

1 **STATE OF NEW HAMPSHIRE**
2 **PUBLIC UTILITIES COMMISSION**

25 JUN '18 PM 3:05

3
4 **June 11, 2018** - 10:06 a.m.
5 Concord, New Hampshire

6
7 **RE: DW 17-165**
8 **ABENAKI WATER COMPANY - ROSEBROOK:**
9 **Request for Change in Rates.**
10 **(Hearing on temporary rates)**

11
12 **PRESENT:** Chairman Martin P. Honigberg, Presiding
13 Commissioner Kathryn M. Bailey
14 Commissioner Michael S. Giaimo

15 Sandy Deno, Clerk

16
17 **APPEARANCES:** **Reptg. Abenaki Water Company, Inc.:**
18 Stephen P. St. Cyr
19 Donald Vaughan
20 Pauline Doucette

21 **Reptg. Omni Mount Washington, LLC:**
22 Thomas B. Getz, Esq. (McLane...)

23 **Reptg. Bretton Woods Property Owners**
24 **Association:**
Paul Mueller

Reptg. Residential Ratepayers:
D. Maurice Kreis, Esq., Consumer Adv.
Office of Consumer Advocate

Reptg. PUC Staff:
Alexander F. Speidel, Esq.
Jayson Laflamme, Asst. Dir/Gas & Water
Robyn Descoteau, Gas & Water Division

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

1
2 CHAIRMAN HONIGBERG: We are here this
3 morning in Docket DW 17-165, which is the
4 Abenaki Water Company-Rosebrook system's rate
5 case, hearing on temporary rates. We have some
6 filings we'll talk about.

7 But before we do anything else, let's
8 take appearances.

9 MR. ST. CYR: Good morning. My name
10 is Stephen P. St. Cyr, and with me is Don
11 Vaughan and Pauline Doucette, representing the
12 Abenaki Water Company.

13 MR. GETZ: Good morning, Mr.
14 Chairman, Commissioners. I'm Tom Getz, from
15 the law firm of McLane Middleton, on behalf of
16 the Omni Mount Washington Hotel.

17 MR. MUELLER: Paul Mueller. I'm here
18 on behalf of the Bretton Woods Property Owners
19 Association.

20 MR. KREIS: Good morning, Mr.
21 Chairman. D. Maurice Kreis, the Consumer
22 Advocate, here on behalf of the residential
23 customers of this utility.

24 MR. SPEIDEL: Good morning,

1 Commissioners. Alexander Speidel, representing
2 the Staff of the Commission. And I have with
3 me Director of the Gas & Water Division,
4 Stephen Frink; Assistant Director of the Gas &
5 Water Division, Mr. Jayson Laflamme; and also
6 Robyn Descoteau, Utility Analyst of the Gas &
7 Water Division.

8 CHAIRMAN HONIGBERG: Is there anyone
9 from the Rosebrook system here?

10 *[No verbal response.]*

11 CHAIRMAN HONIGBERG: All right. Is
12 there anyone else who needs to enter an
13 appearance?

14 *[No verbal response.]*

15 CHAIRMAN HONIGBERG: All right.
16 Where should we start? Mr. St. Cyr.

17 MR. ST. CYR: The Company is willing
18 to participate in a panel to present the
19 Settlement Agreement. The Company doesn't have
20 any preliminary matters prior to that.

21 CHAIRMAN HONIGBERG: Does anyone have
22 any preliminary matters? Mr. Speidel.

23 MR. SPEIDEL: Yes, Mr. Chairman. The
24 Staff would like to make a very short

1 preliminary statement regarding the issue of
2 notice in this case.

3 CHAIRMAN HONIGBERG: Go ahead.

4 MR. SPEIDEL: Thank you,
5 Commissioners. As a general matter, as you may
6 be aware and recall from the prehearing
7 conference in this case, there was a quirk
8 regarding the timing of the filing being made
9 for the temporary rate petition from the
10 Company in this instance. And Staff had made a
11 statement to the effect that there may be an
12 issue regarding notice, but it's within the
13 Commission's discretion to decide as to whether
14 a supplemental Order of Notice would be
15 necessary. And in response, the Commission,
16 and the Chairman himself, made a statement to
17 the effect of "well, let's see if we can try to
18 work this out among the parties."

19 And in turn, the parties had
20 discussions regarding the issues surrounding
21 notice. And I think, in the end, the Staff and
22 the Company concluded that constructive notice
23 of the temporary rate petition had been made
24 within this case to a satisfactory level, and

1 that a settlement agreement on temporary rates
2 would be appropriate.

3 Obviously, there are other parties in
4 this case that do not share this view, and
5 you'll probably hear from them during the
6 pendency of this proceeding and in closing
7 statements.

8 But I just wanted to outline and
9 reiterate that, in this instance, we do have
10 confidence that constructive notice was given
11 to customers of the potential rate changes.
12 They have been pending before the Commission
13 for many weeks. And the Commission could act
14 upon the Settlement Agreement within its
15 discretion and administrative efficiency.

16 Thank you.

17 CHAIRMAN HONIGBERG: Does anyone else
18 want to be heard on this now or do you want to
19 save it for the end?

20 Mr. Getz. You look like you were
21 grabbing the microphone. Maybe I was wrong.

22 MR. GETZ: Thank you, Mr. Chairman.
23 Is this on?

24 CHAIRMAN HONIGBERG: Let's go off the

1 record.

2 [Brief off-the-record discussion
3 ensued.]

4 MR. GETZ: Thank you, Mr. Chairman.
5 I really don't have a preference whether to
6 deal with it now or later. But, you know, we
7 do have a position that was summarized in a
8 letter filed on Friday. I'd like to make a
9 couple of additional points.

10 And I'm also, you know, the whole
11 notion of "constructive notice", I'm not quite
12 sure what's intended by that. But, if I
13 understand it correctly, I think I would have a
14 problem with the notion of "constructive
15 notice" being provided.

16 CHAIRMAN HONIGBERG: Just so I'm
17 clear, the letter you're referring to was filed
18 by the Consumer Advocate?

19 MR. GETZ: Yes. And that was on
20 behalf of Omni and the Bretton Woods Property
21 Owners Association.

22 CHAIRMAN HONIGBERG: I just wanted to
23 make sure I wasn't looking for something else.

24 Well, it sounds like people are --

1 what I think makes sense is for us to proceed
2 with the panel, let's get all that done. And
3 if we want to have a discussion about notice,
4 we can.

5 I guess I'll ask Mr. Kreis, Mr. Getz,
6 anybody else who wants to address this, to make
7 sure they deal with the Pennichuck Water Works
8 case from 1980, as to why that doesn't
9 effectively deal with this issue, not as a
10 "constructive notice" matter, but as an "actual
11 notice" matter, of notice of a permanent rate
12 file being effective notice as to rate
13 increases for the company.

14 I think that may deal with this
15 issue. I have not read the case more than
16 once. But, in reading it, it seems to be
17 supportive of doing what we're doing right now.

18 All right. So, if there's nothing
19 else in the way of preliminaries, why don't we
20 have the witnesses who are going to be
21 testifying proceed to the witness box.

22 Off the record.

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

[WITNESS PANEL: St. Cyr|Descoteau]

1 (Whereupon **Stephen P. St. Cyr**
2 and **Robyn J. Descoteau** were duly
3 sworn by the Court Reporter.)

4 CHAIRMAN HONIGBERG: Mr. Speidel.

5 MR. SPEIDEL: Thank you, Mr.

6 Chairman.

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

8 **ROBYN J. DESCOTEAU, SWORN**

9 **DIRECT EXAMINATION**

10 BY MR. SPEIDEL:

11 Q Ms. Descoteau, could you please state your full
12 name for the record.

13 A (Descoteau) Robyn J. Descoteau.

14 Q And by whom are you employed and what is your
15 business address?

16 A (Descoteau) The New Hampshire Public Utilities
17 Commission, 21 South Fruit Street, Suite 10,
18 Concord, New Hampshire.

19 MR. SPEIDEL: If you'd just speak up
20 a tiny little bit or maybe put the microphone
21 just a little lower. Thank you.

22 BY MR. SPEIDEL:

23 Q What is your position at the New Hampshire
24 Public Utilities Commission?

{DW 17-165} [Re: Temporary Rates] {06-11-18}

[WITNESS PANEL: St. Cyr|Descoteau]

1 A (Descoteau) I'm a Utility Analyst in the Gas &
2 Water Division.

3 Q And could you please describe your position and
4 responsibilities at the Commission.

5 A (Descoteau) I am responsible for the
6 examination, evaluation and analysis of rate
7 filings and financial filings. This includes
8 the recommendation of changes in revenue levels
9 that conform to regulatory methodologies and/or
10 proposals for economical, accounting or
11 operational changes affecting regulatory --
12 regulated -- excuse me -- regulated utility
13 revenue requirements. I represent Staff in
14 meetings with company officials, outside
15 attorneys and accountants relative to rate case
16 and financial matters, as well as the
17 Commission's rules, policies and procedures.

