

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

3  
4   **July 16, 2020 - 9:23 a.m.**

**DAY 2**

5                   *[Remote Hearing conducted via Webex]*

6  
7           **RE: DW 17-165**  
8           **ABENAKI WATER COMPANY - ROSEBROOK:**  
9           **Request for Change in Rates.**  
10           ***(Hearing regarding contested rate***  
11           ***case expenses and Motion to Extend***  
12           ***the Step II Filing Deadline.)***

13           **PRESENT:**   Chairwoman Dianne Martin, Presiding  
14                           Cmsr. Kathryn M. Bailey  
15                           Cmsr. Michael S. Giaimo

16                           Jody Carmody, Clerk  
17                           Eric Wind, PUC Remote Hearing Host

18           **APPEARANCES:**   **Reptg. Abenaki Water Company:**  
19                           Marcia A. Brown, Esq. *(NH Brown Law)*

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

22                           **Reptg. Bretton Woods Property Owners**  
23                           **Association (BWPOA):**  
24                           Paul Mueller

**Reptg. PUC Staff:**  
                         Christopher Tuomala, Esq.

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

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24

**I N D E X**

**PAGE NO.**

**WITNESS PANEL:            DONALD J.E. VAUGHAN  
                                 ROBERT GALLO**

Direct examination by Ms. Brown	8
Cross-examination by Mr. Getz	50
Cross-examination by Mr. Mueller	73
Cross-examination by Mr. Tuomala	75
Interrogatories by Cmsr. Bailey	78, 94, 110
Interrogatories by Cmsr. Giaimo	92, 100
Redirect examination by Ms. Brown	110

\*       \*       \*

**CLOSING STATEMENTS BY:**

Mr. Tuomala	119
Mr. Getz	120, 130
Ms. Brown	124, 132

**P R O C E E D I N G**

1  
2 CHAIRWOMAN MARTIN: Okay. We're here  
3 this morning in Docket DW 17-165, which is the  
4 Abenaki Water Company Request for Change in  
5 Rates. We are here today for a hearing on  
6 Abenaki's Motion to Extend the Step II filing  
7 deadline. This hearing is continued from  
8 April 22nd [23rd?], 2020.

9 We need to make some findings, because  
10 this is a remote hearing.

11 As Chairwoman of the Public Utilities  
12 Commission, I find that due to the State of  
13 Emergency declared by the Governor as a result of  
14 the COVID-19 pandemic and in accordance with the  
15 Governor's Emergency Order Number 12 pursuant to  
16 Executive Order 2020-04, this public body is  
17 authorized to meet electronically. Please note  
18 that there is no physical location to observe and  
19 listen contemporaneously to this hearing, which  
20 was authorized pursuant to the Governor's  
21 Emergency Order.

22 However, in accordance with the  
23 Emergency Order, I am confirming that we are  
24 utilizing Webex for this electronic hearing. All

1 members of the Commission have the ability to  
2 communicate contemporaneously during the hearing  
3 through this platform. And the public has access  
4 to contemporaneously listen and, if necessary,  
5 participate.

6 We previously gave notice to the public  
7 of the necessary information for accessing the  
8 hearing in the Order of Notice. If anybody has a  
9 problem, please call (603)271-2431. In the event  
10 the public is not able to access the hearing, the  
11 hearing will be adjourned and rescheduled.

12 Do we have any members of the public,  
13 Mr. Wind?

14 MR. WIND: No, we do not.

15 CHAIRWOMAN MARTIN: Thank you. Let's  
16 start by taking roll call attendance of the  
17 Commission. When each Commissioner identifies  
18 themselves, please also state if anyone else is  
19 with you and identify them.

20 My name is Dianne Martin. I'm the  
21 Chairwoman of the New Hampshire Public Utilities  
22 Commission. And I am alone.

23 Commissioner Bailey.

24 CMSR. BAILEY: Commissioner Kathryn

1 Bailey. And I am alone.

2 CHAIRWOMAN MARTIN: Commissioner

3 Giaimo.

4 CMSR. GIAIMO: Commissioner Michael

5 Giaimo. I, too, am alone.

6 CHAIRWOMAN MARTIN: Okay. Great.

7 Let's take appearances, starting with Attorney

8 Brown.

9 MS. BROWN: Good morning,

10 Commissioners. My name is Marcia Brown, with NH

11 Brown Law. And with me today, as witnesses, is

12 Donald Vaughan, who is Chairman of the Abenaki

13 Water Company; Bob Gallo, who is President of

14 Abenaki Water Company. Again, they will be here

15 as witnesses.

16 And, also in attendance is Nick

17 LaChance, who is the Vice President of Abenaki

18 Water, as well as President of New England

19 Service Company, which is Abenaki's parent.

20 Thank you.

21 CHAIRWOMAN MARTIN: Thank you.

22 Attorney Getz.

23 MR. GETZ: Good morning, Madam Chair,

24 Commissioners. I'm Tom Getz, from the law firm

1 of McLane, Middleton, appearing on behalf of Omni  
2 Mount Washington, my client. Chris Ellms, from  
3 Omni, should be on as an attendee, as well as Mr.  
4 Brogan.

5 CHAIRWOMAN MARTIN: Okay. Thank you.  
6 Mr. Mueller. Oh, you're on mute.

7 MR. MUELLER: Can you hear me now?

8 CHAIRWOMAN MARTIN: Yes.

9 MR. MUELLER: Paul Mueller,  
10 representing Bretton Woods Property Owners  
11 Association. I am alone.

12 CHAIRWOMAN MARTIN: Great. Thank you.  
13 And Mr. Tuomala.

14 MR. TUOMALA: Thank you, Madam  
15 Chairwoman. Good morning, Commissioners.  
16 Christopher Tuomala, Staff Attorney at the Public  
17 Utilities Commission.

18 CHAIRWOMAN MARTIN: Okay. Thank you,  
19 everyone. We have exhibits that were premarked  
20 and prefiled for the April hearing. I have 12  
21 through 26. We also had Exhibit 27 and 28, which  
22 were record requests. And Exhibit 9 was  
23 previously admitted in this matter.

24 Is there any change to that?

1 MS. BROWN: None from the Company.

2 CHAIRWOMAN MARTIN: Okay. Seeing none.  
3 Is there anything else we need to address as a  
4 preliminary matter?

5 MR. GETZ: Madam Chair, there is one  
6 potential issue. My understanding, from Attorney  
7 Brown, is that the direct examination could take  
8 an hour. And I had raised previously with the  
9 parties the possibility of having a recess after  
10 the direct is complete, in order to discuss with  
11 my client cross-examination questions.

12 CHAIRWOMAN MARTIN: Okay. So, let's  
13 look at time then. And, if you can make your  
14 request at the time, I would appreciate it.

15 MR. GETZ: Thank you.

16 CHAIRWOMAN MARTIN: Okay. My  
17 understanding is we're going to hear on the Step  
18 II adjustment today. And we also expect to hear  
19 a report from Abenaki on its efforts to resolve  
20 the water pressure problems in the Rosebrook  
21 water system.

22 So, why don't we get the witnesses  
23 sworn in at this point.

24 (Whereupon **Donald J.E. Vaughan** and

[WITNESS PANEL: Vaughan|Gallo]

1                   **Robert Gallo** were duly sworn by the  
2                   Court Reporter.)

3                   CHAIRWOMAN MARTIN: Ms. Brown.

4                   MS. BROWN: Thank you. And, for  
5                   edification of the Commissioners, and Staff and  
6                   the parties, the exhibits that I will be walking  
7                   the witness panel through will be 20, 21, 22, 23,  
8                   and 26. Thank you.

9                   **DONALD J.E. VAUGHAN, SWORN**

10                   **ROBERT GALLO, SWORN**

11                   **DIRECT EXAMINATION**

12 BY MS. BROWN:

13 Q       If I can start, Mr. Vaughan, with you. Can you  
14       please state your name and position with Abenaki  
15       Water for the record?

16 A       (Vaughan) Yes. My name is Donald Vaughan. And  
17       I'm the Chairman of Abenaki Water Company.

18 Q       Thank you. And can you please describe your  
19       responsibilities in that position?

20 A       (Vaughan) Yes. Basically, operations and  
21       financial oversight.

22 Q       And, Mr. Vaughan, are you also -- do you do work  
23       for New England Service Company? And, if so, if  
24       you could explain?

[WITNESS PANEL: Vaughan|Gallo]

1 A (Vaughan) Yes, I do. I'm Chairman of the Board,  
2 as well as the Vice President of Operations for  
3 New England Service Company.

4 Q Mr. Vaughan, do I hold any licenses?

5 A (Vaughan) Yes, I do. I am a Registered Engineer  
6 in Massachusetts.

7 Q Okay. And what do you consider to be your area  
8 of expertise?

9 A (Vaughan) Generally, management, operations,  
10 financial oversight, particularly within water  
11 utilities.

12 Q Thank you. And will the testimony you'll be  
13 offering today be within that area of expertise?

14 A (Vaughan) Yes.

15 Q Thank you. Mr. Gallo, if I could have you please  
16 state your name and position for the record?

17 A (Gallo) My name is Bob Gallo. And I am the  
18 President of Abenaki Water Company.

19 Q And, Mr. Gallo, when did you join Abenaki?

20 A (Gallo) July 15th of 2019.

21 Q Thank you. Can you please describe for the  
22 record what your responsibilities are for the  
23 Company?

24 A (Gallo) Oversight of staff, project management,

[WITNESS PANEL: Vaughan|Gallo]

1           some engineering design, and regulatory, you  
2           know, regulatory compliance.

3    Q       Thank you.  And do you interface with New England  
4           Service Company?

5    A       (Gallo) Yes.  I am -- I am the Vice President of  
6           Engineering for New England Service Company.

7    Q       Thank you.  And, Mr. Gallo, have you previously  
8           testified before this Commission?

9    A       (Gallo) I've attended technical sessions, but  
10           have not testified before the Commission.

11   Q       Do you have any experience in testifying?

12   A       (Gallo) Yes.  Had once before, in Vermont  
13           Superior Court.

14   Q       Thank you.  Mr. Gallo, do you hold any licenses?

15   A       (Gallo) Yes.  I'm a Registered Professional  
16           Engineer in New Hampshire, Vermont,  
17           Massachusetts, and New York.

18   Q       And can you please summarize what you consider to  
19           be your area of expertise?

20   A       (Gallo) Generally, water resources, which  
21           involves water systems, sewer systems, and storm  
22           water systems.  And that would be the main focus  
23           of my expertise.

24   Q       Thank you.  And do you -- would the testimony you

[WITNESS PANEL: Vaughan|Gallo]

1 are offering today be within that area of  
2 expertise?

3 A (Gallo) Yes, it will.

4 Q Thank you. And, Mr. Gallo, do you have Exhibit  
5 26 in front of you?

6 A (Gallo) Yes.

7 Q That's the -- for the record, that's the sanity  
8 survey?

9 A (Gallo) Yes.

10 Q Okay. You have that in front of you.

11 MS. BROWN: And may I proceed? I just  
12 want to make sure I'm not rushing the  
13 Commissioners? Okay. I think I'm seeing nods  
14 that they have it.

15 BY MS. BROWN:

16 Q Okay. Mr. Gallo, are you familiar with this  
17 sanity survey?

18 A (Gallo) Yes, I am.

19 Q And this document is from the Department of  
20 Environmental Services, is that correct?

21 A (Gallo) That is correct.

22 Q And are you familiar with sanity surveys?

23 A (Gallo) Yes. They are done in an effort to  
24 identify any, obviously, any sanitary defects,

[WITNESS PANEL: Vaughan|Gallo]

1 operational defects, that may be wrong with the  
2 system. And they make those recommendations or  
3 file a report, and we receive that, and are  
4 instructed to correct any deficiencies that may  
5 arise.

6 Q Okay. And, Mr. Gallo, I want to turn to Page 7  
7 of this document. Well, actually, I don't think  
8 it's -- it's 4, sorry. On Page 4, with respect  
9 to the significant deficiencies, is the pressure  
10 listed as a significant deficiency?

11 A (Gallo) That's correct.

12 Q And are you familiar with the pressure  
13 requirements Rosebrook must adhere to?

14 A (Gallo) Yes. The maximum pressure per state  
15 regulation is 100 psi. So, that would apply to  
16 Rosebrook as well.

17 Q Okay. Are there other deficiencies that DES  
18 flagged that would be addressed by this Step II  
19 engineering design?

