes.

15 CHAIRMAN IGNATIUS: The rate of return
16 calculation?

17 MR. RICHARDSON: Yes, rate of return
18 calculation.

19 BY MR. RICHARDSON:

20 Q. This is on Page 100 -- Tab 3, 162. You see that?

21 A. (St. Cyr) Yes.

22 Q. Okay. And, you see it says the actual rate of return
23 is 8,000 -- or, sorry, "8.717 percent". And, that
24 results in an exceedance of \$7,000.83 [\$7,083?]?

1 A. (St. Cyr) That's correct.

2 Q. And, I believe you said this before, but let me ask
3 you. I mean, is this -- do you put a lot of weight
4 into this calculation or is the cash flow statement
5 more important?

6 A. (St. Cyr) This particular Company's perspective, the
7 cash flow statement is more important. It manages its
8 day-to-day operations really with the cash that's
9 available.

10 Q. And, so, why is that more important? Could you state
11 why it's more important to the Company?

12 A. (St. Cyr) It's the cash, it's the amount of cash that
13 the Company has to work with every day.

14 Q. Okay. All right. So, then, the 8 percent, 8.7 percent
15 doesn't mean that the Company had all that money
16 available to spend?

17 A. (St. Cyr) No, it does not.

18 Q. All right. Now, I'd like you to turn to Staff 1-5,
19 Exhibit 1, Page 2.

20 A. (St. Cyr) I'm there.

21 Q. Thank you. And, you'll see, let me find it. Oh, okay.
22 I was on Page 1. So, Page 2. You'll see that number,
23 net operating income, "211,781", this one actually says
24 it's "777", but that's supposed to be about the same

1 number, is that right?

2 A. (St. Cyr) Yes.

3 Q. Okay. Now, just to highlight, the first -- one of the
4 first things you've taken out of this to determine, I
5 guess, how much cash is available is the \$73,000 in
6 interest expense, is that right?

7 A. (St. Cyr) Yes.

8 Q. In interest on the Company's debt?

9 A. (St. Cyr) Yes.

10 Q. And, that you arrive at a number of "142,617"?

11 A. (St. Cyr) Which represents the Company's preliminary
12 net income for 2012.

13 Q. Okay. But is that a statement of the amount of cash
14 that the Company has on hand or are there other
15 obligations it has to meet?

16 A. (St. Cyr) It's not a statement of cash, and there are
17 other obligations that the Company has to meet.

18 Q. Okay. So, now, let's jump to the cash flow, Staff 1-4,
19 the Company's response.

20 CMSR. HARRINGTON: Is this Page 164

21 you're moving to?

22 MR. RICHARDSON: Correct.

23 BY MR. RICHARDSON:

24 Q. And, we see that number repeated again, the "142,617"

1 that was derived from the schedule we just looked at,
2 right.

3 A. (St. Cyr) That's correct.

4 Q. Okay. And, you know, there's various adjustments that
5 are made, for example, "depreciation" is one factor?

6 A. (St. Cyr) Yes.

7 Q. Okay. And, then, there's "Principal Payments on Debt".
8 What is that?

9 A. (St. Cyr) "\$143,588".

10 Q. And, what does that reflect?

11 A. (St. Cyr) That would be the principal payment on the TD
12 Bank loans.

13 Q. Okay. So, am I -- I mean, that's greater than what
14 your statement of net income, I believe, from
15 operations is?

16 A. (St. Cyr) It is greater, yes.

17 Q. Okay. And, then, we drop down and we see "Purchase of
18 Plant", and that's 130 -- excuse me, I have "Purchase
19 of Plant and Equipment", "132,621", is that right?

20 A. (St. Cyr) That's correct.

21 Q. Okay. And, so, that's another obligation that the
22 Company has to pay with the cash that it gets from its
23 operations, right?

24 A. (St. Cyr) That's correct.

1 Q. Are there other sources of funds that you think the
2 Company has reasonable access to?

3 A. (St. Cyr) My understanding is it does not have access
4 to other funds.

5 Q. You've heard Mr. Mason say that, in response to some
6 questions, that, you know, "the banks don't appear
7 willing to loan." I mean, is that your experience,
8 that a bank isn't going to be loaning to a company in
9 this Company's financial position?

