

STATE OF NEW HAMPSHIRE
PUBLIC UTILITIES COMMISSION

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Concord, New Hampshire

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{For Public Use}

RE: DW 16-834
COMPLAINT OF ROBERT MYKYTIUK
AGAINST LAKES REGION WATER
COMPANY, INC.

PRESENT: Chairman Martin P. Honigberg, Presiding
Commissioner Kathryn M. Bailey

Sandy Deno, Clerk

APPEARANCES: Robert Mykytiuk, *pro se*

Reptg. Lakes Region Water Company:
Justin C. Richardson, Esq. (Upton...)

Reptg. PUC Staff:
John Clifford, Esq.
Mark A. Naylor, Dir./Gas & Water Div.
Amanda O. Noonan, Dir./Consumer Serv..
Rorie Patterson, Consumer Services...

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

**CERTIFIED
ORIGINAL TRANSCRIPT**

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P R O C E E D I N G

CHAIRMAN HONIGBERG: We're here this morning in Docket DW 16-834, which is a complaint by Robert Mykytiuk against Lakes Region Water Company. I'll note for the record Commissioner Scott is not here today. And we don't know if he'll be participating in this docket. It will depend on how things proceed.

Before we do anything further, let's take appearances.

It's easier if you just stay seated and speak into the microphone.

MR. MYKYTIUK: Okay. My name is Robert Mykytiuk. I have Roy Frazel, on my left, and Mr. Kevin Quinlin on my right, and Representative Karel Crawford behind.

CHAIRMAN HONIGBERG: Thank you.

MR. RICHARDSON: Good morning, Commissioners. Justin Richardson, with Upton & Hatfield, here on behalf of Lakes Region Water Company. With me at counsel's table I have Leah Valladares, who's our witness for the Company and is the Utility Manager; to her left is Ashley Benes, who works for the Company, and

1 Tom Mason, who is the President of the Company.

2 CHAIRMAN HONIGBERG: All right. Are
3 there any preliminary matters we need to deal
4 with before -- is Staff -- off the record for a
5 moment.

6 *[Brief off-the-record discussion*
7 *ensued.]*

8 CHAIRMAN HONIGBERG: All right.
9 Let's finish appearances then.

10 MR. CLIFFORD: So, John Clifford,
11 Hearing Examiner and Staff attorney for the New
12 Hampshire Public Utilities Commission. With me
13 at counsel's table is Mark Naylor, Director of
14 the Gas and Water Division; Ms. Amanda Noonan,
15 Director of the Commission's Consumer Affairs
16 Division; and on the far right is Rorie
17 Patterson, Assistant Director of the Consumer
18 Affairs Division.

19 CHAIRMAN HONIGBERG: You fooled me,
20 Mr. Clifford. Your placement in the room is
21 confusing to me.

22 MR. CLIFFORD: I admit that. It's
23 quite an unusual arrangement today.

24 CHAIRMAN HONIGBERG: All right. Who

1 wants to tell me if there are any preliminary
2 matters we need to deal with before we start?

3 Mr. Richardson.

4 MR. RICHARDSON: The only question I
5 had for the Commissioners is whether you would
6 like a brief summary of what this case is about
7 before we proceed? We can either save that
8 till the end, after the evidence, or we could
9 do it now. I don't have a strong feeling and
10 can follow whatever the Commission prefers.

11 CHAIRMAN HONIGBERG: Well, I mean, I
12 guess I'd leave it to the parties. If the
13 parties want to do brief openings, that's fine.
14 If they just want to get started, that's fine,
15 too. We've read the papers. So, I think we
16 have some sense of what this is about.

17 But, if, Mr. Mykytiuk, if you want to
18 make a brief opening, you're welcome to do so.
19 And I mean "brief", and it's not a substitution
20 for the case you're going to put on. But, if
21 you want to summarize what this is about,
22 that's fine, but you're not required to do so.

23 Mr. Richardson, you are free to do so
24 as well, either now or before you begin your

1 presentation. Mr. Clifford, if you want to
2 make any kind of statement, that's fine, too.

3 MR. RICHARDSON: Why don't we -- I'll
4 suggest that we just begin. And, if we need to
5 make a summary at the end of the case about,
6 you know, burden of proof and what the law
7 requires after the evidence is in, that's fine
8 with me.

9 CHAIRMAN HONIGBERG: Mr. Mykytiuk, do
10 you want to make a brief statement up in
11 advance or do you just want to start calling
12 witnesses?

13 MR. MYKYTIUK: No, I would like to
14 make a statement. However, what I would like
15 to put forward is that I did add some exhibits.
16 I was under the impression, reading the
17 itinerary for this hearing, that I could offer
18 exhibits, and I did add a few exhibits that
19 weren't put forward a month or so ago.

20 CHAIRMAN HONIGBERG: Do we have those
21 documents in front of us already or --

22 MR. MYKYTIUK: Yes. I filed the
23 exhibits this morning as well.

24 CHAIRMAN HONIGBERG: Off the record.

1 *[Brief off-the-record discussion*
2 *ensued.]*

3 CHAIRMAN HONIGBERG: All right. So,
4 back on the record. I have -- we have, both of
5 us, have two things. We have something marked
6 "Exhibit 1", which looks like this
7 [indicating], and we have something marked
8 "Exhibit 2" that's in the upper right-hand
9 corner.

10 Is there anything else we should
11 have? Do I need to know anything about what's
12 in front of me right now?

13 MR. RICHARDSON: That's all. Exhibit
14 1 is Lakes Region's exhibits that are all
15 documents that are prefiled. The tab order is
16 a little different than what you have in your
17 docketbook. This is mostly just for ease of
18 presentation. When I ask a question about a
19 witness, I'll tell them to turn to that tab, so
20 you can follow along.

21 CHAIRMAN HONIGBERG: Okay. Ease is
22 good.

23 MR. MYKYTIUK: I believe his are in
24 numbers and mine are in letters, my exhibits

1 versus Lakes Region's exhibits.

2 CHAIRMAN HONIGBERG: Yes. It looks
3 like what you've done is I think the Clerk has
4 marked your packet as "Exhibit 2". And within
5 Exhibit 2, you have an "A", a "B", I see "D", I
6 assume there's a "C".

7 MR. MYKYTIUK: That's correct.

8 CHAIRMAN HONIGBERG: Yes. There's
9 "C", "D". Yes. So, I see what you've done.
10 Okay. We'll deal with those, I guess, as they
11 come up.

12 (The documents, as described,
13 were herewith marked as
14 **Exhibit 1** and **Exhibit 2**,
15 respectively, for
16 identification.)

17 CHAIRMAN HONIGBERG: Does Staff have
18 any exhibits it intends to put in?

19 MR. CLIFFORD: No. Staff does not
20 have any exhibits at this time.

21 CHAIRMAN HONIGBERG: All right. Is
22 there anything else we need to do? You want to
23 make a brief statement, Mr. Mykytiuk?

24 MR. MYKYTIUK: Please.

1 CHAIRMAN HONIGBERG: All right. Why
2 don't you proceed.

3 MR. MYKYTIUK: Okay. First thing,
4 I'd like to thank this Commission for the
5 opportunity to present my case today. A brief
6 summary of why I'm here is that the Lakes
7 Region has, without justification, been
8 charging me an additional fixed rate charge.
9 It's my contention that this additional meter
10 charge is not validated by either the Lakes
11 Region Water tariff or the PUC regulations.

12 CHAIRMAN HONIGBERG: That was brief.

13 CMSR. BAILEY: Well done.

14 CHAIRMAN HONIGBERG: Thank you.
15 Mr. Richardson, do you want to do an equally
16 brief summary now or would you like until it's
17 your turn to present witnesses?

18 MR. RICHARDSON: I will, as I don't
19 have a stopwatch in front me and this would be
20 a race. But I'll say just briefly that, in
21 this case, it's the customer who has the burden
22 of proof, and we believe it is to show that
23 Lakes Region's rates are unjust or
24 unreasonable. Lakes Region has charged the

1 approved rate. They have to make a
2 determination in every case about whether any
3 facility is one customer or two. "Water
4 service" means service in compliance with the
5 rules and the tariff and the laws in New
6 Hampshire, which Lakes Region has applied.
7 And, so, we're going to ask the Commission to
8 deny this complaint today.

9 And the only issue that's really open
10 is, is whether this property, with two
11 structures, basically, two different living
12 arrangements on one lot, requires two service
13 lines. And we have not asked the customer
14 to -- and we haven't threatened to disconnect
15 them, we've left this open for the Commission
16 to ultimately decide. And coming out of this
17 hearing, if the Commission determines one way
18 or the other, that's what we'll end up doing.

19 So, that's, in summary, what this
20 case is about today.

21 CHAIRMAN HONIGBERG: Thank you, Mr.
22 Richardson.

23 Mr. Clifford, anything you want to
24 offer up front?

1 MR. CLIFFORD: Nothing that we want
2 to offer up front. We're just going to reserve
3 our position, after the complainant and the
4 Lakes Region makes their case, and we'll give
5 you our views at the end of the proceeding.

6 CHAIRMAN HONIGBERG: Fair enough.
7 Mr. Mykytiuk, then do you want to call your
8 witnesses? Do you want to do them all at once
9 or are you going to do them one at a time?

10 MR. MYKYTIUK: Can I begin with
11 exhibits, and then work the witnesses in? Or,
12 probably, because of a time constraint for
13 Representative Crawford, I'd like to have her
14 go first, if I may?

15 CHAIRMAN HONIGBERG: All right. Let
16 me ask the parties about these exhibits. It
17 might make things easier. Do we anticipate any
18 objection to the full admission of any of these
19 exhibits?

20 MR. RICHARDSON: It's not
21 anticipated. So, obviously, Exhibit 2 is new
22 to me today. But I've glanced at it briefly,
23 and I'm hoping that we'll just stipulate, and
24 then the Commission will give whatever it's

1 due. You may --

2 CHAIRMAN HONIGBERG: I mean, I was
3 hoping you'd stipulate now, and that would
4 facilitate Mr. Mykytiuk's use of those
5 documents, without any kind of need to go
6 through a lot of formal stuff.

7 MR. RICHARDSON: Let's do that.

8 CHAIRMAN HONIGBERG: All right. And,
9 Mr. Mykytiuk, are you going to object to any of
10 the documents that Mr. Richardson put in his
11 packet?

12 MR. MYKYTIUK: No.

13 CHAIRMAN HONIGBERG: All right. So,
14 we're going to rule that all these documents
15 are going to be full exhibits in this
16 proceeding. That will make it a little easier
17 for you to work with them, Mr. Mykytiuk.

18 Typically, what we would do is have
19 your case come in through witnesses. And, to
20 the extent you want to refer to documents as
21 you're going with these witnesses, that's what
22 you would do. These are now full exhibits. If
23 there are points you want to make with them
24 during the course of your proceeding, you're

1 free to do that. Though, typically, what we
2 would do is hear from witnesses, and they would
3 be in the context of that.

4 Now, you, I believe, intend to offer
5 testimony as well, correct?

6 MR. MYKYTIUK: I do. I can elaborate
7 on each one of the exhibits.

8 CHAIRMAN HONIGBERG: Yes. So, why
9 don't you, and since Representative Crawford
10 has a time constraint, why don't you get what
11 you need from her, and then decide what you're
12 going to do next after that.

13 MR. MYKYTIUK: Okay.

14 CHAIRMAN HONIGBERG: All right.
15 Representative Crawford, we actually have a
16 witness box up here.

17 REP. CRAWFORD: Oh. I have to go up
18 there?

19 CHAIRMAN HONIGBERG: It's what we're
20 used to, yes.

21 REP. CRAWFORD: It's different than
22 our hearings over at the State House.

23 CHAIRMAN HONIGBERG: Off the record.

24 *[Brief off-the-record discussion]*

[WITNESS: Crawford]

1 ensued.]

2 (Whereupon **Karel Crawford** was

3 duly sworn by the Court

4 Reporter.)

5 CHAIRMAN HONIGBERG: Mr. Mykytiuk,

6 you may proceed.

7 **KAREL CRAWFORD, SWORN**

8 **DIRECT EXAMINATION**

9 BY MR. MYKYTIUK:

10 Q. We have some exhibits here reference your phone
11 conversations and emails between Ms. Valladares
12 and Amanda Noonan from the Consumers Office.
13 Can you elaborate on these conversations that
14 you've had with both parties?

15 A. Yes. I spoke to Ms. Noonan in September, I
16 believe, and asked her if she could help me
17 look in your Administrative Rules to find
18 documentation on clarity -- give me clarity on
19 where it says in your Administrative Rules
20 where Lakes Region Water could charge a second
21 base fee. And she basically said she would get
22 back to me, which she did a few days later.
23 And she wrote -- well, she said to me that she
24 could not find anything specific. And, then,

[WITNESS: Crawford]

1 there was an email. I mean, I have them here.
2 I didn't know I was going to -- I thought I was
3 just going to make a statement and then leave.
4 But I didn't know I was going to be
5 back-and-forth kind of thing.

6 So, the statement that Ms. Noonan said was
7 that she believed that she -- that she could
8 not find that information. And I told her I'm
9 pretty black-and-white person, working with
10 laws and rules, and I really would like to see
11 it in writing. And she said she could not find
12 those statements in writing in your
13 Administrative Rules. And she wrote an email
14 to, I believe, Leah, is it "Valladares"? And
15 then Leah and I had communications about that.
16 And, at first, I said "Is it in the tariff
17 anywhere? I've read all the tariffs for Lakes
18 Region Water. I could not see it in the
19 tariffs either." And I said, you know, "You
20 just can't arbitrarily charge someone something
21 if it's not in writing or in a contract." And
22 I didn't get an answer for either statements
23 that I, you know, had.

24 So, if I could just read my testimony, I

[WITNESS: Crawford]

1 would appreciate that, and not do a
2 back-and-forth kind of thing? Would you mind
3 that?

4 Q. No. That's fine.

5 CHAIRMAN HONIGBERG: Hang on. Mr.
6 Richardson?

7 MR. RICHARDSON: Is this the
8 testimony that was in the summary that we're
9 talking about?

10 WITNESS CRAWFORD: No. This was just
11 something I wrote up last night. It's very
12 basic.

13 MR. RICHARDSON: Oh. Okay. Well, I
14 mean, the witness is free to testify. I mean,
15 so --

16 CHAIRMAN HONIGBERG: Yes. It's true.
17 It's just that things usually go a little bit
18 smoother when there's some question and answer
19 that directs the witness.

20 But all right. Seeing no objection,
21 here with go with Representative Crawford. One
22 thing that would be helpful, since it wasn't
23 done up front, if you could identify yourself
24 fully for the record, with name and town and

[WITNESS: Crawford]

1 such like that. And, then, if you have a
2 statement you want to read, why don't you
3 proceed.

4 WITNESS CRAWFORD: Thank you very
5 much.

6 **BY THE WITNESS:**

7 A. My name is Karel Crawford. I represent Carroll
8 County District 4, for the Towns of
9 Moultonborough, Sandwich, and Tuftonboro. And
10 I thank you for hearing my testimony this
11 morning.

12 I was contacted by one of my constituents,
13 Mr. Robert Mykytiuk, about an ongoing problem
14 he was having with his water supplier, Lakes
15 Region Water Company. I am familiar with Mr.
16 Mason and his company, and I am aware that he
17 is the only water supplier to hundreds of homes
18 in the Moultonborough area.

19 Mr. Mykytiuk indicated that he was being
20 charged a second base fee for water that is
21 being supplied to a second structure from the
22 original water line in his main house. The
23 meter in the original building is not being
24 bypassed, and this meter measures all water

[WITNESS: Crawford]

1 being used in both buildings.

2 Being a person who expects -- who expects
3 charges for a service to be clearly written in
4 a contract, rules or laws, and also should be
5 clearly understood by the public receiving the
6 service, I searched the PUC Administrative
7 Rules and also reviewed Lakes Region Water
8 tariffs to see where it was indicated that a
9 second base fee may be charged for a second
10 building, even if the water is still coming
11 from the main source and metered for payment to
12 the utility. I could not find such a rule or
13 tariff. And I then contacted Ms. Amanda, the
14 Director of Consumer Services and External
15 Affairs to help me with the search. Ms. Noonan
16 called me a few days later and indicated she
17 could not find that information, and said "in
18 the meantime, if there is nothing definitive in
19 the tariff, it will likely mean billing
20 Mr. Mykytiuk a single base charge until the
21 tariff is updated."

22 I believe that a private utility company,
23 especially one who has a monopoly for water
24 services in many communities in the Lakes

[WITNESS: Crawford]

1 Region, especially Moultonborough, should not
2 arbitrarily be able to charge a second base fee
3 for a water that is already metered and coming
4 from the main source.

5 I would ask the Commission to look at this
6 very seriously, especially with Governor
7 Sununu's request for public comments on New
8 Hampshire Public Utilities Commission
9 Administrative Rules.

10 Thank you for hearing my testimony.

11 CHAIRMAN HONIGBERG: Mr. Mykytiuk, do
12 you have any other questions for Representative
13 Crawford?

14 BY MR. MYKYTIUK:

15 Q. There was also a Exhibit B, which comes from
16 Ms. Valladares. And it mentions that Lakes
17 Region attorney -- or, I'm sorry, it's from
18 Rorie Peterson [Patterson?], that they
19 inquired, and that no one has been able to come
20 up with an explanation for this. Are you
21 familiar with that?

22 MR. MYKYTIUK: And these, by the way,
23 are Exhibit B and C that Ms. Crawford has been
24 alluding to.

[WITNESS: Crawford]

1 **BY THE WITNESS:**

2 A. I believe I saw those. Uh-huh.

3 MR. MYKYTIUK: I have no further
4 questions.

5 CHAIRMAN HONIGBERG: Mr. Richardson,
6 do you have questions for Representative
7 Crawford?

8 MR. RICHARDSON: Yes, I do. Thank
9 you. Let's start, I'd like to mark the
10 Commission's rules, the portion that I have
11 here, as "Exhibit 3" at this point. Does that
12 make sense?

13 CHAIRMAN HONIGBERG: You want to mark
14 it? Sure.

15 (The document, as described, was
16 herewith marked as **Exhibit 3** for
17 identification.)

18 CHAIRMAN HONIGBERG: Mr. Clifford?

19 MR. CLIFFORD: Could we go take -- go
20 off the record for a minute?

21 CHAIRMAN HONIGBERG: Sure.

22 *[Brief off-the-record discussion*
23 *ensued.]*

24 CHAIRMAN HONIGBERG: All right. Are

[WITNESS: Crawford]

1 we back on the record? So, you've marked as
2 "Exhibit 3" a section of the PUC's rules?

3 MR. RICHARDSON: Yes. And could I
4 give the witness the Clerk's copy, because I
5 miscounted exhibits today, so I'm going to be
6 short? This is going to happen on all of them.
7 So, if we could, I could just take that over so
8 she can read it, and then we'll bring it back
9 while she's on the stand.

10 *[Atty. Richardson handing*
11 *document to the witness.]*

12 MR. RICHARDSON: Thank you.

13 **CROSS-EXAMINATION**

14 BY MR. RICHARDSON:

15 Q. Representative Crawford, I have a section of
16 Rule Puc 606 in front of you now. Is that
17 correct?

18 A. Yes.

19 Q. Okay. And you mention that the Staff and you
20 and others had looked into the rules and
21 couldn't understand why Lakes Region was
22 charging for two services at this property.
23 So, in light of that, I'd like you to look at I
24 think the third page, it's marked page "17" at

[WITNESS: Crawford]

1 the bottom.

2 A. Okay.

3 Q. Rule 606.04. And look at Section (h). And
4 I'll read that to you. Do you see where that
5 is?

6 A. On 606.04(h), "Each utility shall require that
7 the customer shall not install any tree or
8 branch connection in the service pipe"?

9 Q. That is correct. And then there's also below
10 that, in Section (j), where it says "Each
11 utility shall require the following in relation
12 to individual service connections". And, then,
13 in Section (2), it says "No tandem services
14 shall be permitted."

15 Now, do you agree with me that a tandem
16 service is essentially when you have one
17 service line coming into one building, and then
18 you have another service line coming out of
19 that that basically links them up in tandem?
20 Is that -- that's your understanding of what
21 Mr. Mykytiuk has?

22 A. I -- I would hate to say "yes", but I really
23 don't quite understand.

24 Q. Okay. So, Lakes Region has to treat all of its

[WITNESS: Crawford]

1 customers equally and fairly. You'd agree with
2 that, right?

3 A. Uh-huh.

4 Q. And, so, if we were to allow Mr. Mykytiuk to
5 effectively hook up multiple buildings in
6 tandem, we'd have to do that for all of our
7 customers, right?

8 A. Yes.

9 Q. Okay. But the PUC rules state that Lakes
10 Region is prohibited from allowing this type of
11 arrangement, where there's a tandem service,
12 where one residence is connected to the other.
13 So, I guess the question is is why, if one
14 building is occupied by Mr. Mykytiuk, and the
15 other is rented out as a vacation rental, why
16 isn't that two services?

17 A. I don't know. And I don't know that that
18 doesn't happen in other residences in those
19 developments. And we're talking about two huge
20 developments in Moultonborough. So, I don't
21 know if other people are doing tandem or not.

22 Q. Uh-huh.

23 A. So, I couldn't say if it was. I don't know.

24 Q. Right. And, I mean, Lakes Region ran into this

[WITNESS: Crawford]

1 problem where we were approached by a
2 low-income housing project in Tamworth, and
3 they had asked us to hook their units up,
4 because they were running their own water
5 system and it was expensive. And one of the
6 problems we ran into was that we were required
7 by our tariff to charge each unit as a separate
8 customer. And, so, we weren't ultimately able
9 to do that. But I guess, you know, why would
10 it be fair, if we couldn't do it for a
11 low-income housing project, why would we do
12 that in this case, where it's effectively a
13 vacation rental, in addition to a primary
14 residence?

15 A. I was under the impression it was just a
16 bunkhouse. I didn't know it was a rental.

17 Q. Okay. So, the bunkhouse is where Mr. Mykytiuk
18 lives, correct?

19 A. I don't know.

20 Q. Okay.

21 A. No.

22 Q. All right. And I think that has two bedrooms
23 in it, that's our understanding from the
24 exhibits. And then the other, the original

[WITNESS: Crawford]

1 building, which is now the vacation rental,
2 has, I think, five -- up to five bedrooms in
3 it, depending on whether some rooms are
4 converted, they have beds and things like that.
5 Would you agree that, you know, that the summer
6 is the busy time in Moultonborough?

7 A. Yes.

8 Q. And, so, when people come in and they want to
9 be at the lake, that's when the demand for
10 service on Lakes Region's system is at its
11 maximum?

12 A. I would assume so.

13 Q. Right. Right. And the DES rules require that
14 the system be designed to meet that maximum
15 demand. Does that sound correct to you?

16 A. Yes, it does.

17 Q. Okay. So, I mean, I guess, if bringing in a
18 vacation rental increases the demand for water
19 on the July 4th Weekend, isn't it reasonable to
20 require that each unit, each place where water
21 is being consumed, one's a commercial rental,
22 the other is residential, pays a separate
23 charge for that?

24 A. I don't understand why -- I guess I don't

[WITNESS: Crawford]

1 understand why, and it's just common sense to
2 me, why someone who's using the same water, on
3 the same meter, just as electrical meters that
4 you have and you run wires to a shed or
5 whatnot, everything is being documented and
6 metered, why you would have to put in another
7 base fee when the water is coming from the same
8 source. So, I guess I don't -- I think why I'm
9 here is to have clarification in the rules or
10 in the tariff, so that a common person, like
11 myself, I don't receive water from Lakes
12 Region, I have an artesian well, but, if I did,
13 I would want to be able to read it very
14 clearly, when I put in another building or a
15 shed or whatever, that it was very clear in my
16 contract with the water service that I would be
17 charged a second base fee. And I guess I don't
18 see that here.

19 Q. Uh-huh.

20 A. And that is why I'm here.

21 Q. Yes.

22 A. I'm not against or for.

23 Q. Right.

24 A. I'm just looking for a clarification in the

[WITNESS: Crawford]

1 rules.