20 A (Gallo) Yes. There was a mention in the sanitary  
21 survey of the unaccounted for water with the  
22 system generally runs in the vicinity of 18  
23 percent. So, the pressure reduction project will  
24 also address that. And, obviously, in addition

[WITNESS PANEL: Vaughan|Gallo]

1 to that, we, you know, address the pressure  
2 issues throughout the system.

3 Q Okay. Thank you. Now, are there other concerns  
4 that the engineering design will also address  
5 that were not flagged in the sanity survey?

6 A (Gallo) Yes. Safety is a big issue. We do have  
7 operators that are inside the plants, you know,  
8 the pump station, and working throughout the  
9 system on hydrants, *etcetera*, with these high  
10 pressures, you run the risk of, you know,  
11 catastrophic damage and personal -- and bodily  
12 injury, if something does fail, more so than you  
13 would with a lower pressure system.

14 Case in point was, you know, a line  
15 break at the pump station that nearly destroyed  
16 the entire structure. Two gentlemen, two  
17 operators were in the building at that time.  
18 And, luckily, the doors of the pump station were  
19 open, or they may have, you know, been seriously  
20 injured or killed.

21 Q Thank you. Mr. Vaughan, I'd like to have you  
22 turn to Exhibit 22. Do you have that in front of  
23 you?

24 A (Vaughan) I do.

[WITNESS PANEL: Vaughan|Gallo]

1 Q Okay. And what is Exhibit 22?

2 A (Vaughan) Twenty two is -- Exhibit 22 is a  
3 document that provides the background of the  
4 pressure reduction issue and potential solutions.

5 Q Thank you. And, for the record, that document  
6 was filed by the Company in June of 2018.

7 Mr. Vaughan, I know that Mr. Gallo had  
8 discussed some of the difficulties with the high  
9 pressure in the system. Are there others? Other  
10 difficulties or issues you would like to list?

11 A (Vaughan) Well, to supplement what Mr. Gallo  
12 said, and I may be repeating, but, particularly,  
13 water hammer is an issue, which occurred on  
14 numerous occasions. And the damage that's  
15 associated with extreme pressure, which, again,  
16 Mr. Gallo cited as to what happened in the pump  
17 station. And, even on main breaks, you know, you  
18 can have just much more significant damage just  
19 as it is directly related to pressure; wear and  
20 tear on the equipment; and also the propensity to  
21 make small leaks large leaks over time. And, you  
22 know, the least of which, again, Mr. Gallo cited,  
23 was operator safety.

24 Q Thank you. Mr. Vaughan, can I have you go turn

[WITNESS PANEL: Vaughan|Gallo]

1 to Page 6 of Exhibit 22? It's a page entitled  
2 "Goals".

3 A (Vaughan) Yes. I have Page 6.

4 Q Now, understanding this was a 2018 document, can  
5 you tell me whether the goals now, in 2020, have  
6 changed, from the Company's perspective?

7 A (Vaughan) They have not.

8 Q Thank you very much. And would you agree that  
9 the engineering design, which is the subject of  
10 Step II, is intended to achieve these goals?

11 A (Vaughan) That is correct.

12 Q Okay. Now, Mr. Vaughan, I would like to have you  
13 turn to Exhibit 20.

14 A (Vaughan) Yes.

15 Q Do you have that in front of you?

16 A (Vaughan) I do.

17 Q And this is Abenaki's January 7th, 2019 response  
18 to the Commission's Order 26,205, would you  
19 agree?

20 A (Vaughan) Yes.

21 Q Okay. And, opening this document to document  
22 Page 2, do you see that?

23 A (Vaughan) Yes, I do.

24 Q And is that your response to the Order?

[WITNESS PANEL: Vaughan|Gallo]

1 A (Vaughan) It is.

2 Q Okay. And, Mr. Vaughan, back on the first page,  
3 first full paragraph, the two issues that your  
4 memorandum was speaking to, the fifth line in the  
5 first paragraph, I just want to get into the  
6 record, what you were speaking to was the first  
7 issue, "The solutions considered before  
8 contracting with Horizons", is that correct?

9 A (Vaughan) Correct.

10 Q And the second issue you spoke to was "other  
11 possible options available to address the water  
12 pressure problems"?

13 A (Vaughan) That's correct.

14 Q Okay. All right. And the third reason was  
15 "supporting the construction of a new water tank,  
16 as proposed by Horizons, as the best and most  
17 cost-effective solution." Did you address that  
18 as well?

19 A (Vaughan) Yes.

20 Q Okay. Now, with respect to the water storage  
21 tank, Mr. Vaughan, did Abenaki get any pushback  
22 on that potential solution?

23 A (Vaughan) Yes.

24 Q And by whom?

[WITNESS PANEL: Vaughan|Gallo]

1 A (Vaughan) By Omni.

2 Q Has Abenaki since taken the water storage tank  
3 off the table, in an attempt to gain party  
4 support?

5 A (Vaughan) Yes.

6 Q And what aspect of the tank? Is it all of the  
7 tank or a portion of the tank project that was  
8 taken off the table?

9 A (Vaughan) The tank itself, as well as all the  
10 engineering regarding the soil conditions, the  
11 geotechnical survey, those items were taken off  
12 the table.

13 Q Is a portion of the water storage tank still in  
14 the engineering design?

15 A (Vaughan) Yes.

16 Q And can you explain what portion is?

17 A (Vaughan) The portion that remains in the design,  
18 as it is contained in the Step II, is the siting  
19 of the tank, and as well as the site design.

20 Q Okay. And, if you can explain the tank, was a  
21 vendor involved in the pricing of the portion of  
22 the tank -- let me rephrase that question. Of  
23 the portion that was taken off the table of the  
24 storage tank, did it involve the vendor costs?

[WITNESS PANEL: Vaughan|Gallo]

1 A (Vaughan) Excuse me. Yes. It also involved  
2 the -- the vendor was going to do the design of  
3 the tank also.

4 Q Okay. Mr. Vaughan, with respect to this Exhibit  
5 20, if I could have you turn to page -- document  
6 Page 3, which is -- it's got a number "2" at the  
7 bottom, because it's part of your memo. Do you  
8 have that in front of you?

9 A (Vaughan) Yes.

10 Q Now, under "Solutions considered by the Company  
11 before contracting with Horizons", can you please  
12 summarize Paragraph 1.A [A.1?]?

13 A (Vaughan) Yes.

14 Q And what that solution Abenaki considered was?

15 A (Vaughan) Yes. That would have been a real quick  
16 solution, without an awful lot of thought. But  
17 it would have involved a dedicated fill line to  
18 the tank, with a pressure reducing valve on the  
19 discharge or the distribution side of the tank.  
20 The issue with that is that it would have  
21 controlled the pressures on the lower elevations  
22 of the system, but it would have put the upper  
23 elevations either with no pressure or no service  
24 at all.

[WITNESS PANEL: Vaughan|Gallo]

1 Q Thank you. With respect to the solution that was  
2 in Paragraph A.2, can you please summarize that  
3 for the record?

4 A (Vaughan) Yes. This was to address the high  
5 pressure particularly at the well house, where we  
6 have a discharge pressure of somewhere in the  
7 vicinity of 180 to 185 psi, depending on demand.  
8 But we would have liked to, and would like in a  
9 Step II proposal, to reduce that discharge  
10 pressure at the wells to 100 psi. So, this  
11 particular solution would have been to put a  
12 intermediate pump station between the pump  
13 station and the tank. However, that would not  
14 really address all the other issues in the  
15 distribution system, they would still have high  
16 pressure.

17 Q Okay. Thank you for that summary. Can I have  
18 you turn to the next page? And, under Paragraph  
19 B, "Other Possible Options". Now, can you  
20 please -- I'm sorry, are you there?

21 A (Vaughan) Yes. Yes.

22 Q Okay. All right. Sorry to rush you.

23 A (Vaughan) Okay.

24 Q Can you please describe for the record what these

[WITNESS PANEL: Vaughan|Gallo]

1 other options that Abenaki considered were?

2 A (Vaughan) Well, we considered the installation of  
3 multiple PRVs at various locations, in addition  
4 to the pump stations. We also considered looping  
5 water mains, to potentially reduce water hammer.  
6 And then, we also considered other engineering  
7 designs, as they may have been at a good -- an  
8 optimal cost/benefit.

9 Q Now, Mr. Vaughan, you mentioned an acronym "PRV".  
10 Could you just describe that for the record  
11 please?

12 A (Vaughan) A "PRV" is a pressure reducing valve.

13 Q Thank you. And, of the solutions that you just  
14 listed in Paragraphs A and B, these are not  
15 being -- these stand-alone solutions were not  
16 pursued by -- or, are being abandoned, or I guess  
17 not pursued by Abenaki, is that correct?

18 A (Vaughan) That is correct.

19 Q Okay. And you've already explained why. Now, if  
20 I can have you turn to, let's see, still on Page  
21 4 of the document, further up in that page it  
22 references some Horizons evaluations from 2006,  
23 do you see that? I'm sorry, 2016, do you see  
24 that?

[WITNESS PANEL: Vaughan|Gallo]

1 A (Vaughan) I do.

2 Q And that Horizons also developed a hydraulic  
3 model in 2017, do you see that?

4 A (Vaughan) I do.

5 Q Okay. And are those reports attached to this  
6 filing?

7 A (Vaughan) Yes, they are.

8 Q Okay. So, let's turn to Page 6. And that -- is  
9 that the 2016 evaluation that Horizons did?

10 A (Vaughan) Yes, it is, entitled "System Evaluation  
11 for Pressure Reduction".

12 Q Okay. And can you move forward to Page 53 of  
13 this exhibit?

14 A (Vaughan) Yes, I have it, I believe.

15 Q And is this the 2017 report?

16 A (Vaughan) That is correct.

17 Q A hydraulic modeling report?

18 A (Vaughan) Correct.

19 Q Okay. And did both of these 2016 and 2017  
20 reports inform Abenaki on the designs that it  
21 wishes to pursue?

22 A (Vaughan) Yes.

23 Q Okay. So, let's turn to Page 73, if we could.  
24 I'm sorry, 71. And let me know when you are

[WITNESS PANEL: Vaughan|Gallo]

1           there?

2   A       (Vaughan) I am here.

3   Q       Okay.  And is it fair to characterize this 2018  
4           summary from Horizons was the recommendations  
5           based on those two prior reports?

6   A       (Vaughan) Yes.

7   Q       Okay.  Thank you.  And it's addressed to Tom  
8           Hansen, is that correct?

9   A       (Vaughan) That is correct.

10  Q       But are you familiar with this document?

11  A       (Vaughan) Yes.

12  Q       Okay.  And if you could turn to Page 73?

13  A       (Vaughan) I'm there.  Yes, I have that.

14  Q       And do you see the "Recommendations"?

15  A       (Vaughan) Yes.

16  Q       And, so, today we're here about the Step II and  
17           funds, and are these funds for what's described  
18           as "Phase I" on this page?

19  A       (Vaughan) Yes.  That is correct.

20  Q       And it's a design of system improvements, is that  
21           correct?

22  A       (Vaughan) Correct.

23  Q       Okay.  So, it's not a study, it's a design?

24  A       (Vaughan) It is a design.

[WITNESS PANEL: Vaughan|Gallo]

1 Q Okay. So, if this lawyer were referring to the  
2 engineering that's being done under Step II as a  
3 "study", I would be incorrect, is that right?

4 A (Vaughan) That is correct.

5 Q Thank you. I hope to keep catching myself,  
6 referring to this as "design". Mr. Vaughan, in  
7 Phase I, the design of system improvements, does  
8 that include pump stations?

9 A (Vaughan) Yes, it does.

10 Q Okay. And what else will this design phase  
11 include?

12 A (Vaughan) It includes the location of pressure  
13 reducing valves. It includes also the siting to  
14 make a -- make an optimal location. It would  
15 include locations of the various pump stations.  
16 And it would include also negotiation, or at  
17 least the identification of the easements  
18 necessary, and the negotiation included that goes  
19 with that.

20 Q Thank you.

21 A (Vaughan) And I might add also that this is also  
22 intended to reach the goal of reducing overall  
23 system pressure to a maximum of about 100 psi.

24 Q So, Mr. Vaughan, can I have you turn to Exhibit

[WITNESS PANEL: Vaughan|Gallo]

1 23?

2 A (Vaughan) I have it.

3 Q Okay. And this document is entitled "Agreement  
4 for Engineering Services"?

5 A (Vaughan) That's correct.

6 Q Okay. And is it fair to characterize this as the  
7 contract that Abenaki would enter into to do the  
8 recommended designs in Phase I of the report that  
9 we just looked at?