10 A. (St. Cyr) It's become much more difficult for banks to
11 loan to companies.

12 Q. All right. So, I mean, based on these numbers in this
13 schedule, you know, is it -- what is your conclusion
14 with respect to the Company's ability to actually pay
15 the taxes?

16 A. (St. Cyr) It doesn't have the ability to pay the taxes
17 today.

18 Q. Now, a lot of discussion has occurred regarding the
19 paid-in capital amount, "123,356" that's shown on this
20 page, right?

21 A. (St. Cyr) That's correct.

22 Q. Can you give me a sense of, I think we've heard Tom say
23 -- or, "Mr. Mason" say I should, say in all proper
24 decorum, that the Company has put in, you know,

1 millions of dollars -- or, a million dollars in the
2 last five years. I mean, do you agree with that or
3 what is your sense of that?

4 A. (St. Cyr) That's correct.

5 Q. Okay. And, what has the Company received as a result
6 of its investment -- or, what have the Masons, excuse
7 me, received as a result of their investment in Lakes
8 Region Water Company during that period?

9 A. (St. Cyr) Beginning in 2011, they began to receive a
10 return of that capital. But they have never received a
11 return on that capital. And, up till that point in
12 time, I don't believe they have ever taken any money
13 out of the Company.

14 Q. Well, I don't know if you can identify for me the time
15 period. But how far back would we have to go, in your
16 opinion, before we found a time at which the Masons
17 received something in addition to this \$123,000 that
18 you've identified on this schedule?

19 A. (St. Cyr) Yes. I don't believe the Company -- I don't
20 believe the Masons have ever taken money out of the
21 Company until 2011.

22 Q. But what -- I mean, what about earnings that have been
23 paid to the shareholders? I mean, how far back do we
24 have to go before we find that, okay, we have some

1 money here, 123,356, and that's value provided to the
2 shareholders, right?

3 A. (St. Cyr) Well, as I said before, it's essentially
4 giving the Masons the money back that they have put in.

5 Q. Right. What other forms of consideration have they
6 received over this last five-year period or whatever
7 period you want to look at?

8 A. (St. Cyr) They have not received any compensation for
9 the capital that they have invested.

10 Q. So, do you know, I mean, if we were to look at this
11 number, and compare that to what the Company's kind of
12 net investment is, I mean, what sort of a -- is this an
13 excessive payment or what is this?

14 A. (St. Cyr) This is, you know, if they invested a million
15 dollars, and I know that it was more than that, you
16 know, this is approximately 10 percent of that amount.
17 And, again, this represents two years. So, they would
18 have got back 5 percent of what they invested over the
19 years for 2011 and 2012.

20 Q. Uh-huh. And, then, during the years before that, what
21 did they receive?

22 A. (St. Cyr) They did not receive anything.

23 Q. Do you think that that's an unreasonable thing for the
24 Mason's to receive?

1 A. (St. Cyr) No, I don't.

2 Q. Okay. I want to clarify something that was asked of
3 Mr. Dawson. And, you were asked about the fourth
4 quarter and investments that you had made and whether
5 those were necessary. And, if you look at this cash
6 flow statement, there's about \$132,000 that the Company
7 spent on plant and equipment. Do you agree with that,
8 Mr. Dawson?

9 A. (Dawson) I do.

10 Q. What would happen if the Company failed to make those
11 types of investments or if it failed to make that
12 specific investment?

13 A. (Dawson) A couple things would happen. First thing is,
14 we would most likely be out of compliance, almost
15 absolutely be out of compliance. And, the second thing
16 is, again, I've touched on this, but the quality of
17 service to our customers would definitely go downhill.
18 We would probably not be able to make some capital
19 improvements that were necessary that the customers
20 deserve. And, it would negatively affect the
21 operations of the Company.

22 Q. So, would you agree with the statement then that the
23 Company had no choice but to spend money that was part
24 of its return in order to maintain its operations?