18 Q What is your specific area of business
19 expertise?

20 A (Descoteau) Accounting and finance.

21 Q Do you consider the testimony that you will
22 offer today to be within your area of
23 expertise?

24 A (Descoteau) Yes, I do. Yes, I do.

{DW 17-165} [Re: Temporary Rates] {06-11-18}

[WITNESS PANEL: St. Cyr|Descoteau]

1 Q Could you please describe your involvement with
2 this docket.

3 A (Descoteau) I read through, reviewed, and
4 tested the integrity of the original filing and
5 of the temporary filing. I traced the filings
6 to the PUC Annual Reports on file in the
7 Commission. Following this, I asked one set of
8 discovery questions for the temporary filing
9 and reviewed the responses. I participated in
10 the settlement discussions and prepared the
11 revenue requirement schedules for the
12 Settlement Agreement.

13 Q So, the Settlement Agreement you're referencing
14 is this document that was filed with the
15 Commission on May the 30th of 2018?

16 A (Descoteau) Yes, it is.

17 Q And you support the Settlement Agreement as
18 it's been filed?

19 A (Descoteau) Yes, I do.

20 Q Mr. St. Cyr, could you state your full name and
21 business affiliation for the record.

22 A (St. Cyr) My name is Stephen P. St. Cyr. I'm
23 the owner and operator of St. Cyr & Associates.
24 And we do a lot of work with small water and

{DW 17-165} [Re: Temporary Rates] {06-11-18}

[WITNESS PANEL: St. Cyr|Descoteau]

1 sewer companies.

2 Q So, as part of your responsibilities, are you
3 representing the Company in this proceeding?

4 A (St. Cyr) Yes, I am.

5 Q And so, as part of your responsibilities in
6 representing the Company in this proceeding,
7 you advised on the Settlement Agreement that is
8 presented to the Commission and was filed on
9 May the 30th, correct?

10 A (St. Cyr) That is correct.

11 Q And do you support the Settlement Agreement as
12 filed?

13 A (St. Cyr) Yes, we do.

14 MR. SPEIDEL: Thank you very much. I
15 would request that the Settlement Agreements be
16 marked as hearing "Exhibit 1" please?

17 CHAIRMAN HONIGBERG: That works.

18 (The document, as described, was
19 herewith marked as **Exhibit 1** for
20 identification.)

21 MR. SPEIDEL: Thank you.

22 BY MR. SPEIDEL:

23 Q Going back to you, Ms. Descoteau. Are you
24 aware of any corrections or changes that ought

[WITNESS PANEL: St. Cyr|Descoteau]

1 to be made to the Settlement Agreement or its
2 schedules?

3 A (Descoteau) No, I am not.

4 Q Could you please describe the difference
5 between the temporary revenue requirement
6 proposed by the Company, Abenaki, in their
7 temporary rate filing and the Settlement
8 Agreement revenue requirement.

9 A (Descoteau) The Settlement Agreement revenue
10 requirement is slightly lower than that
11 requested by Abenaki in their temporary rate
12 filing. This is due to three adjustments those
13 made to rate base, one adjustment made to
14 revenue, and adjustments made for tax changes.

15 Q Would you agree that the Settlement Agreement
16 represents a compromise of the Staff and the
17 Company's positions?

18 A (Descoteau) Yes, it does.

19 Q What is the temporary increase in annual
20 revenues as recommended by the Settlement
21 Agreement?

22 A (Descoteau) The Settlement Agreement recommends
23 a temporary increase in revenues for Abenaki
24 Water Company-Rosebrook of \$41,145, or a 14.89

{DW 17-165} [Re: Temporary Rates] {06-11-18}

[WITNESS PANEL: St. Cyr|Descoteau]

1 percent increase over current rates. This is
2 based on an October 2016 to September 2017 test
3 year.

4 Q Does the Settlement Agreement include schedules
5 showing how the revenue requirements were
6 calculated?

7 A (Descoteau) Yes, it does. The calculation of
8 the proposed temporary revenue requirement is
9 detailed in Attachment A, Schedules 1 through
10 5.

11 Q What is the proposed rate of return?

12 A (Descoteau) The proposed rate of return is
13 detailed on Attachment A, Schedule 2, and it is
14 6.74 percent. This is comprised of a
15 weighted average long-term debt equaling
16 1.77 percent and common equity equaling 4.97
17 percent. Debt is 48.19 percent and equity is
18 51.81 percent. The parties have agreed that
19 for purposes of this Agreement, the equal --
20 the equivalent of a 9.6 rate of return, the
21 ROE, is reasonable. This ROE will be
22 reevaluated during the permanent phase of this
23 case.

24 Q And that 9.6 percent figure is a percent

{DW 17-165} [Re: Temporary Rates] {06-11-18}

[WITNESS PANEL: St. Cyr|Descoteau]

1 figure, right?

2 A (Descoteau) Yes.

3 Q Okay. Could you please explain Schedule 3,
4 Rate Base, within Exhibit 1, the Settlement
5 Agreement?

6 A (Descoteau) Absolutely. Attachment A, Schedule
7 3, shows the rate base as submitted in the
8 initial filing, as revised in filings sent to
9 Staff on April 24th and April 30th. These
10 revisions were due to discovery questions,
11 revisions. And the final column shows Staff
12 *pro forma* adjustments, and then the final rate
13 base.

14 Q Could you please explain the adjustments made
15 to rate base.

16 A (Descoteau) Schedule 3a details the
17 adjustments. Staff made three adjustments.
18 Specifically, they are the removal of plant
19 acquisition adjustment from plant as an
20 allowable -- as an unallowable recovery amount;
21 removal of prepaid insurance as it's already
22 included in operating expenses; and the
23 adjustment of cash working capital due to
24 expense adjustments during the case.

{DW 17-165} [Re: Temporary Rates] {06-11-18}

[WITNESS PANEL: St. Cyr|Descoteau]

1 Q Okay. Now, on Schedule 3a, what is "Working
2 Capital", WC?

3 A (Descoteau) "Working capital" is an allowance
4 for funds that the utility expended for
5 operation and maintenance of the utility prior
6 to receiving revenues for the services
7 provided. Abenaki used a formula common in
8 utility practice: O&M expenses multiplied by
9 working capital percentage, in this case
10 12.33 percent, which is half of the billing
11 period of 15 days plus 30 days for the month,
12 divided by 365 days in the year.

13 Q Ms. Descoteau, could you please explain
14 Schedule 4, Income Statement.

15 A (Descoteau) Similar to Schedule 3, Schedule 4
16 shows the Income Statement as submitted in the
17 initial filing, a revised filing submitted to
18 Staff on April 24, 2018, and as reflected
19 following Staff's *pro forma* adjustments.

20 Q Did you make any adjustments, and if you have,
21 could you please explain them?

22 A (Descoteau) Staff's adjustments are detailed on
23 Schedule 4a, and there were two adjustments
24 made. Specifically, an adjustment to taxes --

{DW 17-165} [Re: Temporary Rates] {06-11-18}

[WITNESS PANEL: St. Cyr|Descoteau]

1 specifically, they were an adjustment to taxes
2 to reflect Interest Expense Synchronization and
3 Income Tax Normalization.

4 Q And Schedule 4b calculates the Interest Expense
5 Synchronization/Income Tax Normalization
6 calculations, correct?

7 A (Descoteau) Yes, it does.

8 Q All right. Ms. Descoteau, could you please
9 explain what impact the temporary rate proposal
10 within the Settlement Agreement will have on
11 the monthly bill of a residential customer.

12 A (Descoteau) A residential customer using 1.31
13 hundred cubic feet of water per month will see
14 their water invoice increase from approximately
15 \$17 per month, to approximately \$19.75 per
16 month, or an increase of approximately \$2.75
17 per month, or \$33 per year.

18 Q Thank you. What is the proposed effective date
19 of the temporary rate increase?

20 A (Descoteau) The proposed effective date for
21 temporary rates is for service rendered on or
22 after February 1st, 2018.

23 Q What was the date of notice by publication
24 required by the Order of Notice in this

{DW 17-165} [Re: Temporary Rates] {06-11-18}

[WITNESS PANEL: St. Cyr|Descoteau]

1 proceeding?