10 A (Vaughan) Yes. It is very similar.

11 Q Thank you. When you say "similar", are there  
12 changes?

13 A (Vaughan) Pardon me?

14 Q When you say "similar", was there a distinction  
15 you wished to make?

16 A (Vaughan) Yes. You know, we have never given  
17 Horizons a RFP. They have always conceptualized  
18 this, but they have summarized what they have  
19 been aware of and what they have known, and they  
20 priced this project out accordingly. So, an RFP  
21 would make the price more precise.

22 Q Okay. Now, while we're on this subject, have you  
23 reached out to Horizons over the last -- well,  
24 since 2018, to get more exact pricing?

[WITNESS PANEL: Vaughan|Gallo]

1 A (Vaughan) Yes, we have. As the scope of the work  
2 has changed, we've approached them many times,  
3 and they have responded.

4 Q Okay. And this summary was for -- or, in 2018,  
5 it was as if the tank and vendor portion were  
6 still in it, is that correct?

7 A (Vaughan) Correct.

8 Q Okay. All right. Now, if you could turn to Page  
9 5 of this Exhibit 23, under Paragraph 4, "Fee"?

10 A (Vaughan) Yes. I have that.

11 Q And the design is -- the pricing for that is seen  
12 in Items number 2, 3, 4, and 5, is that correct?

13 A (Vaughan) Correct.

14 Q Sorry. I'm now crossing off questions that  
15 you've already answered.

16 Now, Mr. Vaughan, I'd like to have you  
17 turn back to the "Scope of Services", starts on  
18 Page 1.

19 A (Vaughan) Yes. I have that.

20 Q Now, since the Commission issued its order in  
21 October, late October 2019, has Abenaki moved  
22 forward with Item 3(1), which is "Basis of Design  
23 Report"?

24 A (Vaughan) It has not.

[WITNESS PANEL: Vaughan|Gallo]

1 Q And could you briefly explain to the Commission  
2 why it hasn't or can't move forward with that  
3 phase?

4 A (Vaughan) It just has not had sufficient time to  
5 produce that. The order was given, I believe,  
6 mid-October, and there was just not enough time  
7 for Horizons to prepare that.

8 Q Okay. Now, can I have you turn to Page 2, and  
9 the "Pump Station Designs"? Can you please  
10 provide the Commissioners with an explanation as  
11 to whether Abenaki was able to move forward with  
12 that? And, if it did not, why?

13 A (Vaughan) The pump station designs would include  
14 the locating of the pump stations at proper  
15 elevations or gradients. And the reason for  
16 that, obviously, is due to the extreme terrain  
17 differential on the -- well, in the local area.  
18 So, there's an awful lot of work that goes with  
19 locating them adequately and sufficiently, so  
20 that -- that the pressures do not exceed 100 psi,  
21 but yet they reach minimum pressures.

22 There's also easements that would be  
23 associated with those, as well as the subsequent  
24 negotiations on those easements.

[WITNESS PANEL: Vaughan|Gallo]

1 Q And Abenaki wasn't able to move forward with that  
2 between October I think it was 21st, through  
3 December?

4 A (Vaughan) Virtually not -- not even a down  
5 payment on the time. There would just be so much  
6 work involved. And one has to remember that we  
7 would be dealing with associations, which is a  
8 little bit different than dealing with an  
9 individual. There would be discussions on, as an  
10 example, the precise location, the architecture,  
11 *etcetera, etcetera.*

12 Q Okay. And I'd like to ask you about Number 3,  
13 and the well pump design, has Abenaki moved  
14 forward with that portion of the pressure  
15 reduction design?

16 A (Vaughan) It has not, because that was part of  
17 the overall project.

18 Q Okay. Mr. Vaughan, has Abenaki spent money  
19 towards solving this pressure problem?

20 A (Vaughan) Well, Abenaki has been involved in this  
21 project, I believe, since 2017. And you can see  
22 all the reports that we've had as exhibits. You  
23 also, and I say "you", I mean, collectively,  
24 "we", as Abenaki, we've attended meetings, we've

[WITNESS PANEL: Vaughan|Gallo]

1 attended hearings, we've made phone calls. And,  
2 so, subsequently, we have incurred I want to say  
3 somewhere in the vicinity of \$81,000, which is in  
4 a deferred account.

5 So, as an example, our time here  
6 essentially gets charged to that deferred  
7 account. And, so, that's just a symbolic case of  
8 how we have accumulated costs here.

9 Q Thank you. Mr. Gallo, I would like to turn to  
10 you, because I asked a series of questions of Mr.  
11 Vaughan about Abenaki moving forward with any of  
12 these design proposals, and wanted to ask if you  
13 had any opinion in response to those questions?

14 A (Gallo) Yes. I do agree with Mr. Vaughan, that  
15 siting of the pump stations is somewhat fluid.  
16 You know, it really would have to be tied in with  
17 the services that Horizons Engineering would  
18 provide. There would have to be a site survey in  
19 several areas to determine, you know, if the most  
20 appropriate areas. Excuse me.

21 As far as a design of a loop with  
22 pressure reducing valves, again, that, you know,  
23 the locations of those pump stations would have  
24 some bearing on where valves are placed.

[WITNESS PANEL: Vaughan|Gallo]

1           So, it's, you know, it really isn't  
2 something that could have been done, you know,  
3 unless Horizons had moved forward with their  
4 work.

5 Q   Okay. And, Mr. Vaughan, this may be somewhat  
6 redundant to your earlier testimony. But did you  
7 reach out to Horizons for an update of costs,  
8 between the time the Commission issued the order  
9 in the rate case, something like January-ish,  
10 between that January and October timeframe, when  
11 the Commission issued its clarification on the  
12 step? Were you reaching out to Horizons for more  
13 accurate numbers?

14 A   (Vaughan) Yes.

15 Q   Okay. Thank you. And did you do that more than  
16 once?

17 A   (Vaughan) Yes.

18 Q   Okay. Now, Mr. Vaughan, you touched upon needing  
19 landowner or association property access. So,  
20 I'd like to revisit that. Do you have any  
21 experience in negotiating with homeowners  
22 associations/landowners to place infrastructure  
23 on their property?

24 A   (Vaughan) Limited.

[WITNESS PANEL: Vaughan|Gallo]

1 Q And, of that experience, how long has it taken to  
2 negotiate with a landowner?

3 A (Vaughan) It depends on the landowner. It  
4 depends on the receptivity of the landowner.  
5 There's just so many dynamics involved. You  
6 know, it needs to be, basically, a win/win or a  
7 mutually beneficial discussion that results in  
8 what both can live with.

9 Q And, Bob, can you elaborate on that question?

10 A (Gallo) Yes. On a timeline, it could, you know,  
11 if the process went relatively smoothly with the  
12 landowners, it could take a couple months. Any  
13 protracted negotiations could extend it out, you  
14 know, three to six months. It does vary, you  
15 know, based on the individual situations.

16 Q Okay. I would like to turn back to Exhibit 22,  
17 if you have it in front of you. This is the  
18 pressure reduction presentation that the Company  
19 filed. And have you turn to Page 14, document  
20 14?

21 A (Gallo) Yes, I have that.

22 Q And, Mr. Gallo, just a background question. You  
23 are familiar with this document?

24 A (Gallo) Yes.

[WITNESS PANEL: Vaughan|Gallo]

1 Q And can you explain why these attached pages  
2 showing Fairway Village, Stonehill Association,  
3 Mount Madison, Presidential View, why were these  
4 included?

5 A (Gallo) Well, I think they're, you know, they are  
6 just, you know, a larger view of potential sites  
7 that might be required, not necessarily all the  
8 sites that are required.

9 Q Okay. And is it that the design, Horizons would  
10 figure out which of these proposed locations  
11 would be best for the pump stations?

12 A (Gallo) That's correct. And that would also --  
13 that would also depend on, again, the earlier  
14 question about easements and landowners. So, it  
15 would be a combination of Horizons identifying  
16 the best locations, and then our ability to, you  
17 know, gain permission, you know, to use those  
18 areas for the pump station.

19 MS. BROWN: Thank you. And I just want  
20 to check with the stenographer, because when you  
21 answered "yes", it was somewhat broken up on my  
22 end. And I just want to make sure that  
23 Mr. Patnaude needed you to restate that or  
24 whether he was okay?

[WITNESS PANEL: Vaughan|Gallo]

1 MR. PATNAUDE: I'm okay, I think.

2 MS. BROWN: Thank you.

3 BY MS. BROWN:

4 Q Now, Mr. Gallo, of these associations, is it  
5 Abenaki's intent to use common areas, if  
6 possible, for the placement of pump stations?

7 A (Gallo) That is correct.

8 Q Thank you. And do you also agree with I think  
9 what Mr. Vaughan had testified, that the Company  
10 wishes to work with homeowners associations and  
11 landowners, rather than do a battle and seek  
12 eminent domain?

13 A (Gallo) That is correct. We do not intend to do  
14 that, to seek eminent domain. You know, we want  
15 this to be a project that's supported by everyone  
16 in the community, because it is a much needed  
17 project.

18 Q Okay. Now, Mr. Gallo, going back to the Exhibit  
19 23, in the agreement on the engineering services  
20 and the contract that Abenaki would have for  
21 Horizons. On the first page, it mentions "Basis  
22 of Design Report", and the last sentence says  
23 "The basis of design will be submitted to the  
24 State of New Hampshire." Can you please speak to

[WITNESS PANEL: Vaughan|Gallo]

1           that?  What's that requirement?  What's that step  
2           about?

3    A       (Gallo) Well, the DES would require a design  
4           review, which is a technical review of the design  
5           itself, and if it will, you know, if it will  
6           work, if it is correct.  There may be other  
7           reviews.  There will be other reviews involved,  
8           such as an environmental review, where it would  
9           look at, you know, issues like erosion control,  
10          to make sure that is mitigated.

11                    There could be, you know, depending on  
12           location, you know, there could be wetlands  
13           permitting, and potentially town permitting as  
14           well, for locations of some of these new  
15           structures.

16   Q       Thank you for that summary of permits.  Mr.  
17           Vaughan, I would like to ask you a question about  
18           the costs.

19                    And, in the documents we've seen thus  
20           far, it's hovered around 100,000, which was what  
21           the original base dollar amount for the step is.  
22           Have you had a chance to see updated estimates?  
23           And, if so, what are the updated cost ranges now?

24   A       (Vaughan) If you're referring to the Horizons

[WITNESS PANEL: Vaughan|Gallo]

1 proposal, we've reached out to them. They have  
2 also wanted to know where we stand in this  
3 process. But they are estimating, and I  
4 underscore that, between 100 and 130,000, for the  
5 engineering design of which we are discussing  
6 right now.

7 Q I'm sorry. Did you just say "100 to 130"?

8 A (Vaughan) Yes.

9 Q Okay. Thank you. Now, I would also like to have  
10 you speak to the costs -- well, let me rephrase  
11 this. Do you remember, in Staff's  
12 recommendation, that it talked about the removal  
13 of the tank and removing that cost from the  
14 overall 100,000, and it would result in a lower  
15 amount for the total project potentially? Do you  
16 remember that?

17 A (Vaughan) Yes, I do.

18 Q And can you speak to, if the -- no, I will just  
19 state for the record the figure that was used in  
20 Staff's recommendation was 31,000. Is it  
21 accurate that, if you remove the tank, that it's  
22 going to remove that 31,000 from that 100,000  
23 total figure?

24 A (Vaughan) No, it is not.

[WITNESS PANEL: Vaughan|Gallo]

1 Q And can you explain why?

2 A (Vaughan) Because the 30,000 involves locating  
3 the site, the proper site, an optimal site,  
4 essentially, on the other side, and on the hotel  
5 side of Route 302, which would be to the north.  
6 Horizons would have insisted that the tank vendor  
7 do the design, and that's what they did. They  
8 said that the tank vendor was going to do the  
9 design, and the construction and all the -- as I  
10 said before, the geotechnical exploration and  
11 evaluations.

12 A (Gallo) May I add to that please?

13 Q Sure. Mr. Gallo, the same question to you.  
14 Thank you.

15 A (Gallo) Yes. You know, it would also include  
16 wetlands delineations, where applicable; you  
17 know, soil delineations. It would look at pipe  
18 alignments that would be required for the use of  
19 a tank. And, you know, other miscellaneous items  
20 that would be required for the placement of the  
21 tank. Again, back to, potentially, erosion  
22 control mitigation may be another, you know,  
23 another, you know, another part of that line  
24 item.