2 Q. And, so, but you agree with me, if someone were
3 to have, say, multiple apartment units or would
4 add an apartment to a building that's
5 separately rented out from where the customer
6 lives, that's a situation where it would be
7 appropriate to consider a second base charge?

8 A. If I wanted to, if I had an apartment, and I
9 wanted that person to pay their fair share of
10 the water bill, because they're paying rent,
11 and I wanted them to pay for their own water,
12 sure. But, if it's a bunkhouse, where I might
13 have relatives or whatnot staying, I certainly
14 wouldn't be charging them for the water that
15 they were consuming, and the water is still
16 coming from my main house.

17 So, I guess either I'm confused about the
18 whole thing or I guess I'm just maybe not as up
19 to speed on your Administrative Rules.

20 Q. Right. So, Lakes Region has to then make a
21 judgment call in each case about whether
22 something is a separate rental or whether it's
23 a small one then? Is that how they have to do
24 this?

[WITNESS: Crawford]

1 A. I don't know why they would have to make that
2 determination.

3 Q. Well, because they have to apply their tariff
4 evenly. So, if they're charging service for
5 each unit in a rental property or each apt in
6 Tamworth, and then a situation comes up with a
7 rental in Moultonborough, they ultimately have
8 to apply the tariff in the same way, so that
9 everyone is paying the same share of the
10 Company's costs. Isn't that what the goal is
11 in this environment?

12 A. Then, wouldn't the tariff be clearer and be
13 very specific that it's a rental property, and
14 not just a bunkhouse or an inlaw apartment?
15 Because we are going to be coming into that
16 situation, where people are going to be putting
17 inlaw apartments on. And, if I put a dwelling
18 or an inlaw apartment on my house, I'm not
19 going to have another base fee for that,
20 because I'm certainly not going to charge my
21 mother-in-law for water.

22 So, I guess what I'm saying, and why I am
23 here, is just make it very clear to the
24 consumer on basically what you're going to

[WITNESS: Crawford]

1 charge them. That's the only reason I'm here.
2 Not whether -- I mean, I just -- I just think
3 it needs to be clearer for the consumer.

4 Q. Uh-huh. And I agree, I mean, clarity always
5 helps. But this isn't an inlaw apartment.
6 This is a separate unit that's rented out as a
7 vacation rental that has five bedrooms in it.
8 And, then, the owner lives in the bunkhouse
9 that's separate. That's right, correct?

10 A. I have no idea.

11 MR. RICHARDSON: Okay. All right.
12 Thank you.

13 CHAIRMAN HONIGBERG: Mr. Clifford, do
14 you have any questions for Representative
15 Crawford?

16 MR. CLIFFORD: No, we do not.

17 CHAIRMAN HONIGBERG: Commissioner
18 Bailey, do you have any questions?

19 CMSR. BAILEY: No thank you.

20 BY CHAIRMAN HONIGBERG:

21 Q. Representative Crawford, your view is that, in
22 order to charge the second base fee, the
23 Company needs to have a second meter installed.
24 Isn't that right?

[WITNESS: Crawford]

1 A. Yes.

2 Q. If the reason a second meter is installed -- is
3 not installed at this time is because the
4 Company decided to hold off and not impose the
5 other charges that would be necessary to do
6 whatever construction needed to be done to put
7 that meter in --

8 A. Uh-huh.

9 Q. -- until the end of this, would that change
10 your view of this?

11 A. Well, it's kind of like putting the cart before
12 the horse kind of thing. So, if I -- if this
13 hearing says -- if what comes from this hearing
14 is you believe that things are not clear, that
15 they should be clearer, and Lakes Region Water
16 puts in their tariff that they should be able
17 to charge a second base fee, and it's very
18 clear, then I guess that's what it needs to be.

19 But, right now, I don't believe it does.
20 And, so, if they're charging people for a
21 second base fee, I think they should refund
22 their money until it is clear.

23 CHAIRMAN HONIGBERG: Okay. Thank
24 you. Mr. Mykytiuk, do you have any further

[WITNESS: Crawford]

1 questions for Representative Crawford?

2 MR. MYKYTIUK: Well, I'd like to add,
3 Exhibit F and G directly address this issue.
4 Ms. Crawford didn't have this -- doesn't have
5 this information in front of her. So, these
6 questions were rather technical for someone
7 that's -- that doesn't have these exhibits in
8 front of her.

9 CHAIRMAN HONIGBERG: Well, I mean,
10 are you going to ask her a question about
11 something she doesn't have in front of her?

12 MR. MYKYTIUK: No, and I didn't. But
13 Mr. Richardson addressed something that she
14 really wasn't well-versed in talking about,
15 because she doesn't have any of the diagrams or
16 anything that are very explicit.

17 CHAIRMAN HONIGBERG: Okay. Do you
18 have a question you want to ask her?

19 MR. MYKYTIUK: No.

20 CHAIRMAN HONIGBERG: All right.
21 That's all that I wanted to know.

22 MR. MYKYTIUK: Okay.

23 CHAIRMAN HONIGBERG: All right.

24 Then, I think, Representative Crawford, you're

1 free to go.

2 WITNESS CRAWFORD: Thank you very
3 much.

4 CHAIRMAN HONIGBERG: All right.
5 Mr. Mykytiuk, who is your next witness?

6 MR. MYKYTIUK: I would like to
7 address this while we're on this subject.
8 These Exhibits F and G are relevant here. Mr.
9 Richardson introduced an exhibit here, and it
10 talks about 606.04 of the PUC, "Each utility
11 shall require the customer shall not install
12 any tree or branch connection in the service
13 pipe."

14 If you take a look at the Exhibit G,
15 the service pipe runs from the curb stop into
16 the home, into the primary dwelling, and then
17 it hits a meter. That is where the service
18 pipe ends, as far as I'm aware, unless
19 something has changed. There was no tandem
20 service added to this.

21 If I had done what Mr. Richardson
22 alleged, I would have been stealing the water,
23 because it would have been prior to a meter.
24 And I did not do that.

1 If you refer to Exhibit F, it clearly
2 shows where the water comes into the house,
3 from underground, in front of the bucket there,
4 and it comes in, and I have the arrows showing
5 exactly where the water flows. Goes by the
6 meter, it comes across the top, and it hits a
7 whole house filter that I had to install
8 because the water was contaminated all the time
9 with particles and contamination from breakage
10 and stuff in the system, and then it goes on
11 beyond that. And you can see where I added the
12 line in my crawlspace in my line. It has
13 nothing to do with Lakes Region Water's supply
14 line service pipe.

15 CHAIRMAN HONIGBERG: Okay. So, I
16 think, probably later, Mr. Richardson will want
17 to ask you some questions. Correct, Mr.
18 Richardson?

19 MR. RICHARDSON: Yes. Yes. I guess
20 what I'm unsure of, is this Mr. Mykytiuk
21 testifying now, I think, which I think is where
22 we're going?

23 CHAIRMAN HONIGBERG: It sure seems
24 like it. Do you want to be your next witness?

1 MR. MYKYTIUK: I apologize. I'm
2 obviously a fish out of water here at this
3 hearing. But I can introduce that later, if
4 that's more convenient.

5 CHAIRMAN HONIGBERG: Well, it's
6 really up to you.

7 MR. MYKYTIUK: I just wanted to
8 clarify some points that I think were
9 erroneously made.

10 MR. RICHARDSON: And I'd like to ask
11 questions on that. So, if he'd like to proceed
12 now, I think that would make a heck of a lot of
13 sense.

14 CHAIRMAN HONIGBERG: It may well make
15 sense. I know you have a couple of other
16 witnesses. I don't want to -- I don't want to
17 tell you how to put your case on. But it may
18 make sense for you to be your next witness, to
19 tell your story and then have Mr. Richardson
20 ask you questions about it. I don't -- I mean,
21 I have some sense of what your other witnesses
22 are going to talk about. They're fairly
23 limited. You might want to have them go first,
24 and tell their stories and then be subject to

[WITNESS: Quinlin]

1 questions.

2 But, at some point, either now or
3 after these other witnesses, you're going to be
4 up there telling your story under oath, and Mr.
5 Richardson is going to get a chance to ask you
6 questions and we are going to get a chance to
7 ask you questions. So, --

8 MR. MYKYTIUK: Okay. At this point,
9 so that I don't tie up Mr. Quinlin's time, if
10 he chooses to leave early, I'd like to call him
11 as a witness.

12 CHAIRMAN HONIGBERG: Fair enough.

13 (Whereupon **Kevin Quinlin** was
14 duly sworn by the Court
15 Reporter.)

16 WITNESS QUINLIN: For the record, my
17 name is Kevin Quinlin. I'm a concerned
18 ratepayer, as well as a president of the
19 Balmoral Improvement Association and member of
20 the Moultonborough Planning Board.

21 **KEVIN QUINLIN, SWORN**

22 **DIRECT EXAMINATION**

23 BY MR. MYKYTIUK:

24 Q. Okay. Mr. Quinlin, do you recall having a

[WITNESS: Quinlin]

1 conversation with Mr. Mason regarding my
2 additional fixed rate charge?

3 A. Yes. I've had several conversations with Mr.
4 Mason.

5 Q. Can you elaborate?

6 A. To the best of my recollection, and again these
7 were conversations held over a period of time,
8 so I've made some notes here. They're not all
9 inclusive of the conversations that were held,
10 but the brief points I think that are germane
11 to this discussion here.

12 Mr. Mason was on a job in Balmoral, and I
13 stopped by to say "hi", as I usually do, and
14 see what's going on. The discussion quickly
15 turned to an issue regarding the merits of an
16 issue Lakes Region Water was having with
17 Mr. Mykytiuk regarding charging a second base
18 rate fee for his bunkhouse. I told Mr. Mason
19 he needed to show where it was in the PUC
20 regulation or the tariff that LRW had the
21 authority to charge this fee. I subsequently
22 reviewed the regulation and tariffs and found
23 no basis for the fee, through my own readings.

24 I told Mr. Mason of my findings in a

[WITNESS: Quinlin]

1 subsequent conversation and advised him that he
2 should seek a change to the tariff, and also
3 that, if this fee was so important, he should
4 do it sooner than later, as legislation was
5 recently passed regarding ADUs, accessory
6 dwelling units. And, without a specific
7 clarification, he would likely run into many
8 more disputes, as the language in the ADU
9 states "separate utilities are not required".

10 In business, the first question in many a
11 dispute is "what does the contract say?" And
12 we had a few more comments, and that was about
13 it.

14 At another point in the conversation, Mr.
15 Mason said -- stated that he needed the
16 additional fee, as Lakes Region makes no money
17 on the metered water, but only on the base
18 rate. I asked him "what effect there was for
19 Lakes Region the day before versus the day
20 after Mr. Mykytiuk installed his water line, as
21 there were no services provided, no costs
22 incurred, and no liabilities incurred by
23 Mr. Mykytiuk putting in the additional line?"
24 There was no real answer to it, other than

[WITNESS: Quinlin]

1 "well, that's how I have to make my money".
2 And he stated he would at some point have to --
3 at some point he stated he "may have to raise
4 everyone's rates, if Mykytiuk didn't pay the
5 second base rate."

6 I explained that I saw no financial or
7 safety issue, and again no basis, as it is
8 similar to any other utility, when you bring an
9 electric line in, you have the meter, and then
10 from there on you wire your house or you plumb
11 the gas or run the cable as you see fit. But
12 you are metered and you're paying the rate for
13 services that you've used.

14 And we had some other discussions on some
15 things. And, basically, I told him "you can't
16 run a public utility like a private
17 enterprise", and that, in order to charge a
18 second base rate fee, he needs to have the
19 tariff changed or clarified.

20 Q. During a Balmoral Improvement Association
21 meeting, was a vote taken regarding the stand
22 the Association was taking regarding this
23 additional fixed rate?

24 A. I had a -- to the discussion --

[WITNESS: Quinlin]

1 MR. RICHARDSON: Objection.

2 CHAIRMAN HONIGBERG: Wait, wait,
3 Mr. Quinlin. Yes, Mr. Richardson.

4 MR. RICHARDSON: There's no mention
5 of a vote anywhere in any of the materials.
6 So, I'm kind of -- this is news to me. It's
7 not been disclosed previously.

8 CHAIRMAN HONIGBERG: You may answer.

9 **BY THE WITNESS:**

10 A. It's, basically, the question came up through
11 several people that had heard about what was
12 going on and so on and so forth. Mr. Mason
13 asked one of the Board members if he knew
14 anything about it, and that Board member -- we
15 hadn't had a Board meeting in a couple of
16 months, and that Board member didn't attend the
17 last one. We had a quorum at this one. And,
18 at that point in time, finding out that this
19 was going to be raised to the level of the
20 Commissioners here, I thought it best we take a
21 vote on it. And it has nothing to do with
22 Lakes Region, other than the sense of the Board
23 members.

24 I'll read the statement: "Regarding Lakes

[WITNESS: Quinlin]

1 Region Water's assertion that it is entitled to
2 charge Balmoral Improvement Association members
3 two fees if water is being provided to two
4 structures on the same lot, it was voted by the
5 Board that the Board would support "one lot/one
6 fee" premise."

7 MR. MYKYTIUK: No further questions.

8 CHAIRMAN HONIGBERG: Mr. Richardson.

9 MR. RICHARDSON: Thank you.

10 **CROSS-EXAMINATION**

11 BY MR. RICHARDSON:

12 Q. Mr. Quinlin, you stated you reviewed the
13 Company's tariff, and that's what led you to
14 conclude that there wasn't any authority to
15 charge a second base charge?

16 A. Correct.

17 Q. You're aware that the Company serves properties
18 that have apartments in them that are leased
19 out, right?

20 A. I'm aware they serve many communities and many
21 different types of water companies.

22 Q. And, if someone installs a structure that has
23 two bedrooms in it in one structure, and then
24 another one that has five bedrooms in it, and

[WITNESS: Quinlin]

1 it leases the five one out, you would agree
2 with me those are two different uses, right?

3 A. No. I would say that it's none of my business
4 what goes on on a particular property. If you
5 have a single lot, and the property is clearly
6 in compliance with both the Town of
7 Moultonborough regulations and the state
8 regulations, the water is metered, then, in my
9 view, it doesn't matter what the person is
10 doing with their property, unless it violates
11 some other ordinance within the town.

12 Q. So, whether or not Lakes Region could charge
13 for an apartment rental would depend on what
14 the zoning ordinance says? Is that what your
15 position is?

16 A. To some degree, if you have an apartment
17 building, you have one service line coming into
18 that building. If the apartments are rented,
19 whoever is the owner of that building would be
20 required to collect rents from those people,
21 and a portion of whatever costs were associated
22 with that apartment. Whereby you may or may
23 not want to put a meter in there to meter each
24 individual apartment. But I don't see where,

[WITNESS: Quinlin]

1 if the water coming in from Lakes Region, or
2 whatever water company it is, goes into that
3 building and it's metered, then the cost of
4 that metering is done.

5 In terms of a base rate fee, I agree there
6 should be one base rate fee. But, beyond that,
7 there are no other services or anything else
8 being done, whether it's a single family lot, a
9 single family unit, or multiple units after
10 that, the water is being charged and it's the
11 water that's being used.

12 Q. Right.

13 A. So, I don't know why you would have to have
14 multiple base rate fees, plus metered rate fees
15 for the water usage, for every apartment.

16 Q. I meant to ask this before and I forgot. First
17 of all, you were able to get power back, I
18 assume?

19 A. Yes, we were. And, by the way, I would like to
20 thank -- sincerely express my gratitude for the
21 New Hampshire Electric Co-op and the fine work
22 they did in and the expedient manner in which
23 they performed their work. They did an
24 outstanding job up there and should be

[WITNESS: Quinlin]

1 congratulated and recognized for that.

2 Q. So, you agree with me, though, that in March,
3 right now, it's not the busy season in
4 Balmoral, right?

5 A. Correct.

6 Q. And it changes fairly significantly when you
7 get to July and August, when you've got
8 vacationers coming in, right?

9 A. Yes.

10 Q. Okay. And you would agree that, if you start
11 adding additional units that are occupied in
12 July, that increases the maximum demand on
13 system, right?

14 A. It increases the use of the water, yes.

15 Q. Right. And, if the -- were you aware that the
16 DES rules require that the system be designed
17 not based on average demand, but the maximum
18 daily demand?

19 A. Yes.

20 Q. And that clearly occurs in July in Balmoral?

21 A. Correct. And it's my understanding that the
22 system is designed for that.

23 Q. Right. And then -- And, so, making bigger
24 storage tanks, making more wells, those are all

[WITNESS: Quinlin]

1 things that are going to increase Lakes
2 Region's costs, right?

3 A. Correct.

4 Q. And isn't it fair that the things that
5 contribute to the increased cost, whether it's
6 single family residence, whether it's a store
7 like Skelley's, in Moultonborough, or whether
8 it's vacation rentals, each use should pay its
9 fair share of the cost to operate the system?

10 A. I view the -- yeah, I agree. I view the cost
11 of the system in two ways. One is the main
12 service that goes into the property, the other
13 is the actual use of the water that goes in
14 there, which is metered and charged
15 appropriately.

16 Q. Uh-huh.

17 A. Those fees, I'm not sure how they're
18 calculated, but should be calculated based on
19 the peaks and valleys of the thing. Like any
20 other business that relies on tourist industry,
21 you make your money when you can, and that's
22 during the summer, in the case of the Lakes
23 Region.

24 Q. So, if those fees are based on the assumption

[WITNESS: Quinlin]

1 that each unit, whether it's a residence or an
2 apartment, is paying it's own rate, if we were
3 to allow some situations where apartments
4 aren't charged, we ultimately would have to
5 increase the rate that everyone else pays,
6 wouldn't we?

7 A. My view on that would be, you should correctly
8 calculate what the rate needs to be to support
9 the business. And, if that's calculated, then
10 it should be evenly distributed across all
11 water companies or, well, the one water
12 company, however you define it.

13 You open up another point here, in that
14 the -- there's a direct conflict of interest
15 here when you start to talk about profit losses
16 and monies, in that Mr. Mason runs both a
17 public utility, Lakes Region Water, as well as
18 Lakes Region Services, that, as far as I
19 know --

20 Q. Well, I'm sorry for interrupting you, but the
21 Commission has said that Lakes Region Water
22 Service isn't an issue in this case. And you
23 many not be aware, but they issued an order
24 saying that that information wasn't what we're

[WITNESS: Quinlin]

1 here to discuss today.

2 A. Okay. But, if we're talking about profit and
3 money, and where you make your money, and the
4 peaks, and whether the Company is profitable or
5 not, then I think it's extremely relevant.

6 Q. Right. And I would agree with that. The
7 question then becomes "how is Lakes Region's
8 water service intended to be applied?" And, if
9 we're charging for apartments that are rented
10 in Tamworth, then we ought to be charging for
11 vacation rentals that are rented in
12 Moultonborough. That only seems fair to me.
13 Do you disagree with that?

14 A. I neither disagree nor agree. What I'm saying
15 is that you should charge -- you should
16 calculate the rates accordingly, and then
17 charge it across the board fairly.

18 Q. Uh-huh. Do you have this binder in front of
19 you?

20 A. No, I do not.

21 MR. RICHARDSON: Okay. Let me -- let
22 me do this. Let me borrow the -- return the
23 PUC rules, which is Exhibit 3, to the Clerk,
24 and then I'll borrow the binder, and so you can

[WITNESS: Quinlin]

1 look along with me.

2 CHAIRMAN HONIGBERG: Off the record.

3 *[Brief off-the-record discussion*
4 *ensued.]*

5 *[Atty. Richardson handing*
6 *document to the witness.]*

7 CHAIRMAN HONIGBERG: All right.

8 We're back on the record.

9 BY MR. RICHARDSON:

10 Q. So, I just gave you a copy of what's been
11 marked as Lakes Region "Exhibit 1". And
12 there's tabs within that. And why don't you go
13 to the last tab, which is number "6". And
14 it's -- on the top it should say "LRW Rebuttal
15 Exhibit L". Let me know when you have that?

16 A. Yes. I have it.

17 Q. So, you recognize that to be the Town's
18 proposed ADU amendment to its Zoning Ordinance,
19 right?

20 A. Yes.

21 Q. And I understand that, on Tuesday, this passed
22 by a fairly large margin, I think it was two to
23 one, right?

24 A. Correct.

[WITNESS: Quinlin]

1 Q. And, so, this is now incorporated into the
2 Town's Zoning Ordinance as a matter of law,
3 once the ADU law becomes effective?

4 A. Yes.

5 Q. Okay. So, could you look at the bottom of
6 Page 1 of that document which is marked "LRW
7 Exhibit L"?

8 A. Uh-huh.

9 Q. And you see where it says "The maximum size of
10 an ADU shall not exceed 1,000 feet" -- "square
11 feet"?

12 A. Yes.

13 Q. Excuse me. Were you aware that the bunkhouse
14 is 1,500 square feet?

15 A. Yes.

16 Q. So, this unit doesn't qualify as an ADU?

17 A. I'm not aware that Mr. Mykytiuk has applied for
18 ADU status. If he does, he will have to go
19 through the Zoning Board and ask for a
20 variance.

21 Q. Right. So, speaking today, if this structure
22 is 1,500 square feet, it wouldn't comply with
23 the Ordinance as it's written today?

24 A. Correct.

[WITNESS: Quinlin]

1 Q. Okay. And it also has -- it's not connected.
2 So, there's no common shared doorway, which is
3 also a requirement in that Ordinance?

4 A. That's correct. But I don't understand why
5 we're talking about this. It's not an ADU,
6 it's not proposed to be an ADU at this point.

7 CHAIRMAN HONIGBERG: And I would
8 note, Mr. Richardson, that you, I believe, made
9 an argument that the new ADU law is not
10 relevant to this at all.

11 MR. RICHARDSON: Correct. And it's
12 just the witness had said earlier he referenced
13 the fact that he was talking about ADUs, and
14 that it was -- we couldn't require a separate
15 utility. So, I wanted to clarify that it
16 wasn't his position that this was an ADU.

17 And, with that, I have no further
18 questions on that subject.

19 WITNESS QUINLIN: My comment was
20 really only to impart that Mr. Mason could
21 avoid a lot of disputes if he, you know, with
22 this coming down, if he had taken some action
23 to have the tariff changed or the rates changed
24 or something, to take some action prior to this

[WITNESS: Quinlin]

1 coming into effect.

2 Q. Now, you said earlier, I think you alluded to
3 the fact that Balmoral was, you know, opposed
4 to someone with one service line being charged
5 a second base charge?

6 A. The Board of Directors took a vote and said we
7 would go with one -- "one lot/one fee".

8 Q. So, are you -- are you aware that there are two
9 properties in Balmoral that have two separate
10 service lines because they have apartment
11 rentals?

12 A. I have heard that there are. I don't know the
13 circumstances on which they came about and what
14 was the reasoning of why they were done that
15 way.

16 Q. Right.

17 A. I know others that are not.

18 Q. Did you read the rules coming into this
19 meeting? The PUC rules, I'm sorry.

20 *[Court reporter interruption.]*

21 BY THE WITNESS:

22 A. I'm not sure which rules you're referring to.

23 BY MR. RICHARDSON:

24 Q. Would it surprise you that Puc Rule 606.04

[WITNESS: Quinlin]

1 prohibits tandem services, in other words
2 like --

3 A. Yes. I read those rules.

4 Q. Okay. And you understand that that's what's
5 happening here, right?

6 A. I do not understand, and nor do I agree with
7 that. I think Mr. Mykytiuk explained earlier,
8 and will in subsequent testimony, that he, in
9 fact, is not running a tandem line, and that it
10 is taken after the meter, and was inspected by
11 Lakes Region Water Company.

12 Q. So, if you were to take a very technical
13 reading of the Zoning Ordinance, the way
14 Mr. Mykytiuk has, and said "Okay, well, this
15 unit has bedrooms, but it doesn't have a
16 kitchen. So, it's not a dwelling. So, I'm
17 going to put one on." But then you could keep
18 going. You could put in a second or a third
19 and run them all off the same line, couldn't
20 he?

21 A. He could conceivably have a shed in the
22 backyard with a water spigot that would water
23 his flowers.

24 Q. Yes. Right. And, then, if he were to put more

[WITNESS: Quinlin]

1 beds in that, he could rent those out for a
2 fee?