2 A (Descoteau) Rosebrook mailed the public notice
3 to customers on January 11th, which was just
4 prior to the Martin Luther King, Junior
5 holiday. Customers report receiving the notice
6 on January 17th, 2018 due to the holiday. The
7 temporary rate filing was received by the
8 Commission on January 18th, 2018.

9 Q Are you aware of the fact that by statute, upon
10 the setting of permanent rates by the
11 Commission, a utility can recoup the revenue
12 difference between the temporary and permanent
13 rates?

14 A (Descoteau) Yes.

15 Q And how does that operate?

16 A (Descoteau) Following the final Commission
17 Order in this proceeding, the Company will file
18 its calculation of the temporary-permanent rate
19 recoupment amount and the proposed surcharge
20 for Staff's revenue. Following its review,
21 Staff will make recommendations to the
22 Commission concerning the Company's proposed
23 recoupment amount and surcharge.

24 Q And by "Staff's revenue", you meant to say

{DW 17-165} [Re: Temporary Rates] {06-11-18}

[WITNESS PANEL: St. Cyr|Descoteau]

1 "Staff's review", correct?

2 A (Descoteau) Yes. Sorry.

3 Q No problem. Mr. St. Cyr, do you have any
4 general comments you'd like to make regarding
5 the Settlement Agreement at this time?

6 A (St. Cyr) Yes. I would point out on
7 Schedule 4, Column (4), the "Revised Temporary
8 Rate Filing", that the Company's actual net
9 operating loss was \$14,202. I want folks in
10 the room --

11 *[Court reporter interruption.]*

12 **CONTINUED BY THE WITNESS:**

13 A (St. Cyr) -- to know that the Company has been
14 losing money since it purchased Rosebrook. The
15 temporary rate filing was largely -- or, the
16 rate filing itself was largely driven by the
17 Company not making money. The temporary rate
18 filing itself is based on actual results. The
19 Company made no *pro forma* adjustments to rate
20 base. It made no *pro forma* adjustments to
21 capital structure. It did make one adjustment
22 to operating expenses, that pertaining to
23 taxes, to which the Staff subsequently reduced
24 that to take into consideration the lower

{DW 17-165} [Re: Temporary Rates] {06-11-18}

[WITNESS PANEL: St. Cyr|Descoteau]

1 federal and state tax rates. The Company
2 agrees with that reduction.

3 And then, lastly, the Company adjusted its
4 revenue requirement to just simply allow it to
5 cover its costs and to earn the proposed rate
6 of return in the temporary rate process of this
7 filing.

8 The Company is in support of the
9 Settlement Agreement, and that the proposed
10 increase would be uniformly applied against all
11 customer classes.

12 Thank you.

13 MR. SPEIDEL: Thank you, sir. Staff
14 has concluded its direct questioning of these
15 witnesses.

16 CHAIRMAN HONIGBERG: Mr. Getz.

17 MR. GETZ: Thank you, Mr. Chairman.
18 I have a few questions for Ms. Descoteau,
19 following up on the comments about explaining
20 the difference between temporary rates and
21 permanent rates.

22 WITNESS DESCOTEAU: Uh-huh.

23 **CROSS-EXAMINATION**

24 BY MR. GETZ:

[WITNESS PANEL: St. Cyr|Descoteau]

1 Q And I think, as you said, that if temporary
2 rates are greater -- or, if permanent rates are
3 greater than temporary rates, then the
4 difference is recouped by Abenaki, is that
5 correct?

6 A (Descoteau) That's correct.

7 Q Then, on the other hand, if permanent rates are
8 less than temporary rates, if customers are
9 overpaying in the interim, then that difference
10 is refunded to customers later?

11 A (Descoteau) Yes.

12 Q Is that correct?

13 A (Descoteau) That is correct.

14 Q Would you agree that the potential permanent
15 rate increase in this case could be lower than
16 the proposed 14.89 percent temporary rate
17 proposal?

18 A (Descoteau) I can't comment. I'm not sure on
19 that at this point.

20 Q So, it's fair to say you haven't formed an
21 opinion on that?

22 A (Descoteau) I haven't at this point.

23 Q Is it fair to say that it's a common practice
24 at the Commission to set temporary rates at

{DW 17-165} [Re: Temporary Rates] {06-11-18}

[WITNESS PANEL: St. Cyr|Descoteau]

1 current rates?

2 A (Descoteau) When Staff gets a filing into the
3 office, it looks at all the expenses and
4 revenues and the income statements and all the
5 investments that have been made that are
6 presented in the case. And if they're
7 justifiable, we'll do above current rates. We
8 try to make the shock, the rate shock is the
9 least amount possible on the customers.

10 Q But it's not unusual for the Commission to set
11 temporary rates at current rates?

12 A (Descoteau) It's been done.

13 Q Is it -- would it be fair to say that the
14 practice of setting temporary rates at current
15 rates assures that customers are not put in the
16 position where they're overpaying and then
17 subject to receiving a refund six or nine
18 months or more later?

19 A (Descoteau) It could happen.

20 Q But, mathematically, if you set rates at
21 current rates, then there's no refund that
22 would occur?

23 A (Descoteau) Correct.

24 Q Would you be surprised to learn that, as a

{DW 17-165} [Re: Temporary Rates] {06-11-18}

[WITNESS PANEL: St. Cyr|Descoteau]

1 customer, Omni Mount Washington Hotel would
2 prefer that it not be in the position where
3 it's overpaying now and would receive a refund
4 at some future date?

5 A (Descoteau) I've read that opinion.

6 Q Well, for this docket, let me ask this
7 question, would the likelihood of a refund
8 situation occurring, would that be reduced if
9 the Commission were to reduce the proposed
10 temporary rate increase?

11 A (Descoteau) I don't know at this point.

12 Q Do you have an opinion on whether a temporary
13 rate increase in the range of 5 to 10 percent
14 would be unjust or unreasonable?

15 A (Descoteau) My calculations are showing at this
16 point that they should be at 14.89 percent.

17 Q No higher? No lower?

18 A (Descoteau) At this point, my calculations are
19 showing the 14.89.

20 MR. GETZ: I have no further
21 questions, Mr. Chairman. Thank you.

22 CHAIRMAN HONIGBERG: Mr. Mueller.

23 MR. MUELLER: Yes. I have a question
24 for Mr. St. Cyr, with respect to the income tax

[WITNESS PANEL: St. Cyr|Descoteau]

1 calculations on Schedule 1.

2 BY MR. MUELLER:

3 Q Schedule 1 as presented comes down to a derived
4 rate of return -- or, increase, rather, of the
5 14.89 percent. But it assumes an Income Tax
6 Divisor of 60 percent, which would be the
7 amount that Abenaki would keep after Federal
8 Income Taxes and state income taxes. Keep 60
9 percent, 40 percent would be what they would
10 pay for federal taxes at the old rate of 35
11 percent and the New Hampshire Business Profits
12 Tax less Federal Income Tax benefit.

13 So, my question to you is, given the
14 significant reduction in Federal Income Tax
15 rates as of January 1st, from 35 percent down
16 to 21 percent, I think that 60 percent Income
17 Tax Divisor in that schedule should be quite a
18 bit higher, because Abenaki is going to keep a
19 lot more money after tax. And if you filtered
20 that different assumption down, the increase in
21 temporary rates would be more like 11.93
22 percent, rather than 14.89 percent.

23 So, my question is on the Income Tax
24 Divisor, why is it set at the old rates and not

{DW 17-165} [Re: Temporary Rates] {06-11-18}

[WITNESS PANEL: St. Cyr|Descoteau]

1 the new rates?

2 A (St. Cyr) So, the calculation was actually done
3 by Staff, but the Company agrees with it. And
4 maybe the clearest way in which to see that is
5 Attachment A, Schedule 5. On Attachment A,
6 Schedule 5, what you see is what the rates were
7 in 2017, and specifically the federal tax rate
8 being 34 percent and the New Hampshire Business
9 Tax rate being 8.2 percent. And those were the
10 rates that the Company used in its original
11 filing. Subsequently, we did have the change
12 in the tax laws. And the rates that are
13 actually used in the calculation of determining
14 rates are what's under the column "Effective
15 2018". And you can see that the Federal Income
16 Tax rate is at "21 percent" and the New
17 Hampshire Business Profits Tax is at
18 "7.9 percent". So, the proposed temporary
19 rates do take into consideration the lower
20 federal and state tax rates.