[WITNESS PANEL: Vaughan|Gallo]

1 Q Okay. And is it because that design, the siting  
2 part, is critical to knowing where to put  
3 everything else, like the pump stations? Is that  
4 accurate?

5 A (Gallo) Right. So, in the event that a storage  
6 tank is eventually -- is eventually built, that  
7 the location and elevation of that tank would  
8 help to define, you know, what pressures would be  
9 available in that part of the system. And,  
10 again, that's based on the elevation of the tank.  
11 So, siting that area, finding a suitable area, is  
12 important for any long-term planning of the  
13 system.

14 Q Thank you. Thank you for that nuance and  
15 clarification.

16 Now, Mr. Vaughan, I'd like to just ask,  
17 the step has a \$100,000 cap. Does Abenaki have  
18 that cash on hand to fund moving forward with the  
19 Scope of Services for this engineering design?

20 A (Vaughan) It does not.

21 Q And can you explain why?

22 A (Vaughan) Yes. Abenaki is, basically, the C  
23 corporation and an umbrella that includes  
24 Rosebrook. But it also has other systems. And

[WITNESS PANEL: Vaughan|Gallo]

1 just to note, one would be White Rock, one would  
2 be Lakeland. And the Commission is aware of  
3 those.

4 Abenaki has spent a large amount of  
5 capital on defending certain dockets that are  
6 pending. You know, it's been a diversion from  
7 its cash flow. And, so, for those reasons, and  
8 those are significant reasons, Abenaki cannot  
9 afford to just cough up, if you will, the  
10 engineering fee that's going to be required for  
11 this project.

12 Q Has the pandemic impacted Abenaki's revenues?

13 A (Vaughan) Yes.

14 Q Okay. And you mentioned Abenaki and other water  
15 systems. Does Rosebrook have the cash on hand to  
16 move forward with this Scope of Services?

17 A (Vaughan) It does not.

18 Q Okay. And, so, when you mention "Abenaki", would  
19 that be a borrowing situation between Rosebrook  
20 and Abenaki?

21 A (Vaughan) It would. Yes, it would. It would be  
22 a -- beg your pardon -- it would be a borrowing  
23 situation between Rose -- between Abenaki and the  
24 lender.

[WITNESS PANEL: Vaughan|Gallo]

1 Q Okay. And -- okay. That, too. Thank you. What  
2 about cash on hand at the New England Service  
3 Company level? Is it available for Rosebrook to  
4 move forward with this engineering design?

5 A (Vaughan) It is not.

6 Q Thank you. Now, Mr. Vaughan, continuing on with  
7 the financial situation, does Rosebrook have  
8 debt? Does it have loans?

9 A (Vaughan) Yes.

10 Q And are there cash coverage covenants associated  
11 with those loans?

12 A (Vaughan) Yes.

13 Q Such that Abenaki/Rosebrook would have to have  
14 cash on hand as a reserve just to not trigger any  
15 defaults on that loan?

16 A (Vaughan) That is correct. And just let me  
17 clarify that it's not Rosebrook. It's Abenaki  
18 that has that debt.

19 Q Okay. Thank you. And have you spoken to your  
20 lenders about this project and the cash outlay  
21 and the step?

22 A (Vaughan) Yes.

23 Q And have they expressed any hesitance of Abenaki  
24 moving forward with the step absent, they don't

[WITNESS PANEL: Vaughan|Gallo]

1 think Abenaki does not have the ability to  
2 recover the 100,000?

3 A (Vaughan) Yes. They have significant hesitancy.  
4 They effectively want to see an order, or else  
5 they would have no confidence that we're going to  
6 be able to recover that outlay.

7 Q Thank you. Mr. Vaughan, I'd like to just have  
8 you speak to the mechanism that the Commission  
9 approved for this engineering design was a step,  
10 rather than you coming in for a financing, is  
11 that correct?

12 A (Vaughan) That is correct.

13 Q And had Abenaki considered financing at one time?

14 A (Vaughan) It has considered financing at one  
15 time, going out to the capital markets.

16 Q And is -- but did Abenaki switch gears, from  
17 financing to a step, when the settlement of the  
18 rate case started going into the direction of a  
19 step, rather than financing?

20 A (Vaughan) Yes.

21 Q Okay. Just want to get clarification on the  
22 record about the 100,000 and what it buys  
23 Abenaki. Is it accurate that the 100,000 is not  
24 all that is needed for the entire pressure

[WITNESS PANEL: Vaughan|Gallo]

1 reduction project?

2 A (Vaughan) If you're referring to the design, it  
3 probably is not enough. If you're referring to  
4 the construction itself, it absolutely is not  
5 enough.

6 Q Thank you. If I could have you turn to Exhibit  
7 21, which is the Staff Recommendation. And it's  
8 the second to last page, there's a Gantt chart.

9 MS. BROWN: Now, for the record, when I  
10 printed mine on an eight and a half by eleven, it  
11 cut off the left margin. So, I just want to make  
12 sure that everyone has the left margin visible on  
13 their copy.

14 CHAIRWOMAN MARTIN: Attorney Brown, can  
15 you tell me again where you are? I was taking  
16 notes on something.

17 MS. BROWN: Sure. I am directing the  
18 witnesses to Exhibit 21, second to last page of  
19 the electronic document, there is a Gantt chart.

20 CHAIRWOMAN MARTIN: Okay. Thank you.

21 MS. BROWN: Thank you.

22 BY MS. BROWN:

23 Q And, Mr. Vaughan, do you have this in front of  
24 you?

[WITNESS PANEL: Vaughan|Gallo]

1 A (Vaughan) I do.

2 Q Okay. Now, does the Gantt chart show the  
3 sequence of outlays of cash required to address  
4 the pressure problem, as well as instances of  
5 replenishments, such as financings or rate cases?

6 A (Vaughan) It does.

7 Q And I just want to make a note that "Phase IV -  
8 Bidding and Construction...[of the] new water  
9 storage tank", that's the part that's on --  
10 that's certainly on hold at this point, correct?

11 A (Vaughan) That is. That is correct.

12 Q Okay. And, so, can you just walk us through what  
13 Abenaki sees as the timing, and how it will fully  
14 address the pressure problem? Can you walk us  
15 through this Gantt chart?

16 A (Vaughan) I will attempt to. This Gantt chart  
17 was produced in January of 2019. And it was a  
18 refinement, as we learned more of the variables  
19 and more of the scope and the nuances of the  
20 project. So, we factored in the procedural  
21 schedule, and then we went right to Phase I,  
22 which was the design. And we thought at that  
23 time it would be a \$100,000 outlay, you know, a  
24 deferred outlay, until we could capitalize that,

[WITNESS PANEL: Vaughan|Gallo]

1           when everything became used and useful. We  
2           assigned a contract to it, "16-09", which  
3           indicates that, effectively, we started thinking  
4           about this in 2016.

5                        That first maroon horizontal line there  
6           encompasses approximately seven months, six or  
7           seven or eight months, give or take. And, then,  
8           simultaneously with this, we would have gone in  
9           for a financing, and at that time we estimated up  
10          to \$3 million. And we probably would have taken  
11          that down in tranches, but we wanted clearance  
12          and concurrence with our lender that we could get  
13          up to 3 million.

14                       The next item here is a petition for  
15          recovery of the 1,000 [sic], that's the Step II.  
16          And we had estimated that would occur sometime in  
17          2019, concurrent with the conclusion of a design.

18    Q          Now, when you say -- can I interrupt you? When  
19                you said "1,000", you meant "100,000"?

20    A          (Vaughan) Beg your pardon, 100,000.

21    Q          Thank you.

22    A          (Vaughan) Thank you.

23    Q          I didn't mean to interject.

24    A          (Vaughan) Thank you. And then, we had estimated

[WITNESS PANEL: Vaughan|Gallo]

1 at that time that Phase II of the project would  
2 have been the bidding and construction of what we  
3 would call "Contract 1", including the  
4 transmission line and the booster pump station.  
5 And this is all pending and subject to  
6 refinement, because it was done in 2019, early,  
7 with what we knew then.

8 So, the 1,000 -- beg your pardon in  
9 omitting three zeros here, but the 1,000,000 was  
10 an estimate, and it was meant to punctuate the  
11 whole process with a rate increase, which was the  
12 next blue line there underneath, which is  
13 generally called a "general rate case or a step  
14 increase recovering the 1,000,000." And that was  
15 to mitigate the impact, or rate impact. And we  
16 had estimated that would take about a year.

17 In the meantime, we would have probably  
18 part of the system of the construction project  
19 running. That was our plan. It would not  
20 effectively reduce the pressure, but things would  
21 be in operation, and they would effectively solve  
22 the reduction problem after we did the final  
23 construction phase. And then, that is when we  
24 would realize the pressure reduction or the

[WITNESS PANEL: Vaughan|Gallo]

1 benefits in the actual pressure reduction.

2 Then, underneath the general rate case,  
3 we then said "Okay, this project is going to be  
4 broke up into two construction phases." We're  
5 calling this "Phase III", because Phase I was the  
6 design; Phase II would have been the first  
7 construction project; Phase III would have been  
8 the third and final project, since we are  
9 excluding the tank. We estimated that at a  
10 million dollars.

11 And then, we said, subsequent to that,  
12 and simultaneously to the finish of it, we would  
13 petition for the recovery of the final million  
14 dollars. And, effectively, that's how we wanted  
15 to stage the project. Again, this is subject to  
16 change, as we know more information.

17 Q Thank you. Mr. Gallo, do you have anything to  
18 add to that discussion?

19 A (Gallo) No, I do not.

20 Q Okay. Mr. Vaughan, I would like to move onto the  
21 timing. In the -- in the Motion for Extension of  
22 Time, Abenaki requested till the end of this  
23 year. Do you think a better recommendation would  
24 be to have a series of months that we are

[WITNESS PANEL: Vaughan|Gallo]

1           requesting the delay or the extension to be,  
2           rather than a fixed date?

3   A       (Vaughan) Yes.

4   Q       And how many months do you think Horizons needs?

5   A       (Vaughan) I would like to see at least eight  
6           months. And I think that is a very expeditious  
7           design. But I do think that the project is so  
8           comprehensive, and has so many moving parts in  
9           engineering and negotiations, that I would like  
10          to see between eight months and twelve months.

11   Q       Okay. Bob?

12   A       (Gallo) Yes. The timeline, as we discussed  
13          earlier with the easements, the timeline could be  
14          severely affected by the protracted negotiations  
15          for easements for the pump station -- pump  
16          station locations. Those locations would be  
17          needed prior to finalizing the design of those  
18          stations and the overall project. So, eight to  
19          twelve months, you know, would be -- would be, I  
20          think, an optimistic, you know, estimate,  
21          provided everything goes well with those land  
22          acquisitions.

23   Q       Thank you. But the Company could keep the  
24          Commission abreast of its progress, is that

[WITNESS PANEL: Vaughan|Gallo]

1 right?

2 A (Gallo) That's correct.

3 Q Okay. Mr. Vaughan, I would like to just get a  
4 little more fine-tuned with Abenaki's response,  
5 after it received the October letter defining the  
6 scope of what would be allowed on this step. Did  
7 you -- was Horizons able to do any of the work  
8 between that October and, I guess, mid-December  
9 timeframe last -- in 2019?

10 A (Vaughan) No. They were not.

11 Q Thank you. And, so, does the timing that you're  
12 requesting the extension to extend to, is it also  
13 impacted by Horizons availability?

14 A (Vaughan) Yes, it is.

15 Q And do you have a reasonable belief that Horizons  
16 can fit this project in in the timeframe you're  
17 now requesting?

18 A (Vaughan) I do.

19 Q Okay.

20 A (Vaughan) Let me qualify that. Negotiations of  
21 easements could be protracted. I would put that  
22 in as a caveat.

23 Q Okay. Thank you. Mr. Vaughan, and, Mr. Gallo,  
24 I'll have the same question to you, are you aware

[WITNESS PANEL: Vaughan|Gallo]

1 of whether -- or, do you have an opinion on  
2 whether Department of Environmental Services  
3 still supports this project?

4 A (Vaughan) Yes.

5 Q Yes, you have an opinion?

6 A (Vaughan) Well -- beg your pardon. Yes, they do  
7 support this project, wholeheartedly.

8 Q Okay. Mr. Gallo, do you agree with that?

9 A (Gallo) Yes, I do.

10 Q And have either of you been in contact with DES  
11 about this project recently?

12 A (Vaughan) Not recently. But we have been in  
13 communication, and they responded to us. I think  
14 we have a document that attests to their support.