3 A. Provided it met the guidelines of the
4 Moultonborough statutes.

5 Q. Right. And, so, at some point, Lakes Region
6 has to be able to say "Wait a minute. All
7 these units are increasing our cost to serve
8 this property"?

9 A. I don't understand how the costs are increased?

10 Q. Okay. Well, if you -- you understand how, you
11 know, pipe is built --

12 A. I understand how water flows, yes.

13 Q. Right.

14 A. And it goes through the meter and gets charged.

15 CHAIRMAN HONIGBERG: Mr. Quinlin, why
16 don't you let Mr. Richardson ask his questions
17 before, I know --

18 WITNESS QUINLIN: Sorry.

19 CHAIRMAN HONIGBERG: I know you think
20 you know what he's going to ask, but every once
21 in a while he surprises us.

22 WITNESS QUINLIN: I apologize.

23 BY MR. RICHARDSON:

24 Q. So, you know, as you get a larger and larger

[WITNESS: Quinlin]

1 diameter pipe to meet a greater demand, that
2 increases the cost, right?

3 A. Correct.

4 Q. In fact, fairly significantly?

5 A. Potentially.

6 Q. And, when you have to put in permits for three
7 wells up at Mount Roberts, instead of two,
8 that's an additional cost as well, right?

9 A. Correct. But I don't believe we're talking
10 about increasing the size of the pipe flowing
11 through.

12 Q. Okay. But you understand that the PUC Staff
13 has reviewed Lakes Region's rates and allocated
14 the costs based on the number of residents,
15 that includes the number of apartments in
16 Tamworth, it includes the number of apartments
17 or services that are in Balmoral that have two
18 service lines. That's how we apply rates
19 fairly and evenly, isn't it?

20 A. Correct. I live in my home by myself. And, in
21 the summer, I have up to 21 people staying with
22 me. I don't see that you would have a need to
23 charge me a separate base rate fee for the
24 summer, versus the winter, where it's by

[WITNESS: Quinlin]

1 myself. We're throwing lots of balls in the
2 air.

3 Q. Right.

4 A. Different apples, oranges and pears here. I'm
5 not sure where it really is relevant.

6 Q. But, if you were to amend your setup and put in
7 a second building and rent that out, so it
8 would be your family, plus someone else's, it
9 would be fair for Lakes Region to recover that
10 through its rates, right?

11 A. If it complies and is in line with the Zoning
12 Ordinance and land use in Moultonborough. In
13 this case here, Mr. Mykytiuk meets the
14 requirements of the Moultonborough building
15 codes and such as one single family dwelling on
16 one unit, with a bunkhouse.

17 MR. RICHARDSON: I have no further
18 questions.

19 CHAIRMAN HONIGBERG: Mr. Clifford, do
20 you have any questions for Mr. Quinlin?

21 MR. CLIFFORD: No. We don't have any
22 questions for Mr. Quinlin.

23 CHAIRMAN HONIGBERG: Commissioner
24 Bailey.

[WITNESS: Quinlin]

1 BY CMSR. BAILEY:

2 Q. Are you familiar with the two other instances
3 that Attorney Richardson was speaking about,
4 the apartments in Balmoral?

5 A. There are no legal apartments in Balmoral.
6 There are only single family homes, with
7 potential bunkhouses there. Should be under
8 the same circumstances as Mr. Mykytiuk, with no
9 cooking facilities.

10 Q. So, people don't live there 12 months a year?

11 A. I don't know that. I'm not aware that they do.
12 My neighbor has a similar situation and does
13 not live there 12 months a year. He comes up
14 on the weekends.

15 Q. He has a bunkhouse?

16 A. He has a bunkhouse over the garage.

17 Q. And does he have a separate meter, to your
18 knowledge?

19 A. He may or may not. I don't know.

20 CMSR. BAILEY: Okay. Thank you.

21 CHAIRMAN HONIGBERG: I have no
22 questions for Mr. Quinlin.

23 Mr. Mykytiuk, do you any further
24 questions for Mr. Quinlin?

[WITNESS: Quinlin]

1 MR. MYKYTIUK: No.

2 CHAIRMAN HONIGBERG: You can return
3 to your seat, or leave as you wish,
4 Mr. Quinlin.

5 Mr. Mykytiuk, do you have another
6 witness?

7 MR. MYKYTIUK: No, I don't. The
8 other witness did not show up.

9 CHAIRMAN HONIGBERG: All right. So,
10 it sounds like you are the last witness for
11 yourself, is that right?

12 MR. MYKYTIUK: I am.

13 CHAIRMAN HONIGBERG: Just because
14 this is the way we do things, why don't you go
15 up to the witness stand. Mr. Patnaude will
16 have you take the oath. And then you can tell
17 your story and describe the exhibits that we
18 haven't already talked about. And, then, Mr.
19 Richardson, potentially Mr. Clifford, or one of
20 us may have questions for you. Okay?

21 MR. MYKYTIUK: Thank you.

22 (Whereupon **Robert Mykytiuk** was
23 duly sworn by the Court
24 Reporter.)

[WITNESS: Mykytiuk]

1 **ROBERT MYKYTIUK, SWORN**

2 WITNESS MYKYTIUK: Probably the best
3 way for me to go about this, since I'm not so
4 well versed in this practice, is to offer
5 exhibits, and I have comments for each exhibit.

6 So, if we may refer to Exhibit A.
7 Exhibit A, you'll see that I applied for a
8 building permit on November 4th, 2014, and was
9 granted an occupancy permit for the garage,
10 with bunkhouse, on January 7th, 2016. This is
11 a bunkhouse, which is subordinate to a primary
12 residence, which, by definition, contain
13 sleeping facilities, and may contain sanitary
14 facilities, but does not contain cooking
15 facilities. Therefore, it's awful hard to live
16 in a building that you can't cook in.

17 It's my contention that nowhere in
18 Lakes Region Water's tariff, nor the PUC
19 regulations, specifically addresses an
20 additional meter charge for any of this.

21 Exhibit B. Exhibit B and C further
22 reinforce, and we probably, if time is of the
23 essence, you probably don't want to hear this,
24 it will just reiterate what Representative

[WITNESS: Mykytiuk]

1 Crawford stated about the emails that she
2 received between Amanda Noonan's office and
3 Leah Valladares, from their attorney, on
4 Exhibit C, "Lakes Region's tariff does not
5 directly" -- "appear to directly address the
6 issue." That's on Exhibit C, second paragraph.
7 So, that takes care of Lakes Region's tariff.
8 And Ms. Noonan's email, Exhibit B, on the
9 second page, talks about reaching out to
10 Representative Crawford, and that there was
11 nothing that they found. "I have not been able
12 to find anything", in that first paragraph,
13 third line down. And, in the end, it says "In
14 the meantime, if there is nothing definitive in
15 the tariff, it will likely mean billing
16 Mr. Mykytiuk a single base charge until the
17 tariff is updated."

18 Referencing the Commission's order of
19 Motion to Deny, and I believe -- I don't offer
20 this as an exhibit, I would assume you have it,
21 on Page 4, it's the document dated
22 January 31st, 2017, that brought us to this
23 hearing. It states that "neither the
24 Commission's rules nor the Company's tariff

[WITNESS: Mykytiuk]

1 specifically addresses whether separate charges
2 are permitted or required when an ADU is
3 installed on a customer's property."

4 CHAIRMAN HONIGBERG: Hang on. Are
5 you reading from the order that looks like that
6 *[indicating]*?

7 WITNESS MYKYTIUK: Yes. That's
8 correct. On Page 4.

9 CHAIRMAN HONIGBERG: Oh, I see where
10 you're reading. You're about six or seven
11 lines down?

12 WITNESS MYKYTIUK: Correct.

13 CHAIRMAN HONIGBERG: Okay.

14 WITNESS MYKYTIUK: Exhibits D and E.
15 Exhibit D, my initial call into Mr. Naylor's
16 office to resolve this matter, it was extremely
17 contentious. And, after being informed by
18 Mr. Naylor at the end of the conversation, or
19 towards the end, that the conversation was
20 over, he abruptly hung up on me. Now, this is
21 the first level of this complaint process.

22 The second, and these are found in
23 Exhibits D and E, the second level of the
24 complaint process, refer to Exhibit D, where

[WITNESS: Mykytiuk]

1 the online complaint was filed. Margaret
2 Raymond assigned this case to Eileen Hadley.
3 The second page of D, I sent an email off to
4 Ms. Hadley informing her that I had information
5 available for this. Ten minutes later I
6 received an email stating Mr. Naylor was
7 involved once again. Nine days later, the last
8 page, I received an email from Mark Naylor
9 stating "We do not disagree with the decision
10 to charge two base charges", but without any
11 reference to a PUC regulation or Lakes Region
12 tariff, which I had asked for numerous times.

13 Mr. Naylor stated that, if I was
14 dissatisfied with the conversations I had with
15 the Commission Staff, the next step would be to
16 file a formal complaint. I had absolutely no
17 conversations with the Staff. No one called
18 me.

19 Exhibits F and G. At this point, I'd
20 like to address a few erroneous errors with
21 the -- or, statements, so to speak, with the
22 order of Motion to Deny the complaint. It
23 states on Page 1 that "During construction,
24 Mr. Mykytiuk tapped into the service connection

[WITNESS: Mykytiuk]

1 to his primary", and this is what I just
2 alluded to while Representative Crawford was on
3 the stand. It shows that I did not tap into
4 the service connection. This was inside my
5 crawlspace, underneath the home, past the
6 meter. So, there was no tapping into the
7 service connection, which the document claims.

8 On Page 2, it states, in the
9 paragraph one, that I "submitted that this new
10 structure is an ADU". This also is incorrect.
11 I clearly state in my letter of December 13th,
12 the Motion to Exclude, that the bunkhouse
13 currently does not meet the Town's proposed ADU
14 requirement, but it shouldn't be an issue for
15 compliance when my construction is complete.
16 And this garage/bunkhouse is not completed.
17 It's still under construction.

18 This Exhibit G, if I had -- I have
19 requested of Mr. Richardson's office to
20 provide, per the PUC regulation, they're
21 required to have -- Lakes Region is required to
22 have a systems map showing where the service --
23 utility service comes down the street, where
24 the curb stops are placed. I have requested

[WITNESS: Mykytiuk]

1 this from Mr. Richardson's office and have not
2 received it.

3 If we can move onto Exhibit H.

4 MR. RICHARDSON: May I just interject
5 for the record? The request that the witness
6 is referring to was I had submitted a request
7 that he provide the same summary that the
8 Executive Director had provided, or directed
9 all the Parties to provide. And Mr. Mykytiuk
10 sent me that, I want to say it was about a week
11 or two ago, and I saw that it came in, and I
12 figured that it was his summary. It does
13 state, as he said, that he, in his response or
14 his summary, he wrote -- he requested that
15 Lakes Region provide the systems maps.

16 I realized that as I was preparing
17 for trial yesterday. So, I didn't realize he
18 meant to submit a request, it wasn't submitted
19 to me as a request, but as a response. So,
20 that's why we haven't responded.

21 CHAIRMAN HONIGBERG: Okay. All
22 right. But Exhibit -- if I'm not mistaken,
23 Mr. Mykytiuk, Exhibit G is your sort of
24 schematic, not-drawn-to-scale drawing of what

[WITNESS: Mykytiuk]

1 you think it looks like?

2 MR. MYKYTIUK: Exactly.

3 CHAIRMAN HONIGBERG: And, Mr.

4 Richardson, I don't get the sense that you have
5 a fundamental disagreement that Exhibit G is a
6 generally accurate picture?

7 MR. RICHARDSON: And I will also
8 agree for the record that, you know, it's our
9 position that this isn't a branched service.
10 The only relevance of "branched service" is to
11 say how the rules require us to limit our
12 service to one use. So, our view is it's a
13 tandem service. He obviously disagrees.

14 CHAIRMAN HONIGBERG: I got that.
15 But, right now, I'm just trying to get --

16 MR. RICHARDSON: Yes.

17 CHAIRMAN HONIGBERG: -- understand
18 what these exhibits are, and where you agree
19 and disagree.

20 So, it seems like that's really not
21 ultimately that important, because they don't
22 have a problem with your drawing of Exhibit G,
23 Mr. Mykytiuk. Is that -- can we agree on that?

24 WITNESS MYKYTIUK: No, that's -- no,

[WITNESS: Mykytiuk]

1 we can't agree. And the reason being is my
2 next exhibit, Exhibit H, would prove my point.

3 CHAIRMAN HONIGBERG: Well, let me
4 stop you though. I'd like you to hear -- I'd
5 like to hear you describe Exhibit F again, now
6 that you're sitting up there, rather than at
7 your -- at the table. Because you did it
8 fairly quickly, I want to make sure I
9 understand, and that the record is clear as to
10 what's in Exhibit F.

11 WITNESS MYKYTIUK: Okay. If you
12 begin with Exhibit G, it shows Mayflower Lane,
13 which I live on, and it shows the utility
14 service line coming down the street. Then, the
15 service connection, which runs from the street
16 to the curb stop on my property. From the curb
17 stop in, it's a customer service pipe. And
18 that customer service pipe ends at the meter.
19 From that point further, it's my -- there's no
20 explanation that I could find anywhere, in a
21 tariff or the PUC, what that is called, it's my
22 main water line in my home.

23 And Exhibit F now shows exactly where
24 the service pipe comes in, through the ground,

[WITNESS: Mykytiuk]

1 comes up in front of the pail. I have arrows
2 showing the flow of the water. It goes by a
3 meter. And it comes up, and it makes a
4 90-degree turn, goes through a whole house
5 water filter, that was imperative that I put in
6 because of damage I've had in the future -- I
7 mean, in the past, I'm sorry, from contaminated
8 water, pebbles, whenever they open up the
9 lines, which are so antiquated, they're
10 constantly doing.

11 MR. RICHARDSON: Objection.

12 CHAIRMAN HONIGBERG: We're not here
13 about water quality.

14 WITNESS MYKYTIUK: I understand.
15 And, then, you can see my "main house line" I
16 refer to comes in, and that's where I tap into
17 the line.

18 The "tandem service" that Mr.
19 Richardson refers to, if that's called a
20 "tandem service", and there's nothing that
21 clarifies that, there is a shut-off. And it
22 also says "if a tandem service is provided", is
23 there, you have to have shut-offs, which you
24 can clearly see there is a shut-off. But I'm

[WITNESS: Mykytiuk]

1 still not of the belief that this is a tandem
2 service. And you can see the water going to
3 the bunkhouse.

4 What I wanted to point out with the
5 second page of that is you can see clearly why
6 I have a water filter. That's the water filter
7 changed while I was taking these pictures.
8 Yes. That's a new water filter, the previous
9 page is the water filter, and I go through a
10 water filter like that at least once a month.

11 CHAIRMAN HONIGBERG: Okay. We're not
12 here about water quality. So, you wanted to
13 then move on to Exhibit H?

14 WITNESS MYKYTIUK: Yes. Exhibit H
15 shows Mr. McGuire's house, which has one
16 service pipe. The service pipe, and this is
17 where I alluded to, if I had the maps, which
18 Lakes Region is required to have for their
19 water system in there, if I had this map
20 system, I could show you there is only one
21 service line going into this. That is his
22 original home on the right-hand side of the
23 driveway. He has since built what is
24 considered a garage/bunkhouse on the left. Mr.

[WITNESS: Mykytiuk]

1 Mason -- or, Mr. McGuire moved over to that a
2 number of years ago. He has one service pipe
3 that goes to the house on the right, it's
4 metered. And, then, underneath the driveway,
5 and several years ago, Mr. Mason, I believe,
6 went over there and had to repair it, because
7 it burst in the middle of the winter, the pipe
8 runs from that house over to the bunkhouse, to
9 the garage. And he had, I believe it was, from
10 what I was told by Mr. McGuire himself, and
11 Jake Dawson, who used to work for Lakes Region
12 Water, that Mr. Mason, Senior, put this second
13 meter in for Mr. McGuire so he could figure out
14 how much to charge tenants, not because he was
15 being charged a second meter charge.

16 I also requested of Mr. Richardson
17 bills, which would verify whether a second
18 meter charge. He alluded to an earlier
19 conversation that there are several homes in
20 there that are paying, and my belief is the
21 only reason they're paying is because they're
22 being intimidated to do it. There is nothing,
23 once again, in the tariff or the PUC that
24 require this to be -- to have second meters.

[WITNESS: Mykytiuk]

1 There's many units in that Balmoral Association
2 that have bunkhouses. And, if they are paying
3 a second meter charge, it's not because it's
4 required by a tariff or a PUC, it's by
5 intimidation.

6 I have been intimidated by Lakes
7 Region Water. Mr. Mason has been to my house
8 twice. Ms. Valladares has called me on the
9 phone. And they deny intimidation or water
10 shut-off. I have documentation here as well in
11 the next exhibits proving.

12 So, had I had a map of the water
13 system, I could -- and the bills from
14 Mr. McGuire, I could prove that Mr. McGuire,
15 and I can tell you definitively he told me in
16 person last summer that he does not pay two
17 meter charges. And he is clearly living in the
18 house on the left, and he's renting the house
19 on the right.

20 Exhibit I, and this is where
21 Ms. Noonan would be able to help me out, I
22 believe, with the video. Thank you, Amanda. I
23 have a video. This letter, Mr. Mason showed up
24 at my property around the 20th of April of last

[WITNESS: Mykytiuk]

1 year, 2000 --

2 MR. RICHARDSON: I'm going to object
3 to this, because we asked for a copy of the
4 video that was referenced in the exhibits, and
5 the video that I was provided was when
6 Mr. Justin Benes, with Lakes Region, and
7 Ms. Valladares came to his property in order to
8 inspect the system, to make sure there was no
9 bypass and there was no public health threat
10 due to the two houses.

11 So, if there's a video of a
12 discussion with Mr. Mason, it hasn't been
13 provided, disclosed in any way, and this is the
14 first time I'm hearing about it.

15 CHAIRMAN HONIGBERG: Well, wait.
16 Wait, Mr. Mykytiuk. I have a question before
17 you start. What is this video that you're
18 about to show?

19 WITNESS MYKYTIUK: This video is them
20 showing up at my door demanding --

21 CHAIRMAN HONIGBERG: Is it --

22 WITNESS MYKYTIUK: -- demanding an
23 inspection. When this letter now stated, it
24 was a registered letter, and this is a phone

[WITNESS: Mykytiuk]

1 conversation I just alluded to, on a Friday. I
2 came home from a trip, Ms. Valladares called
3 me.

4 CHAIRMAN HONIGBERG: Wait. My next
5 question is, is it the video that you sent to
6 Mr. Richardson already?

7 WITNESS MYKYTIUK: Yes.

8 CHAIRMAN HONIGBERG: So, this is a
9 video you've seen.

10 WITNESS MYKYTIUK: I sent it to
11 Ms. Noonan as well, and 15 other people.

12 CHAIRMAN HONIGBERG: Okay. Thank
13 you.

14 So, you're withdrawing your
15 objection, Mr. Richardson?

16 MR. RICHARDSON: Correct. I
17 misunderstood what he was explaining it to be.

18 CHAIRMAN HONIGBERG: Okay.
19 Ms. Noonan, I think we're ready to start the
20 video.

21 WITNESS MYKYTIUK: Well, I would like
22 to preface this, if I may? So, this -- I
23 received this phone conversation, phone call
24 from Ms. Valladares, on Friday. I believe it

[WITNESS: Mykytiuk]

1 was the -- probably the 3rd of April, and
2 explaining that they needed to come and do an
3 inspection. And tried telling me there was a
4 registered letter that I had not picked up in
5 the mail. And I said "well, I had just got
6 back in town from a trip." Next day, I went,
7 which was Saturday, the -- probably the 3rd --
8 no, Saturday, the 2nd. So, the Saturday, the
9 2nd, I picked up the -- somewhere around there,
10 I picked up the registered letter. That would
11 have been the 5th, I believe, or the 4th -- 4th
12 or 5th. I picked this letter up, which was
13 stating that I had "ten days" for an inspection
14 "to avoid disconnection of service". They
15 referenced the New Hampshire RSA 539, which was
16 that they were coming to inspect to make sure
17 there was no backflow problems and I wasn't
18 stealing the water.

19 They showed up, unannounced, at my
20 house, on Monday morning, first thing Monday
21 morning. I was busy with other people. I
22 didn't have the time for it. And this -- this
23 video will show exactly the next step. I told
24 Ms. Valladares I was going to video tape this

[WITNESS: Mykytiuk]

1 with my cellphone. They did their inspection,
2 and were satisfied that there were no cross
3 connection problems, there was no theft of
4 water. And, at that point, the only problem
5 that they had was I hadn't filled out an
6 application for a new service.

7 CHAIRMAN HONIGBERG: Okay. Now --
8 hang on one second. Let's go off the record.

9 *[Brief off-the-record discussion*
10 *ensued.]*

11 CHAIRMAN HONIGBERG: We can go back
12 on the record. Now you can go.

13 MR. RICHARDSON: So, before we start,
14 just for the stenographer's benefit, the
15 individuals are Justin Benes that is in the
16 video, Benes is B-e-n-e-s, and then
17 Ms. Valladares you'll see in the video. And
18 then I believe just Mr. Mykytiuk is the person
19 speaking who is not on the camera.

20 CHAIRMAN HONIGBERG: Do you want to
21 say something else, Mr. Mykytiuk, about this?

22 WITNESS MYKYTIUK: Yes. And the
23 reason for this video was that this letter
24 states I had "ten days" to contact them. This

[WITNESS: Mykytiuk]

1 was five days into picking up this registered
2 letter. Their contention is I had "ten days
3 from April 26th". And my contention is "I'm
4 not clairvoyant. I don't know what's in a
5 letter, if I don't have it."

6 CHAIRMAN HONIGBERG: Okay.

7 ***[Presentation of a video.]***

8 ***[Short pause.]***

9 MS. NOONAN: Sorry. It was all set
10 up. It worked earlier.

11 CHAIRMAN HONIGBERG: All right. So,
12 with some technical issues, we're not able to
13 watch the video right now, but we should be
14 able to come back to it I'm guessing in a few
15 minutes.

16 What's the point of the video? What
17 point do you want to make about it?

18 WITNESS MYKYTIUK: That many times in
19 earlier -- in earlier testimony Mr. Richardson
20 has stated that they have not threatened. They
21 have threatened me more than once. And this
22 video shows, when you're sent a registered
23 letter and given ten days, you have ten days
24 from the receipt of the letter. Is that not

[WITNESS: Mykytiuk]

1 correct?

2 CHAIRMAN HONIGBERG: So, the point
3 you're --

4 WITNESS MYKYTIUK: They showed up at
5 my property five days.

6 CHAIRMAN HONIGBERG: We only get to
7 speak one at a time, okay? And, right now, I
8 would like to ask you a question. Which means
9 you need to wait until I'm done with the
10 question. Okay?

11 WITNESS MYKYTIUK: Yes.

12 CHAIRMAN HONIGBERG: So, the point
13 you want to make about this video is that it
14 will show that they did, in fact, threaten or
15 intimidate you. Is that what you're --

16 WITNESS MYKYTIUK: Exactly.

17 CHAIRMAN HONIGBERG: Okay. So, when
18 we're able to view it, we'll be able to see it.

19 So, that takes you through Exhibit I.
20 Does it also cover Exhibit J?

21 WITNESS MYKYTIUK: Yes. It's all
22 part of --

23 CHAIRMAN HONIGBERG: Okay. What is
24 next?

[WITNESS: Mykytiuk]

1 WITNESS MYKYTIUK: Exhibit J shows
2 the inspection was completed satisfactorily.
3 But the threat of disconnection of service
4 remained, even though they stated, in Exhibit
5 K, second to the last paragraph, that they have
6 not continued to threaten water shut-off; but
7 they have. It says "Mr. Mykytiuk has not made
8 any formal requests to us nor have we
9 continually threatened to turn the water off";
10 they have several times.

11 **THE FOLLOWING DIALOGUE IS TAKEN**
12 **FROM THE VIDEO PRESENTATION:**

13 MR. MYKYTIUK: Okay. And you are?

14 MS. VALLADARES: Leah Valladares, --

15 *(Video presentation*
16 *interrupted.)*

17 MS. NOONAN: Sorry. Are we ready?

18 Okay.

19 CHAIRMAN HONIGBERG: The magic of
20 technology. All right.

21

22

23

24

[WITNESS: Mykytiuk]

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**THE FOLLOWING DIALOGUE IS TAKEN
FROM THE VIDEO PRESENTATION:**

MR. MYKYTIUK: Okay. And you are?