21 The percentage that you're referring to,
22 the percentage used as a divisor to determine
23 the revenue requirement, that, too, is cited on
24 that particular page. It was "60.59 percent",

{DW 17-165} [Re: Temporary Rates] {06-11-18}

[WITNESS PANEL: St. Cyr|Descoteau]

1 and it's now "72.76 percent". And what that's
2 essentially doing is making sure that the
3 revenue is adequate in order to cover the tax.

4 Q I understand that, and I agree with the
5 calculations as you mentioned on Schedule 5, in
6 the right-hand column, "Effective 2018", the
7 "27.24 percent".

8 However, I guess my question is, that
9 doesn't seem to flow through to the top
10 schedule, Schedule 1. It's still using the old
11 rate at the 60.59 percent, which would affect
12 the temporary increase rates.

13 CHAIRMAN HONIGBERG: Put simply, what
14 Mr. Mueller is asking is, on Schedule 1, why is
15 it "60.59" instead of "72.76"?

16 WITNESS ST. CYR: I guess we would
17 have to take a second look at that. I'm not --
18 offhand, I'm not really sure.

19 MR. SPEIDEL: Mr. Chairman, I've been
20 advised by Director Frink that Assistant
21 Director Laflamme is prepared to offer
22 testimony in explanation of this matter.

23 CHAIRMAN HONIGBERG: Is there any
24 objection to having Mr. Laflamme testify for

[WITNESS PANEL: St. Cyr|Descoteau|Laflamme]

1 Staff?

2 [No verbal response.]

3 CHAIRMAN HONIGBERG: Seeing none, why
4 don't we have Mr. Laflamme sworn in.

5 (Whereupon **Jayson P. Laflamme**
6 was duly sworn by the Court
7 Reporter and joined the witness
8 panel.)

9 **JAYSON P. LAFLAMME, SWORN**

10 BY CHAIRMAN HONIGBERG:

11 Q Mr. Laflamme, why don't you identify yourself
12 for the record.

13 A (Laflamme) My name is Jayson Laflamme. I'm the
14 Assistant Director of the Gas & Water Division
15 of the New Hampshire Public Utilities
16 Commission.

17 Q You heard the exchange that was going on just
18 before you moved from the table to the witness
19 stand?

20 A (Laflamme) Yes.

21 Q What did you want to offer up on this topic?

22 A (Laflamme) I think the question was that it
23 appears that the schedules reflect the income
24 tax -- income taxes at the prior rates,

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[WITNESS PANEL: St. Cyr|Descoteau|Laflamme]

1 34 percent for Federal Income Tax and
2 8.2 percent for state income tax. The reason
3 why that the Income Tax Divisor reflected on
4 Schedule 1 is at the old rate is that we're
5 kind of in a transitional period. The filing
6 was made under the assumption of the old tax
7 rates. And, so, we use that as -- in order to
8 determine an initial revenue deficiency, and
9 you'll see that on Schedule 1, of "\$47,138".

10 But underneath that is what has been
11 labeled a "Tax Rate Change Revenue Adjustment",
12 and that reduces that initial revenue
13 deficiency that was calculated by \$5,993. And
14 that adjustment reduces -- effectively reduces
15 the income tax expense reflected in rates from
16 the old rates that were effective in 2017,
17 2017, to the new rates, which went into effect
18 in 2018. And the calculation of that \$5,993
19 reduction can be found on Bates Page 011, which
20 is Attachment A, Schedule 4b, at the bottom of
21 the page. And it's identified as "Tax Change
22 Effect - FERC Methodology". And that's what
23 has been adopted by -- the FERC methodology
24 dates back to when there was a similar tax

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1 change in the mid 1980s, I believe. And this
2 was -- this was the calculation that was used
3 on an interim basis in order to determine the
4 reduction resulting from the tax rate changes.

5 CHAIRMAN HONIGBERG: Mr. Mueller, do
6 you want to continue?

7 MR. MUELLER: Sure. I appreciate the
8 explanation of what that 5,993 represents. And
9 I did review Attachment A and Schedule 4b.
10 However, I would submit that the 5,993 is not
11 enough to compensate for the change in the tax
12 rates. The line above it, as submitted, was
13 47,138. I think that number should be more
14 like 39,252, so, a difference of about \$8,000.
15 So, a little bit different than the 5,993. So,
16 personally, I think the 5,993 is not enough to
17 compensate for the change in the rates.

18 That said, I'm not familiar with
19 FERC, the Federal Energy Regulatory Commission.
20 I'm not sure how that's relevant here. But I
21 did review the calculations. I understand the
22 calculations. But I would submit that I don't
23 think it's adequate.

24 CHAIRMAN HONIGBERG: Well, right now,

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[WITNESS PANEL: St. Cyr|Descoteau|Laflamme]

1 if you have any other questions for the panel,
2 we understand that you have that argument and
3 that's your position. But do you have other
4 questions for the panel at this time.

5 MR. MUELLER: I do not.

6 CHAIRMAN HONIGBERG: Okay. Mr.
7 Kreis.

8 MR. KREIS: Thank you, Mr. Chairman.
9 Just a couple of brief questions, I think for
10 Ms. Descoteau.

11 BY MR. KREIS:

12 Q Ms. Descoteau, the proposed Settlement
13 Agreement on Temporary Rates includes embedded
14 within it a return on equity of 9.6 percent.
15 How did you settle on that figure?

16 A (Descoteau) That figure is the amount that
17 we've been using for small water utilities in
18 past cases recently.

19 Q Have there any been any changes to the overall
20 economic conditions in the last few months that
21 might suggest a different return on equity
22 could apply in determining what rates are just
23 and reasonable today?

24 A (Descoteau) Those weren't given any factors.

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[WITNESS PANEL: St. Cyr|Descoteau|Laflamme]

1 Q So, there are such changes, but you didn't
2 consider them. That's your answer?

3 A (Descoteau) I wouldn't say so. I wouldn't give
4 that -- I wouldn't say "yes" or "no" to that.

5 Q Okay. Is it fair to say, looking at the big
6 picture here, that the way that you reached
7 settlement with the Company is the Company
8 started by eliminating certain *pro forma*
9 adjustments from its temporary rate request,
10 yes, compared to its permanent rate request?

11 A (Descoteau) I don't understand the question.

12 Q Well, I'm just trying to figure out how you
13 settled on the revenue requirement that you
14 adopted for temporary rates. So, maybe you
15 could just describe the process of how you got
16 there?

17 A (Descoteau) Describing the process is a private
18 meeting between the parties in a settlement
19 discussion.

20 Q I'm not asking you to talk at all about what
21 settlement discussions you've had with the
22 Company. I'm just asking you to explain to me,
23 and ultimately to the Commission, how you got,
24 and how the Commission should get, and how we

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[WITNESS PANEL: St. Cyr|Descoteau|Laflamme]

1 should all think about how you took whatever
2 the Company was requesting in temporary rates
3 and concluded that some different figure ought
4 to really apply, and that's the figure in the
5 Settlement Agreement?

6 MR. SPEIDEL: I would object to the
7 question for lack of clarity.

8 CHAIRMAN HONIGBERG: Yes. I think,
9 Mr. Kreis, the way you were going at it
10 originally I think is going to get you what
11 you're looking for. So, if you want to circle
12 back to the first question you asked Ms.
13 Descoteau on this topic, and maybe ask Mr. St.
14 Cyr as well, they can describe how they started
15 with one set of numbers and ended up with a
16 different set of numbers at the end. And I
17 think some of the schedules provide us with
18 some of that information, too.

19 MR. KREIS: Well, right. But that
20 presupposes a level of cooperation from the
21 witnesses that has not been forthcoming.

22 CHAIRMAN HONIGBERG: I'm just
23 suggesting that you try again. And if you
24 don't get cooperation, you may get assistance.

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[WITNESS PANEL: St. Cyr|Descoteau|Laflamme]

1 MR. KREIS: Thank you. So, again, I
2 think my questions are for Ms. Descoteau.

3 BY MR. KREIS:

4 Q When the Company made its temporary rate
5 request, this is just a yes or no question, the
6 Company got -- the Company started with its
7 permanent rate request and eliminated certain
8 *pro forma* adjustments for purposes of temporary
9 rates, correct?

10 A (Descoteau) Correct.

11 Q And you, meaning the Staff, then eliminated
12 certain additional *pro forma* requests, to get
13 to your temporary rate settlement with the
14 Company. Yes?

15 A (Descoteau) Correct.

16 Q And so, is it fair to say that, in your
17 judgment, there are no reasonable grounds for
18 questioning the *pro forma* adjustments that you
19 did adopt in the Settlement Agreement with
20 respect to temporary rates?