15 Q Okay. And is there -- do you know if the town  
16 still supports this project?

17 A (Vaughan) It does. And, when I say "the town", I  
18 am also referring to the Town of Carroll Fire  
19 Department.

20 Q Okay. Good. And, perhaps the Town of -- the  
21 Twin Mountain Fire Department, is that what  
22 you're referring to?

23 A (Vaughan) Yes.

24 MS. BROWN: And, for the record, I know

[WITNESS PANEL: Vaughan|Gallo]

1           that that letter of support is in Exhibit 20,  
2           Page 80.

3                       And that was all of the questions that  
4           I have on direct. Thank you.

5                       CHAIRWOMAN MARTIN: Attorney Getz, did  
6           you have your request for a recess at this point?

7                       Oh, you're on mute. You're on mute.

8                       MR. GETZ: Yes, Madam Chair. I think  
9           it would make sense to recess at this point, you  
10          know, given the previous discussion about  
11          breaking from 11:00 to 12:00. I'd like to have a  
12          chance to speak to my client about that. So,  
13          then we could ask questions.

14                      I'm getting some feedback from  
15          something. Can you hear me, Madam Chair?

16                      *(Chairwoman Martin indicating in the*  
17                      *affirmative.)*

18                      MR. GETZ: So, the bottom line is we'd  
19          like to take a recess now. And maybe it makes  
20          sense to resume sometime after noon.

21                      MS. BROWN: I can get back for 11:40.

22                      MR. GETZ: Twelve is fine with me.

23                      MS. BROWN: Okay. All right. I don't  
24          want to overstep and take time. I appreciate it.

[WITNESS PANEL: Vaughan|Gallo]

1 CHAIRWOMAN MARTIN: Okay. So, you're  
2 suggesting that we just break now, until Attorney  
3 Brown returns?

4 MR. GETZ: I think that makes sense.  
5 I'm going to need some time to talk to my client,  
6 my witness. And it's going to take -- and,  
7 certainly, I'm not going to -- I can't imagine  
8 I'd be done, or your questions or other questions  
9 would be done before noon. So, it may be the  
10 best use of time.

11 CHAIRWOMAN MARTIN: Okay. Any  
12 objection from anyone else?

13 MS. BROWN: No objection from the  
14 Company.

15 MR. TUOMALA: No objection from Staff,  
16 Madam Chairwoman. That seems like perfectly  
17 reasonable, to recess until noon.

18 MR. GETZ: And I could also add, given  
19 what I've heard in the direct testimony, I don't  
20 expect to be calling Mr. Brogan for rebuttal.

21 MS. BROWN: Okay.

22 CHAIRWOMAN MARTIN: Okay. Great. Mr.  
23 Mueller, I didn't hear from you. Did you have  
24 any objection?

[WITNESS PANEL: Vaughan|Gallo]

1 MR. MUELLER: I'm fine. No objection.

2 CHAIRWOMAN MARTIN: Okay. Great.

3 Then, we will recess now, and return then.

4 MS. BROWN: Thank you.

5 CHAIRWOMAN MARTIN: You're welcome.

6 MR. GETZ: Thank you.

7 *(Recess taken at 10:28 a.m., and the*  
8 *hearing resumed at 12:06 p.m.)*

9 CHAIRWOMAN MARTIN: All right. We are  
10 on the record, Mr. Getz, for your  
11 cross-examination.

12 MR. GETZ: Thank you, Madam Chair.  
13 Good afternoon, Mr. Vaughan and Mr. Gallo.

14 WITNESS GALLO: Good afternoon.

15 WITNESS VAUGHAN: Good afternoon.

16 **CROSS-EXAMINATION**

17 BY MR. GETZ:

18 Q I'd like to start by trying to understand the  
19 status of your activities with DES and the  
20 timeline that you're going to pursue. And I want  
21 to make sure I'm understanding all the terms that  
22 are here correctly.

23 So, I think, originally, in your  
24 contract with Horizons, from September 2018,

[WITNESS PANEL: Vaughan|Gallo]

1           there was mention of filing a "Basis of Design  
2           Report" with the DES, is that correct?

3   A       (Vaughan) There really is no -- am I unmuted?

4   A       (Gallo) Yes.  You're okay, Don.

5   A       (Vaughan) There is actually no contract.  This is  
6           strictly a proposal.  There has not been an  
7           executed contract.

8   Q       So, when you're saying "contract", you're talking  
9           about the -- well, it was referred to previously  
10          in the Settlement Agreement as a "contract" with  
11          Horizons.  But I understand that that, from what  
12          you said earlier, that's really more of an  
13          estimate on their behalf, is that correct?

14  A       (Vaughan) That's correct.

15  Q       Okay.  Okay.  So, I'll return to that then.  So,  
16          with DES, though, is the next step you need to  
17          file with them a Basis of Design Report?

18  A       (Gallo) Yes.  That's correct.  Once we're under  
19          contract with Horizons, they will finalize their  
20          preliminary design and provide a Basis of Design  
21          Report.

22  Q       And then, the filing you made on June 16th, 2020,  
23          arguing against delay of the hearing today, you  
24          mentioned that delaying the hearing would "delay

[WITNESS PANEL: Vaughan|Gallo]

1 Abenaki's ability to file for design review at  
2 DES." So, is "design review" the same thing as  
3 the "Basis of Design Report"?

4 A (Gallo) No. The "Basis of Design Report" is  
5 really a preliminary report. Where "design  
6 review" would be when you present your final  
7 design to them, and they would -- and they would  
8 then approve the entire set of documents.

9 Q Okay. That was -- I was also trying to  
10 understand that, because earlier one of you  
11 mentioned something about "final design", in your  
12 earlier direct examination. So, "final design"  
13 is "design review". So, basically, it's a  
14 two-step process at least that you have to go  
15 through at DES?

16 A (Gallo) That's correct.

17 Q So, then, with getting to the timeline issues,  
18 so, the next step, you have the estimate from  
19 Horizons, and then, I understand from what you  
20 said earlier, that the next step would be to  
21 issue an RFP?

22 A (Vaughan) Yes.

23 Q And, presumably, that RFP would go to, I guess,  
24 other people, including Horizons?

[WITNESS PANEL: Vaughan|Gallo]

1 A (Vaughan) Potentially.

2 Q So, and then the product, the outcome of that,  
3 when you issue the contract with the winner of  
4 the RFP, assuming it's -- assume, for purposes of  
5 this discussion, it's Horizons, then Horizons  
6 would prepare the Basis of Design Report?

7 A (Gallo) That's correct.

8 Q And you're thinking that, from the time of  
9 contracting, until the report is issued, would  
10 take eight months?

11 A (Vaughan) Yes.

12 A (Gallo) Well, not for the Basis of Design Report.  
13 Yes. It's the final design documents would be in  
14 that time range. But the Basis of Design Report,  
15 we don't have an actual project schedule for the  
16 design efforts. So, I couldn't speak to, you  
17 know, a date on when the Basis of Design Report  
18 will be completed.

19 Q Okay. So, then, the steps would be issue the  
20 RFP, award the RFP, the winning bidder gives back  
21 the Basis of Design Report, there are some other  
22 steps, and then the final design is sent to DES?

23 A (Gallo) Yes. That's correct. And included in  
24 that would be, you know, obviously, we would need

[WITNESS PANEL: Vaughan|Gallo]

1 to nail down those easements, we may -- we may  
2 have to obtain for them, you know, once we have  
3 the -- you know, the easements and the locations  
4 concretely identified, then it can -- then, the  
5 design can move forward, you know, to final  
6 design.

7 So, I think, at this point, the Basis  
8 of Design will just be a preliminary document  
9 saying what the intent of the project is, and  
10 some, you know, some rough numbers associated  
11 with it. But, once, you know, the design  
12 would -- a lot of the design would basically be  
13 stalled until we obtain those easements.  
14 Because, you know, obviously, we need to know the  
15 final locations, so they can finalize numbers and  
16 plans.

17 Q And that's where I was -- the next step I was  
18 heading towards was trying to understand where  
19 the negotiations of the easements come in in this  
20 timeline. So, what can you do with the  
21 negotiation of easements now? Can you do  
22 anything now?

23 A (Vaughan) No.

24 Q So, you can't go to the homeowners associations

[WITNESS PANEL: Vaughan|Gallo]

1 to negotiate easements until after the Basis of  
2 Design Report is done, the first step?

3 A (Vaughan) Actually, beyond that. We won't be  
4 able to do anything with easements until Horizons  
5 determines the appropriate location for the pump  
6 stations, or any other appurtenance that might be  
7 involved.

8 Q So, it is one step at a time. You can't do  
9 things at the same -- you can't do two different  
10 things at the same time?

11 A (Vaughan) It's linear.

12 Q So, then, -- well, let me ask you then about  
13 the -- Abenaki's Motion to Extend the Deadline  
14 that it filed -- well, it's dated "December 27,  
15 2019". In there, you said that "notwithstanding  
16 numerous contacts, Abenaki has been unable to  
17 commence discussions with Omni relative to  
18 easements, consequently, it has been unable to  
19 finalize the engineering designs."

20 So, I guess I have two questions about  
21 that statement that was in the -- in that Motion  
22 to Extend the Deadline. Had you reached out to  
23 Omni prior to December 31st, 2019, to commence  
24 discussions about easements?

[WITNESS PANEL: Vaughan|Gallo]

1 A (Vaughan) Probably not, because we didn't know  
2 where the precise locations would be.

3 Q So, then, that's not a truthful statement. That  
4 the extension -- you couldn't proceed because you  
5 hadn't had contacts with Omni about the  
6 easements?

7 A (Vaughan) I don't think that's quite accurate. I  
8 believe that we had made that statement because  
9 we could not determine where the particular pump  
10 stations were located. And, so, therefore, it  
11 would not be fruitful to start negotiations.

12 Q But you did not make numerous contacts prior to  
13 December 31?

14 A (Vaughan) I think it might have been a singular  
15 contact.

16 Q Mr. Gallo, do you recall e-mail exchanges you had  
17 with Mr. DeBottis after January 1?

18 A (Gallo) I do, yes. I had asked him for a  
19 potential meeting. And I think, at that time, we  
20 also -- I think I may have discussed access to  
21 the property. But, with Mr. DeBottis, yes. I  
22 had -- I had e-mailed him, and requested that we  
23 meet. And then, just, you know, with this  
24 process going on, decided to wait until we had

[WITNESS PANEL: Vaughan|Gallo]

1 more clarification on this issue.

2 Q But do you recall that Mr. DeBottis had suggested  
3 several dates at the end of January to talk about  
4 these issues?

5 A (Gallo) I do recall, I believe he said that we  
6 would preferably meet at your offices. And then,  
7 at that time, you know, with this hearing, you  
8 know, with this process we're going through right  
9 now, thought it better that we would have, you  
10 know, some resolution on this issue before moving  
11 forward with that.

12 Q And, so, then you proposed that you'd get -- you  
13 would get back to him in the future about setting  
14 up some meetings?

15 A (Gallo) Yes. And that would have been at the  
16 resolution of this issue.

17 Q So, you have not contacted Mr. DeBottis since  
18 January 22nd about setting up another meeting?

19 A (Gallo) No, I have not, because we haven't made  
20 it through a decision on this issue.

21 Q And there's another statement in that Motion to  
22 Extend that -- where it says "Abenaki has been in  
23 conversation with Staff concerning the  
24 infeasibility of completing the engineering

[WITNESS PANEL: Vaughan|Gallo]

1 designs by December 31, 2019." Can you tell me a  
2 little more about what was discussed at that --  
3 in these conversations with Staff, and what you  
4 meant by the "infeasibility of completing the  
5 engineering designs"?

6 A (Vaughan) Yes. And I'm trying to recollect, it  
7 was a little while ago. But the order, I  
8 believe, came out in mid-October for us. And we  
9 had very little time, you know, a month and a  
10 half, to have Horizons complete the engineering,  
11 and that just was impossible. It was virtually  
12 infeasible.

13 Q Well, when you say "complete", well, you hadn't  
14 even issued the RFP?

15 A (Vaughan) That's correct.

16 Q You still haven't issued an RFP.

17 A (Vaughan) Well, we wouldn't have -- we wouldn't  
18 have issued the RFP, unless we had confidence  
19 that the order would come out so that we could  
20 recover the funds that are involved in the Step  
21 II. We wouldn't have done that. And it would  
22 have just been a waste of everybody's time.