MS. VALLADARES: Leah Valladares,
Lakes Region Water Utility Manager. May we
have permission to inspect your connection so
there is no cross-connection and a bypass --

MR. MYKYTIUK: I will allow you --

MS. VALLADARES: -- today?

MR. MYKYTIUK: -- to do the
inspection. I was going to call you.

MS. VALLADARES: Okay.

MR. MYKYTIUK: It's not convenient
right now. However, --

MS. VALLADARES: We're here to do the
inspection or we're going to disconnect.

MR. MYKYTIUK: I didn't -- or you're
going to disconnect the service?

MS. VALLADARES: Correct (Inaudible).

MR. MYKYTIUK: According to this
letter, which says I have "ten days" from the

[WITNESS: Mykytiuk]

1 letter.

2 MS. VALLADARES: From the letter,
3 April 26th.

4 MR. MYKYTIUK: I picked the letter up
5 on the 4th of May, which means I have till the
6 14th.

7 MS. VALLADARES: No. It says "from
8 the letter", I'm sorry.

9 MR. MYKYTIUK: What am I, supposed to
10 be clairvoyant?

11 MS. VALLADARES: Sorry.

12 MR. MYKYTIUK: I know what's -- I
13 know what the letter is all about, if I don't
14 even see it?

15 MS. VALLADARES: If you would let us
16 inspect, while we're here, while we have time,
17 instead of having us --

18 MR. MYKYTIUK: And your name is?

19 MR. BENES: Justin, Field Supervisor,
20 Justin Benes. You were also told this on
21 Friday.

22 MS. VALLADARES: Yes, sir.

23 *(End of video presentation.)*

24 CHAIRMAN HONIGBERG: Off the record.

[WITNESS: Mykytiuk]

1 *[Brief off-the-record discussion*
2 *ensued.]*

3 CHAIRMAN HONIGBERG: All right. So,
4 now we've had a chance to see the video. I
5 don't know whether you were done talking about
6 Exhibits J and K?

7 WITNESS MYKYTIUK: Exhibit J, showing
8 that the inspection was completed
9 satisfactorily, but the threat of disconnection
10 of service remained, even though they stated
11 again, in Exhibit K, in the second to the last
12 paragraph, that they had -- they have not
13 continued to threaten, which they have.

14 CHAIRMAN HONIGBERG: Is there a
15 document between J and K that shows the threats
16 of disconnection?

17 I guess, what are you referring to?

18 WITNESS MYKYTIUK: Exhibit J, if you
19 read the last paragraph, it says "You are still
20 responsible for a second base charge for your
21 new service", this is after the inspection,
22 "and if the bill becomes past due you will run
23 the risk of disconnection of service" once
24 again. The threats have continued.

[WITNESS: Mykytiuk]

1 At this point, I have a summation.

2 CHAIRMAN HONIGBERG: Well, why don't
3 we save that -- yes, well, why don't you give
4 it, if you want. Here's the thing. You could
5 either do it now, while you're sitting there,
6 under oath, or you could wait till the very end
7 of the case and do it then as a summary of your
8 argument. It's up to you.

9 WITNESS MYKYTIUK: That's more
10 preferable.

11 CHAIRMAN HONIGBERG: Okay.

12 WITNESS MYKYTIUK: Thank you.

13 CHAIRMAN HONIGBERG: Mr. Richardson,
14 I assume you have questions for Mr. Mykytiuk?

15 MR. RICHARDSON: Yes, I do. Thank
16 you.

17 **CROSS-EXAMINATION**

18 BY MR. RICHARDSON:

19 Q. Do you have the complaint that you filed with
20 the PUC in front of you? Your complaint? I
21 can't bring a copy of your exhibits. So, the
22 one you filed with the PUC?

23 A. Perhaps I do, in the big envelope there. Which
24 one are you referring to?

[WITNESS: Mykytiuk]

1 CHAIRMAN HONIGBERG: Hang on. Let's
2 go off the record for a second.

3 *[Brief off-the-record discussion*
4 *ensued.]*

5 CHAIRMAN HONIGBERG: All right. Mr.
6 Richardson, I believe Mr. Mykytiuk now has in
7 front of him the document you wanted him to
8 look at, which is his complaint dated
9 October 3rd?

10 MR. RICHARDSON: Correct. Yes.

11 CHAIRMAN HONIGBERG: All right.

12 BY MR. RICHARDSON:

13 Q. And do you see the first -- you have the first
14 page in front of you, Mr. Mykytiuk?

15 A. Yes.

16 Q. Okay. Paragraph 2, you state "Under New
17 Hampshire Statute 150-5, Definitions: A
18 bunkhouse is an accessory structure subordinate
19 to the primary structure containing sleeping
20 facilities which may be accompanied by sanitary
21 facilities but does not contain cooking
22 facilities. (See Exhibit B)."

23 Now, you filed that statement. Are the
24 documents you filed true and accurate?

[WITNESS: Mykytiuk]

1 A. Yes.

2 Q. All right. So, you're not aware of any
3 documents that are incorrect that you
4 submitted?

5 A. I'm not aware.

6 Q. Okay. So, I went and looked at Exhibit B. And
7 why don't you turn to that, in your complaint,
8 where it says "Exhibit B" that you referred to.

9 A. Exhibit B, yes.

10 Q. And it says, right where I have my copy, it's
11 "Exhibit B", it's handwritten in green, and
12 then there's a number "3" below it, and it says
13 "This language will not be on the ballot and is
14 provided here for a complete review of the
15 proposed changes."

16 So, what is that, because state law isn't
17 adopted by ballots?

18 A. I'm not sure what you're referring to,
19 counselor.

20 Q. Okay. Do you see your October 3rd complaint,
21 and there's a document called "Exhibit B"?

22 A. Yes.

23 Q. What does it say on the top of it?

24 A. "This language will not be on the ballot and is

[WITNESS: Mykytiuk]

1 provided here for a complete review of the
2 proposed changes."

3 Q. Okay. Now, where did you find that?

4 A. Be honest with you, I'm not sure.

5 Q. Okay. All right. Well, let me -- you're aware
6 that there is no "150-5" in state statutes that
7 refers --

8 A. This might have been from a different town.
9 And the only reason why I referenced a
10 different town is Moultonborough does not have
11 specific definitions for everything. They use
12 a general building, and I have it in my folder
13 there, the building code, International
14 Building Code.

15 Q. Right. So, you had to look somewhere else, but
16 this isn't a "state statute", the way you said
17 it was? So, it was a -- it was the Town of
18 Sandwich's ordinance, wasn't it?

19 A. That I'm not sure. I'm not aware.

20 Q. So, your complaint says this is a "state law",
21 you just told me your testimony is "true and
22 accurate", but now you're telling us that this
23 isn't a state statute, and it might be from
24 some town ordinance other than Moultonborough,

[WITNESS: Mykytiuk]

1 where the property is located?

2 A. That's a possibility. If Moultonborough
3 doesn't specifically have it in there, I got it
4 somewhere.

5 Q. All right. So, --

6 A. And it's applicable here in the State of New
7 Hampshire. And it's what -- because I
8 confirmed this with Mr. Cahoon, the Building
9 Inspector. I asked him specifically "is this
10 the definition of a "bunkhouse"? And he said
11 "yes".

12 Q. And I'm sure he was correct in the Town of
13 Sandwich. But let's mark a document --

14 A. He's not the building inspector in Sandwich.

15 MR. RICHARDSON: So, this is "Exhibit
16 4".

17 (The document, as described, was
18 herewith marked as **Exhibit 4** for
19 identification.)

20 BY MR. RICHARDSON:

21 Q. Now, do you see, I didn't make a copy of the
22 whole zoning ordinance, because I didn't want
23 to drown everyone in paper, but you see on the
24 top where it says "Chapter 150 Zoning

[WITNESS: Mykytiuk]

1 Ordinance". And then you see the sections are
2 all numbered, 150-1, second page 150- -- I
3 mean, second paragraph, "Title", and then it
4 goes on. And then you see the definition in
5 question, I believe is in 150-5, there's
6 "Accessory Dwelling", which is in your Exhibit
7 B.

8 Now, is this the document this came from,
9 the Town of Sandwich's Zoning Ordinance?

10 A. Again, I'm not aware. This is so long ago. I
11 tried to come up with these definitions.
12 They're not specifically spelled out in a lot
13 of the information that the Building Inspector
14 provided me with.

15 However, for a bunkhouse, I knew these
16 questions were forthcoming. And I specifically
17 asked Mr. Cahoon "Is this the definition you
18 use for a bunkhouse?" And he said "yes".

19 Q. Okay. But state law doesn't define what a
20 "bunkhouse" is. I mean, the Town of Sandwich
21 may have defined it. I don't believe
22 Moultonborough has defined what a "bunkhouse"
23 is. The Commission's rules don't define it.
24 It's not in state statute.

[WITNESS: Mykytiuk]

1 Why is Lakes Region supposed to apply a
2 definition in the Town of Sandwich to property
3 in Moultonborough?

4 A. That's a -- that's a great question. Why does
5 Lakes Region interpret their tariffs the way
6 they do? There's a lot of ambiguity. And
7 perhaps that's what the Governor has now
8 ordered effective the 31st of this month, that
9 all these statutes and regulations and
10 everything will be reviewed.

11 Q. Okay. Your complaint also referenced a
12 document called the "Carroll County Code".
13 What is the -- how is the Carroll County Code
14 relevant to this case?

15 A. Where is this?

16 Q. It's also in your Exhibit B, and it's in your
17 complaint, paragraph -- of October 3rd, in
18 Paragraph 4. You say "Under Carroll County
19 Code 175-175, terms defined:", and then you go
20 into a definition of a "dwelling unit". I
21 guess, why is -- how is Lakes Region supposed
22 to monitor what different counties are doing in
23 their codes and why does that matter to water
24 rates for water service?

[WITNESS: Mykytiuk]

1 A. I think it was referenced to a dwelling that I
2 kept getting from Ms. Valladares, that I had
3 two dwellings. In the Town of Moultonborough,
4 you cannot have two dwellings on one single
5 lot. Years back, the Town of Moultonborough
6 took it upon themselves, I have two lots -- had
7 two lots. They combined these two lots into
8 one, unbeknownst to me when I purchased the
9 lot. And I built the first garage five feet
10 onto the second lot. I couldn't split it.

11 Q. So, --

12 A. So, I have one lot, and one dwelling, and one
13 garage with a bunkhouse.

14 CHAIRMAN HONIGBERG: Hang on.
15 Neither one of you is listening to the other.

16 MR. RICHARDSON: And I realize that.
17 So, I'm going to try to bring it back to what
18 we're here for.

19 CHAIRMAN HONIGBERG: Okay.

20 BY MR. RICHARDSON:

21 Q. So, is it your position that the Town of
22 Sandwich Ordinance or the Carroll Code is
23 binding on this Commission in how they
24 determine what's required to charge a separate

[WITNESS: Mykytiuk]

1 rate or not? Are those documents binding or
2 informative on this Commission?

3 A. I would -- I would venture to say they're more
4 informative and trying to get some kind of
5 general --

6 Q. Okay.

7 A. -- direction here.

8 Q. But you're aware that water rates apply to
9 properties whether they meet the definition of
10 a "dwelling" or not? I mean, you could have a
11 store, like, you know, Skelley's, in
12 Moultonborough, that's connected to the water
13 system. No one lives in it, it's not a
14 dwelling. But they still have to pay a water
15 rate, right?

16 A. I can't speak for them.

17 Q. Okay. A restaurant, that would have to pay a
18 water rate, even though it's not a dwelling?

19 A. I can't speak.

20 Q. Okay. So, then, your conclusion, I mean, you
21 could have things, even things like a golf
22 course or a sprinkler system in a ball field
23 that's connected to the water system, and it
24 uses water and it has to pay rates, right?

[WITNESS: Mykytiuk]

1 A. I am not aware of how Lakes Region does
2 business, no.

3 Q. Okay. So, then, maybe your conclusions are
4 falling short of the mark, if you don't know
5 how the water system operates?

6 A. And how would that be that my conclusions are
7 falling far short?

8 Q. Okay. Your property is a vacation rental,
9 right? You have that use? That's what you
10 rent your property out for?

11 A. It's not rented year round, no. I stay over
12 there. It's rented on a weekly basis. I know
13 well in advance when it is. I can stay there,
14 I can leave. It's pretty much turnkey.

15 Q. And the bunkhouse is where you live? That's
16 your primary residence, right?

17 A. No. That is not correct.

18 Q. Where do you vote?

19 A. Where do I vote?

20 Q. Did you vote on the ADU law?

21 A. Where do I vote?

22 Q. Yes.

23 A. There's only one address.

24 Q. Okay. So, do you vote in the Town of

[WITNESS: Mykytiuk]

1 Moultonborough? Are you a Moultonborough
2 resident?

3 A. I am.

4 Q. Okay. And your address is at -- on Mayflower
5 Lane, right?

6 A. That's correct.

7 Q. Okay. That's -- do you own any other
8 properties?

9 A. Yes.

10 Q. Okay. But Moultonborough is where you live,
11 and you voted in Moultonborough. So, that's
12 your residence, your legal residence?

13 A. That's correct.

14 Q. Okay. So, you have your legal residence, and
15 then you have a rental use on the property,
16 right?

17 A. My legal residence is 17 Mayflower Lane, yes.

18 Q. And your weekly rental is also at the same
19 location, right?

20 A. Correct.

21 Q. Okay. So, how is that different than someone
22 having an apartment that they rent out for a
23 tenant, where you have two uses? One is a
24 tenant's use for a family, the other is for

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1 your family. That's two families, two uses,
2 isn't it?

3 A. It would appear so.

4 Q. Okay. You testified earlier about the McGuire
5 property. And I think you said that it has a
6 meter that Tom Mason installed, Tom Mason,
7 Senior, excuse me. And is that still the case?
8 There's two meters in that dwelling -- or, in
9 those two buildings, there's one in each
10 building?

11 A. From what I understand.

12 Q. And is that based on what Mr. Dawson told you
13 or is that based on what Mr. McGuire told you?

14 A. Both.

15 Q. Okay. Are you aware that both of those
16 buildings existed in the 1960s, before Lakes
17 Region even bought the Paradise Shores system?

18 A. No.

19 Q. So, you don't know whether that's true or not?

20 A. I don't.

21 Q. Okay. So, it's possible that that scenario,
22 with one service line going to two properties,
23 may predate the Commission's rules which
24 prohibit tandem services, correct?

[WITNESS: Mykytiuk]

1 A. I would think it would be covered in the
2 tariff, something referencing a "grandfather
3 clause", if that's what you're referring to?

4 Q. Well, I --

5 A. But it's not.

6 Q. Right. And I guess the question is, is that
7 you understand that water service, under RSA, I
8 believe it's 374 -- no, let me backtrack and
9 make sure I get the law right. So, I'll give
10 you a copy. We don't need to mark this as an
11 exhibit.

12 *[Atty. Richardson handing*
13 *document to the witness.]*

14 BY MR. RICHARDSON:

15 Q. So, I'm looking at RSA 378, and it's a state
16 statute. And I guess the thing I'd like to
17 highlight for you and ask you about is, is that
18 a utility is required to provide schedules, and
19 then it says "showing the rates, fares and
20 charges and prices for any service rendered or
21 to be rendered in accordance with the rules
22 adopted by the commission pursuant to RSA
23 541-A."

24 So, my question to you was, is when the

[WITNESS: Mykytiuk]

1 McGuire property was installed with a service
2 line in 1965, or whenever that may have been,
3 it could have predated the Commission's rules,
4 right?

5 A. Perhaps.

6 Q. And, when you take service at your property,
7 and you add to your property or the use
8 changes, Lakes Region has to follow the rules
9 that are in place at that time, right?

10 A. Yes.

11 Q. So, there's a pretty major difference between
12 what the rules might have been in 1965 and what
13 they were last year, when you did your
14 construction?

15 A. I would assume so.

16 Q. Now, you have said, based on your Exhibit 2,
17 and then which has the Exhibits F and G, which
18 are the diagrams, that you don't believe your
19 property has a "tandem service"?

20 A. No, I don't.

21 Q. So, I guess my question to you is, is isn't a
22 tandem -- I mean, do you know what the -- the
23 word "tandem", to me, means things "linked one
24 after the other". And isn't that exactly what

[WITNESS: Mykytiuk]

1 you've done? You have a service line going
2 into your property, and then you have
3 effectively connected behind the meter, so
4 there's no bypass, we're fine on that, but then
5 you've run a new service line to a second
6 building, right?

7 A. Do you see in that where it talks about "if",
8 "but if a tandem service is in there"?

9 Q. Yes.

10 A. Could you read that to the Commission please?

11 Q. Sure. Give me a second to pull the rules out.
12 And we're referring to Rule 606.04.

13 A. I don't have this in front of me.

14 Q. And I believe it's the letter (j), and I'll --
15 let me get to it, and then I'll read it so
16 everyone can follow along. So, at 606.04(j),
17 and it says "Each utility shall require the
18 following in relation to individual service
19 connections:" And then it says, in Paragraph
20 (1), "Each service connection shall be provided
21 with an individual shut-off". And then it says
22 "(2) No tandem services shall be permitted".
23 And then it says "and", and then this is the
24 part that you wanted me to read, "(3) Where

[WITNESS: Mykytiuk]

1 such tandem services exist, the shut-offs
2 necessary to comply with this requirement shall
3 be installed."

4 So, when it says "where they exist",
5 obviously, it's referring to where they already
6 existed under the -- before the rule, right?

7 A. That's your interpretation.

8 Q. Exactly. And you have a different
9 interpretation?

10 A. Absolutely I do, just as well as Lakes Region
11 interprets these tariffs.

12 Q. And what's your interpretation of when it says
13 "no tandem services shall be permitted"? That
14 means "going forward we can't have tandem
15 services", right?

16 A. That's not my interpretation.

17 Q. Okay.

18 A. A lot of ambiguity in that.

19 Q. All right. So, it's your interpretation then
20 that, once the water gets into your house, you
21 can run as many lines as you want to as many
22 structures as you want, and there's nothing
23 Lakes Region can do about it?

24 A. Well, let me say this, Mr. Richardson. If,

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1 once it's underneath, past the meter, and they
2 are being paid, and there is no -- absolutely,
3 no expense on their part, are you trying to
4 tell me that what goes on in Balmoral, that
5 people aren't running off to a garage or a
6 sprinkler system? It's their piping. Why
7 can't they do it? If they want to add a spigot
8 to the outside of the house, they can't do
9 that? Is that what you're telling me?

10 Q. Well, I think there's a limit, when it's one
11 residential use for one customer, that's one
12 use. But what you're doing is is you're
13 renting the property out as an apartment to a
14 third party, and you've seen Lakes Region's
15 exhibits, right? Do you dispute that there's
16 one customer comment of yours who said they
17 "had eight grandchildren in the property, no
18 problems"? I mean, that -- this is a pretty
19 significant demand on the system in the
20 summertime.

21 A. That's when they came. They came in May and
22 did the inspection. And she was satisfied that
23 there was no problems with the system.

24 Q. I'm talking about your tenants. So, you could

[WITNESS: Mykytiuk]

1 have eight grandkids in your dwelling that you
2 rent out for -- on a weekly basis, you could
3 have eight grandkids in the house, and they
4 said it would be "no problem". Do you agree
5 with that?

6 A. I don't think there's going to be any problem.
7 I haven't had any problems.

8 Q. Okay. So, how is that not a separate use of
9 the system?

10 A. Is this what we're talking about, "separate
11 uses"? How about all the rest of what people
12 do, once the line is under their house and they
13 tap into it? What's the definition of
14 "separate use"?

15 Q. Okay. Well, I guess it comes down to, you
16 know, "what do the Commission's rules allow?"
17 And I'm looking at a rule that says you can't
18 have a use that is a "tandem service"
19 connection. But I take it your position is, is
20 that because it's inside your house, you can
21 run as many lines, to as many properties as
22 possible? If your lot was bigger, you could
23 have five of these, and there's nothing Lakes
24 Region could do about it?

[WITNESS: Mykytiuk]

1 A. I think that what people do under their house
2 Lakes Region might be very surprised. I don't
3 think what I am doing has violated any tariff,
4 specifically Lakes Region's tariff or the PUC
5 regulations. I read them. I did not -- and I
6 spoke with the Building Inspector, I spoke with
7 the plumber that was doing the work in my -- my
8 heating and air conditioning man, and no one
9 ever saw this coming. No one.

10 Q. Did you speak to Lakes Region about before you
11 did this?

12 A. They talk about "initiation of service". I had
13 service.

14 Q. Okay.

15 A. This is not a new service.

16 Q. Okay. But, when you were building your
17 separate bunkhouse, did you approach Lakes
18 Region and say "is this allowed under the
19 Commission's rules or under your tariff?"

20 A. From what I read, I didn't feel I had to.

21 Q. What did you read?

22 A. I read the tariffs and I read the regulations,
23 and I could not see --

24 Q. Before you --

[WITNESS: Mykytiuk]

1 A. As a matter of fact, they're very -- the most
2 updated are the rates. The tariff is very
3 outdated, antiquated. It hasn't been updated
4 for years.

5 Q. But you understand that the way the tariff is
6 applied, every time there's an apartment on one
7 property, each apartment is applied, so that
8 they're all paying a single customer charge,
9 right?

10 A. Let me -- let me put this question back to you.

11 Q. No, no, no. Yes or no?

12 CHAIRMAN HONIGBERG: Mr. Mykytiuk,
13 the way this works is he asks questions, you
14 answer. You'll have a chance to make another
15 statement, when the questioning of you is done,
16 to clarify things. But, right now, he's asked
17 you some questions, and it would be probably
18 most productive for you to just try and stick
19 to those answers. You'll be able to make
20 additional comments, but listen to his question
21 and answer.

22 WITNESS MYKYTIUK: All right.

23 BY MR. RICHARDSON:

24 Q. So, I have forgotten the question. But I

[WITNESS: Mykytiuk]

1 believe it was, how is this different from an
2 apartment? Each -- two separate uses on the
3 same property, same owner of the building, but
4 how is it fair for them to pay two charges, but
5 you only pay one?

6 A. I can't comment on what's fair and what's not.
7 From what I read in the PUC and the tariff, I
8 have done nothing wrong.

9 Q. But are you aware that I believe it's state law
10 requires that essentially all tariffs are
11 evenly applied to all people for similar
12 situations, right? That sounds fair. And you
13 wouldn't want to be treated any differently
14 than the folks in Tamworth or any other town,
15 who are charging one rate, you'd be upset if
16 they were given a discount and you weren't,
17 right?

18 A. Perhaps.

19 Q. And, so, if they're paying for apartments in
20 Tamworth, and everywhere else in the system,
21 isn't it only fair that your use should pay for
22 two connections, when they do as well?

23 A. I wasn't sure, I wasn't aware that Tamworth is
24 applicable here.

[WITNESS: Mykytiuk]

1 Q. Uh-huh. But you understand the fairness of,
2 when you have multiple apartments connected to
3 the system, each apartment pays for a separate
4 customer charge. And, if you don't, then that
5 means you avoid the base charge, which is
6 something like \$500, isn't it?