21 A (Descoteau) Correct.

22 MR. KREIS: Okay. Mr. Chairman, I
23 think those are the only questions I really
24 need to ask.

{DW 17-165} [Re: Temporary Rates] {06-11-18}

[WITNESS PANEL: St. Cyr|Descoteau|Laflamme]

1 CHAIRMAN HONIGBERG: Commissioner
2 Bailey.

3 CMSR. BAILEY: Thank you. Good
4 morning.

5 BY CMSR. BAILEY:

6 Q Mr. Laflamme, can you take me through
7 Attachment A, Schedule 4b, on Bates Page 011,
8 and tell me how the tax change effect works its
9 way through to Schedule 1, on Bates Page 004?

10 I understand you used the FERC methodology
11 to change the tax impact. But I really want to
12 understand the math.

13 A (Laflamme) Do you want me to take you through
14 the entire Schedule 4b or just that bottom,
15 that bottom calculation?

16 Q Well, the bottom calculation is the calculation
17 that reduces the tax expense by \$5,993. That's
18 what I'm interested in.

19 A (Laflamme) Okay. Just to walk it through, the
20 "Income Tax Expense prior to Gross-up" is a
21 negative \$4,458. And that's derived from, I
22 think if you go to Schedule 4, and you'll see
23 that the first three columns show the original
24 temporary rate filing. And then, if you go

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[WITNESS PANEL: St. Cyr|Descoteau|Laflamme]

1 down to the next to the last line, results in a
2 \$27,173 income tax expense during the Company's
3 test year. And then, in Column (4), --

4 Q Wait a sec. Can you help me out with the
5 \$27,000 number?

6 A (Laflamme) Yup.

7 Q Where is that?

8 A (Laflamme) That is the next to the last line,
9 right above "Net Operating Income", there's a
10 line identified as "Less Income Taxes".

11 Q So, is that the number that the Company claims
12 it spent on income taxes in the test year?

13 A (Laflamme) I believe so, yes. Yes. It's a *pro*
14 *forma* test year from -- and I'll have Mr. St.
15 Cyr answer that. The *pro forma* test year is?

16 A (St. Cyr) The twelve months ended September 30,
17 2017.

18 A (Laflamme) And --

19 Q Okay. Wait a second. So, in 2017, you
20 actually paid \$10,626, and you're adjusting
21 that upward by 16,547?

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

23 Q And why is that upward adjustment included?

24 A (St. Cyr) So, the income taxes incurred during

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[WITNESS PANEL: St. Cyr|Descoteau|Laflamme]

1 the year was 10,626, but it produced a net
2 loss. So, as the Company adds revenue from the
3 proposed increase in rates, it adjusts its
4 expense in anticipation of paying a larger
5 expense.

6 Q Okay. So, if you got your full revenue
7 requirement, then your taxes in 2017 would have
8 increased by 16,000?

9 A (St. Cyr) That's correct. If the proposed
10 temporary rates were increased and we, in turn,
11 received that additional amount of revenue,
12 then we would have had additional amount of
13 tax. And this was the amount that we
14 calculated and submitted as part of the
15 original filing.

16 Q Okay. So that \$16,547 increase in tax expense
17 is based on the revenue requirement that you
18 asked for in permanent rates?

19 A (St. Cyr) In temporary rates.

20 Q Just in the temporary rates?

21 A (St. Cyr) Correct.

22 Q So, by raising your rates by 14,000 something
23 dollars, you get a \$16,000 additional tax
24 burden?

{DW 17-165} [Re: Temporary Rates] {06-11-18}

[WITNESS PANEL: St. Cyr|Descoteau|Laflamme]

1 A (St. Cyr) It's 40 some odd thousand dollars.

2 The increase in revenue would be --

3 Q Oh, 41.

4 A (St. Cyr) -- 41,145.

5 Q Yes. Okay. All right. Thank you. Okay. Go
6 ahead, Mr. Laflamme.

7 A (Laflamme) Okay. And then, Staff made a *pro*
8 *forma* adjustment for two income taxes, to
9 reduce income tax expense by \$15,084, which --
10 and that's based on -- that's based on the
11 calculation I believe at the top of
12 Schedule 4 -- 4b.

13 And so, taking into account the actual
14 test year, the Company's *pro forma* adjustment,
15 Staff's *pro forma* adjustment to reduce, we wind
16 up with an income tax expense of negative
17 \$4,458.

18 Q And so, that means you think that the income
19 tax expense is going to be that much less than
20 what the Company thought it would be?

21 A (Laflamme) That's actually probably true --
22 more clearly said, based on the *pro forma* test
23 year, before calculating the revenue
24 deficiency, the Company would be due a refund

{DW 17-165} [Re: Temporary Rates] {06-11-18}

[WITNESS PANEL: St. Cyr|Descoteau|Laflamme]

1 of \$4,458.

2 Q Say that again. Sorry.

3 A (Laflamme) Before -- before calculating the
4 revenue deficiency for the Company, and taking
5 into account the *pro forma* adjustments to the
6 test year, it would result in a \$4,458 tax
7 refund to the Company.

8 Q So, that's -- they paid actually 10,626, and
9 you're saying that they would have been due a
10 refund of 4,458?

11 A (Laflamme) If, based on the *pro forma* -- what
12 *pro forma* adjustments have been made.

13 Q And the *pro forma* adjustments that were made by
14 the Company and Staff or just by Staff?

15 A (Laflamme) By the Company and Staff.

16 Q Okay. How does that jibe with the \$16,000
17 increase in taxes that the Company thought it
18 would need if the \$41,000 temporary rate had
19 been in effect?

20 A (St. Cyr) So, I may be in a better position to
21 answer that. First of all, the original
22 temporary filing was filed at the higher rates.
23 So, the filing was made at 34 and the
24 8.2 percent tax rates. And then, when we made

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[WITNESS PANEL: St. Cyr|Descoteau|Laflamme]

1 the revised filing, that amount -- I guess the
2 actual amount didn't actually change, but then
3 Staff took into consideration the lower rates
4 in adjusting the tax expense. And they're
5 saying, if the lower rates were in place during
6 the test year, based on their calculation, we
7 would have got a refund rather than an expense.

8 Q Oh, I see.

9 A (St. Cyr) And now they're saying, to just take
10 that one step further, that gets us to a point
11 where we have not yet adjusted the revenue for
12 the temporary rates. So, when you then add the
13 additional revenue that's required, and then go
14 back and recalculate what the tax would be at
15 the lower rates, that's the subsequent
16 adjustment that they made to get us to an
17 operating income requirement of the 14,120.

18 Q Where does the income tax gross-up number come
19 from on Schedule 4b?

20 A (Laflamme) That comes from, if you take -- if
21 you go to Schedule 1, and starting from the
22 top, you have rate base times the rate of
23 return of 6.74 percent, and it results in a
24 operating income requirement of \$29,442.

{DW 17-165} [Re: Temporary Rates] {06-11-18}

[WITNESS PANEL: St. Cyr|Descoteau|Laflamme]

1 Q Before you leave there, sorry to interrupt, but
2 that 29,442 is the income requirement from the
3 return on investment. It's not the only
4 operating income requirement. Is that correct?

5 A (Laflamme) Correct.

6 Q So, it's a portion of the operating income
7 requirement, based on return on investment?

8 A (Laflamme) Correct.

9 Q All right. Thank you.

10 A (Laflamme) Correct.

11 Q Okay. Go ahead.

12 A (Laflamme) And then, when you compare that
13 to -- when you compare the operating income
14 requirement to the *pro forma* operating income
15 of \$882, the result indicates that the Company
16 has a revenue deficiency of \$28,560. And then
17 that number is divided by the Income Tax
18 Divisor of 60.59 percent, based on the old
19 rate, the old income tax rates, and you come to
20 a tax effected revenue deficiency of 47,138.
21 The difference between \$47,138 and \$28,560 is
22 the tax gross-up of \$18,578.