23 Q So, maybe that leads to these questions I have  
24 about process. You said "it would waste

[WITNESS PANEL: Vaughan|Gallo]

1           everybody's time to issue the RFP", but maybe it  
2           comes down to, what's going to be in this  
3           petition that you're going to file with the  
4           Commission for the step increase? Are you -- are  
5           you going to need to issue an RFP, and then  
6           get -- go through the whole engineering process  
7           with Horizons to get a final design, that then  
8           will be part of the petition to the Commission?  
9           Is that how you see it?

10        A     (Vaughan) I would suspect it would unravel -- or,  
11           not "unravel", but unfold like that. And there  
12           may be some interim communication with Staff,  
13           showing them the plans. I can see that that  
14           process would occur.

15        Q     But you said earlier you don't have the cash  
16           available to engage Horizons to produce the  
17           plans. Did I understand that correctly?

18        A     (Vaughan) That is correct. That is correct.

19        Q     So, how do you -- what's the next move then for  
20           you? How do you actually get to engage Horizons  
21           to produce the plans, when you say you don't have  
22           the cash available?

23        A     (Vaughan) Well, we will have the cash when this  
24           order is -- this issue is decided. In other

[WITNESS PANEL: Vaughan|Gallo]

1 words, is the Commission going to allow us to  
2 proceed to recover the funds involved in engaging  
3 Horizons or are they -- or are they not? And we  
4 expect that they will. And once they do, and it  
5 is formalized, then we will get the financing,  
6 and proceed with the RFP and the engagement of,  
7 potentially, Horizons.

8 Q So, the very fact of the Commission extending  
9 your deadline will put you in a position to get  
10 financing from the parent?

11 A (Vaughan) Would you repeat that question? I'm  
12 not quite clear.

13 Q So, you say you need something from the  
14 Commission to be able to put you in a position to  
15 get the financing to actually contract with  
16 Horizons to produce the designs?

17 A (Vaughan) That's correct.

18 Q And what's before the Commission now is a Motion  
19 to Extend the Deadline. So, does the granting  
20 the Motion to Extend the Deadline then put you in  
21 a position to get the financing?

22 A (Vaughan) Yes. The answer is "yes". Now, there  
23 are a couple of possibilities here where we can  
24 get the funding. One would be, obviously, to

[WITNESS PANEL: Vaughan|Gallo]

1 petition the Commission for financing. But  
2 another one would be also to use our credit line  
3 in the interim.

4 Q So, you have an obligation to provide some  
5 engineering to DES that you haven't moved ahead  
6 with. If the Commission were to deny your Motion  
7 to Extend the Deadline, then what happens? Where  
8 are you?

9 A (Vaughan) Well, the deadline has already expired.  
10 We're requesting, in this initiative, that the  
11 deadline be ten months from the order, or  
12 thereabouts, approximately ten months.

13 Now, once we have that, then we will  
14 prepare the RFP, with confidence that the -- that  
15 we can get recovery of the engineering fees that  
16 Horizons, or some other consultant, is going to  
17 charge us. And we will undoubtedly use the  
18 credit line and currently do a financing.

19 Q So, when you say "ten months from the order",  
20 you're talking about the order -- what you're  
21 hoping for is an order from the Commission  
22 extending the deadline, ten months from that  
23 order?

24 A (Vaughan) Or, the Commission approving the

[WITNESS PANEL: Vaughan|Gallo]

1 pressure reduction project in general, as well as  
2 the order that allows that.

3 Q My understanding is the Commission is not going  
4 to approve a project, or the design of the  
5 project, until it gets the petition from you with  
6 the design that accompanies it. Are you  
7 presuming that the Commission is going to -- will  
8 act now, in saying that -- are you asking for  
9 pre-approval now of the design?

10 A (Vaughan) Yes.

11 Q So, this is --

12 A (Vaughan) Excuse me.

13 Q So, you're asking for more than an extension of  
14 the deadline. You're asking the Commission to  
15 change the process. And, instead of as part of a  
16 Step II order accepting the design, you're asking  
17 them to make some kind of pre-approval now, is  
18 that correct?

19 MS. BROWN: Don't answer, Mr. Vaughan,  
20 until I issue or state my objection.

21 To the extent his response is a legal  
22 response, I think it's not his field. And I  
23 think, Mr. Getz, your question does touch upon a  
24 legal interpretation, when he's "asking for

[WITNESS PANEL: Vaughan|Gallo]

1 pre-approval". I mean, I know you and I know  
2 what that means. But I'm not sure that Mr.  
3 Vaughan knows exactly what that means.

4 So, I just want to note an objection.  
5 To the extent that you're asking for a legal  
6 response, it's inappropriate. But, as a, you  
7 know, a person that operates and manages water  
8 utilities, he can answer in that capacity.

9 Thank you. And I guess I forgot to ask  
10 for an objection.

11 CHAIRWOMAN MARTIN: What was that?

12 MS. BROWN: I forgot to ask if I could  
13 have the Commissioners accept that objection.

14 Thank you.

15 CHAIRWOMAN MARTIN: I'm sorry. I just  
16 wanted to know if anyone else wants to be heard  
17 on that?

18 MR. GETZ: Well, I would like to reply.

19 CHAIRWOMAN MARTIN: Mr. Tuomala?

20 MR. TUOMALA: I guess, in a limited  
21 sense, that you'd be asking Mr. Vaughan for a  
22 legal opinion, I would sustain the objection.  
23 But his interpretation of exactly what they're  
24 asking for, I think, is relevant.

[WITNESS PANEL: Vaughan|Gallo]

1 CHAIRWOMAN MARTIN: Mr. Getz, your  
2 response?

3 MR. GETZ: I think that's -- my  
4 response is consistent with what Attorney Tuomala  
5 is saying. I'm asking him what he understands  
6 that he's -- that his company is asking the  
7 Commission to do, and whether that's consistent  
8 with the process that had previously been  
9 approved.

10 CHAIRWOMAN MARTIN: Mr. Mueller, do you  
11 want to be heard on this?

12 MR. MUELLER: No.

13 CHAIRWOMAN MARTIN: Okay. Thank you.

14 The objection is overruled, to the  
15 extent that the question asked for his  
16 understanding of process. Mr. Vaughan, you  
17 should limit your response to your understanding  
18 of what you are requesting, and not give a legal  
19 interpretation. That clear?

20 WITNESS VAUGHAN: Yes.

21 CHAIRWOMAN MARTIN: Thank you.

22 MR. GETZ: So, should I restate?

23 CHAIRWOMAN MARTIN: You can restate, if  
24 that's helpful. But I think he understands now

[WITNESS PANEL: Vaughan|Gallo]

1           how he can answer.

2 BY MR. GETZ:

3 Q       Mr. Vaughan, can you answer?

4 A       (Vaughan) Yes. Yes. What we're seeking is  
5       the -- for the Commission to allow for the  
6       project to proceed based on its prudence.

7 Q       So, you're asking the Commission to find now that  
8       it's a prudent project?

9 A       (Vaughan) I am asking the Commission to approve  
10       the end result, the attempt to realize the goals  
11       that we've already presented, in the form of  
12       engineering and specification designs.

13 Q       So, you're asking the Commission to do something  
14       other than -- let me step back and rephrase that.  
15       The original order from the Commission said that  
16       you needed to show that you produced the most  
17       cost-effective design in order for the step  
18       increase to happen. Do you understand that  
19       approach?

20 A       (Vaughan) Yes.

21 Q       And I take it, based on your experience, you know  
22       what "pre-approval" is, is that fair to say?

23 A       (Vaughan) Yes.

24 Q       So, are you asking the Commission to do something

[WITNESS PANEL: Vaughan|Gallo]

1 different now than what it approved in its  
2 original order?

3 A (Vaughan) All we are asking is for the Commission  
4 to extend the deadline.

5 Q Okay. I'm having trouble reconciling that with  
6 what you previously said. So, you're asking them  
7 to extend the deadline, and then -- which, give  
8 or take what you said before, would probably be  
9 around July of next year. So, when you get to  
10 then, then you will file what you believe to be  
11 the most cost-effective design, that then the  
12 Commission has to decide whether it agrees with  
13 that, and then that would end up triggering the  
14 Step II. Is that fair to say?

15 A (Vaughan) Yes.

16 Q Let me ask about financing. Earlier, there was  
17 some discussion during the settlement, that it  
18 became that the Settlement and the Step II kind  
19 of replaced the notion of having a financing  
20 docket. Is that true?

21 A (Vaughan) Would you repeat that please?

22 Q I'm trying to -- earlier, in your direct  
23 examination by Ms. Brown, there was some  
24 discussion that the Settlement Agreement and the

[WITNESS PANEL: Vaughan|Gallo]

1 agreement to do a step, for the engineering  
2 costs, somehow replaced the idea of having a  
3 financing for the engineering costs, or  
4 otherwise. Is that accurate?

5 A (Vaughan) I'm not sure how you've posed that.  
6 There would necessarily be a financing involved.

7 Q Do you recall at any time during the process of  
8 the discussion about doing a financing to raise  
9 the costs for the engineering design costs with  
10 Horizons?

11 A (Vaughan) Yes.

12 Q So, that's something you could do, is submit a  
13 petition, to the extent that you don't have cash  
14 available, you could submit a financing petition?

15 A (Vaughan) Yes.

16 Q And one of the -- as part of a financing  
17 petition, then you would have to demonstrate that  
18 the use of the proceeds was reasonable, you  
19 understand that?

20 A (Vaughan) Yes.

21 Q I'm also wondering what the status is of any  
22 potential future rate case. Is there anything  
23 under consideration at this point? And do you  
24 have any idea of when such a rate case would be

[WITNESS PANEL: Vaughan|Gallo]

1 made?

2 A (Vaughan) Not at this point. But there would be  
3 a rate case in the -- in the future.

4 Q Is it possible that such a rate case would  
5 overtake or precede -- or, supersede the need for  
6 a Step II increase for the engineering costs?

7 A (Vaughan) Would you please restate that? I mean,  
8 beg your pardon, would you please repeat that?

9 Q Well, let me rephrase. So, the way, under your  
10 proposal now, you would file a petition sometime  
11 in the middle of next year, probably post July,  
12 for a Step II rate increase for the engineering  
13 costs?

14 A (Vaughan) For the recovery.

15 Q Right. So, is it possible that there will be a  
16 request for a rate increase in the interim, and  
17 does that -- would that supersede the Step II at  
18 that time?

19 A (Vaughan) You're asking me to look forward in the  
20 future. And our projections, at this point, are  
21 probably not, but I could not be absolutely sure  
22 on that.

23 Q Well, that's as to whether you will file or not.  
24 But, if you were to file, does that make this,

[WITNESS PANEL: Vaughan|Gallo]

1 for a rate increase, a general rate increase,  
2 would that supersede the Step II?

3 A (Vaughan) You're asking me, again, to look  
4 forward, by asking me "if". But I would rely  
5 only at this point on recovery of the Step II  
6 expense, and reevaluate rate case requirements  
7 subsequently.

8 Q There was also a discussion in the direct about  
9 the \$100,000 estimate for the engineering costs,  
10 and a reference to the Staff Recommendation from  
11 last July, and how they had appeared to reduce  
12 that \$100,000 to \$69,000, because the water tank  
13 would no longer be involved. I didn't really  
14 follow your answer about that. But you did say  
15 that the new estimate from Horizons is now  
16 between 100 and 130.

17 So, could you just -- were you, in your  
18 discussion, were you saying that Staff's theory  
19 that the \$31,000 should be taken out of the  
20 estimate was inaccurate for some reason?

21 A (Vaughan) No. The 31,000 should not be taken out  
22 of the estimate, relative to the range of  
23 estimate that I gave you before, which is "100 to  
24 130". Again, that was a conversation that I've

[WITNESS PANEL: Vaughan|Gallo]

1 had with Horizons.

2 I've had, you know, more than a few  
3 conversations on this project. And the deeper  
4 that we get into this, the more clarity becomes  
5 our, you know, estimates. So, they gave me, you  
6 know, a rough estimate of 100 to 130. That won't  
7 be refined until we actually get a bid.

8 Q So, you also talked about the \$80,000 that's been  
9 spent to date on this effort, meaning, I guess,  
10 the Step II. Does the \$80,000 include any  
11 engineering costs from -- engineering design  
12 costs from Horizons?

13 A (Vaughan) The hydraulic model is included in  
14 there. There's been -- that would probably be  
15 the extent of it.

16 Q So, are you asking that the \$80,000 be added to  
17 the \$100,000 as part of a Step II, or are you  
18 asking at all for the \$100,000 cap on engineering  
19 design costs be increased?