7 A. What I -- I don't know. What I understand is
8 what I read. And there is nothing in the PUC
9 regulations or the tariffs that address this.
10 Period. The ambiguity here goes even further,
11 when Ms. Peterson [sic], Rorie Peterson, says
12 that there is nothing that they can find in the
13 PUC regulations or in the tariff. And it goes
14 further, Amanda Noonan could not find anything
15 in the regs, in the PUC regs. So, then, and,
16 in this Motion to Dismiss, the Commission also
17 states that they can't find anything --

18 Q. Right.

19 A. -- that addresses.

20 Q. And the problem is, isn't it, that Lakes Region
21 has to apply its tariff to stores? It has to
22 apply its tariffs to clubhouses, to residential
23 structures, to apartment buildings, to
24 condominiums, to all sorts of different types

[WITNESS: Mykytiuk]

1 of property. And, really, the question is, is
2 whether they do it fairly and evenly? Isn't
3 that what it ultimately comes down to? Because
4 we can't write a perfect rule. I think your
5 citations to what's a dwelling and what's not a
6 dwelling illustrate that pretty well. I
7 mean, --

8 CHAIRMAN HONIGBERG: Mr. Richardson,
9 is there a question in there?

10 MR. RICHARDSON: Well, probably not.
11 I think we've covered this, and I'll rest at
12 this point. Thank you.

13 CHAIRMAN HONIGBERG: Mr. Clifford, do
14 you have any questions?

15 MR. CLIFFORD: One second.

16 *(Atty. Clifford conferring with*
17 *PUC Staff.)*

18 BY MR. CLIFFORD:

19 Q. We'd actually just like to ask Mr. Mykytiuk to
20 reference Staff to the statement made by Ms.
21 Patterson, because we don't see that in the
22 exhibits. And, so, if there was one made,
23 could you point that out to us in your list of
24 exhibits?

[WITNESS: Mykytiuk]

1 A. It's Exhibit C. And it says, this is from
2 Ms. Valladares to Commissioner Crawford, it
3 says "Hi, again. Back in March, our attorney
4 inquired to Rorie Peterson and Mark Naylor at
5 the PUC hearing." Below is a quote I copied
6 from the email: "Lakes Region's tariff does
7 not appear to directly address the issue."

8 *(Utterance by Ms. Patterson.)*

9 CHAIRMAN HONIGBERG: Ms. Patterson,
10 are you intending to have that put on the
11 record?

12 MS. PATTERSON: No.

13 CHAIRMAN HONIGBERG: Off the record.

14 *[Brief off-the-record discussion*
15 *ensued.]*

16 CHAIRMAN HONIGBERG: Mr. Clifford, do
17 you have any other questions?

18 MR. CLIFFORD: I have one, and just
19 so it's clear.

20 BY MR. CLIFFORD:

21 Q. Is there anything in your read of Lakes
22 Region's tariff which would authorize the
23 imposition of two base charges? Did you find
24 anything in --

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1 A. Nothing. Absolutely nothing.

2 Q. And I would like to pose just sort of a
3 hypothetical, though, because I just want to
4 get clear in my own mind, we're talking about
5 the imposition of base rates, and what's fair
6 and justifiable. And I'm probably going to
7 pose the same question to any of Lakes Region's
8 witnesses. But would you not agree that, if
9 you have a service line to which you keep
10 adding additional branches or additional
11 withdrawals, and you're not catching those,
12 that at some point you may reach the -- in the
13 foreseeable future, you could reach the point
14 where the base rate -- the base charge would
15 not be captured, yet the person -- the last
16 person that taps in may perhaps have no water?
17 Say you run a system where people continually
18 tap into it, but you're not imposing additional
19 base charges, that you would reach a point
20 where the pipe wouldn't be sufficient to give
21 the last connector, the connection, any water,
22 because you wouldn't be, for example, picking
23 up enough additional revenue to, say, make a
24 larger pipe, put in additional wells to

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1 accommodate that last end-user, who you don't
2 even know who they are. But, at some point,
3 someone may tap in and say "I don't have any
4 water" and walk. It's just a hypothetical.
5 But would you agree with that?

6 A. Oh, I would agree. But, again, Mr. Clifford,
7 that this is not incumbent upon me to write the
8 rules or the regulations or tariffs. And, if
9 that -- that certainly isn't the case for me,
10 when I do stay at the bunkhouse and shower, I
11 don't have an issue. Lakes Region came and
12 inspected; they didn't have an issue. Their
13 issue is, and Mr. Quinlin, in his testimony,
14 alluded to it, they're worried about a base
15 fixed -- a fixed base charge period. They have
16 absolutely no expense in this at all. Zero.
17 Zero. They have done nothing. I'm not
18 stealing water, they have confirmed that.
19 Every bit of water that goes through that meter
20 is paid for, and I pay a fixed rate.

21 But, yes, I agree with you. If people
22 just kept adding on to a line that's in their
23 house, absolutely. But that's -- it's not
24 incumbent upon me to nip that in the bud. The

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1 Commission needs to write rules governing this.
2 I read the tariffs. I read the PUC
3 regulations. I talked with many people. There
4 wasn't one "i" that I didn't dot and one "t"
5 that I didn't cross in this process, in this
6 building process.

7 Lakes Region has been the only one that
8 has added any kind of problem to this putting
9 up a garage/bunkhouse. I followed every rule,
10 took out every building permit, paid all my
11 fees. And I don't deny anyone a dime. He
12 has -- Mr. Mason has to make a living, I
13 understand that. He didn't incur any
14 additional cost for me. I pay for a lot of
15 water and I'm hardly at either one of those
16 buildings. The most expensive --

17 CHAIRMAN HONIGBERG: Mr. Mykytiuk --
18 Mr. Mykytiuk, I think you answered the question
19 some time ago.

20 WITNESS MYKYTIUK: Okay.

21 MR. CLIFFORD: I want to thank you
22 for answering the question, and I assume part
23 of that was summation, too. But thank you. I
24 just wanted to get that hypothetical out there,

[WITNESS: Mykytiuk]

1 and that's all -- that was the nature of it,
2 just to see what your views --

3 WITNESS MYKYTIUK: Sure.

4 MR. CLIFFORD: -- on that would be,
5 nothing more. And I thank you for your answer.

6 CHAIRMAN HONIGBERG: Commissioner
7 Bailey.

8 CMSR. BAILEY: Good morning.

9 WITNESS MYKYTIUK: Good morning.

10 BY CMSR. BAILEY:

11 Q. I just want to get some facts. So, the garage
12 that you built with the bunkhouse, is that what
13 you rent or do you rent your house?

14 A. The house is rented by the week, whatever, in a
15 Vacation Rental By Owner Program. I also stay
16 there. Probably, the reason why I do the VRBO
17 versus just renting it out straight through, I
18 don't want tenants there all the time. I want
19 to use it. I have ten brothers and sisters, my
20 family gets together often.

21 Q. Okay. So, do you ever use the bunkhouse for
22 your family?

23 A. Well, if the place is rented maybe in the
24 summertime, we might stay there for a few days.

[WITNESS: Mykytiuk]

1 I'm on the road a lot. I probably work 15-20
2 days a month on the road. My girlfriend lives
3 in Poland, Maine. I'm not here often.

4 Q. So, who uses the bunkhouse? The renters?

5 A. I do.

6 Q. So, --

7 A. Period.

8 Q. Okay.

9 A. It's a garage, mainly.

10 Q. It's a garage --

11 A. But it has a bunkhouse above.

12 Q. And, so, if you happen to be there when your
13 house is rented, that's where you stay?

14 A. Correct.

15 Q. And you probably don't have this in front of
16 you, but Lakes Region, on October 19th, filed
17 their response to your original complaint. And
18 they -- and they included some facts, and I
19 want to ask you if the facts are accurate,
20 okay? So, I'll read them to you, and you tell
21 me if it's true or not.

22 So, they say "The secondary structure
23 contains one sink, two baths, two water
24 closets, two lavatories, one shower, one

[WITNESS: Mykytiuk]

1 dishwasher, and one washing machine." You want
2 me to go through those individually and ask you
3 if you have yes/no?

4 A. Well, I'm not sure --

5 Q. Tell me -- tell me do you have -- how many
6 sinks do you have in the bunkhouse?

7 A. One, two, the kitchen sink --

8 Q. The kitchen sink, in the bunkhouse? I thought
9 there wasn't a kitchen?

10 A. There isn't a kitchen. But there is a sink
11 there. I'm allowed to have a sink.

12 Q. I'm not --

13 A. I can't have cooking facilities.

14 Q. Okay.

15 A. Period.

16 Q. So, you have a sink --

17 A. So, there's two bathrooms and there's two
18 bedrooms.

19 Q. Okay.

20 A. So, there's three sinks, and there's a slop tub
21 downstairs as well, in the garage. So, there's
22 three.

23 Q. Okay.

24 A. Or four.

[WITNESS: Mykytiuk]

1 Q. And are you allowed to have a hotplate or a
2 microwave?

3 A. No.

4 Q. So, the kitchen sink is for what?

5 A. I can bring food into the building, according
6 to Mr. Cahoon. I can bring food in and consume
7 it on-premise.

8 Q. And then maybe rinse off your silverware?

9 A. Sure.

10 Q. Okay. All right. Do you bill your tenants
11 separately for water?

12 A. Which tenants? For the VRBO?

13 Q. Yes.

14 A. By the week?

15 Q. Yes.

16 A. No.

17 Q. Do you have other tenants that occupy this
18 property at any time?

19 A. No.

20 Q. Okay. You said that the bunkhouse was still
21 under construction.

22 A. Correct.

23 Q. What do you still have to do? What are your
24 plans for that?

[WITNESS: Mykytiuk]

1 A. My plans are to make it a functional ADU and
2 apply for a variance. Mr. Richardson alluded
3 to the fact that one of the stipulations in
4 there was it can't be any more than a thousand
5 square feet. Well, Mr. Quinlin also said I can
6 apply for a variance. When I say it's "still
7 under construction", there is stuff that I
8 haven't finished in there. And, on both sides
9 of the old garage, I have to make inside
10 passage. This new ADU that was passed in
11 Moultonborough allows the old garage for
12 passage, inside passage. So, as long as I
13 connect the dwelling to the bunkhouse, to the
14 garage, I can make it a functional ADU.

15 Q. And what do you get from that?

16 A. Cooking facilities.

17 Q. Oh. The ADU allows you to have --

18 A. Correct.

19 Q. -- cooking facilities?

20 A. Correct.

21 CMSR. BAILEY: Okay. I think that's
22 all I have. Thank you.

23 BY CHAIRMAN HONIGBERG:

24 Q. Mr. Mykytiuk, if the tariff had a provision for

[WITNESS: Mykytiuk]

1 a separate base charge in your specific
2 circumstance, the type of structure that we're
3 talking about, would you be objecting to paying
4 it? I just want to make sure I understand the
5 basis of this complaint. Your complaint is
6 that it's not in the tariff and it's not
7 anywhere in the rules, right?

8 A. Exactly.

9 Q. If it were in the tariff or it were somehow
10 clear in the rules, you'd happily, willingly
11 write the check?

12 A. Well, I'm not so sure I'd happily write Lakes
13 Region a check. But, no, I follow the letter
14 of the law. I don't have any issues with back
15 payments to anyone. If it's there, I will pay
16 it. I pay them for the water bill. I've never
17 disputed it. They have always received their
18 money. I don't think it's -- you're probably
19 going to shut me off with this comment, but
20 it's not the best water I've ever had, and I've
21 lived all over this country. The most
22 expensive, for sure, and that's coming off the
23 mountain for free.

24 MR. RICHARDSON: Mr. Chairman,

[WITNESS: Mykytiuk]

1 there's a certain incongruity where the
2 Commission rules that certain information is
3 inadmissible, and yet this witness, right after
4 saying how he "follows all the rules",
5 continues to walk over that ruling. And, you
6 know, I'm --

7 CHAIRMAN HONIGBERG: You're talking
8 about the "water quality" comments?

9 MR. RICHARDSON: Yes. He's saying he
10 "follows the rules", but he clearly doesn't
11 follow the rulings in this proceeding.

12 CHAIRMAN HONIGBERG: I got you. But
13 we're not here to talk about water quality,
14 it's not going to be part of the decision.
15 It's not relevant to anything we're talking
16 about. It's clear how he feels about it.
17 We're moving on.

18 MR. RICHARDSON: Okay.

19 BY CHAIRMAN HONIGBERG:

20 Q. You and Mr. Richardson had a little
21 back-and-forth about the word "tandem". What
22 does "tandem" mean to you?

23 A. "Tandem", to me, "tandem" would have been
24 taking off a system that isn't already paid --

[WITNESS: Mykytiuk]

1 that I'm not already paying. In other words,
2 if I connected into the service line before the
3 meter, that would be a tandem connection. This
4 main line, per this Exhibit F, I have many
5 lines that tap off of this, this main house
6 line. There's many inside my house that go in
7 different directions, that go out to an outside
8 spigot that I added. "Tandem" is not -- again,
9 there's a lot of ambiguity here.

10 CHAIRMAN HONIGBERG: I just wanted to
11 know what your view of that word was, and I
12 think you gave it to me, and I thank you for
13 that.

14 I have no other questions. Based on
15 the questioning you received from Mr.
16 Richardson and Mr. Clifford, Commissioner
17 Bailey and myself, is there anything you would
18 want to follow up on while you're still under
19 oath and correct or supplement or add to,
20 understanding that you're going to have an
21 opportunity to ask questions of the Company's
22 witnesses and make a closing statement? But is
23 there anything based on that questioning, while
24 you're up there and under oath, you'd want to

[WITNESS: Mykytiuk]

1 add?

2 WITNESS MYKYTIUK: Nothing further.

3 Thank you.

4 CHAIRMAN HONIGBERG: Okay. Thank
5 you. So, you can return to your seat.

6 Let's go off the record for a minute
7 and talk about timing.

8 *[Brief off-the-record discussion*
9 *ensued.]*

10 CHAIRMAN HONIGBERG: So, we'll be
11 back as close to 25 minutes to 12:00 as we can
12 get here.

13 (Recess taken at 11:18 a.m. and
14 the hearing resumed at 11:36
15 a.m.)

16 CHAIRMAN HONIGBERG: All right. I
17 think we're ready to hear from Ms. Valladares.

18 (Whereupon **Leah Valladares** was
19 duly sworn by the Court
20 Reporter.)

21 CHAIRMAN HONIGBERG: Mr. Richardson.

22 MR. RICHARDSON: Thank you, Mr.

23 Chairman.

24 **LEAH VALLADARES, SWORN**

[WITNESS: Valladares]

DIRECT EXAMINATION

BY MR. RICHARDSON:

Q. Ms. Valladares, could you please state your name and position, and spell your last name for the benefit of our stenographer.

A. Yes. It's Leah Valladares, V-a-l-l-a-d-a-r-e-s, as in "Sam". I'm the Utility Manager for Lakes Region Water Company.

Q. And what is your role with Lakes Region Water Company? What do you do? What do your responsibilities include?

A. Multiple. Anything from staff, to working with customers, to managing the finances, to setting schedules, reviewing compliance issues, the tariff, etcetera.

Q. And does that include customer relations, and, for example, discussions with people like Mr. Mykytiuk, who may contact?

A. Yes, sir. I'm usually the last one.

Q. "The last one" meaning?

A. Meaning, when staff has interacted with customers, and they want one more person to talk to, I am the one.

Q. Okay. So, you would be like the supervisor at

[WITNESS: Valladares]

1 that point?

2 A. Correct.

3 Q. Okay. Now, we heard testimony about Lakes
4 Region's interactions with the customer. And,
5 if I recall correctly, a comment was made that
6 Mr. Mykytiuk only had "five days of notice"
7 about this issue. Could you please tell me --
8 or, tell the Commissioners, because I know the
9 answer, tell the Commissioners, when did Lakes
10 Region first contact Mr. Mykytiuk about his
11 vacation rental property or building that he's
12 constructed?

13 A. As submitted, I have a letter that I submitted
14 to the New Hampshire PUC Consumer Affairs, and
15 we marked it "Exhibit F". I believe it's in
16 the summary, Justin, that you provided.

17 Q. Sure. Sure. So, you're referring to -- let me
18 back up then. So, Lakes Region has a document,
19 do you have the binder that's marked
20 "Exhibit 2"?

21 A. I do not.

22 Q. Why don't I get a copy to you, so you can work
23 along --

24 A. Sure.

[WITNESS: Valladares]

1 Q. -- with the Commissioners as we do this.

2 (Atty. Patterson handing
3 document to the witness.)

4 BY MR. RICHARDSON:

5 Q. So, you prepared and assembled those documents,
6 is that right?

7 A. Yes.

8 Q. And those documents are true and accurate to
9 the best of your knowledge and belief, right?

10 A. Yes.

11 Q. And you adopt those as part of your testimony
12 in this case?

13 A. Yes.

14 Q. Okay. So, there is a tab in Exhibit 2, and I
15 believe it's tab number -- if you go to Tab 2,
16 you'll see a letter dated "October 19th". Is
17 that what you're looking for?

18 A. No. It's actually August 3rd, Justin, I'm
19 sorry. It's a timeline that was submitted to
20 Ms. Hadley.

21 Q. And I don't know what you're referring to,
22 because this isn't in the outline that you and
23 I discussed. What are you looking at?

24 A. In the original dockets filed, the original

[WITNESS: Valladares]

1 exhibits that I filed.

2 Q. Yes.

3 A. My letter dated August 3rd, it's marked
4 "Exhibit F".

5 Q. Okay. So, go to Tab 3 then, and then find --
6 that's Exhibits A through, I believe, H?

7 A. Correct.

8 Q. And then look for what's --

9 A. Correct. It's in 3.

10 Q. Yes. So, in Tab 3, Exhibit F.

11 A. Yes.

12 Q. And, in reference to that, when did Lakes
13 Region first contact Mr. Mykytiuk about this?

14 A. I would say during the Summer of 2015, Mr.
15 Mason noticed that there was new construction
16 in progress on the property. He had spoken to
17 Mr. Mykytiuk and advised that a new service
18 connection would be needed, if he intended to
19 supply water to the new building.

20 Q. Okay. This is the first time you've testified
21 before, right, --

22 A. Yes.

23 Q. -- in front of the Commission? So, let me --
24 let me try to slow this down a little bit.

[WITNESS: Valladares]

1 Because I think on -- it says "on March
2 29th," --

3 A. Correct.

4 Q. -- "the Company became aware of the
5 building" --

6 A. Correct.

7 Q. -- "that was being constructed."

8 A. Correct.

9 Q. What happened on March 29th or soon thereafter?

10 A. Well, I would assume a phone call was made. I
11 can't recall. I had just started with the
12 Company.

13 Q. All right. Do you know when Mr. Mason first
14 spoke with Mr. Mykytiuk?

15 A. I believe in the Summer of 2015, when
16 construction began.

17 Q. Oh. Okay. So, wasn't the Company aware of the
18 construction on March 29th?

19 A. I wasn't, myself.

20 Q. Okay. But --

21 A. It came to my attention on March 29th. Mr.
22 Mason brought it to my attention.

23 Q. Right. And he brought it to your attention,
24 because he saw the building being constructed?

[WITNESS: Valladares]

1 A. Correct.

2 Q. And did Mr. Mason, around that time, have any
3 discussions with Mr. Mykytiuk?

4 A. I believe so.

5 Q. In fact, is it your understanding that he told
6 Mr. Mykytiuk he needed a second service line?

7 A. Yes, it is.

8 Q. Okay. All right. Thank you. And what was
9 Mr. Mykytiuk's response to being told that he
10 needed a service --

11 A. There was no response.

12 Q. Okay. Was he given an application for service
13 at that time?

14 A. Yes. In a letter on April 26th.

15 Q. Okay. And, so, the letter on April 26th
16 followed, I assume, his not agreeing to submit
17 the application?

18 A. No. There was no response. So, the letter was
19 sent.

20 Q. Right. But, when -- did Mr. Mason report to
21 you what Mr. Mykytiuk's response was when he
22 was asked to submit an application?

23 A. No.

24 Q. No. Okay. All right. Well, so, what caused

[WITNESS: Valladares]

1 the letter to go out by Certified Mail on April
2 26th?

3 A. I wasn't sure if he was a full-time residence
4 or a seasonal residence, and I wanted to
5 guarantee that it was received.

6 Q. Okay.

7 A. There also was a disconnect, if a appointment
8 was not set up within ten days of receipt of
9 the letter.

10 Q. And why ask for or why mention a "potential
11 disconnect"? What was driving that concern?

12 A. There was a potential health hazard. There was
13 a potential bypass hazard. We weren't sure how
14 it was connected.

15 Q. So, you were concerned --

16 A. Correct.

17 Q. -- that those circumstances may exist. And why
18 does connecting multiple buildings present a
19 potential health concern?

20 A. There could be an irrigation system. There
21 could be some sort of backflow issue that would
22 present itself.

23 Q. And, so, that could represent a health concern
24 for whoever -- who was going to be in this new

[WITNESS: Valladares]

1 building, if it was rented, for example?

2 A. Correct.

3 Q. Okay.

4 A. And, Justin, the letter stated to the "date of
5 the letter", not "receipt of".

6 Q. Right. Okay. So, was Lakes Region able to
7 contact Mr. Mykytiuk following, and I believe
8 we saw this in the video, --

9 A. Uh-huh.

10 Q. -- you were able to speak to him --

11 A. Uh-huh.

12 Q. -- prior to going to his property, right?

13 A. Correct. I made a phone call as a last effort
14 to try to contact him. I believe I spoke with
15 him the Friday prior to the date of the
16 disconnect notice.

17 Q. And what did you state to him about the need
18 for a second service line at that point?

19 A. That he created a second place of consumption
20 and that he needed to fill out a service
21 application, and needed to inspect it.

22 Q. So, you effectively repeated what Mr. Mason had
23 told him --

24 A. Correct.

[WITNESS: Valladares]

1 Q. -- in March?

2 A. Correct.

3 Q. And what was his response to that?

4 A. There was none.

5 Q. Well, you were on the phone with him. What did
6 he say when you said that he needed those
7 things?

8 A. I can't recall.

9 Q. Okay. Well, you -- did you tell him that Lakes
10 Region would appear to do the inspection?

11 A. Yes, I did.

12 Q. And that was because you wanted to get that
13 done in ten days?

14 A. Yes. There was a conversation about the
15 receipting, he only got five days. I asked
16 him, would he be willing to make an appointment
17 for the inspection, he did say "no". Sorry,
18 that part I do remember not that my memory is
19 coming back. Part of that conversation was
20 "set up an appointment so we can come down and
21 inspect it", to make sure there was no health
22 hazard and he wasn't bypassing.

23 Q. Okay.

24 A. That was priority.

[WITNESS: Valladares]

1 CHAIRMAN HONIGBERG: Can you wait for
2 just a second?

3 Ms. Valladares, I know you know what
4 the end of Mr. Richardson's questions are going
5 to be. But it would be really helpful for
6 Mr. Patnaude if you would just wait until Mr.
7 Richardson is done with his question before you
8 begin your answer, okay?

9 WITNESS VALLADARES: All right.

10 BY MR. RICHARDSON:

11 Q. So, let me get to the heart of the matter on
12 this line, we can move on. So, you have heard
13 the characterizations that Lakes Region was
14 "harassing" Mr. Mykytiuk and "threatening" him.
15 Were you -- would you agree with that?

16 A. No.

17 Q. What were you trying to do and what were the --
18 how would you characterize what Lakes Region
19 was -- how you were interacting with him?

20 A. I was informing my customer that this was our
21 procedure. This was what was going to happen.
22 We needed an inspection. This was going to
23 happen. He was going to lose service if he did
24 not set up a date for an inspection.

[WITNESS: Valladares]

1 I reminded him, when he sent his payment
2 in the first time that, if he didn't continue
3 to pay the full amount of the bill, he was
4 running the risk. And, in my mind, no, that
5 was not a threat.

6 Q. Right. And, so, that was in reference to the
7 fact that, following the inspection, I assume
8 Lakes Region determined there was no public
9 health threat with the system, and your concern
10 was just to make sure that the system was being
11 billed as two separate places of consumption?

12 A. Yes.

13 Q. Okay. And let me jump ahead or out of order
14 that we may have discussed previously. But how
15 does -- how many similar situations are there
16 in Paradise Shores where there are two
17 buildings or separate uses on one property, in
18 Balmoral, let's start there?

19 A. There are two customers of record that I'm
20 aware of.

21 Q. Okay. And is one of those 42 Heavens Way, in
22 Paradise Shores?

23 A. Yes.

24 Q. Okay. And could you describe what is at that

[WITNESS: Valladares]

1 location?

2 A. I'm sorry. I don't have these memorized at the
3 top of my head.

4 There is a house and a garage -- oh, no,
5 that one, I'm sorry, that one is a very large
6 home on the lake, with a cottage in the front.