23 Q Okay.

24 A (Laflamme) And then, so, when you net the two,

{DW 17-165} [Re: Temporary Rates] {06-11-18}

[WITNESS PANEL: St. Cyr|Descoteau|Laflamme]

1 the income tax expense prior to gross-up of
2 \$4,458, plus the income tax gross-up of 18,578,
3 you come to a composite income tax expense of
4 \$14,120. And then, this is according to the
5 FERC methodology, what's done is you -- and
6 this is from Schedule 5, Schedule 5, and what's
7 been determined on Schedule 5 is the tax
8 multiplier under the old income tax rates in
9 2017 and the effective -- the tax multiplier
10 under the rates for 2018. And so, you use the
11 2018 tax factor as the numerator, the 2017 tax
12 factor as the denominator, and you come up with
13 basically the percentage -- the percentage of
14 the income tax expense that needs to be reduced
15 in order to -- in order to determine the income
16 tax expense under the new income tax rates.
17 And that -- that percentage has been
18 determined, it's 0.57 -- 57. When applied to
19 the income tax expense of 14,120, the adjusted
20 composite income tax expense is \$8,127, and
21 that's -- that what the income tax should be
22 under the new rates of federal and state. And
23 in order to get to that amount, the composite
24 income tax expense of \$14,120 needs to be

{DW 17-165} [Re: Temporary Rates] {06-11-18}

[WITNESS PANEL: St. Cyr|Descoteau|Laflamme]

1 reduced by \$5,993, in order to come up to the
2 adjusted composite income tax expense.

3 Q Okay. Thank you. Would it have been easier,
4 or would it maybe not have been consistent with
5 the FERC methodology, but for purposes of
6 temporary rates, couldn't you have just
7 multiplied the \$28,560, rather than by 60.59,
8 by -- I've lost track of the number, but around
9 72 percent?

10 A (Laflamme) I would hesitate to comment at this
11 time, because the FERC methodology has been --
12 has been what's been adopted by Staff for this
13 transitional period in determining, and is
14 consistent with the methodology that's been
15 adopted by Staff during this transitional
16 period of determining the effect of the tax
17 rate changes on revenue requirements.

18 Q So, is that how you will probably do it in the
19 permanent rate case, by the FERC methodology,
20 or would you figure out the revenue
21 requirement --

22 A (Laflamme) Unless -- at this point, yes, unless
23 a new methodology has been investigated and
24 determined by Staff. This is consistent --

{DW 17-165} [Re: Temporary Rates] {06-11-18}

[WITNESS PANEL: St. Cyr|Descoteau|Laflamme]

1 this methodology is consistent with what was
2 done during the last big tax change in the mid
3 '80s.

4 Q Thank you. Ms. Descoteau, can you look at
5 Bates Page 006 of Schedule 3?

6 A (Descoteau) Yes.

7 Q And are those numbers based on reports of the
8 utility filed with the Commission?

9 A (Descoteau) Which numbers?

10 Q All of them.

11 A (Descoteau) All of them. They all are.

12 Q Okay. So, these are the numbers that the
13 Company says are accurate. And, Mr. St. Cyr,
14 to the best of your knowledge, these numbers
15 are accurate?

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

17 Q And they show a revenue deficiency of, tell me
18 what the number is?

19 A (Descoteau) These are year plant in service
20 numbers.

21 Q Okay. And based on these numbers, there is a
22 revenue deficiency of, if you use 9.6 as a
23 return on equity, --

24 A (Descoteau) Yes.

{DW 17-165} [Re: Temporary Rates] {06-11-18}

[WITNESS PANEL: St. Cyr|Descoteau|Laflamme]

1 Q -- then the revenue deficiency is 41,000
2 something dollars, that's how you got to
3 temporary rates?

4 A (Descoteau) Yes.

5 Q Okay.

6 A (Descoteau) And the reason there were two
7 different temporary adjustments was that in the
8 original filing it was submitted with the
9 four-quarter average, and Staff requested that
10 it be done at a five-quarter average. And the
11 Company just found a few items through audit
12 that had been adjusted, so the Company
13 submitted those changes in their five-quarter
14 adjustments.

15 Q Okay. But, to the best of your knowledge, you
16 believe that the Company is underearning, based
17 on all these assumptions, and there's a lot
18 more work to be done, but that they're
19 underearning by 41,000 something dollars right
20 now?

21 A (Descoteau) Based on temporary rates, yes.
22 There will probably be changes in the permanent
23 rate, because they're -- the permanent rates
24 has adjustments that we have not looked at yet.

{DW 17-165} [Re: Temporary Rates] {06-11-18}

[WITNESS PANEL: St. Cyr|Descoteau|Laflamme]

1 But based on what's been presented in temporary
2 rates, they are underearning.

3 CMSR. BAILEY: Okay. Thank you.
4 That's all I have.

5 CHAIRMAN HONIGBERG: Commissioner
6 Giaimo.

7 CMSR. GIAIMO: Good morning.

8 WITNESS ST. CYR: Good morning.

9 CMSR. GIAIMO: That wasn't a very
10 enthusiastic "good morning".

11 WITNESS DESCOTEAU: Good morning.

12 WITNESS ST. CYR: Good morning.

13 CMSR. GIAIMO: All right. Thanks.

14 Ms. Descoteau mentioned in the
15 beginning "sticker shock", and I think Mr. Getz
16 was making some references to that as well with
17 respect to concerns of his clients. So, I have
18 just a couple questions in that area.

19 BY CMSR. GIAIMO:

20 Q Attorney Getz suggested that his clients would
21 prefer not to pay more than they have to, and
22 would prefer not to pay more now, even if it
23 means a refund later. Is anyone willing to
24 handicap the likelihood of needing a refund?

{DW 17-165} [Re: Temporary Rates] {06-11-18}

[WITNESS PANEL: St. Cyr|Descoteau|Laflamme]

1 A (St. Cyr) I believe there's no chance that that
2 would happen.

3 A (Descoteau) And I would agree with that at this
4 point.

5 Q Great. During the settlement, and I'm not
6 going to ask you to go into any specifics, but
7 did the Staff and the Company consider
8 potential sticker shock, and was the temporary
9 number set via the Settlement mindful of the
10 potential for a future -- for the future
11 sticker shock?

12 A (St. Cyr) I would say yes.

13 Q Has there been any back-of-the-envelope
14 calculations as to what the permanent rates
15 will look like relative to these Settlement
16 rates? If the Settlement is expected to
17 increase the average residential customer by
18 \$33, what could the potential next permanent
19 rate case look like?

20 A (St. Cyr) So, in the Company's original filing
21 for permanent rates, it requested an increase
22 of \$102,232.

23 Q Uh-huh.

24 A (St. Cyr) So, 41,000 would be roughly

{DW 17-165} [Re: Temporary Rates] {06-11-18}

[WITNESS PANEL: St. Cyr|Descoteau|Laflamme]

1 40 percent of that. And the original filing
2 again would have included the old tax rates.
3 So, the Company, you know, without any
4 discussions with Staff, would expect that that
5 request would be lower, simply because of the
6 lower tax rates. But this is -- the temporary
7 rates is a step towards getting what the
8 Company had requested as part of its original
9 filing.

10 Q So, we could see, if it was \$33, we could see
11 something in the magnitude of another -- a
12 doubling of that?

13 A (St. Cyr) Potentially, yes.

14 CMSR. GIAIMO: Okay. Thank you. I
15 have no other questions.

16 CHAIRMAN HONIGBERG: I don't have any
17 questions that haven't already been asked.

18 Just before we circle back for
19 redirect, Mr. Getz, you didn't -- you asked
20 your questions before Mr. Laflamme appeared in
21 the witness box. Do you have any questions for
22 Mr. Laflamme?

23 MR. GETZ: I do not.

24 CHAIRMAN HONIGBERG: Okay. Thank

[WITNESS PANEL: St. Cyr|Descoteau|Laflamme]

1 you.

2 Mr. Speidel, do you have any redirect
3 for the panel?

4 MR. SPEIDEL: We do not, no. Thank
5 you.

6 CHAIRMAN HONIGBERG: Mr. St. Cyr, in
7 light of all the questions that have been asked
8 by the folks out there, do you have anything
9 you would want to add on redirect?

10 WITNESS ST. CYR: I do not.

11 CHAIRMAN HONIGBERG: All right. So,
12 I think the witnesses can return to their
13 seats.

14 There are no other witnesses, is that
15 correct?

16 *[No verbal response.]*

17 CHAIRMAN HONIGBERG: Before we have
18 the parties sum up, I'll note that there is an
19 opportunity for public comment. Are there any
20 members of the public who wish to comment on
21 the Company's temporary rate request?

22 *[No indication given.]*

23 CHAIRMAN HONIGBERG: All right,
24 seeing none. I guess we'll go Mr. Getz,

{DW 17-165} [Re: Temporary Rates] {06-11-18}

1 Mr. Mueller, Mr. Kreis, Mr. Speidel, and then
2 Mr. St. Cyr.

3 Mr. Getz, why don't you start us
4 off.

5 MR. GETZ: Okay. Thank you, Mr.
6 Chairman.

7 I'll begin by addressing the issue of
8 the effective date. You did raise the point
9 with respect to the 1980 Pennichuck Water Works
10 case. As I understand that case, the temporary
11 rate filing was made along with the permanent
12 rate filing. I don't think that case reaches
13 the facts of this case. I think that case
14 stands for the proposition that, when a
15 temporary rate filing is made along with the
16 permanent rate filing, that the Commission has
17 a great deal of discretion in when it will set
18 the effective date. That case was I think a
19 little complicated because of the whole issue
20 of bills rendered filing, and I think the
21 argument was there that the Commission set the
22 effective date several months after the
23 suspension order, and the Company had argued
24 that it go back to the original date of filing.