20 A (Vaughan) Well, at this point, I'd like to break  
21 this up into two parts. One would be, we would  
22 carve out the engineering fees, which would be,  
23 you know, somewhere, and I'm estimating, because  
24 I'm basing my estimate on others' estimates, but

[WITNESS PANEL: Vaughan|Gallo]

1 100 to \$130,000. That would be, hopefully, in  
2 the Step II recovery. The \$80,000, I think we  
3 would like to recover in perhaps our first rate  
4 case.

5 Q I've got a couple other questions about things  
6 that arise because of Staff's -- the statement  
7 Staff made in its July 15 Recommendation, which I  
8 guess was Exhibit 21.

9 So, Staff, at that time, also mentioned  
10 it supported -- or, Staff encouraged -- was  
11 encouraged by Abenaki's willingness to apply for  
12 low cost financing from DES for construction of  
13 the required infrastructure. Did Abenaki pursue  
14 that financing?

15 A (Vaughan) We have, to the extent that we've made  
16 queries. And I didn't make those queries. We  
17 have somebody within the Company that did make  
18 those queries. But, in any event, if we did look  
19 for financing, we would certainly pursue SRF  
20 funding, as well as Trust Funds, and then our own  
21 lender is fairly competitive also.

22 Q And Staff also, in one of the primary parts of  
23 the Staff Recommendation, was asking the  
24 Commission to authorize Abenaki to proceed with

[WITNESS PANEL: Vaughan|Gallo]

1           contracting with Horizons Engineering. Do you  
2           recall that?

3   A       (Vaughan) Somewhat. I probably think that  
4           probably would have taken place.

5   Q       Well, do you recall that, in the Commission's  
6           order from October, in its clarifying order it  
7           found that Abenaki did not need authority to  
8           proceed with contracting with Horizons?

9   A       (Vaughan) I recollect that.

10   Q       So, is it true then that Horizons -- that Abenaki  
11           could have contracted with Horizons last summer  
12           to produce the -- to go forward with the  
13           engineering design, is that correct?

14   A       (Vaughan) They could have. Abenaki could have  
15           done that. It may not have been prudent, but  
16           they could have done it.

17   Q       So, it could have done it. It didn't do it.  
18           Staff had proposed also, as part of that  
19           Recommendation, that the deadline for filing be  
20           extended until March 31, 2020. But Abenaki asked  
21           that the deadline be set sooner, at December 31,  
22           2019, is that correct?

23   A       (Vaughan) Will you -- may I hold this line of  
24           questioning for a moment?

[WITNESS PANEL: Vaughan|Gallo]

1 Q Sure.

2 A (Vaughan) Yes. Beg your pardon. Yes. There  
3 were a lot of possibilities and potential paths  
4 that the Company could have taken.

5 MR. GETZ: Madam Chair, I think that's  
6 all the questions I have. Thank you.

7 CHAIRWOMAN MARTIN: Okay. Thank you.  
8 Mr. Mueller, do you have questions?

9 MR. MUELLER: Yes, I do. My questions  
10 are for Mr. Vaughan.

11 BY MR. MUELLER:

12 Q And I refer to this morning's testimony about  
13 cash that's available to potentially pay for this  
14 Horizons engagement. So, is it true that New  
15 England Service Company, who files public  
16 financial statements on your public New England  
17 Service Company website, at December 31st, 2019,  
18 has both \$781,095 available in cash, and \$456,385  
19 available in marketable securities, for a total  
20 available of \$1,237,480?

21 A (Vaughan) You're asking me if that's true?

22 Q Yes.

23 A (Vaughan) I don't have those financials in front  
24 of me, but it's probable.

[WITNESS PANEL: Vaughan|Gallo]

1 Q Okay. I'm reading directly from the audited  
2 financial statements. And, similarly, at  
3 December 31st, 2018, you had cash of 1,666,643  
4 and marketable securities of 417,010, for a total  
5 available of 2,083,653?

6 A (Vaughan) That's possible.

7 Q Okay.

8 A (Vaughan) You're speaking about the New England  
9 Service Company audited financials?

10 Q Yes.

11 A (Vaughan) And you realize that's a consolidation?

12 Q I do. However, the testimony stated -- your  
13 testimony stated "either Abenaki nor New England  
14 Service Company had the cash available"?

15 A (Vaughan) That is correct at the present.

16 MR. MUELLER: Okay. Thank you. That's  
17 all I have, Commissioner.

18 CHAIRWOMAN MARTIN: Okay. Thank you,  
19 Mr. Mueller.

20 Mr. Tuomala.

21 MR. TUOMALA: Thank you, Madam  
22 Chairwoman.

23 Good afternoon, Messrs. Vaughan and  
24 Gallo. I have a few questions, hopefully brief.

[WITNESS PANEL: Vaughan|Gallo]

1 Apologize if some of them are repeats from  
2 prior questions, but I just want to make sure I  
3 have the timeline straight in my head on some of  
4 the requests for extension that you mentioned  
5 early.

6 BY MR. TUOMALA:

7 Q But, first, I wanted to briefly speak to the  
8 testimony, Mr. Vaughan, that you had just given  
9 about notification to Staff about problems or the  
10 inability to file in a timely manner for the Step  
11 II last year. Can you specifically address any  
12 conversations that you recall having with Staff  
13 about filing the extension last year?

14 A (Vaughan) I cannot really remember what happened,  
15 what conversations took place. You know, and,  
16 basically, we're a small company and we wear  
17 many, many hats. So, I can't specifically summon  
18 up the remembrances.

19 Q Okay. Thank you, Mr. Vaughan. Now, I just want  
20 to pivot to the timeline for the extension. And  
21 either Mr. Vaughan or Mr. Gallo can answer it.

22 You had mentioned that, instead of the  
23 extension until December 31st of this year, 2020,  
24 you were looking for an extension of a period of

[WITNESS PANEL: Vaughan|Gallo]

1 months, from either eight to twelve months. Is  
2 it correct, my understanding correct that, at the  
3 end of those twelve months, if the extension were  
4 granted, worst case scenario it was twelve  
5 months, and, if that extension were granted by  
6 the Commission, which would -- if an order were  
7 issued soon, say, in *arguendo*, tomorrow, we'd be  
8 looking at July of 2021. That, at that point,  
9 the engineering designs would be complete, and  
10 the filing for recovery for those engineering  
11 designs? Or, do you envision another possible  
12 extension at that time?

13 A (Gallo) Well, this is Bob Gallo. That would, as  
14 we discussed earlier, that would depend on  
15 acquiring, you know, the necessary easements to  
16 construct those improvements. And I think it was  
17 suggested earlier that we would keep the  
18 Commission apprised of what we were doing, and if  
19 there were any roadblocks in our way.

20 So, as we mentioned earlier, an  
21 easement, you know, a protracted easement  
22 negotiation, you know, could take several months,  
23 you know, even beyond -- even beyond three or  
24 four months, you know, if it's, I guess,

[WITNESS PANEL: Vaughan|Gallo]

1           contentious, you would say.

2   Q       Thank you for that.  So, would you say that, in  
3           fairness, that the extension for twelve months  
4           might not be sufficient, that the Commission  
5           would possibly with entertaining a further  
6           extension for the filing sometime, possibly even  
7           to late 2021 to 2022?

8   A       (Gallo) We would hope it wouldn't take that long.  
9           But, you know, if there is, you know, an issue  
10          where, you know, there may be some alternate  
11          sites, as we discussed earlier, that could be  
12          explored.  But, at this time, you know, we don't  
13          have a sense of, you know, what kind of, you  
14          know, how agreeable, I would say, those entities  
15          would be, those homeowners associations.

16                 So, it's, you know, it's really a  
17          jump-ball at this point, because we, you know, we  
18          really can't predict what -- you know, homeowners  
19          associations, you know, how they will respond.

20                 MR. TUOMALA:  Okay.  And thank you for  
21          that.

22                 Madam Chairwoman, I do not have any  
23          further questions at this time.  Thank you.

24                 CHAIRWOMAN MARTIN:  Okay.  Thank you.

[WITNESS PANEL: Vaughan|Gallo]

1 Commissioner Bailey.

2 CMSR. BAILEY: Thank you. Good  
3 afternoon, Mr. Gallo and Mr. Vaughan.

4 WITNESS VAUGHAN: Good afternoon.

5 WITNESS GALLO: Good afternoon.

6 BY CMSR. BAILEY:

7 Q Mr. Vaughan, were you aware of the pressure  
8 problem in Rosebrook when you acquired the  
9 franchise?

10 A (Vaughan) Yes.

11 Q Do you know what year the Sanity Survey first  
12 identified pressure as a significant issue?

13 A (Vaughan) I believe it was the prior Sanity  
14 Survey, if I'm not mistaken.

15 Q The one before --

16 A (Vaughan) Yes, the current one.

17 Q So, the current one was 2019?

18 A (Vaughan) Correct.

19 Q Do you remember if it was before or after you  
20 bought the Company?

21 A (Vaughan) It was before we bought the Company.

22 Q Okay. I have noted that, in Exhibit 20, on Page  
23 3, DES sent a letter to Abenaki saying that there  
24 was a "public health risk" because of the

[WITNESS PANEL: Vaughan|Gallo]

1 pressure problem.

2 A (Vaughan) Page 3. I'm trying to locate that.

3 Q It's in Exhibit 20.

4 A (Vaughan) Exhibit 20.

5 Q The second bullet on Page 3. The document  
6 Page 3.

7 A (Vaughan) Let's see. I'm not exactly sure why  
8 that's characterized as a "public health risk",  
9 unless it has to do with safety.

10 Q Right. That's what I assumed it had to do with.

11 A (Vaughan) Yes. And I think that's the  
12 implication there.

13 Q Okay. Do you understand -- well, actually, let  
14 me back up. Mr. Gallo, can you give me some  
15 indication of your experience as -- of  
16 regulation? You mentioned in your opening  
17 statement that you've had experience with  
18 regulations?

19 A (Gallo) Yes. I've had experience with, you know,  
20 and I've worked in several states, in particular,  
21 I worked for eight years for a consulting firm in  
22 Vermont. It was a land development company or a  
23 land development firm. Where we exclusively  
24 dealt with, you know, the permitting and

[WITNESS PANEL: Vaughan|Gallo]

1 construction, you know, of residential  
2 subdivisions, commercial/industrial uses. And,  
3 as part of that, my duties were to obtain  
4 permitting. So, it may be a storm water permit,  
5 maybe a permit to construction the water system,  
6 a permit to construct sanitary facilities.

7 So, in that respect, I've had -- I've  
8 had a lot of interactions with regulatory  
9 authorities.

10 Q Have you had any experience with regulatory  
11 requirements of public utilities?

12 A (Gallo) From the sense of a Public Utilities  
13 Commission?

14 Q Well, yes. I mean, do you understand the  
15 obligations of a public utility? Do you have any  
16 experience with that?

17 A (Gallo) This, from my understanding of the rules  
18 with the DES, I understand that we have an  
19 obligation to provide, you know, safe and  
20 reliable -- safe and reliable service.

21 Q And we just established that DES thinks that  
22 there's a public health risk because of the  
23 safety issue of this pressure problem. Is that  
24 right?

[WITNESS PANEL: Vaughan|Gallo]

1 A (Gallo) Correct.

2 Q So, as a Professional Engineer, and I ask this of  
3 both of you, how can you allow this public health  
4 risk to continue without solving the problem  
5 immediately?

6 A (Vaughan) We cannot.

7 Q Well, --

8 A (Vaughan) Well, we can't do it from ourselves.

9 Q I understand that. And the Commission, in 2018,  
10 gave you the opportunity to get an engineering  
11 study completed over the next year. What  
12 happened? The design study?

13 A (Vaughan) Well, that would have entailed a  
14 significant capital expense. And there was some  
15 risk associated with that. I mean, this is not a  
16 new situation. This pressure problem has been  
17 around for some time. And, with all due respect,  
18 we weren't sure what kind of obstacles or  
19 challenges we were going to encounter in engaging  
20 an engineer. And I'm saying this mostly from the  
21 cost recovery point of view.

22 Now, once we had the engineering and so  
23 forth, then the next step, obviously, is to get  
24 into construction. And the construction is

[WITNESS PANEL: Vaughan|Gallo]

1 fairly comprehensive, and, in itself, is going to  
2 require, you know, some vetting, some evaluation.  
3 You know, there was a lot of risk associated with  
4 spending \$100,000 on the Rosebrook system.