1 A. (Dawson) As the Operations Manager of Lakes Region,
2 yes, I agree with that.

3 Q. And, is that going to end in 2012 or are you going to
4 have to -- is this a trend that's going to continue?

5 A. (Dawson) Excuse me. I don't foresee that ending at any
6 point. Every day the water system gets older, every
7 day it needs money. And, you know, when you replace,
8 you know, certain components of a water system, from
9 day one, they start getting older. So, I don't ever
10 see the need for capital improvements at Lakes Region
11 Water Company to stop.

12 Q. And, how would you characterize the Company's efforts
13 to find outside sources of financing? Do you talk
14 about this often? What do you do?

15 A. (Dawson) I talk to Tom frequently about it. I often
16 see his frustration. I know that he's tried to find
17 other sources of financing, and has always hit a
18 roadblock.

19 Q. So, would you agree that essentially the customer
20 revenues represent the only source of financing
21 improvements right now?

22 A. (Dawson) Absolutely.

23 Q. Mr. St. Cyr, I had asked you, based on the corrections,
24 or that OCA had discussed looking at your tax returns,

1 you know, whether there were -- whether any of those
2 would cause you to change your opinion as to the
3 Company's tax liability. And, I say this as
4 transition, because we've now, since I wrote that
5 question, we've heard from Staff. But could you
6 clarify for me, with the Staff's document in front of
7 you, a reduction -- does a reduction of \$17,000 that I
8 believe you suggested is what this calculation would be
9 the effect of on the Company's tax liability in 2012,
10 does that change your opinion of whether an emergency
11 exists?

12 A. (St. Cyr) No, it does not.

13 Q. So, let me get to the next question then. Which is,
14 you know, why couldn't the Company have filed a rate
15 case, say, based on a 2011 test year or filed for a
16 rate case -- a temporary rate increase as soon as the
17 rehearing was denied? Did you have the information you
18 needed at that point?

19 A. (St. Cyr) At that time, I believe we're into late 2012.
20 You know, the only information that would have been
21 available would have been 2011. And, it just did not
22 seem prudent or practical to prepare a filing based on
23 2011 data, when we were closing 2012 or in the process
24 of closing 2012.

1 Q. And, in fact, if you were to do a, you know, a proforma
2 tax liability based on 2011 as your baseline, what
3 would that show?

4 A. (St. Cyr) It would presumably show a similar tax
5 expense and tax obligation.

6 Q. Well, I'm sorry, what was the Company's tax obligation
7 in 2011?

8 A. (St. Cyr) It did not have a tax obligation in 2011.

9 Q. So, in other words, even if you filed a rate case based
10 on 2011, you'd still have to adjust it based on 2012
11 numbers, is that right?

12 A. (St. Cyr) That's correct.

13 Q. Does that make any sense?

14 A. (St. Cyr) No, it does not.

15 Q. All right. Are there other reasons why a 2012 test
16 year would be preferable to 2011?

17 A. (St. Cyr) It's simply the most recent and presumably
18 the best data available to set future rates on.

19 Q. Do you recall what Staff's objection was concerning why
20 we couldn't have a tax expense in the last rate case?

21 A. (St. Cyr) The objection was based on the availability
22 of net operating losses and Section 179 deductions.

23 Q. But I -- let me suggest to you that the Company made
24 those arguments, but do you recall Staff's objection

1 being that it was too far past the test year to make
2 adjustments?

3 A. (St. Cyr) I believe that was part of their argument,
4 yes.

5 Q. And, in fact, this Commission directed this Company to
6 file based on a more recent test year, when it denied
7 rehearing, didn't it?

8 A. (St. Cyr) That was part of their order, yes.

9 Q. Uh-huh. So, how long, I mean, you heard Tom say that
10 we should redo this, we could redo this in May, based
11 on a 2012 test year, once the returns are filed. How
12 much effort is required to assemble a rate case?