1 But I think the larger issue is that,
2 though the Commission has, you know, wide
3 discretion when there's the rates -- the two
4 rate requests are made together, that's not the
5 situation here.

6 CHAIRMAN HONIGBERG: Assume with me
7 for a moment the following facts: That the
8 permanent rate request was made at the end of
9 December. Within a few weeks, the Commission
10 suspended the tariff. And in response to that
11 action, the Company requested that its
12 permanent rates be set as temporary rates.
13 Assume that chronology, which is what I think
14 is what happened.

15 MR. GETZ: So, the -- I'm sorry.

16 CHAIRMAN HONIGBERG: Assume your
17 chronology is not correct.

18 MR. GETZ: Okay.

19 CHAIRMAN HONIGBERG: That the request
20 for a temporary rate wasn't put in place until
21 after the permanent rate request was -- or, the
22 permanent rate tariff was suspended.

23 MR. GETZ: Well, putting --

24 CHAIRMAN HONIGBERG: Because I think

1 that's our chronology, and I believe that
2 parallels this chronology.

3 MR. GETZ: The chronology here, I
4 don't know, you know, if I assume that that's
5 what actually did happen in the 1980 Pennichuck
6 Water Works case, and then that's what the -- I
7 don't see that, but if that's what they -- if
8 that's the facts that they were basing it on,
9 and it was an informed decision, then I look at
10 it as it would be saying that you have that
11 discretion.

12 But I also look at and direct the
13 Commission to the Lakes Region Water Company
14 case in DW 05-137, which is analogous to this
15 case, where there was a rate filing in
16 December, there was a suspension order in
17 January, and then the Petition for Temporary
18 Rates was filed in February. In that case, the
19 Commission required a Supplemental Order of
20 Notice. And so, it would set back the
21 effective date. And what we -- we lack a
22 Supplemental Order of Notice in this case.

23 So, our position, even if you were --
24 the hypothetical or the assumption is correct

1 about what happened in 1980, the Commission has
2 wide discretion. And we would argue the better
3 course is to issue that Supplemental Order of
4 Notice as was done in the Lakes Region case.
5 And that would -- so, there's been no real
6 notice, not effective notice at this point from
7 our position.

8 CHAIRMAN HONIGBERG: Sure.

9 CMSR. BAILEY: Mr. Getz, there was
10 notice of the permanent rate filing, and
11 everybody who was interested in talking about
12 the permanent rates intervened. And those
13 intervenors got notice of this temporary rate
14 filing and temporary rate hearing. Is that
15 correct?

16 MR. GETZ: So, the parties to the
17 case received the Petition for Temporary Rates
18 when it was filed on January 18th, I believe.

19 CMSR. BAILEY: Okay. Do you think
20 that there would have been more interventions
21 if we issued another Order of Notice on the
22 temporary rates? I mean, didn't the people who
23 were interested in this rate increase get
24 notice?

1 MR. GETZ: I don't think I can speak
2 to that, and I don't think that's the test of
3 whether there's effective notice is if you're
4 going to make a judgment based on how many
5 people respond.

6 CMSR. BAILEY: Not how many, but who,
7 the people who are interested in the rate
8 increase.

9 MR. GETZ: But I don't think that's
10 the judgment of effective notice, is what has
11 the Company done to assure that all customers
12 know about the proposed temporary rate increase
13 that was part of the testimony. Not that
14 people who show up and intervene based on the
15 permanent rate increase are the only ones who
16 need to know, and are the only ones that
17 actually get the notice.

18 CMSR. BAILEY: Okay. Thank you.

19 CHAIRMAN HONIGBERG: Go ahead. You
20 can continue.

21 MR. GETZ: Well, I think that
22 completes the points I wanted to make. And the
23 only other issue with respect to the notice
24 here I guess also goes to the completeness of

1 the original filing. The irregularity of this
2 case, where you filed permanent rates, you have
3 the prehearing conference, you file temporary
4 rates, and then just last week now we're seeing
5 the testimony on the ROE premium, which should
6 have been part of the filing made back in
7 December.

8 That's all I have, Mr. Chairman.

9 CHAIRMAN HONIGBERG: Thank you, Mr.
10 Getz. Mr. Mueller.

11 MR. MUELLER: With respect to the
12 adequate notice, having been here back in
13 January, having been one of the intervenors, at
14 that time I believe the facts were there was a
15 permanent rate increase proposed, there was not
16 a temporary rate increase proposed. And if my
17 memory serves correct, even the Staff commented
18 that that was unusual.

19 Subsequent to that January meeting,
20 as an intervenor, the permanent rate increase
21 request was withdrawn. And there was nothing
22 sent to homeowners after that to notify us
23 about any temporary rate increase.

24 So, I don't feel that we were

1 properly noticed, just as a homeowner, without
2 any knowledge of these previous rate cases that
3 have been mentioned. So, just personally, as a
4 homeowner, I don't feel that we were
5 appropriately noticed. And to have the
6 effective date of any rate increase for
7 temporary rates go to February 1st just doesn't
8 seem right, when we weren't properly noticed.

9 CHAIRMAN HONIGBERG: That's it?

10 MR. MUELLER: And, secondly, I do
11 have a comment on the ROE premium.

12 CHAIRMAN HONIGBERG: Uh-huh.

13 MR. MUELLER: I do expect there's
14 lots of material out in the Internet that you
15 can look at for ROE premiums. And following
16 along with Mr. Kreis's question about "was more
17 current financial conditions considered in the
18 9.6 percent ROE premium?", and I don't think I
19 got a conclusive response on that. But there
20 are Massachusetts rate case filings more
21 current that would say an ROE premium should be
22 a 3 percent premium based on their
23 debt-to-equity ratios over non-risk treasuries.
24 And if you assume that non-risk 30-year

1 treasuries today are about 3 percent, that
2 would give about a 6 percent ROE premium,
3 rather than the 9.6 that was assumed in the
4 request.

5 That's all I have.

6 CHAIRMAN HONIGBERG: Mr. Kreis.

7 MR. KREIS: Thank you, Mr. Chairman.

8 I don't have a whole lot to add to the learned
9 arguments that you have just heard from Mr.
10 Getz and Mr. Mueller.

11 I think that the Commission needs to
12 keep in mind that the temporary rate statute,
13 RSA 378:27, vests you with permissive
14 authority. We've heard a lot from the State
15 Supreme Court recently about the difference
16 between the "shall" and everything else. And
17 this is not a "shall" scenario. This is a
18 "may" scenario, because that's the word in the
19 statute, and you have a lot of discretion.

20 You have heard from all of the
21 ratepayer interests that are represented here
22 that the temporary rates should not be put into
23 effect on the schedule agreed to in the
24 Stipulation and Settlement Agreement. And I

1 think you should take that very seriously.
2 This is a case that will set a precedent, that
3 will be looked to by subsequent customers in
4 temporary rate scenarios. The temporary rates
5 are fully reconciling, of course. So,
6 ultimately, this will all come out in the wash,
7 depending on what decision you make at the very
8 end of the case.

9 In the meantime, for whatever reason,
10 this is a company that has pursued a very
11 irregular path to getting us here talking about
12 temporary rates today. And I don't think you
13 should reward those irregularities, both with
14 respect to what ROE should apply as the just
15 and reasonable rate ultimately in this case,
16 and what the Company is entitled to by way of
17 temporary rates.

18 I don't have a lot of arguments to
19 make on the specific revenue requirement that
20 the Company and the Staff settled upon. I take
21 the Staff analyst at their word that they have
22 followed the dictates of the statute, which is
23 to say they have no reasonable ground to
24 question any of the figures that they adopted

1 in the Settlement that they received from the
2 Company. I accept that.

3 I think the real issue here is the
4 effective date of the temporary rates. And I
5 think that the 1980 Pennichuck Water Works case
6 tells you and all of us that, to the extent the
7 Commission regards itself as bound by that
8 precedent, you have a lot of discretion to do
9 right by both the shareholders -- the owners of
10 the Company and the shareholders as the
11 statutory arbiter between those two interests.