7 Q. And how is that set up, in terms of the number
8 of service lines?

9 A. There are two service lines for this --

10 Q. And --

11 A. Go ahead.

12 Q. No, I interpreted you this time. So, there's
13 two service lines. What else is there?

14 A. There are two meters and two customer accounts.

15 Q. Okay. So, that's treated effectively the way
16 that you've asked Mr. Mykytiuk to be treated?

17 A. Correct.

18 Q. Okay. And what is -- is there a second at 10
19 Pleasure Lane?

20 A. Yes, sir, there is.

21 Q. And what is there?

22 A. That consists of a house, and then a garage
23 that has an apartment, a bunkhouse above.

24 Q. Okay. And how many service lines does that

[WITNESS: Valladares]

1 have?

2 A. There are two.

3 Q. And how many meters?

4 A. Two.

5 Q. And how is that handled from a billing
6 perspective?

7 A. They are set up as two accounts.

8 Q. Okay. And, now, so, that's in Paradise Shores.
9 Then, there's also, in Paradise Shores, the
10 McGuire property that was alluded to?

11 A. Correct.

12 Q. And what was your knowledge of that before it
13 was brought to the Commission's attention by
14 Mr. Mykytiuk?

15 A. As far as how the account was set up?

16 Q. Right. Was the Company aware, prior to this
17 proceeding, that Mr. McGuire had two -- well, a
18 main dwelling and an apartment that were on the
19 same service line?

20 A. No, I was not.

21 Q. Okay. And, so, when was that -- when was that
22 configuration established, in terms of when
23 Lakes Region acquired the system?

24 A. I don't understand the question.

[WITNESS: Valladares]

1 Q. Okay. Well, I'll rephrase it. Is it your
2 understanding that Lakes Region acquired
3 Paradise Shores around 1970?

4 A. I would have to ask somebody else for that.

5 Q. All right. Okay.

6 A. I would assume so. But it's an assumption.

7 Q. Right. Right. Well, it's the Company's
8 understanding that that was the way it was set
9 up when Lakes Region acquired the system, is
10 that fair to say?

11 A. That is fair to say.

12 Q. And you've discussed that with Mr. Mason, I
13 assume?

14 A. Yes, I have.

15 Q. And, actually, it was his father who originally
16 acquired the system, right?

17 A. I believe so.

18 Q. So, it's been around for possibly decades and
19 decades?

20 A. I believe so, yes.

21 Q. Okay. What has Lakes Region done with respect
22 to Mr. McGuire's system? Has anyone contacted
23 him from the Company?

24 A. I believe Mr. Mason has.

[WITNESS: Valladares]

1 Q. And what is the Lakes Region's plan in light of
2 this issue? What needs to be done with that
3 property?

4 A. They will be set up with two accounts.

5 Q. Okay. And what about the service line issue?

6 A. It would be inspected. And, if a second
7 service line was needed, then I'm sure we would
8 take provisions to do so.

9 Q. Right. Or the other approach, you heard the
10 rule, 606.04, I believe (j), where it says
11 "where there's already an existing single
12 service line, the other option is to put in
13 customer stops", right?

14 A. Correct.

15 Q. And that's a technical consideration that would
16 need to be addressed, right?

17 A. Yes, it would be.

18 Q. But that's not really your area of expertise or
19 how would that be handled?

20 A. That is not my area of expertise. I would
21 refer to my field supervisor, Mr. Mason.

22 Q. Okay. Now, is there -- tell me about, in
23 Wentworth Cove, I understand there's also a
24 similar configuration, where there's -- the

[WITNESS: Valladares]

1 Company is aware of where there's one property
2 with two structures or dwellings on it?

3 A. Yes, sir.

4 Q. And how is that set up?

5 A. It's set up with two accounts and two service
6 lines.

7 Q. Okay. And that's a metered system, right?

8 A. Yes, sir.

9 Q. Are there two meters at that property?

10 A. Yes, sir.

11 Q. And do you know the address? I don't have that
12 in my notes here.

13 A. It's 141 Wentworth Cove Road.

14 Q. Okay. So, beyond those, I guess, is it -- how
15 do you characterize what the Company does or
16 how it applies its tariff, to things like
17 apartments, second dwellings or second
18 structures on properties? Is it fair to say
19 that you treat Mr. Mykytiuk the same as all of
20 your other customers, with one exception?

21 A. Yes.

22 Q. Okay. All right. Now, now that we've
23 explained that, what I kind of want to do is go
24 back with you and walk through and have you

[WITNESS: Valladares]

1 explain briefly, for the Commission, what's in
2 your exhibits.

3 So, let's start at Tab 3 of Lakes Region's
4 exhibit, which is number "1", and that is the
5 document that's marked "Exhibit A". Now, tell
6 me what that is.

7 A. That is an "Application for Building Permit"
8 from the Town of Moultonborough, for
9 Mr. Mykytiuk's residence.

10 Q. Okay. And I assume that, just to move things
11 quickly, this document shows that the bunkhouse
12 that was built is "35 by 45", which results in
13 1,575 square feet?

14 A. Correct.

15 Q. Okay. And I believe there's, when you continue
16 into Exhibit B, there's the septic system
17 approval. And does that show the number of
18 bedrooms? Do you know the number of bedrooms
19 in this?

20 A. Exhibit B shows the second septic system that
21 was approved for the apartment that is two
22 bedrooms.

23 Q. Okay. And, I'm sorry. So, Exhibit A shows
24 there are two bedrooms in the -- in the

[WITNESS: Valladares]

1 bunkhouse?

2 A. Correct.

3 Q. Okay. Exhibit B shows they have their own
4 septic, you just covered that. I'd like you to
5 go to Page 5 of 5 of that document that was
6 marked "Exhibit B". And is that the -- that's
7 the layout, is that right?

8 A. Of the septic system?

9 Q. Uh-huh.

10 A. Correct. Yes.

11 Q. And that's also the layout of the building?

12 A. Correct.

13 Q. And we heard that Mr. Mykytiuk intends to
14 expand his buildings to connect them. But is
15 that -- is there a building permit that's been
16 submitted for that?

17 A. Not to my knowledge.

18 Q. So, we're just talking about something that
19 hasn't even been proposed yet?

20 A. I would assume so, yes.

21 Q. Okay. And, as the property exists today, this
22 is how it's set up, with separate buildings,
23 not attached to each other?

24 A. Correct.

[WITNESS: Valladares]

1 Q. Okay. Exhibit C, that's the document that
2 shows that there's one sink, two baths, two
3 water closets, two lavatories, a shower, a
4 dishwasher, and a washing machine, right?

5 A. Correct.

6 Q. And you and Mr. Benes inspected the property, I
7 assume?

8 A. Correct.

9 Q. And is that consistent with what you saw? I
10 understand you may not have toured the whole
11 house, but you saw the piping and plumbing, and
12 it's consistent with that?

13 A. We saw the piping and plumbing underneath.

14 Q. Okay. And, so, that's -- that bunkhouse is
15 consistent with what you would expect for water
16 demand for a residential use, right?

17 A. Yes.

18 Q. Okay. And the fact that it doesn't have a
19 stove, how does that affect the amount of water
20 that might with used?

21 A. There's no effect.

22 Q. Okay. Or, certainly not a material one, I
23 guess?

24 A. No.

[WITNESS: Valladares]

1 Q. Okay. Now, Exhibit D we've already covered.
2 That's the April 26 notice that was referred
3 to, right?

4 A. Correct.

5 Q. Okay. What is Exhibit E?

6 A. Exhibit E was a letter that I sent to
7 Mr. Mykytiuk dated July 27th, in regards to his
8 note that was on his water bill dated
9 June 30th, to give clarification as to why he
10 was charged the second base charge.

11 Q. Uh-huh. So, why didn't, if the PUC rules
12 require a separate service line, or they
13 prohibit tandem services, and we'll get into
14 that in a minute, why didn't you just proceed
15 with disconnection, as was stated in the April
16 letter?

17 A. We were satisfied that the connection didn't
18 propose a bypass. We were satisfied that there
19 were no health concerns, and did not want to
20 create Mr. Mykytiuk a hardship by forcing him
21 to install a second service line.

22 Q. So, am I correct in thinking then that this was
23 really just intended to notify him of the
24 determination that had been made, and that he

[WITNESS: Valladares]

1 needed to pay for the second dwelling, but
2 not -- or, I should say the "second place of
3 consumption", but he was no longer under a
4 threat of disconnection?

5 A. Correct. The bill, when he submitted his
6 payment for the bill dated "June 30th", he
7 submitted the payment short of the second base
8 charge.

9 Q. Okay. And is the -- has Mr. Mykytiuk -- is he
10 current on his bill with the two base charges?

11 A. Yes.

12 Q. Now, let's talk about the base charges a little
13 bit. And, to do that, I'd like to first back
14 up a little bit and get to how the nature of
15 the systems that Lakes Region operates. In
16 Paradise Shores, what percentage of buildings
17 are vacation rentals?

18 A. Approximately 85 percent.

19 Q. Okay. So, how does that affect the way Lakes
20 Region's bills are structured, or "your rates
21 are structured", I should say?

22 A. Our rates are structured to -- my mind just
23 went blank. The fixed portion or our base
24 charge is basically to assist us to offset any

[WITNESS: Valladares]

1 seasonality in our systems.

2 Q. Okay. Now, the -- I assume that capital costs
3 are a major portion of what drives Lakes
4 Region's revenue requirement, is that right?

5 A. Correct.

6 Q. Okay. And the DES design rules, are they --
7 what are they based on? Are they based on
8 average consumption or peak demand or how does
9 that work?

10 A. Generally, peak demand.

11 Q. Okay. So, and when does peak demand occur in
12 the system?

13 A. In July.

14 Q. In like -- and, so, --

15 A. Summer months. During the summer months.

16 Q. And what does a large peak demand mean in terms
17 of like the size of piping that's required?

18 A. I'm not sure I can answer that question.

19 Q. Okay. Well, it affects the volume of wells'
20 production that has to be permitted, right?

21 A. Correct. Correct.

22 Q. And, so, you have to construct additional
23 wells, and that comes with a cost?

24 A. Correct.

[WITNESS: Valladares]

1 Q. And the major factor in Lakes Region's rates,
2 is that capital cost or is it things like
3 electricity and chemicals?

4 A. It's based on our fixed costs. I mean, that's
5 the majority. There's always a cost involved
6 with water being available to a customer,
7 whether it's being used or not. We have a
8 various number of fixed costs to run the system
9 on a day-to-day basis.

10 Q. Uh-huh. And how does that demand increase on
11 like, say, for example, in the month of July
12 versus in the month of January? Is it twice,
13 do you know?

14 A. I would say yes.

15 Q. Okay?

16 A. The electricity is doubled. That's the best
17 example to use is we see that spike.

18 Q. Okay. So, when Mr. Mykytiuk says that he's
19 "paying for his water", and he's not -- if he
20 were to pay only a single base charge, what
21 would that mean, in terms of the fairness to
22 other customers or the cost that is required to
23 serve him?

24 A. Eventually, the cost would be borne by them,

[WITNESS: Valladares]

1 other customers, just because of the extreme
2 demand.

3 Q. Okay. But what I guess I'm trying to get at is
4 is that Lakes Region's rates are based on the
5 maximum demand being served, right? That's
6 what controls the costs, right?

7 A. Yes.

8 Q. Okay. And, if someone were to have multiple
9 units or one apartment that they were renting
10 out, they would be -- but not paying a base
11 charge for it, they would be escaping what
12 percentage of their bill, do you think?

13 A. A majority. A majority portion of their bill.

14 Q. Okay. And would that be fair to Lakes Region's
15 other customers? What would that mean?

16 A. It wouldn't be. That's not fair.

17 Q. Okay. But I -- we didn't talk about Tamworth
18 yet, but I understand that there's a number of
19 apartments in that system?

20 A. Correct.

21 Q. And how are those handled?

22 A. A house that's been converted into a six-unit
23 apartment complex has six base charges.

24 Q. Okay. And the other examples of where they

[WITNESS: Valladares]

1 were converted into apartments, those all
2 have --

3 A. Correct.

4 Q. -- individual base charges? Okay. Let's look
5 at -- let's flip to, I guess, Exhibits H and K,
6 just so we get this in the record. And H is a
7 photo. But let's go to Exhibit K, which is
8 going to be at Tab 5. And could you just tell
9 the Commissioners what you see here.

10 A. That is Mr. Mykytiuk's second structure.

11 Q. You're referring to the large building that's
12 on the right --

13 A. On the right-hand side, correct.

14 Q. Okay. And what's that in the middle with the
15 airplane on it?

16 A. That, I would assume, is his garage for his
17 main structure.

18 Q. Okay. And, then, what is on the left there?

19 A. The house.

20 Q. Okay.

21 A. The primary house.

22 Q. And I take it that the service line goes into
23 the main house on the left from the street,
24 right?

[WITNESS: Valladares]

1 A. Correct.

2 Q. And, then, it goes across to the new building,
3 is it underneath that garage, or where does it
4 go?

5 A. I have no idea.

6 Q. Okay. So, it runs from the house to the
7 bunkhouse?

8 A. The main service line?

9 Q. No. No, no, no. I'm sorry. The water service
10 line comes in from the street, and from that
11 location Mr. Mykytiuk has installed plumbing
12 that connects his -- the original house to the
13 bunkhouse?

14 A. Correct.

15 Q. Okay. All right. And do you know how that
16 connection is made or where it goes?

17 A. In his diagram.

18 Q. Okay. So, that's consistent with what you've
19 seen?

20 A. Correct.

21 Q. I want to -- we've spoken a bunch about the
22 Commission's rules and Rule 606.04. And I
23 guess I want to show you a demonstrative
24 exhibit.

[WITNESS: Valladares]

1 MR. RICHARDSON: Let me show it to
2 Mr. Mykytiuk and see if there is any objection
3 to this.

4 (Atty. Richardson showing
5 document to Mr. Mykytiuk.)

6 MR. RICHARDSON: So, I'd like to mark
7 this as "Exhibit 5", if I can?

8 CHAIRMAN HONIGBERG: Okay.

9 (The document, as described, was
10 herewith marked as **Exhibit 5** for
11 identification.)

12 (Atty. Richard handing document
13 to the witness.)

14 BY MR. RICHARDSON:

15 Q. So, I've shown Exhibit 5 in front of you. And
16 I'll ask you a couple questions about it before
17 we then show it to the Commission. I guess,
18 does that show what I would describe as the
19 options for connecting under the PUC -- well,
20 not under the PUC rules, but do you see on --

21 CHAIRMAN HONIGBERG: Wait. Stop.
22 Just stop. Start your question again.

23 MR. RICHARDSON: Yes.

24 CHAIRMAN HONIGBERG: Not with "would

[WITNESS: Valladares]

1 this describe something that I think is".

2 MR. RICHARDSON: Right. Yes. Okay.

3 CHAIRMAN HONIGBERG: I don't even
4 know what she's looking at.

5 MR. RICHARDSON: Okay.

6 CHAIRMAN HONIGBERG: So, why don't
7 you have her tell us what she's looking at.

8 MR. RICHARDSON: Yes. Okay.

9 BY MR. RICHARDSON:

10 Q. So, what does this show?

11 A. This shows the straight, ideally, a pipe
12 heading to the vacation rental. And then it
13 shows, prior to the house, another pipe heading
14 out addressing a branch connection. Then, it
15 also shows a tandem pipe going to the second
16 structure.

17 Q. So, the branch connection, is that where the
18 service line branches and goes to multiple
19 dwellings, right?

20 A. It would. And it would be prior to a meter.

21 Q. Right. Prior to the meter, exactly.

22 A. Correct.

23 Q. And that's what Rule 606.04, excuse me, that's
24 what, 606, is it (g) prohibits?

[WITNESS: Valladares]

1 A. I believe (h).

2 Q. Okay. Sorry. (h). So, Rule 606.04(h) says "a
3 utility shall require that the customer shall
4 not install any tree or branch connection in
5 the service pipe"?

6 A. Correct.

7 Q. So, that's one scenario?

8 A. Correct.

9 Q. And, then, the second scenario is in Rule (j),
10 where it says "Each utility shall require the
11 following in relation to individual service
12 connections", and that's that "no tandem
13 services shall be permitted"?

14 A. Correct.

15 Q. Right? And I take it this diagram shows what
16 you believe to be what a "tandem service" would
17 be?

18 A. Correct.

19 Q. Now, if Mr. Mykytiuk is correct, in that his
20 system where he's modified his plumbing, and
21 then run a line from, in his first house, to a
22 second, isn't a tandem service, what would a
23 "tandem service" be?

24 A. I don't have an answer for that.

[WITNESS: Valladares]

1 Q. Well, I guess what I'm trying to figure out is
2 is, if it's not -- once it's beyond the meter,
3 it can't be a branch connection, right?

4 A. Correct. It would be considered "tandem".

5 Q. Right. And, so, what does "tandem" mean to
6 you?

7 A. Something that's off of something else.

8 Q. Okay. So, in other words, it's Lakes Region's
9 understanding that a tandem service is anything
10 where it goes after the meter --

11 A. Correct.

12 Q. -- to a second place of consumption?

13 A. Correct.

14 Q. Okay. Now, why do --

15 MR. RICHARDSON: Let me do this. Let
16 me take that document. I just wanted the
17 Commissioners to be aware of how Lakes Region
18 was interpreting the difference between the
19 two. So, that's all that intends to show.

20 BY MR. RICHARDSON:

21 Q. And, so, why, in your opinion, do the
22 Commission's rules prohibit tandem services?

23 First, let's start with this. What impact
24 would a tandem service have on rates? I think

[WITNESS: Valladares]

1 we've already covered that, but --

2 A. There is an impact, because it's going to a
3 second place of consumption, if you're
4 tandeming off of something. I know there was
5 conversation about a "faucet". Well, a faucet,
6 you could tandem a service -- or, you could
7 tandem a line to have water to an outside
8 faucet. But, to tandem to a second place of
9 consumption or a second structure for living
10 purposes, you would be treated as a customer,
11 as a Number 2 customer for that location. It
12 does have an impact. There's more demand.
13 There's more costs involved with supplying that
14 demand.

15 Q. Okay. And I think if you looked at what's in
16 Exhibit I, there's -- I believe there's
17 reference to there being something like, I'm
18 looking at Page 2 of Exhibit I, and you see
19 that it has "two living rooms, one of which can
20 double as a bedroom", this is in the original
21 house, the rental house, right?

22 A. Correct.

23 Q. And, then, there's -- also on that page it says
24 "On the second floor there's a master bedroom

[WITNESS: Valladares]

1 with a king bed"?

2 A. Correct.

3 Q. All right. You see that. And, then, I guess
4 there's a "guest room with a queen bed"?

5 A. Correct.

6 Q. And, then, there's a "second floor full haul
7 bath". But then it goes on, and it says
8 there's a "reading area with a queen futon"?

9 A. Correct.

10 Q. And, then, there's a "third floor bedroom" that
11 "has a queen and two twins"?

12 A. Correct.

13 Q. So, that's -- is that a total of five bedrooms,
14 with seven beds in that structure?

15 A. I would assume so. It says it "Sleeps 12".

16 Q. Okay.

17 A. With "Beds for 10 to 12".

18 Q. Okay. And, then, on Page 4 of 13 of Exhibit I,
19 I see there's a statement "I have 8 children
20 and several grandchildren and it never felt
21 confined or crowded"?

22 A. Correct.

23 Q. Now, so, I take it that these two structures
24 can place a fairly significant demand on the

[WITNESS: Valladares]

1 system during peak consumption?

2 A. Sure.

3 Q. Okay. Now, what effect would a tandem service
4 have on Lakes Region's operations, in the event
5 that there were a leak that came in through the
6 first meter?

7 A. You're going to have to repeat that, Justin.

8 Q. Okay. So, do tandem services present
9 operational problems for Lakes Region?

10 A. Yes.

11 Q. And what are those?

12 A. If there was the ability, number one, on
13 administrative standpoint, if one was rented
14 out, and had two different tenants, we would
15 lose the ability to disconnect service for
16 nonpayment, if one customer chose not to pay
17 versus the other. If there was a leak, unable
18 to isolate, that could affect.

19 Q. And I know there's no irrigation system today.
20 But what would happen if one of the buildings
21 were to change?

22 A. It could propose a health threat.

23 Q. And if Mr. Mykytiuk said today he's "hardly in
24 the house", well, what happens if his property

[WITNESS: Valladares]

1 were sold?

2 A. Correct. Anything could happen.

3 Q. And, in fact, you know, are you notified every
4 time a building permit application gets
5 submitted?

6 A. No, we are not.

7 Q. Okay. So, what's there today could, in fact,
8 be completely different tomorrow?

9 A. Correct.

10 Q. Okay. So, what does Lakes Region recommend
11 that the Commission do in this case?

12 A. At this time, it would be recommended that a
13 second service line be installed, and a second
14 meter be installed in his second place of
15 consumption.

16 Q. And I take it that you would agree -- or,
17 what's your position on "does this system or
18 this setup comply with the Commission's rules
19 as it's currently configured?"

20 A. No, it does not.

21 Q. And why is that?

22 A. Because of the tandem setup he has in his
23 basement.

24 Q. Okay. And, now, I'm going to read to you a

[WITNESS: Valladares]

1 statute, and it's RSA 378:10. And it says "No
2 public utility shall make or give any undue or
3 unreasonable preference or advantage to any
4 person." And you've described the situation in
5 Tamworth where every apartment pays for a
6 separate base charge. What's your conclusion
7 about what the result is that Mr. Mykytiuk's
8 advocating for?

9 CHAIRMAN HONIGBERG: Are you asking
10 her as a lawyer?

11 MR. RICHARDSON: I'm asking her as
12 somebody who's in charge of the finances, if
13 that would be fair financially for --

14 CHAIRMAN HONIGBERG: Okay. All
15 right.

16 **BY THE WITNESS:**

17 A. No. Financially, it would not be fair. With
18 reviewing this from the minute I came aboard at
19 Lakes Region Water, he built a second
20 structure, he built a separate dwelling. It
21 should have two service lines. He should be
22 charged as two customers. He's added an
23 increased draw on the system. And it's how we
24 apply our rules across the board.

[WITNESS: Valladares]

1 BY MR. RICHARDSON:

2 Q. And there's also another provision, I'll just
3 read for your benefit. It's RSA 378:14, and
4 it's called "Free Service". And it says "No
5 public utility shall grant any free service,
6 nor charge or receive greater or lesser or
7 different compensation for any service rendered
8 to any person", and it goes on.

9 So, I guess the question is is from,
10 again, from a financial perspective, would
11 Lakes Region be charging the same rates to all
12 its customers, if Mr. Mykytiuk were allowed to
13 only charge one base charge -- pay one base
14 charge?

15 A. I'm going to make you repeat that.

16 Q. Yes. I'm sorry. I'm not -- I'm trying to do
17 things on-the-fly a little bit too much.

18 So, I guess would it be -- would allowing
19 Mr. Mykytiuk to only pay a single base charge
20 result in him paying a lesser charge within the
21 meaning of the statute that I just read to you?

22 A. Yes.

23 Q. Okay. So, he wouldn't be paying the same rate
24 as the folks in Tamworth or elsewhere?

[WITNESS: Valladares]

1 A. No, he would not.

2 MR. RICHARDSON: Okay. All right.

3 Thank you. I have no further questions.

4 CHAIRMAN HONIGBERG: Mr. Mykytiuk, I
5 assume you have questions for Ms. Valladares?

6 MR. MYKYTIUK: I do, and --

7 CHAIRMAN HONIGBERG: Make sure your
8 microphone is on.

9 MR. MYKYTIUK: I do, and I'll make it
10 very brief.

11 **CROSS-EXAMINATION**

12 BY MR. MYKYTIUK:

13 Q. Do you ever recall being asked to provide a
14 specific tariff or a regulation for this
15 so-called "hook-up" that you requested?

16 A. Yes.

17 Q. Or told me it was -- when did you make this?
18 Could this be in this conversation we had on
19 Friday, where you called my house?

20 A. You have an Application of Service. In my
21 Application of Service, there is a website that
22 tells you about our tariff, and then there is
23 also the website to the PUC regulations.

24 Q. So, if you -- let me ask this. Why would you

[WITNESS: Valladares]

1 send a Registered letter? What's the purpose
2 behind a Registered letter?