13 A. (St. Cyr) It's a pretty significant effort. You know,
14 I think his timing is based on the Company filing a PUC
15 annual report in, you know, the end of March, and
16 taking, you know, some time in April to prepare the
17 case, and then presumably file it in March [May?] is
18 probably the timeline he's thinking of.

19 Q. And, in your experience, how quickly could you then get
20 a hearing and an approval based on temporary rates,
21 based on what you would see as a likely filing date?

22 A. (St. Cyr) Well, the Commission generally would take 30
23 days to issue an order of notice. And, in that order
24 of notice, it would include a notice for publication

1 and a notice of a hearing date. You know, that can be
2 30 to 45 days later. And, then, there would be a
3 hearing, a procedural schedule would be prepared in
4 conjunction with the parties. You know, assuming
5 temporary rates are part of that filing, you know,
6 you're another three or four months out before an order
7 would be issued on temporary rates.

8 Q. So, give me a number of months, if you can? I mean,
9 what's typically been your experience? I'm not trying
10 to force you into --

11 A. (St. Cyr) I would say, if a filing was made May 1st,
12 you know, give or take maybe 30 days, you're probably
13 looking at an order on temporary rates maybe six months
14 later.

15 Q. Okay. So, and during that period then, I assume,
16 unless the Company were to find a way to pay its tax
17 liability, it would accrue interest and penalties on
18 the 2012 amount, as adjusted by this schedule, if
19 that's correct, right?

20 A. (St. Cyr) That's correct.

21 Q. As well as 2013?

22 A. (St. Cyr) That is also correct.

23 Q. And, what would that -- what effect would waiting have
24 on the Company's payables?

1 A. (St. Cyr) it just increases the payables.

2 Q. And, in fact, you haven't been paid yet for the last
3 rate case, have you?

4 A. (St. Cyr) I received my first payment recently.

5 Q. Uh-huh. And, you know, what's your -- you know, kind
6 of what's your willingness or ability to go all out in
7 light of that to try to put all these schedules
8 together ASAP?

9 A. (St. Cyr) There just has to be a better understanding
10 of what the particular arrangement is, rather than
11 having it as open as it is.

12 Q. But, I guess what I'm trying to get at is, you know,
13 was -- do you think that a factor in considering
14 whether or not to seek emergency rates is effectively
15 the interest and penalties that the Company is
16 continuing to incur during the time it takes to get a
17 rate case assembled?

18 A. (St. Cyr) Sure, it's a factor.

19 Q. How significant is that?

20 A. (St. Cyr) It's a factor. I don't -- it's not the
21 primary factor. And, where it fits in, it's one of a
22 number of things that the Company would consider.

23 Q. You were asked questions about whether or not the
24 Company was required to amend its return. And, I'm

1 trying to figure out the best way to approach this.

2 MR. RICHARDSON: Let's do this. Let me
3 start with October 31st, 2011.

4 (Atty. Richardson distributing
5 documents.)

6 MR. RICHARDSON: And, I'd like to mark
7 this. This is a response from the last rate case. I'd
8 like to mark this as -- are we at "LRW" or "Exhibit 11" at
9 this point?

10 CHAIRMAN IGNATIUS: We are. I'm always
11 troubled when I see prepared exhibits that are brought out
12 on redirect, suggesting that you knew full well you wanted
13 to go there, but didn't in the course of the proceeding.
14 But tell me why it's appropriate for this to be
15 introduced, even for identification?

16 MR. RICHARDSON: Sure. There were
17 questions, a lot of questions about the timing, of, you
18 know, when the Company made payments to Barbara Mason,
19 when the Company knew it had its tax liability. And, this
20 is intended for get to those.

21 MS. HOLLENBERG: If I might just
22 interject here? I believe that one of the data requests,
23 actually, I think it's Staff 1-1, asks for authority for
24 making the changes that the Company made to their amended

1 tax returns. And, there were also questions on cross
2 earlier about authority or direction or what caused them
3 to believe that they were obligated. And, if this their
4 support for why they were obligated, you know, this is
5 something that they're providing, at least I was not a
6 participant in this case in October of 2011. So, I'm
7 seeing this now, it's my own fault, but for the first
8 time. So, just to your comment before that it's being
9 brought up now on redirect. I do think there have been
10 opportunities where questions that have been asked of the
11 Company could have included this within the scope of the
12 response.