12 CHAIRMAN HONIGBERG: Mr. Kreis, you
13 mention that, because this is a reconciling
14 rate, there will be either a recoupment or a
15 refund, that it "will all come out in the
16 wash". But it's significant as to when we
17 start the temporary rate. If it's effective
18 February 1, it will all be reconciled to that
19 date. But, if it doesn't start until some
20 later date, there's a period of time in which
21 the Company will just -- that money will be
22 gone, right?

23 MR. KREIS: Yes. And I think that to
24 the extent that is an unwelcomed reality of the

1 Company, that's the cost of pursuing such an
2 irregular path to getting us here.

3 CHAIRMAN HONIGBERG: Okay.

4 CMSR. GIAIMO: Yes. Just to put a
5 different spin on the same question.

6 So, you have concern with delaying
7 this case for ineffective notice, effectively
8 resulting in the Company continuing to lose
9 money, which means you'll have an even greater
10 "sticker shock" when the bill finally comes due
11 to the customers?

12 MR. KREIS: I guess I would agree
13 that that's a different "spin" on the situation
14 that, you know, is a plausible perspective on
15 the whole thing.

16 CMSR. GIAIMO: Thanks.

17 CMSR. BAILEY: Do you think that
18 there's an argument to be made that, if we did
19 not approve the temporary rate, it would be
20 confiscatory?

21 MR. KREIS: No.

22 CMSR. BAILEY: Can you elaborate on
23 that a little?

24 MR. KREIS: Well, --

1 CMSR. BAILEY: If the books and
2 records show that they are revenue deficient,
3 and they have asked us for an increase, it's
4 not confiscatory for us not to set a temporary
5 rate?

6 MR. KREIS: No, it's not
7 confiscatory, because of the way the Company --
8 the Company controls this process. And they
9 presented their case on the terms and in the
10 order and using the mechanisms that it chose.
11 And the Company isn't here arguing that there
12 is a confiscatory rate problem. And, in fact,
13 there were constitutional arguments made in the
14 Pennichuck Water Work case from 1980, and the
15 Commission ultimately said "this is a matter
16 of" -- they used the word "equity" to describe
17 the way it was going to resolve those issues in
18 that case. And I think that's the word you
19 should think of here.

20 CHAIRMAN HONIGBERG: Thank you, Mr.
21 Kreis. Mr. Speidel.

22 MR. SPEIDEL: Thank you, Mr.
23 Chairman.

24 In general terms, just to lead off,

1 since the January prehearing conference, I
2 think it's fair to say, even though this may be
3 true also of other participants in this case,
4 Staff's own position on this matter, in the
5 dictum of our former President Bill Clinton has
6 "evolved". And there's been evolution in
7 Staff's position regarding the question of
8 notice on temporary rates. And so, I think the
9 key that led to this was some consideration of
10 the actual information that had been available
11 to customers and a reading of the Pennichuck
12 Water Works case from 1980.

13 So, to launch into this, when I made
14 mention of the idea of "constructive notice", I
15 was referring to the fact that the original
16 Order of Notice suspending the permanent rate
17 increase tariff made mention of an upcoming
18 "temporary rate" filing. There was one line in
19 that Order of Notice saying that the Company
20 expects that it will be making a filing for
21 temporary rates in short course. And that was
22 based on information provided by the Company
23 and Mr. St. Cyr that they were putting together
24 some temporary rate schedules. So, that was

1 streamed into the Order of Notice that was
2 published at the time and provided to
3 customers.

4 So, that is one element of actual
5 information provided to customers in real time
6 about the expectation that temporary rates
7 could be forthcoming. So, intervenors that did
8 participate in that prehearing conference back
9 in January would have known about that. And
10 the actual filing was made in advance of that
11 prehearing conference as well. So, it was no
12 longer hypothetical, it became an actual issue.

13 And it's been provided to the public
14 in the form of the Commission's official
15 website and filings being made about it, and
16 various comments being filed about it. So,
17 it's not something that was hidden or that
18 folks in the wider universe were not aware of.
19 It was definitely on the radar screen.

20 And moreover, when you do look at the
21 facts of Pennichuck, the Chairman had the
22 correct recollection, when you read the
23 recitation, the facts of the case, what
24 happened there was in late December of 1978

1 there was an initial filing of the rate
2 increase. And then public notice of the
3 filling was given in a local newspaper on the
4 17th of January and the 24th of January in
5 1979, and the notice said January 31st, 1979 is
6 the effective date of the proposed rate
7 increases. And on January 8th of 1979, in
8 fact, there was a suspension order being
9 issued. And Pennichuck's subsequent temporary
10 rate request was made on February the 12th of
11 1979.

12 And when the Supreme Court gave the
13 green light for the Commission's consideration
14 and approval of the temporary rate increase, it
15 made reference to the effective date. Now,
16 that seems to be the gate involved. "In no
17 event may temporary rates be made effective as
18 to services rendered before the date on which
19 the permanent rate request is filed." So, the
20 Supreme Court selected the filing date of
21 December 29th of 1978 as the earliest date that
22 temporary rates could take effect.

23 So, here it would seem to be an
24 instance where the 1980 Pennichuck case does

1 grant the Commission a level of discretion in
2 handling this matter, with an eye towards
3 administrative efficiency, with an eye towards
4 avoiding having to republish an order of
5 notice, and to enable the temporary rate
6 proceeding to move ahead to avoid rate shock.

7 And furthermore, I would say that, in
8 this instance, given that at such an early
9 stage there was actual public awareness of the
10 temporary rate filing being made, there's no
11 indicia of harm regarding proceeding with an
12 approval of the Settlement Agreement as being
13 in the public interest.

14 So, I would concur that it is not an
15 optimal situation. It is not a situation that
16 we are going to encourage. As a staff, we do
17 like to have temporary rate filings being made
18 concurrently with permanent rate filings. It
19 makes things smoother and simpler. But
20 occasionally these situations do arise, and the
21 Commission has dealt with them within its
22 discretion as provided by the New Hampshire
23 Supreme Court.

24 So, we thank the Commissioners for

1 its consideration of the Settlement Agreement.

2 Thank you.

3 CHAIRMAN HONIGBERG: Mr. St. Cyr.

4 MR. ST. CYR: So, just to add my two
5 cents.

6 I would point out that in the
7 introduction letter to the filing itself, the
8 original filing, it states "Rosebrook
9 anticipates that it will make a temporary" --

10 CHAIRMAN HONIGBERG: Slow down. Slow
11 down. If you're reading, slow down.

12 MR. ST. CYR: In the introduction --
13 there's a statement that, in the introduction
14 letter, that says "Rosebrook anticipates that
15 it will make a temporary rate filing". And
16 then, in my testimony, on Page 9, Lines 26 and
17 27, it says "The Company has decided to pursue
18 temporary rates as part of this rate filing.
19 The temporary rate filing will be filed under a
20 separate cover letter."

21 And as Mr. Speidel pointed out, in
22 the Order Number 26,057, which suspended the
23 tariff and established the prehearing
24 conference, it says "Abenaki-Rosebrook stated

1 that it anticipates seeking a temporary rate
2 increase". And, of course, it did make the
3 filing. The filing was actually dated January
4 16th, and received at the Commission
5 January 18th, which is a week before the
6 prehearing conference and technical session
7 that started this case.

8 So, those are just what was in the
9 filing. And from the Company's perspective,
10 there was more than adequate notice and time.

11 And I would point out, it's not
12 unusual for the temporary rate filing to come
13 in after the permanent rate filing. That's
14 just a reality of the smaller companies. They
15 don't have the time and resources to put it all
16 together at one point in time. And I've done
17 this myself with a number of cases, where the
18 temporary filing follows the permanent filing,
19 in this case, probably a little bit longer than
20 I would prefer, but still, it's not uncommon.

21 And then, lastly, I would just say
22 that the Company supports the Agreement and
23 appreciates working with Staff and the other
24 parties in trying to reach that Agreement. And

1 looks forward to working with the Staff and the
2 parties to reach a settlement in the permanent
3 phase of the case.

4 So, we appreciate everybody's time
5 and effort. And thank you for your
6 consideration.

7 CHAIRMAN HONIGBERG: Thank you, Mr.
8 St. Cyr.

9 I believe I failed to note that,
10 without objection, we'll strike ID on Exhibit
11 1.

12 If there's nothing else, then we will
13 adjourn, take the matter under advisement, and
14 issue an order as quickly as we can. Thank you
15 all.

16 MR. SPEIDEL: Thank you.

17 ***(Whereupon the hearing was***
18 ***adjourned at 11:23 a.m.)***