3 A. I sent the Registered letter because 85 percent
4 of the Balmoral residents are seasonal. And,
5 if a disconnect is being sent, I want to make
6 sure that they have received it.

7 Q. So, if no one picks up that letter that says
8 there's "ten days", then what do you do?

9 A. Disconnect the service.

10 Q. You do?

11 A. Yes, sir.

12 Q. So, these people don't know the content of the
13 letter?

14 A. It's very possible.

15 Q. Okay. So, if Lakes Region now feels that
16 service lines and meters should be put in to
17 all the homes in there that might be in
18 violation of what you consider your tariff and
19 required service hook-up, are you going to go
20 back in and retroactively make all these people
21 incur this expense of a service line and a
22 meter charge?

23 A. I believe the rule says "in existence", that
24 there is an exception. We'll have to review

[WITNESS: Valladares]

1 that, and I'll cross that bridge when I get
2 there.

3 Q. Where does it say -- does it say anywhere in
4 the tandem service, where it's considered
5 "tandem", and the service line into the house
6 where -- where does the "tandem" come in?

7 CHAIRMAN HONIGBERG: Are you
8 referring to the rule?

9 MR. MYKYTIUK: Yes.

10 CHAIRMAN HONIGBERG: Okay.

11 MR. MYKYTIUK: 606.04.

12 **BY THE WITNESS:**

13 A. There's not a schematic or a diagram.

14 BY MR. MYKYTIUK:

15 Q. Okay. If you refer to 606.04, it says --
16 talks, (i), that "A utility may require the
17 customer to leave the trench open and the
18 customer service pipe uncovered"; (j), "Each
19 utility shall require the following in relation
20 to individual service connections: ...No
21 tandem service". This -- mine is beyond this.
22 So, there is no trench open. There was no
23 trench dug. This was beyond the meter. So,
24 you're telling me specifically you know for a

[WITNESS: Valladares]

1 fact where a tandem line is considered
2 "tandem" -- a connection is considered
3 "tandem". Where?

4 A. In your situation? Is that what you're asking
5 me?

6 Q. Yes.

7 A. In your situation? Upon inspection, when went
8 down to review, that's when we saw the tandem
9 connection. In your diagram, that is --

10 Q. That's your interpret -- where is the
11 definition of a "tandem" connection and where
12 it occurs in a service line, service pipe?

13 A. Justin, in his diagram, that's my
14 interpretation.

15 Q. That's your interpretation?

16 A. Absolutely.

17 Q. Okay. If you were -- if you completed an
18 inspection, which you did, and you were, as you
19 stated in your letter of the 19th of October,
20 Exhibit K, you said you were satisfied that "no
21 theft occurred" and there was "no backflow
22 problems", and you "didn't want to create a
23 hardship" for myself. Then, why would you
24 pursue a second meter and service line

[WITNESS: Valladares]

1 installation, when, in fact, this has cost
2 Lakes Region nothing, zero? I'm still paying
3 for the water. Exhibit K, the last paragraph
4 says --

5 MR. RICHARDSON: Could she answer the
6 question maybe?

7 MR. MYKYTIUK: I'm asking -- I'm not
8 done, counselor.

9 BY MR. MYKYTIUK:

10 Q. It says "There are other customers within our
11 franchise area that have installed a second
12 meter and service line" --

13 *[Court reporter interruption.]*

14 CHAIRMAN HONIGBERG: Slow down. He's
15 trying to get what you're reading.

16 MR. MYKYTIUK: I apologize.

17 BY MR. MYKYTIUK:

18 Q. -- "within our franchise area that have
19 installed a second meter and service line to
20 their secondary place of consumption. Lakes
21 Region Water Company will pursue requiring
22 Mr. Mykytiuk to do the same for his second
23 place of consumption in the near future." But,
24 earlier in the letter, you said you "didn't

[WITNESS: Valladares]

1 want to create a hardship". But, now, all of a
2 sudden, you do, because you came and you saw
3 that I wasn't in violation of anything, but
4 your interpretation of a cross-connection?

5 A. Are you ready for my answer?

6 Q. I'm asking you for an answer.

7 A. So, you're ready for my answer?

8 Q. Please.

9 A. Okay. In your situation, we inspected, our
10 priority was health and theft of services. You
11 were fine with that, absolutely. But you
12 should have installed a second service line,
13 with a second curb stop and a second meter. I
14 didn't pursue it, because I didn't want to
15 create a hardship for you. That was my error.
16 I need to correct that.

17 I do feel strongly, to be fair to all of
18 our customers, that your second place of
19 consumption should have a separate service
20 connection and a separate meter installed.

21 Q. Okay. My last question, you raised the issue
22 that there were "two places in Balmoral". You
23 didn't give a name for these places, and I'm
24 not sure who you're referring to. I do, and I

[WITNESS: Valladares]

1 didn't offer these as exhibits, however, I have
2 other pictures, and I don't believe one of them
3 has a second meter or a service line
4 connection, a second connection. The name
5 "DeMarco" was not mentioned.

6 A. Is that a question that I'm to answer?

7 CHAIRMAN HONIGBERG: I don't hear a
8 question yet.

9 BY MR. MYKYTIUK:

10 Q. No. Is that Demarco's house? I didn't hear.
11 Was Demarco's house one of those as paying a
12 second fee?

13 CHAIRMAN HONIGBERG: Hang on. Mr.
14 Richardson, if Mr. Mason wants to offer --

15 MR. MASON: Sorry.

16 CHAIRMAN HONIGBERG: -- testimony,
17 maybe we should swear him in. It occurred to
18 me earlier, when Ms. Valladares was describing
19 conversations Mr. Mason had with Mr. Mykytiuk
20 that might -- that might be advisable anyway.

21 But tell me what you think, Mr.
22 Richardson.

23 MR. RICHARDSON: Well, I was really
24 just trying to stay within the parameter of the

[WITNESS: Valladares]

1 witnesses we offered, not to, you know, get
2 into a situation. So, I don't mind. I know
3 that Mr. Mason is more in the field. So, he --
4 and I have heard him confirm that that is --
5 so, I'm happy to do that if it's helpful and
6 there's no objection.

7 CHAIRMAN HONIGBERG: Well, I don't
8 know that it's necessary. I'm just making you
9 aware of the concern.

10 Ms. Valladares, do you know the
11 answer to the question Mr. Mykytiuk just asked
12 you?

13 WITNESS VALLADARES: I believe I do.

14 CHAIRMAN HONIGBERG: Okay.

15 WITNESS VALLADARES: My question
16 would be privacy for other residents and
17 customers. I know the Right to Know law, in a
18 municipal water department, that I just can't
19 arbitrarily give out information for privacy.
20 Does that fall under privacy or, in this case,
21 is it -- you're fine with? Okay.

22 CHAIRMAN HONIGBERG: I don't know
23 what your obligations are regarding
24 confidentiality with respect to other

[WITNESS: Valladares]

1 customers.

2 Mr. Clifford.

3 MR. CLIFFORD: We wanted to raise the
4 same issue. I mean, I think we could have
5 discussions about whether there are other
6 instances of separate connections or not,
7 separate connections, etcetera, separate
8 billing.

9 I don't think we need to go into the
10 details of which customer may or may not have
11 that particular arrangement.

12 CHAIRMAN HONIGBERG: Well, I think
13 Mr. Mykytiuk wants to ask about some specific
14 customers.

15 MR. MYKYTIUK: You know what? So, --

16 CHAIRMAN HONIGBERG: Just a minute.
17 Just a minute. So, we can certainly mark a
18 portion of this record as "confidential", and
19 then have that discussion, and then separate
20 that part of the transcript. Because I think
21 Mr. Mykytiuk has questions about specific
22 customers. It sounds like those questions can
23 be answered.

24 Does everybody agree that we should

[WITNESS: Valladares]

1 go that way?

2 MR. RICHARDSON: I think that's what
3 *PUC versus Lamy* and 91-A:5 requires --

4 [Court reporter interruption.]

5 MR. RICHARDSON: I'm sorry. That's
6 what the case of *PUC versus Lamy*, L-a-m-y,
7 requires and the Commission's rules require.
8 So, why don't we just note that the transcript
9 that's put on the website should have the
10 customer names redacted. And, then, we don't
11 run into any confidentiality issues. And,
12 then, we can have this discussion without undue
13 complexity.

14 CHAIRMAN HONIGBERG: All right.
15 That's what we're going to do. Mr. Patnaude is
16 all over that.

17 So, where were we, Mr. Mykytiuk?

18 MR. MYKYTIUK: I think I'm satisfied
19 with that. We don't need to get into that.

20 CHAIRMAN HONIGBERG: Mr. Clifford.

21 MR. CLIFFORD: So, just with one
22 proviso. Customer names, addresses, and
23 specific billing information, I think would
24 also be relevant, in other words, customer --

[WITNESS: Valladares]

1 individual customer use --

2 CHAIRMAN HONIGBERG: So, what's going
3 to happen is that Mr. Patnaude is going to mark
4 a beginning and an end point where there's
5 confidential information, and we're going to
6 ask the parties to figure out what needs to be
7 redacted.

8 And I think you're right, Mr.
9 Clifford, it's more than just names. But you
10 all can work that out. And I suspect there
11 won't be any disagreement.

12 Now, Mr. Mykytiuk, why don't you ask
13 the questions about the customers you were
14 interested in.

15 MR. MYKYTIUK: I think Mr. Clifford
16 covered that sufficiently for me. I'm
17 satisfied that what he said was there are other
18 people in there we know that haven't been
19 addressed. And there's question marks here.

20 CHAIRMAN HONIGBERG: Well, again, I
21 don't want to tell you how to try your case,
22 but you were beginning to ask something that I
23 think we were interested in.

24 MR. MYKYTIUK: Okay.

[WITNESS: Valladares]

1 CHAIRMAN HONIGBERG: Something about
2 these other customers is significant. And I
3 think Ms. Valladares knows generally how the
4 billing is done for these people. And, if you
5 ask her about specific customers, she will
6 probably be able to tell you what the situation
7 is. Maybe not immediately off the top of her
8 head, but I think she'll probably be able to do
9 it. So, why don't you go ahead.

10 (Transcript continues in the
11 **Confidential & Proprietary**
12 **Section** so designated under
13 separate cover.)
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[WITNESS: Valladares]

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[WITNESS: Valladares]

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[WITNESS: Valladares]

**(The transcript continues within
the public version of the
record)**

MR. MYKYTIUK: Okay. I'm satisfied.

Thank you.

CHAIRMAN HONIGBERG: Mr. Clifford, do
you have any questions for Ms. Valladares?

And, by the way, I think we're done
with the confidential section.

MR. CLIFFORD: No. I do not have any
questions of Ms. Valladares.

WITNESS VALLADARES: Thank you.

CHAIRMAN HONIGBERG: Commissioner
Bailey.

CMSR. BAILEY: Thank you. Good
afternoon.

WITNESS VALLADARES: Good afternoon.

BY CMSR. BAILEY:

Q. Let's start with the rules. Who do the rules
apply to?

A. I would assume the water utility or the
utility, on how we address our customers and
how our franchise and how our company are set
up.

[WITNESS: Valladares]

1 Q. Okay. So, how do you assure that no tandem
2 services are permitted?

3 A. That's a good question.

4 Q. I know.

5 A. On a case-by-case basis, ideally, when a house
6 is being built, a building permit is required,
7 and they will come to us for a service
8 application. It's a tricky thing to try to
9 inspect everybody.

10 Q. Is there anything in your tariff that prohibits
11 tandem operations?

12 A. Wordage?

13 Q. Anything in your tariff that would let a
14 customer know that that's not permitted?

15 A. It's not permissive, no.

16 Q. Is there anything in your tariff that says
17 that?

18 A. No.

19 Q. Okay. Let's look at the tariff. And we've
20 talked a lot about "meter charges" and "base
21 charges". Are those synonymous?

22 A. So, in our rates, which are usually the last
23 page, it explains the minimum charge per
24 customer. I got to get there.

[WITNESS: Valladares]

1 Q. I think it's on Page 10.

2 A. Yes, I think so. In their rates, it explains
3 the "minimum charge per customer", and then a
4 "meter rate per 100 cubic feet".

5 Q. "Metered rate".

6 A. That's per cubic 100 feet.

7 Q. So, that's the usage?

8 A. That is the usage, yes, ma'am.

9 Q. Okay. So, the "minimum charge per customer" is
10 the charge that we've been referring to as the
11 "base charge"?

12 A. Yes, ma'am.

13 Q. Okay. And it says "per customer".

14 A. Yes, ma'am.

15 Q. It doesn't say "per unit".

16 A. Nope.

17 Q. It doesn't -- there was another word that you
18 used, that you used interchangeably with
19 "unit" -- oh, "service", per service. It says
20 "per customer"?

21 A. It does.

22 Q. So, in the apartment building that got
23 converted, or the house that got converted to
24 six apartments, do you bill six different

[WITNESS: Valladares]

1 people for those?

2 A. No. We will bill the one customer six charges.

3 Q. Okay. So, the building owner gets six bills,
4 and then they collect it from their customers,
5 however they're going to do that?

6 A. Correct.

7 Q. Okay. Is there anything else in your tariff
8 that would help a customer know that this
9 wasn't permitted?

10 A. No, ma'am.

11 CMSR. BAILEY: Okay. Thank you.

12 CHAIRMAN HONIGBERG: Commissioner
13 Bailey just asked my questions. So, I have no
14 questions, Ms. Valladares.

15 Mr. Richardson, do you have any
16 furthered questions for Ms. Valladares?

17 MR. RICHARDSON: No, I do not.

18 CHAIRMAN HONIGBERG: All right.

19 WITNESS VALLADARES: May I make one
20 comment to that --

21 MR. RICHARDSON: Oh, sure. I --

22 CHAIRMAN HONIGBERG: I think Mr.
23 Richardson would like to ask you if you have
24 anything you need to add in response to the

[WITNESS: Valladares]

1 questions that Commissioner Bailey asked you.

2 **REDIRECT EXAMINATION**

3 BY MR. RICHARDSON:

4 Q. Based on all the questions you have been asked,
5 Ms. Valladares, is there anything you'd like to
6 add?

7 A. Yes. Thank you. While the tariff doesn't
8 state that they can't, it doesn't say that they
9 can either.

10 CMSR. BAILEY: Okay.

11 BY CHAIRMAN HONIGBERG:

12 Q. How is a customer supposed to know then? How
13 does that work in practice?

14 A. It definitely needs to be revised. But, in an
15 ordinance or a law, interpretation is
16 everything. That our tariffs would be, if we
17 added all this detail to it, I reviewed
18 everybody else's tariff within the district,
19 and nobody's tariff specifically states that a
20 customer can or cannot, or that a tandem is
21 allowed or not allowed. There's no specific
22 wording. We all refer to "customers" and
23 "services" and "places of consumption" and
24 "premises" and "structures" as being

[WITNESS: Valladares]

1 individuals, generally, as a rule.

2 Q. Is the word "tandem" sufficiently universal
3 that "everyone knows" what a tandem is?

4 A. I would assume so. I mean, --

5 Q. But you don't know that? It's just --

6 A. Not for sure, no.

7 CHAIRMAN HONIGBERG: All right.

8 BY CMSR. BAILEY:

9 Q. I don't think so, because you used the term
10 differently. You said "It could be a tandem to
11 an outside faucet."

12 A. Correct.

13 Q. So, the word "tandem" is not --

14 A. It's a branch. Oh, it's not a "branch". I
15 can't use "branch" either. So, it's --

16 Q. Right.

17 A. Yes.

18 Q. That's why these things have to be defined.

19 A. Yes. Oh, I don't disagree.

20 BY CHAIRMAN HONIGBERG:

21 Q. Is a "branch" a well-known term that a branch
22 always happens before the meter?

23 A. I couldn't answer that either.

24 CHAIRMAN HONIGBERG: All right. I

[WITNESS: Valladares]

1 think we're done.

2 Mr. Richardson, in light of that, do
3 you have any further questions?

4 MR. RICHARDSON: Yes.

5 **REDIRECT EXAMINATION (resumed)**

6 BY MR. RICHARDSON:

7 Q. What you were just asked about, you know, how
8 does the world interpret the phrase "tandem".
9 But the Rule 606.04(j) says it's the utility's
10 responsibility to ensure that those tandem
11 services aren't created. And is that what
12 Lakes Region does and why you contacted
13 Mr. Mykytiuk in the first instance?

14 A. Yes.

15 MR. RICHARDSON: Okay.

16 CHAIRMAN HONIGBERG: All right.
17 Thank you, Ms. Valladares. I think you can
18 return to your seat now.

19 WITNESS VALLADARES: Thank you.

20 CHAIRMAN HONIGBERG: And you have no
21 other witnesses, correct, Mr. Richardson?

22 MR. RICHARDSON: That is correct. We
23 would like to reserve about three or four
24 minutes for a closing statement.

[WITNESS: Naylor]

1 CHAIRMAN HONIGBERG: That's fine.

2 Mr. Clifford, I think you're up.

3 MR. CLIFFORD: Staff would like to
4 call Mark Naylor to the stand please.

5 (Whereupon **Mark A. Naylor** was
6 duly sworn by the Court
7 Reporter.)

8 **MARK A. NAYLOR, SWORN**

9 **DIRECT EXAMINATION**

10 BY MR. CLIFFORD:

11 Q. Mr. Naylor, could you just briefly give your
12 name and position with the Commission please.

13 A. Mark Naylor. I'm the Director of the Gas and
14 Water Division.

15 Q. And could you please describe your involvement
16 and interactions in this case between yourself
17 and Mr. Mykytiuk?

18 A. Yes, I can.

19 Q. Thank you.

20 A. I wanted to just elaborate on a couple of
21 things that were referenced earlier. I think
22 it would be helpful to the Commission in --
23 with respect to how we got to the point of the
24 email that I sent, which is Exhibit E, I think

[WITNESS: Naylor]

1 this is Mr. Mykytiuk's Exhibit E. It's my
2 email to him on Friday, August 12th of '16.

3 CHAIRMAN HONIGBERG: It's part of
4 Exhibit 2, which is Mr. Mykytiuk's exhibits,
5 and it's labeled "Exhibit E" within that
6 packet.

7 WITNESS NAYLOR: Thank you.

8 **BY THE WITNESS:**

9 A. And my -- the first sentence, you know, in
10 hindsight, probably should have had more
11 detail, but we had had conversations on the
12 telephone prior to this. And I wanted to
13 stress a couple of quick things with respect to
14 this. First of all, when I had stated here
15 "Staff has reviewed the company's response and
16 we do not disagree with the decision to charge
17 two base charges for the two dwelling units on
18 your property." This was intended as a
19 compromise. With my conversations with
20 Ms. Valladares at the Company, and
21 understanding all of the circumstances
22 surrounding this, this was something that was
23 discussed, and I thought it was a reasonable
24 compromise. I agreed that there should be a

[WITNESS: Naylor]

1 separate service line, there should be a second
2 meter. It is a second dwelling unit. And I
3 wanted to stress, this is a compromise
4 proposal.

5 Yes. The Company's tariff needs to be
6 amended to permit it, but it was a compromise.
7 Now, why did Staff agree that that was an
8 appropriate compromise? It's not correct to
9 assert that adding a second unit to an existing
10 service does not create cost. It does. It
11 creates demand cost. The cost to the Company
12 for providing facilities to meet its peak
13 demands arises from the peak day that is
14 measured on a -- you know, year-round, what is
15 the peak day, Department of Environmental
16 Services requires a utility, like Lakes Region
17 and all the others, to be able to provide that
18 peak demand, plus a safety factor over that, on
19 a 365 day basis. They must be able to produce
20 that amount of water 365 days.

21 When you add additional places of
22 consumption, when you add additional customers,
23 which is what this is, it adds to the peak
24 demand. And that may not have an out-of-pocket

[WITNESS: Naylor]

1 cost today or tomorrow, it will result in cost
2 that the Company will have to face.

3 And this is part of why I agreed that this
4 was a reasonable compromise. It would help the
5 customer not to have to dig up service line and
6 go through other expense to put in a second
7 line, a second meter.

8 But it's -- my agreement with the
9 compromise was based on my understanding of how
10 rates are set and demand costs are considered
11 in the setting of rates. And demand costs, and
12 I'm reading from -- this is very basic
13 information from the American Water Works
14 Association M1 Manual, "Demand costs are
15 associated with providing facilities to meet
16 the peak rates of use or demands placed on the
17 system by the customers." I explained that
18 reasoning to Mr. Mykytiuk when we were on the
19 telephone subsequent to this August 12th email.
20 I explained why I agreed with the compromise.
21 He, obviously, didn't like my answer, and
22 wasn't happy that I wasn't providing some other
23 answer, but I did not hang up on him, by the
24 way. We concluded the call when we were not

[WITNESS: Naylor]

1 making any more progress.

2 But that's -- I felt it was important to
3 point out not only that Staff agreed to a
4 reasonable compromise, but it's based on
5 something, not just thin air. So, thank you.

6 BY MR. CLIFFORD:

7 Q. So, I have a follow-up. Then, would you tend
8 to agree or not that a "dwelling unit" and
9 "customer" should be treated interchangeably or
10 is there a distinction or a distinction without
11 a difference, in your view?

12 A. They should be treated synonymously. Adding an
13 outdoor spigot to an existing residence is
14 simply something that's complementary to a
15 residential use, or, you know, a slop sink in a
16 basement or a garage, that's complementary to a
17 residential use. This is a separate unit. It
18 particularly, because it's, and he has
19 indicated this, it's a rental unit, a seasonal
20 unit, it contributes directly to an increased
21 seasonal demand that has a cost. So, --

22 MR. CLIFFORD: Okay. I don't have
23 any further questions of this witness.

24 CHAIRMAN HONIGBERG: Mr. Richardson,

[WITNESS: Naylor]

1 do you have any questions for Mr. Naylor?

2 MR. RICHARDSON: Just two or three
3 brief ones.

4 **CROSS-EXAMINATION**

5 BY MR. RICHARDSON:

6 Q. So, I'm looking at Page 10 of the tariff. I
7 can show it to you, if you'd like, but I'm just
8 going to read you one sentence from it. And it
9 talks about "General metered service". And it
10 says "This schedule is available to all water
11 service in the franchise area." And that's
12 really the description is "water service".
13 Now, that term isn't defined, right?

14 A. Correct.

15 Q. Now -- but, when I look at RSA 378, it says the
16 company provides service under 378:1 in
17 compliance with the Commission's rules. So, I
18 guess, do you, like I do, connect the dots and
19 say "Well, when the Company provides water
20 service, it's obligated to follow the rules"?

21 A. Of course. Yes.

22 Q. Okay. And I'll show you just something similar
23 to Exhibit 5. We don't have to get that out,
24 but let me hand it to you. Actually, let me

[WITNESS: Naylor]

1 use Exhibit 5, so we don't create conflicting
2 documents.

3 CHAIRMAN HONIGBERG: Good idea.

4 *(Atty. Richardson handing*
5 *document to the witness.)*

6 BY MR. RICHARDSON:

7 Q. So, I want to point your attention to the line
8 going from one building to the other, where the
9 word "tandem" is written. Is that your
10 understanding of what is meant in the
11 Commission's rules by a "tandem" connection
12 that's prohibited by rule?

13 A. Yes. A tandem service is a single service line
14 that serves two end-users. I think that's
15 pretty clear, however it's structured. It's
16 one service line providing water service to two
17 or potentially more customers.

18 Q. And, if -- and, so, a "tandem" specifically
19 refers to when it goes from one building behind
20 the meter to another, right? And that's what
21 that shows?

22 A. Yes.

23 Q. And, if it were to occur before the meter, is
24 it your conclusion that would be a "branched"

[WITNESS: Naylor]

1 service line, which is also prohibited by rule?

2 A. Yes. They're really -- they're

3 indistinguishable, as far as I'm concerned.

4 It's the same thing. It's providing service to

5 two or more customers from one service line.

6 It creates a lot of problems, which has been

7 discussed earlier. Inability to detect leaks,

8 you know, where the leaks are, or one customer

9 at the end of that, taking service off that

10 line, refuses to pay, and the other does pay,

11 disconnection of service problems. So, that's

12 why it's prohibited.