13 MR. RICHARDSON: But, yes, the real
14 question is, in the questions in data responses, were
15 "what was the authority to amend or the requirement to
16 amend the Company's return?" That's really the wrong
17 question.

18 MS. HOLLENBERG: With all due respect, I
19 asked questions why they believed they were obligated to
20 amend their returns earlier today.

21 CHAIRMAN IGNATIUS: All right. Go
22 ahead, Mr. Richardson.

23 MR. RICHARDSON: And, the other piece to
24 this puzzle is, of course, the timing of the payments to

1 the Masons relative to the date on which they had known
2 that there would be no tax expense recovery in this case.
3 And, I think that's an important question that's been
4 raised by all the parties. And, I think that, you know,
5 really, you know, just the October 31st date, and then,
6 you know, what the -- you know, what the treatment should
7 be for the adjustment that the Company accepted. I don't
8 think this is -- we could spend more time arguing about
9 this case than I think, this exhibit, than I intend to ask
10 about it.

11 MS. HOLLENBERG: May I ask a clarifying
12 question? Did you just refer to "payments to the Masons"?

13 MR. RICHARDSON: Yes.

14 MS. HOLLENBERG: The "timing of the
15 payments to the Masons", what payments are you talking
16 about?

17 MR. RICHARDSON: The 123,000. I
18 probably should have said "Barbara Mason" then.

19 MS. HOLLENBERG: And, those occurred
20 prior, I think Mr. Mason testified earlier, that they
21 ended in September of 2011?

22 CHAIRMAN IGNATIUS: No.

23 MR. RICHARDSON: '12.

24 CHAIRMAN IGNATIUS: '12.

[WITNESS PANEL: Mason|Dawson|St. Cyr]

1 WITNESS MASON: '12.

2 MS. HOLLENBERG: Oh, okay. Thank you.

3 CHAIRMAN IGNATIUS: I'm a little lost in
4 what the relevance of any of this is, but I think that's
5 just because I'm getting weary. You want to introduce
6 this data request from the prior rate case, because it's
7 relevant to the Company's -- Mr. St. Cyr's answer was he
8 didn't know of any. He felt it was appropriate to amend
9 the tax return, but didn't cite to any particular statute,
10 rule, requirement to do so.

11 MR. RICHARDSON: Right.

12 CHAIRMAN IGNATIUS: And, so, where
13 you're taking next is to say that this is something that
14 the Staff of the Commission had encouraged to be done?

15 MR. RICHARDSON: Well, and more
16 fundamentally, what I would like to show is is that
17 whether or not the Company amended its returns, it's
18 required by its acceptance of this treatment to recognize
19 on its books all of these expenses as income. And, then,
20 in turn, the Company can't use deductions that are no
21 longer supported on its books. So, when it adjusted and
22 removed its net operating losses on its books, whether it
23 amended its returns in the past or not is actually
24 secondary to whether or not it could claim those net

1 operating losses in 2012. And, this is the starting point
2 of when that all -- when that process started to take
3 place.

4 CHAIRMAN IGNATIUS: All right. Well,
5 the reason I'm being a stickler about it is because I just
6 don't want to open up -- there was a lot of debate in the
7 prior rate case about reclassification and amending
8 returns, and a dispute on whether that was appropriate or
9 not. So, I don't want us to get into everybody filing
10 everything about that issue.

11 MR. RICHARDSON: Yes.

12 CHAIRMAN IGNATIUS: But I'll allow this
13 to be introduced -- or, marked for identification, and let
14 you go ahead and ask about it.

15 MR. RICHARDSON: Thank you.

16 (The document, as described, was
17 herewith marked as **Exhibit 11** for
18 identification.)

19 BY MR. RICHARDSON:

20 Q. Mr. St. Cyr, you see in the first sentence, where it
21 says "Staff believes that the classification of such
22 payments to an expense account of any kind is
23 imprudent"?

24 A. (St. Cyr) That's correct.

1 Q. All right. And, that's effectively what started a
2 process to change the Company's books to reflect that
3 conclusion, right?

4 A. (St. Cyr) That's correct.

5 Q. Okay. Now, I want to show you -- well, let me just ask
6 you this. Do you feel that it would be accurate or
7 prudent or even legal, if you know, having accepted
8 that, to claim net operating losses that were based
9 upon the treatment of pensions and the loan interest as
10 an expense?

11 A. (St. Cyr) I don't believe that there's a basis to do
12 that for tax purposes.

13 Q. And, in fact, what would happen if you did take that
14 approach?

15 A. (St. Cyr) I think we would be subject to potential
16 fraudulent tax returns.

17 MR. RICHARDSON: Okay. I want to show
18 you an IRS publication I located yesterday. And, Staff
19 has this. Why don't we mark this as --

20 MS. HOLLENBERG: Excuse me. It's 4:30.
21 And, we haven't -- we've just gotten these documents
22 today, I guess. I guess I could just check in and see
23 where we're going at this point in time? Only because I
24 have personal obligations to meet in a short time period.

1 CHAIRMAN IGNATIUS: That's a fair
2 question. Obviously, we're not going to finish this
3 afternoon. Let's go off the record for a moment.

4 MR. RICHARDSON: Sure.

5 (Brief off-the-record discussion
6 ensued.)

7 CHAIRMAN IGNATIUS: Let's go back on the
8 record. We're going to have to continue on with another
9 day, not a full day, but a few hours, I think, to complete
10 testimony and any oral closings that people wish to make.
11 We will do that tomorrow morning, starting at 9:00. And,
12 I appreciate people's willingness to make that work.

13 We still have a couple of matters to
14 finish up with the panel here right now. And, so, our
15 hope is that, in the next ten minutes or so, we can
16 conclude that, so that, if they're not needed tomorrow,
17 they don't have to make the trip back. It's quarter of
18 5:00, and I do know people have other obligations in their
19 lives. And, so, if anybody needs to leave, I understand
20 that. And, I appreciate your willingness to stay on,
21 including our clerk, are you able to stay on? All right.
22 So, Mr. Richardson.

23 MR. RICHARDSON: Thank you. I'd like to
24 just then mark the two documents that -- into the record.

1 And, I'll bypass questions to the witnesses, as we
2 discussed while we were off the record. The parties
3 already have copies. It's the two IRS publications. I
4 believe it's 538 and 542, but I don't have them right in
5 front of me.

6 CHAIRMAN IGNATIUS: So, the Publication
7 538 from the Internal Revenue Service, we'll mark as
8 "Exhibit 12" for identification. It's entitled
9 "Accounting Periods and Methods". And, Publication 542
10 from the IRS, we'll mark, which is entitled
11 "Corporations", we'll mark as "Exhibit 13" for
12 identification.

13 (The documents, as described, were
14 herewith marked as **Exhibit 12** and
15 **Exhibit 13**, respectively, for
16 identification.)

17 CHAIRMAN IGNATIUS: And, Mr. Richardson,
18 if there are particular pages that zero in on your point,
19 we're always welcome to be directed?

20 MR. RICHARDSON: In both, in both books,
21 both publications, and, in the "Corporations" publication,
22 under the "Accounting System", right in the first or
23 second paragraph on that section, it talks about how the
24 Company's accounting system has to reflect the costs and

1 expenses on its books. And, then, in the "Accounting
2 System", the latter publication, it talks again about how
3 the Company has to reflect the same treatment on its books
4 for income and expenses in each year. And, effectively,
5 the two of those, I believe, lead me to the conclusion
6 that, once the Company's recognized that an expense has
7 been disallowed, and, in this case, the nature of the
8 expense required that it be treated as income.

9 And, with that, I'll just simply wrap up
10 my redirect. I only really have two very brief subject
11 areas I can do in a couple questions.