13 MR. RICHARDSON: Thank you.

14 CHAIRMAN HONIGBERG: Mr. Mykytiuk, do
15 you have questions for Mr. Naylor?

16 MR. MYKYTIUK: No, sir, I don't.

17 CHAIRMAN HONIGBERG: Commissioner
18 Bailey.

19 *(Chairman Honigberg and*
20 *Commissioner Bailey conferring.)*

21 CHAIRMAN HONIGBERG: All right. I'm
22 going to go first, Mr. Naylor.

23 BY CHAIRMAN HONIGBERG:

24 Q. Picking up where Mr. Richardson left off, with

[WITNESS: Naylor]

1 the definitions of "tandem" and "branch", I
2 understood you to say that they're
3 "indistinguishable"? That they mean the same
4 thing to you?

5 A. I think they do, yes.

6 Q. So, you heard Ms. Valladares' testimony that,
7 for her, a branch would occur before the meter
8 and a tandem would occur after the meter,
9 that's not -- you don't agree with her
10 distinction there?

11 A. I don't -- I guess I would say she's not wrong.
12 The idea I think is what's important. The
13 concept of what's actually happening.

14 Q. But, for her, that working definition works for
15 her, as she understands it, and it's not
16 inconsistent with the definitions of those
17 words, which are the same, she just chooses to
18 use one word for one and a different word for
19 the other?

20 A. Apparently, so. Yes.

21 Q. All right. Is there an accepted standard
22 definition of any of these relevant terms,
23 "tandem" or "branch", or any other synonyms we
24 could throw out there? "Tree", I think "tree"

[WITNESS: Naylor]

1 is a word that's used in the rules.

2 A. I don't -- I don't know. I'd probably have to
3 think about that for a while. I mean, we've
4 run into so many of these types of things over
5 the years. This particular company has run
6 into some very interesting situations, where a
7 single service line goes off in some direction,
8 and it's virtually inaccessible. And there may
9 be three or four customers served off that,
10 through their backyards, or through a swamp or
11 through ledge, or all kinds of stuff. I mean,
12 it ends up being the same problem, regardless
13 of what you call it.

14 CHAIRMAN HONIGBERG: All right.
15 Commissioner Bailey.

16 BY CMSR. BAILEY:

17 Q. I understand why tandem service wouldn't be
18 good or why we would want to prohibit service
19 to three or four customers for the reasons that
20 you mentioned, because you can't decide who's
21 responsible for a loss, it may be a payment
22 problem. But, in this case, there's one
23 customer paying the bill. It's one customer.
24 So, that doesn't -- help me out. Why am I not

[WITNESS: Naylor]

1 understanding that -- I see the distinction,
2 when there are multiple customers involved. I
3 don't see how -- how do you consider this
4 multiple customers?

5 A. Two customers -- excuse me. Two customers are
6 appropriate here, because one is a residence
7 and one is a rental unit.

8 Q. But doesn't he rent his house, and the bunkroom
9 is where he stays?

10 A. Well, whichever one he uses and whichever one
11 he rents should have no distinction. It's a
12 separate place of consumption. It's a second
13 unit, with facilities, that creates additional
14 demand on the system. That's the important
15 concept, is the additional demand. There is a
16 cost for that second place of consumption to be
17 served.

18 Q. And the demand cost is the fixed costs that get
19 recovered in the flat quarterly charge, is that
20 right?

21 A. Well, it depends on the company and its rate
22 design.

23 Q. Well, let's talk about this company.

24 A. Ideally, in a perfect world, your fixed charge

[WITNESS: Naylor]

1 covers the company's fixed costs. The
2 consumption charge covers just the company's
3 variable costs.

4 Now, this company has a significantly
5 larger fixed charge than it does consumption
6 charge. That's to help balance the seasonality
7 of their systems. But, for most water
8 companies, it's really not practical to have
9 the consumption charge only recover variable,
10 because it's going to be unfair to one group or
11 another. If it's year-round or seasonal, or,
12 you know, high users, low users, it just --
13 it's going to create real inequities.

14 So, then, you get into other factors,
15 which are part of the -- you know, sort of
16 principles of rate design, is how do you
17 construct rates that are as fair as you can get
18 them, depending on all of the factors that
19 you're looking at?

20 So, -- and, you know, in a lot of cases,
21 we're dealing with legacy rates on some of
22 these systems. Most of them have had rates,
23 you know, reevaluated in the recent, you know,
24 10, 15 years. But it's awful hard to change

[WITNESS: Naylor]

1 rates substantially, I mean, rate design,
2 changing fixed versus variable, fixed versus
3 consumption rates dramatically, because
4 somebody is going to get, you know, somebody is
5 going to get really hit pretty hard. So, we
6 have, in some dockets, in rate cases, we've
7 phased in changes in rate design, so that it
8 wouldn't be so impactful to certain customers.

9 So, it's a balancing act. And it's an
10 art, much more than a science.

11 Q. So, if you wanted to correct this tariff, to
12 make it appropriate for all those reasons, what
13 would you do? Would you increase the usage
14 charge or would you increase the demand charge?

15 A. What I would do, in this particular case, would
16 be to provide a clear definition of what a
17 "customer" is, what a "place of consumption"
18 is. A clear definition of how service is
19 applied for. And I couldn't answer that
20 specifics of whether or not the fixed versus
21 the consumption charges should be tweaked.
22 That would require a lot more study.

23 Q. Okay.

24 A. But I think, and as I said, the compromise

[WITNESS: Naylor]

1 proposal that I agreed with does require a
2 tariff change to make it clear.

3 Q. And the compromise proposal that you made was
4 not to put another service connection and
5 another meter, but just to charge the base
6 charge every quarter?

7 A. Second base charge, that's correct. There was
8 only one other way to do it, and that would be
9 to set a larger meter, which would account for
10 the greater demand.

11 Q. Do you know if the demand that is -- or, the
12 consumption is greater than that which the
13 meter can read in this location?

14 A. I don't have any information on that.

15 Q. Okay.

16 A. But that's certainly possible. I'm not so
17 much -- I don't think that the problem is
18 reading, I think it probably ends up showing up
19 as a pressure problem, because, you know, the
20 regular 5/8ths residential meter is designed to
21 permit flows, you know, a certain amount of
22 water in a certain amount of time. And larger
23 meter sizes are going to treat that
24 differently, permit greater flows. And that's

[WITNESS: Naylor]

1 a synonym for demand. So, the price for, say,
2 a one-inch meter or a one and a half-inch meter
3 is going to, you know, significantly more.

4 Q. But, presumably, somebody with a one-inch meter
5 has more water flowing at the same time, that
6 they have a greater need?

7 A. They have a greater need, they have greater
8 demand. It may not be 24/7, it may be one or
9 two hours a day, you know, that they have the
10 significant demand. But the meter has to be
11 able to accommodate the flow that they need at
12 peak times.

13 CMSR. BAILEY: Okay. Thank you.

14 BY CHAIRMAN HONIGBERG:

15 Q. Mr. Naylor, something you said led me to think
16 about the new law, that I don't think is really
17 directly relevant to what we're talking about,
18 but your discussion of a problem or the
19 situation. The legislation that's going to go
20 into effect this summer, which has a provision
21 in it that says "a separate service cannot be
22 required", is that going to -- is that going to
23 distort all of the water companies' ratemaking
24 systems?

[WITNESS: Naylor]

1 A. I guess we'll find out. I mean, that's a good
2 point. There certainly are some of them now.

3 Q. Maybe a philosophical discussion or maybe not
4 philosophical, a practical discussion that
5 needs to be considered?

6 A. Yes. Yes. It's, you know, it's going to
7 depend. I mean, I don't think there's, unless
8 customers are having particular problems, you
9 know, most residential properties have a 5/8th
10 inch meter and that's adequate.

11 Q. Well, it may be that some customers want the
12 second meter, because what they're going to do
13 is install a place that they do intend to rent
14 out to somebody not related. It's not going to
15 be an inlaw, it's going to be an unrelated
16 person that they want to charge and also have
17 separate metered service, right?

18 A. Uh-huh.

19 Q. It could be a customer choice situation. But,
20 for those who do want to put it in place, where
21 they're going to be responsible for all the
22 usage, the possibility is there, is it not?

23 A. Sure. Yes.

24 CHAIRMAN HONIGBERG: All right. I

[WITNESS: Naylor]

1 don't think I have anything else.

2 Mr. Clifford, do you have any further
3 questions for Mr. Naylor?

4 **REDIRECT EXAMINATION**

5 BY MR. CLIFFORD:

6 Q. Well, I just wanted to go back to the topic you
7 just talked about, which was peak demand. So,
8 can you envision -- say Mr. Mykytiuk no longer
9 owns the property. What would be the effect if
10 he sold it and both dwelling units were
11 occupied full time?

12 A. Well, it just furthers the point, that there
13 should be -- it should be considered two
14 customers. And, you know, ideally, it should
15 be two meters, two service lines. But, as I
16 say, the compromise that was proposed was not
17 to go to that additional cost for the customer,
18 and just charge a second base charge.

19 Q. Right. I mean, there was testimony about that
20 Mr. Mykytiuk wasn't on the property at all
21 times when the other building was being
22 occupied. But, if both were occupied, and
23 both -- and the accessory dwelling unit, which
24 has 10 to 12 occupees [sic], occupiers, people

[WITNESS: Naylor]

1 in it, and the main dwelling house is fully
2 occupied, would, in your opinion, you know, a
3 simple 5/8ths inch line into the house be
4 sufficient to handle peak demand, if both
5 properties are drawing what I would say was a
6 peak demand amount of water on a July day?

7 A. Well, that's --

8 Q. I mean, that's my hypothetical.

9 A. That's a result that comes from, you know, the
10 problem here. It's, you know, the demand may
11 be too much for the meter. But, whether or not
12 the owner is there, I mean, we have seasonal
13 customers that call us, and I'm sure the
14 Company, and other companies in the state with
15 seasonal customers, get calls and say "Well,
16 I'm paying, you know, \$580 a year, and I'm
17 there four weekends. You know, how is that
18 fair?" And the answer is, the water is there
19 for you 24/7, whether you use it or not. When
20 you turn the tap on, the water is there. You
21 can't tell the town "I'm not going to pay my
22 taxes, because I never use the fire department,
23 I never use the police department, I mean, I
24 never use the schools." They're there for you

[WITNESS: Naylor]

1 if you need them. And the water service is
2 there for you, that, you know, when you want
3 it. So, that's the demand factor that's really
4 been ignored.

5 MR. CLIFFORD: No further questions.

6 CHAIRMAN HONIGBERG: Thank you,
7 Mr. Naylor. I think you can return to your
8 seat.

9 I take it there are no more
10 witnesses, correct?

11 MR. CLIFFORD: Correct.

12 MR. RICHARDSON: Correct.

13 CHAIRMAN HONIGBERG: All right.
14 We've already dealt with Exhibits 1 and 2.
15 Those are full exhibits. We have Exhibits 3,
16 4, and 5. Starting with 3 and 4, which are --
17 3 is the excerpt from the Administrative Rules,
18 Exhibit 4 is what I believe was represented to
19 be something from the Town of Sandown.

20 Is there any objection to striking
21 the ID on 3 and 4?

22 MR. RICHARDSON: None here.

23 CHAIRMAN HONIGBERG: All right. So,
24 they will be full exhibits.

1 All right. Exhibit 5 will not be a
2 full exhibit. It was used as a chock. It was
3 described. Multiple witnesses testified about
4 it and described its contents. It's just a
5 little bit too rough for me to be comfortable
6 that that's going to be a full exhibit.

7 MR. RICHARDSON: I thought it was
8 helpful. But, if the -- you know, I'm talking
9 with the people that give it the weight it's
10 due. So, I have no strong feelings either way,
11 if that's what --

12 CHAIRMAN HONIGBERG: I understand. I
13 think your witness testified to what was in it,
14 described the differences, actually, probably
15 as clearly as the exhibit itself showed. So, I
16 mean, it may have been helpful to her.

17 MR. RICHARDSON: Right.

18 CHAIRMAN HONIGBERG: And that's the
19 classic use of a chock.

20 MR. RICHARDSON: Yes.

21 CHAIRMAN HONIGBERG: So, I think
22 we're going to not strike the ID on 5. It will
23 just live on as a marked exhibit.

24 Is there anything else we need to do

1 before the parties sum up?

2 MR. RICHARDSON: I don't believe so,
3 no.

4 CHAIRMAN HONIGBERG: All right.
5 We're going to go Mr. Richardson, then
6 Mr. Clifford, and, Mr. Mykytiuk, as the
7 complainant, you get the last word.

8 So, Mr. Richardson, why don't you
9 begin.

10 MR. RICHARDSON: Thank you.
11 Mr. Chairman, members of the Commission, we've
12 heard a lot today, but let me just summarize
13 and highlight for you.

14 First of all, under the Commission's
15 rules, it's the person who's the complainant
16 who has the burden of proof. And that's Puc
17 203.25, "Burden and Standard of Truth". It
18 says "Unless otherwise specified by law, the
19 party seeking relief through a petition,
20 application, motion or complaint shall bear the
21 burden of proving the truth of any factual
22 proposition by a preponderance of the
23 evidence."

24 So, what's the rule or standard that

1 applies? Lakes Region is required, under RSA
2 374:2, to charge rates that are just and
3 reasonable. And, by the same token, so, the
4 law says "All charges", and I'm going to skip
5 over a little bit, "for any service rendered...
6 shall be just and reasonable and not more than
7 allowed by law or by order of the public
8 utilities commission."

9 So, we have orders that are approved
10 for the Lakes Region's companies' rates, and
11 that's what they have charged. So, the
12 question then becomes "Are those just unjust or
13 unreasonable? Have we applied them in a way
14 that are unjust or unreasonable?" All that
15 Lakes Region has done in this case is charged
16 its approved rate for water service -- for
17 water service.

18 So, the question then becomes "what
19 does "water service" mean?" And the answer is
20 is, when you look at 378:1, it says "Every
21 public utility shall file with the public
22 utilities commission...schedules showing the
23 rates, fares, charges and prices for any
24 service rendered or to be rendered in

1 accordance with the rules of the Commission."

2 So, it directs Lakes Region to go out and do,
3 just not only what the tariff says, but also
4 what the rules say.

5 And I think that's important, because
6 you may recall that the conversations in this
7 case began in March, with Ms. Valladares saying
8 that the Company became aware on March 29th.
9 Mr. Mason had spoken with Mr. Mykytiuk. There
10 were efforts to communicate with him. He was
11 sent a letter. He was spoken to on the phone.
12 And he was asked to apply for this service. He
13 ultimately didn't do it. But that's what
14 happens is is the rules put the burden on the
15 Commission -- excuse me, on the utility to
16 explain what the rules require. And, then, the
17 question becomes "Has the utility acted in a
18 way that is unjust or unreasonable?"

19 Now, the rules don't define, as
20 Mr. Naylor suggested, Director Naylor, what a
21 "customer" is. We agree with that. And the
22 reason is, it's almost impossible to define
23 across the board what a "customer" is. Because
24 whatever rule you write will result in some

1 hardship or some circumstance like this one,
2 where things don't quite fit. But we know,
3 from Lakes Region's system, there are
4 residents, there are apartments, there are
5 condominiums they have commercial units, like
6 Skelley's.

7 In other cases, you know, sometimes
8 "water service" means "fire protection
9 service", sometimes it's a golf course, it's a
10 hospital, it's an airport. I mean, you
11 can't -- it's very hard to write one rule
12 that's going to apply correctly in every
13 circumstance.

14 So, what the question then becomes is
15 is it becomes a factual determination. Has
16 Lakes Region correctly applied its service as
17 it's intended? I don't think there's any
18 factual dispute in this case. It becomes easy,
19 because this is really a vacation rental that
20 places a high level of demand on the system,
21 during the period when demand is at its
22 highest. There's a year-round occupancy by the
23 owner. That ownership can change. I mean,
24 that could become a permanent residence. It

1 could become connected. All sorts of things
2 can happen. But I think right now, as it
3 stands today, Lakes Region has correctly
4 determined that one of these uses is a vacation
5 rental and the other is a permanent residence.
6 That's just like an apartment.

7 And, when you look at the
8 Commission's rules, one thing we haven't talked
9 about is 603 -- or, 606.04(g). And that says
10 that "curb stops shall be placed at the
11 customer's property line except in unusual
12 situations like service to an apartment or to a
13 condominium." So, what's interesting about
14 that is is that it's recognizing that
15 apartments and condominiums are unusual
16 circumstances, and you have to apply things a
17 little bit differently. Maybe you have a
18 change in the service line, like some of the
19 properties we've heard about. Maybe going
20 forward, as we do today, we require that
21 separate service lines are there.

22 The key point is is that Lakes Region
23 has, despite arguments about what a "dwelling"
24 is or isn't or a "structure" is or isn't or

1 what's a "single family residence" or isn't,
2 what is an "accessory dwelling unit" or isn't.
3 The fact is is that there's two significant
4 separate uses, and Lakes Region correctly
5 evaluated those and said "Yes, these are
6 separate uses." This isn't like, you know, the
7 faucet on the outside of the building that's,
8 you know, just there to water the garden.
9 These are two separate uses, where you can have
10 as many as eight grandchildren and seven beds,
11 five bedrooms occupying one building, with two
12 in the other.

13 So, I don't blame Mr. Mykytiuk for
14 wanting clarity. And the same is true on our
15 side of the table. We think and we know that
16 we need to address this issue head-on, because
17 it can happen again. But, at the end of the
18 day, when you look at the facts, it doesn't
19 require that the rule be perfectly written.
20 The question is is whether "have we applied our
21 rates unlawfully, unjustly or unreasonably?"
22 And the fact is, as we heard Director Naylor
23 testify, we've done exactly what we do in every
24 single case, and we've tried to reach the right

1 result.

2 Lakes Region doesn't have a strong
3 feeling about whether Mr. Mykytiuk has a
4 separate service line or not, as long as the
5 rates are being correctly identified. Now, it
6 could become a problem in the future, where,
7 you know, if you have to turn off one customer,
8 because, you know, they have a pipe freeze, you
9 know, you end up having to shut them both.
10 There are very significant operational
11 challenges.

12 If someone installs a sprinkler
13 system or an irrigation system, there's the
14 potential for water to be pulled out, and that
15 can become a public health threat. Right now,
16 things are okay. And, so, that's why we've
17 held them where they are. But, at the end of
18 the day, what we feel we need to do is to be
19 fair to our customers and treat everyone
20 financially the same.

21 I think the evidence on the whole is,
22 yes, there's an accessory dwelling unit out
23 there. There's an issue in the future, but
24 this isn't one of them. This is two separate

1 units. We have charged two separate charges,
2 exactly as we do and exactly as our rates are
3 intended to be done.

4 So, I think, at the end of the day,
5 we want the Commission to deny the complaint.
6 Whether or not it wants to require a separate
7 service line is up to the Commission. We'll
8 use that information and that will affect how
9 we may -- we may look at other properties or
10 other examples, based on the facts.

11 CHAIRMAN HONIGBERG: I have a
12 question for you, Mr. Richardson. When you
13 were questioning Ms. Valladares, you and she
14 actually had a little bit of a disagreement in
15 wording with respect to when the Company became
16 aware of the construction versus when they
17 became aware that construction was completed.

18 It's pretty clear to me that Ms.
19 Valladares' testimony was that Mr. Mason knew
20 of it the previous summer, and had a
21 conversation with the customer, with
22 Mr. Mykytiuk, the previous summer. Her letter
23 is quite clear that, in March, 29th or
24 whatever, that the Company became aware that

1 construction was completed, and that's when
2 they went, that's when they said "we want to
3 see what's going on."

4 You said in your closing just a
5 minute ago that it was important that the
6 Company deal with the customer reasonably.
7 That chronology I'm pretty sure is right, given
8 the way the documents came in and the way the
9 testimony came in. Does that change your
10 conclusion at all about whether the Company has
11 dealt with this situation reasonably?

12 MR. RICHARDSON: I'm not sure that I
13 saw the distinction that you saw or I
14 understood it. I mean, I'm not doubting what
15 you heard is what you heard. I guess my
16 understanding is that the Company became aware
17 in March 29th of 2016 of the construction. I
18 don't know if it had been completed or not at
19 that point. And that's when Mr. Mason had the
20 conversation with the customer. And that, no,
21 the issue was raised of needing a separate
22 service line, and there was not an agreement.
23 He was given an application, which he never
24 submitted, which then caused the April 29th

1 letter.

2 CHAIRMAN HONIGBERG: I think we're
3 there on the chronology for there. I
4 understand.

5 MR. RICHARDSON: Yes.

6 CHAIRMAN HONIGBERG: I understand
7 your position now.

8 MR. RICHARDSON: So, I think that's,
9 you know, that's my understanding. And, if I
10 may?

11 *(Atty. Richardson conferring*
12 *with Company representatives.)*

13 MR. RICHARDSON: Okay. That's our
14 best information that we have at this point.

15 CHAIRMAN HONIGBERG: I understand.
16 Mr. Clifford.

17 MR. CLIFFORD: Sure. Staff would
18 just like to be brief in its conclusion. Is
19 that we are supportive of the testimony of
20 Mr. Naylor, in that we do believe the two base
21 charges are reasonable in this case. But,
22 again, we believe the Company does need to
23 amend its tariff, as it is permitted to do so.

24 And, given my obligation as an

1 attorney here, I just want to point out that
2 there is some incongruence in our own rules
3 about references to what customer -- we refer
4 to "customer" in Puc 102.05, and talking about
5 what we consider a customer for purposes of our
6 rules. But we don't consider what a "customer"
7 is for purposes of tariffed rates. And, in
8 particular, if you look at Lakes Region Water,
9 they don't refer to "customer", they refer to
10 "service".

11 So, I do sense that there may be
12 some -- part of the outcome here may be to try
13 to tie these things together. So that, when
14 we're talking in terms of "customers" and
15 "service", everyone is on the same page to
16 avoid any incongruities in the future.

17 But we stated our position, and we
18 think it's the right one, given the testimony
19 of Mr. Naylor today.

20 CHAIRMAN HONIGBERG: Thank you, Mr.
21 Clifford. Mr. Mykytiuk, you get the last word.

22 MR. MYKYTIUK: Thank you. In
23 summation, I believe I've shown that neither
24 myself nor anyone in this process can find

1 anything more than ambiguity in these PUC
2 regulations and tariffs. Justification from
3 Lakes Region Water to charge has not been
4 established.

5 To date, Lakes Region Water has not
6 incurred one cent of additional cost. Yet,
7 Exhibit K, last paragraph, states that they
8 will pursue requiring me to install a second
9 meter and a service line in the near future.

10 Although, second paragraph on Page 2,
11 they said they "didn't pursue it", because they
12 "didn't want to create a hardship". I see no
13 sense in this at this point. Nothing's to be
14 gained.

15 The ambiguity in the regulations and
16 the tariffs need to be changed. I think that's
17 been the common theme here all day.

18 There's been more than one reference
19 that the bunkhouse is my "primary residence";
20 it is not. If I'm around during a rental
21 period, which has been no more in the past, and
22 I've done this for one year, has been no more
23 than about eight to ten weeks, total, out of 52
24 weeks. If it's been rented in those time

1 periods and I'm here, I'm an airline pilot, I'm
2 on the road all the time. If I'm here, I may
3 stay in the bunkhouse. I may stay at my
4 girlfriend's up in Maine. I have a 95 year-old
5 dad that I take care of also, sometimes, down
6 in Massachusetts. I'm on the road a lot.
7 There's very little demand on this system.

8 If they wanted ever to mediate or
9 bring this to some kind of a happy conclusion,
10 never has Lakes Region brought up the PUC
11 1203.17, the "conference to mediate" this
12 complaint, not once. And it is required of
13 them to have mentioned this to me.

14 At this point, I respectfully request
15 that the Commission find in my favor and
16 require Lakes Region Water to refund all the
17 past additional fixed charges, with interest.

18 Thank you very much.

19 CHAIRMAN HONIGBERG: Thank you,
20 Mr. Mykytiuk. Thank you all for the
21 presentation today.

22 We will take this matter under
23 advisement and issue an order as quickly as we
24 can. We are adjourned.

1 MR. MYKYTIUK: Thank you.

2 MR. RICHARDSON: Thank you.

3 ***(Whereupon the hearing was***
4 ***adjourned at 1:19 p.m.)***

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