12 CHAIRMAN IGNATIUS: All right.

13 CMSR. HARRINGTON: Could you just give
14 us the page and the section, so we're sure we get the
15 right thing, because this is an issue I don't want to have
16 to revisit.

17 MR. RICHARDSON: Absolutely. So, the
18 Publication 542, --

19 CHAIRMAN IGNATIUS: Exhibit 13.

20 MR. RICHARDSON: Exhibit 13, thank you,
21 "Accounting Methods", on Page 8. And, it says right in
22 the first paragraph, under "Accounting Methods", was what
23 I would read to the witness and have them explain. And,
24 then, in the next, and this is 538, "Accounting Periods

1 and Methods" -- I have this highlighted in the copy I gave
2 to Staff, meaning for my own benefit. So, I'm again on
3 Page 8, apparently, at the bottom of the left --

4 CMSR. HARRINGTON: Okay. We're still in
5 Exhibit 13?

6 MR. RICHARDSON: No, we're not. We've
7 jumped to 12, which is Exhibit -- Publication 538. And,
8 again, under "Accounting Methods", at the bottom of
9 Page 8, in the first column, it says "You must use the
10 same accounting method from year to year. An accounting
11 method clearly reflects income only if all items of gross
12 income and expenses are treated the same from year to
13 year." And, then, it contains a rather cautionary
14 paragraph, that "If you do not use an accounting method
15 that clearly reflects your income, your income will be
16 refigured under the method that, in the opinion of the
17 IRS, does not [does?] clearly reflect income." And, those
18 are obligations that would apply to the 2012 return.

19 CMSR. HARRINGTON: Okay. Thank you.

20 CHAIRMAN IGNATIUS: Thank you. All
21 right. Any objection to these being marked for
22 identification?

23 MS. HOLLENBERG: No.

24 MS. BROWN: No.

1 CHAIRMAN IGNATIUS: I see none.

2 Appreciate that, Mr. Richardson. Please proceed.

3 BY MR. RICHARDSON:

4 Q. Mr. St. Cyr or Mr. Mason, or both, you, very quickly,
5 you were asked questions about the timing of payment of
6 the 123,000 as the reduction in paid-in capital. Do
7 you know when those payments ceased?

8 A. (Mason) I believe it was September of 2012.

9 Q. And, did that coincide with the Commission's denial of
10 rehearing?

11 A. (Mason) Close to it. It was -- it definitely had some
12 influence on it.

13 Q. Uh-huh. And, Mr. St. Cyr, does that -- do you agree
14 with Mr. Mason's response?

15 A. (St. Cyr) Yes.

16 Q. Okay. You were asked some questions by Commissioner
17 Scott as to what this reduction of paid-in capital
18 means. And, I guess my question is is how is the
19 \$123,000 reflected on the Company's books?

20 A. (St. Cyr) It's reflected in the "Additional Paid-in
21 Capital" line on the Company's balance sheet.

22 Q. So, am I correct in saying that it's a reduction in the
23 Company's equity?

24 A. (St. Cyr) That's correct.

1 Q. And, that means that, when the Company goes to have its
2 rates calculated or its rate of return, it's not
3 entitled to earn on that amount, right?

4 A. (St. Cyr) That's correct.

5 Q. So, when the Company recognized that payment to Barbara
6 Mason, essentially she was forgoing the right to earn
7 on any of that money? It's gone at that point?

8 A. (St. Cyr) That's correct.

9 MR. RICHARDSON: Okay. Thank you.

10 That's it.

11 CHAIRMAN IGNATIUS: All right. Thank
12 you. The witnesses are excused. Thank you very much for
13 your patience for a long, long day. We will resume at
14 9:00 tomorrow morning, with the Staff witnesses, correct?

15 MS. BROWN: Thank you.

16 CHAIRMAN IGNATIUS: Thank you, everyone.

17 MS. HOLLENBERG: Thank you.

18 CHAIRMAN IGNATIUS: We're adjourned for
19 the evening.

20 **(Whereupon the hearing adjourned at 4:53**
21 **p.m., and the hearing to reconvened on**
22 **March 7, 2013, commencing at 9:00 a.m.)**

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