5 Q Is the risk that -- is the risk that you won't be  
6 able to recover it?

7 A (Vaughan) Yes.

8 Q Is that the only risk or are there more risks?

9 A (Vaughan) No, that would be -- that's largely the  
10 risk, is whether we could recover it.

11 Q Well, the Commission gave you permission and said  
12 that you would be allowed to recover that, if you  
13 got it done in 2019. So, what risk was left?

14 A (Vaughan) I don't recall exactly how that was  
15 worded. But I'm going to say that, you know, it  
16 was a fairly extensive undertaking. We had  
17 already spent quite a bit of money after we  
18 acquired the Company on several things. There  
19 were some well and pump improvements. We metered  
20 and totally revamped the billing and the customer  
21 service operation. So, there was quite a bit of  
22 expense there.

23 It may be that it was an amount of  
24 money that we felt like, you know, it was

[WITNESS PANEL: Vaughan|Gallo]

1           probably uncertain as to, you know, whether we  
2           could recover it. But, you know, I could look at  
3           the order.

4   Q       Do you think that there's a risk that, if a  
5           serious safety accident occurs, it would cost you  
6           more than \$100,000?

7   A       (Vaughan) You mean, in terms of liability?

8   Q       Yes.

9   A       (Vaughan) Well, you know, our charge is to  
10          provide, you know, safe water at a reasonable  
11          price. And we're doing that. But we're  
12          hamstrung, in that we're trying to solve this  
13          pressure problem. It's not a new problem. And I  
14          think we are the ones that are attempting to do  
15          that, of all the owners that have preceded us.  
16          So, we are attempting to do that in good faith.

17                 Rosebrook is a small company. It's  
18          only 400 customers. And these small systems are  
19          very risky, in terms of cash flow, in terms of  
20          revenue.

21                 As an example, we've just lost quite a  
22          bit of revenue in the shutdown of the hotel,  
23          because of the pandemic. So, that makes this  
24          company much more risky.

[WITNESS PANEL: Vaughan|Gallo]

1                   You know, the revenue is not what we  
2                   expected. So, I'm trying to -- putting a lot  
3                   into this response, Commissioner, and I apologize  
4                   for that. But I think the risk was such that we  
5                   really needed some more substantial support  
6                   relative to recovery.

7    Q            So, the reason that you did not contract with  
8                   Horizons to accomplish the design in 2019 is  
9                   because you didn't believe that the Commission's  
10                  order would allow you to recover that?

11   A            (Vaughan) Well, in 2019, we were in the midst of  
12                  this whole process, and we were discussing  
13                  recovery. So, I think that the thought then was  
14                  that we would be able to obtain recovery from the  
15                  Commission throughout this initiative.

16   A            (Gallo) Commissioner, this is Bob Gallo. As we  
17                  discussed earlier, if we're talking about the  
18                  order that came out in October, that, you know,  
19                  as we discussed earlier, that would not have been  
20                  enough time to complete an engineering design.

21   Q            No. I'm talking about the order that was issued  
22                  in December of 2018, that approved the Settlement  
23                  Agreement, that provided you the opportunity to  
24                  request the recovery in Step II, after you

[WITNESS PANEL: Vaughan|Gallo]

1 conducted the design. And you never even started  
2 it. Why will you start it now?

3 A (Vaughan) Well, if you -- in my recollection of  
4 this, Commissioner, is that, and I'm trying to go  
5 back to that original order, I know there was  
6 some contention between Omni and  
7 Rosebrook/Abenaki. And there was some pushback.  
8 I think that was evident there. I think that the  
9 Step II came out of this, that order, if I recall  
10 correctly. And, because there was contention,  
11 that translated into risk. And I believe that's  
12 why we did not proceed.

13 Q So, you didn't believe that you could demonstrate  
14 that the design of this significant pressure  
15 problem solution would be cost-effective?

16 A (Vaughan) No, Commissioner. We believed that it  
17 would be cost-effective. However, if -- my  
18 recollection again, is that we were being asked  
19 to provide a cost-effective solution even before  
20 we started the solution. It was almost like  
21 prescribing a cure before the patient was  
22 examined. And we were -- we just had real  
23 difficulty in getting past that.

24 Q So, are you then now asking the Commission to go

[WITNESS PANEL: Vaughan|Gallo]

1 even further than it did in the 2018 order, and  
2 decide that it's prudent to proceed with this  
3 project before it begins?

4 A (Gallo) Well, if I could answer that. You know,  
5 the DES fully supports this project. And, with  
6 the high pressures, you know, prudence -- I think  
7 prudence would be a given at this point, because,  
8 you know, there are very limited options on how  
9 to -- how to design the system and achieve the  
10 correct pressures. So, you know, I think there's  
11 already a prudence established for that by the  
12 support of the DES.

13 Q Well, isn't that your job then, to go forward?  
14 If you've decided that it's prudent, you go  
15 forward. And, after you make the investment, we  
16 review that and make sure that it was. And I  
17 don't understand why you're so afraid that we  
18 will determine three years from now that it  
19 wasn't a prudent decision to solve the safety  
20 problem?

21 A (Vaughan) I think, Commissioner, we were asked,  
22 and I think woven into the context there, was to  
23 provide a cost-effective solution before we even  
24 started it, started the engineering project. And

[WITNESS PANEL: Vaughan|Gallo]

1 we couldn't come up with that before we started  
2 the project, the most cost-effective solution,  
3 because we didn't know. In fact, you know, as we  
4 discussed this morning, that we're still locating  
5 pump stations and configurations of the  
6 distribution system. So, I think that is what's  
7 stalled us.

8 Q It seems like a "chicken and an egg" problem. I  
9 mean, you said before that you have to get  
10 Horizons, or somebody, to design the solution,  
11 before you know where you have to get the  
12 easements. So, you can't start on the easements  
13 now. You need to get that engineering design  
14 study done.

15 A (Vaughan) Correct.

16 Q And I still don't understand what your -- what  
17 you expect the Commission to say, what magic  
18 words you expect the Commission to say, for you  
19 to take the responsibility to do that study --  
20 or, not "study", that design?

21 Can you tell me what magic words you  
22 need?

23 A (Vaughan) I think that all we're looking for,  
24 Commissioner, is the extension of the timeline,

[WITNESS PANEL: Vaughan|Gallo]

1 and the ability and some sort of confidence that  
2 we're going to be -- we will be able to recover  
3 the expense associated with the engineering.

4 Q And what assurance do we have that, if we extend  
5 the timeline, you will issue the RFP the day  
6 after the order?

7 A (Vaughan) Well, we will -- we will issue the RFP  
8 the day after the order.

9 Q I think you said earlier, I think it was you, Mr.  
10 Vaughan, that you "haven't made it through the  
11 decision on this issue." Is the decision on this  
12 issue to go forward with the design just based on  
13 a guarantee of cost recovery?

14 A (Vaughan) Yes, pretty much. We're just looking  
15 for that.

16 Q Have you considered the cost of digging 400 wells  
17 and abandoning the service territory?

18 A (Vaughan) No.

19 Q How much do you think that would cost?

20 A (Vaughan) It depends on the water table there,  
21 Commissioner. I have no idea, to be quite frank.  
22 But it could -- I wouldn't even want to  
23 speculate.

24 Q Okay. Can we look at Exhibit 21, the Gantt

[WITNESS PANEL: Vaughan|Gallo]

1 chart? I think it's Bates Page 109.

2 A (Vaughan) Yes.

3 Q All right. Let's assume that you get an order  
4 that you believe will allow you to proceed with  
5 the design, with contracting for the design.  
6 Where does that put us on this timeline?

7 A (Vaughan) We're looking at 2019. So, I will  
8 project that over to 2020. And, so, we moved  
9 everything up, to the right, in pretty much the  
10 same order that it's configured.

11 Q But, really, it would go to 2021, right? Because  
12 the design will happen through July of 2021, and  
13 you will request recovery of that sometime after  
14 that?

15 A (Vaughan) I would suspect so. Somewhere in 2021,  
16 the latter part of 2021.

17 Q And, so, that's going to push this whole timeline  
18 out to 2026 or 2027?

19 A (Vaughan) It could.

20 Q Do you have any concerns about that?

21 A (Vaughan) Pardon me?

22 Q Do you have any concerns about that?

23 A (Vaughan) No. I mean, we could compress this.  
24 But, you know, we're sensitive to rate impacts,

[WITNESS PANEL: Vaughan|Gallo]

1 and we broke this up. But, you know, if the  
2 Commission would allow, we could do the project  
3 all in one or two years.

4 Q The testimony about the \$31,000 for the tank  
5 removal from the project, is it -- let me see if  
6 I understand it correctly. I think that Staff  
7 may have believed that the new design would  
8 eliminate using a tank. And what you've intended  
9 was postponing the installation of the tank. Is  
10 that right?

11 A (Vaughan) That's correct.

12 Q So, the tank would be built in the last phase,  
13 not eliminated?

14 A (Vaughan) No. The tank would be eliminated as a  
15 prospective project, subsequent to the pressure  
16 reduction project. We would ideally like to  
17 include it. But there was some concern, dissent,  
18 and I am not sure I understand what the basis of  
19 that was. But, because there was some pushback,  
20 we just deleted it.

21 But, however, we're going to locate the  
22 tank site. We're going to do the tank design --  
23 rather, the site design and the underground  
24 piping design, but we are not going to built the

[WITNESS PANEL: Vaughan|Gallo]

1 tank, and that was eliminated as part of the  
2 estimates here. And that's the best way I can  
3 characterize this, is Horizons is trying to keep  
4 track of this, because things change. And, so,  
5 they did not include that.

6 Q Okay. I see Commissioner Giaimo has a follow-up,  
7 but let me just ask you. So, what you're saying  
8 is, that we still want Horizons to design the  
9 tank, but you had agreed not to build it at this  
10 point in time, and it's not part of any of those  
11 estimates?

12 A (Vaughan) That's correct, with the exception that  
13 Horizons isn't going to design the tank. They're  
14 going to locate the site --

15 Q Yes.

16 A (Vaughan) -- and the underground piping,  
17 *etcetera, etcetera.*

18 CMSR. BAILEY: Okay. Commissioner  
19 Giaimo, you have a question?

20 CMSR. GIAIMO: I do. And thank you for  
21 allowing me to chime in here. But, since we're  
22 on Exhibit 21, I thought it made sense to chime  
23 in now.

24 BY CMSR. GIAIMO:

[WITNESS PANEL: Vaughan|Gallo]

1 Q So, Mr. Vaughan, you said that the project can be  
2 done in "one to two years", as opposed to what  
3 looks like could be five to seven years?

4 A (Vaughan) If it's -- I'm estimating. It could be  
5 perhaps done in, I would guess, probably a year  
6 and a half or two years, and, you know,  
7 consideration of the construction season there is  
8 narrow. But, if we did it all at once, it's a  
9 possibility.

10 Q And that presumes no easement issues, is that  
11 correct?

12 A (Vaughan) Well, the easement issues wouldn't be  
13 part of the construction.

14 Q Okay. All right. Thanks. Okay. So, that  
15 helps. So, you said "one to two years". How  
16 much more would that add to it? What's the  
17 premium associated with expediting it?

18 A (Vaughan) They're certainly would be a premium,  
19 but I don't know how much that would be. And I  
20 would -- let me just rephrase that. I suspect  
21 there would be a premium.

22 Q Okay. All right. And the Phase IV tank, how  
23 much was that? Was that \$2 million?

24 A (Vaughan) The Phase IV tank? Yes, we got 500,000

[WITNESS PANEL: Vaughan|Gallo]

1           there, I think, you know, assuming a half a  
2           million gallons, somewhere around there. And,  
3           you know, these are just conceptual estimates. I  
4           mean, this goes back to January 2019, and prior,  
5           actually.

6    Q       So, the estimated cost of 2.6 million that we see  
7           here, I just want to make sure I understand it,  
8           that does not include the Phase IV tank?

9    A       (Vaughan) That's correct. Oh, beg your pardon.  
10           Beg your pardon. That does include the tank.  
11           However, we've deducted that, or we will deduct  
12           it. But, again, an estimate, and, you know, it's  
13           hard to -- it's hard to estimate construction  
14           costs, and timing, and the competitive market at  
15           any given time.

16   Q       Okay. So, if you were to re -- if you were to  
17           update this, this chart, on Bates 109, we would  
18           probably see \$500,000 removed that's associated  
19           with the tank?

20   A       (Vaughan) Yes. You'd see the costs associated  
21           with the tank removed.

22   Q       But the design would have -- the design would  
23           have been included in this?

24   A       (Vaughan) Not the design, just the site design

[WITNESS PANEL: Vaughan|Gallo]

1 and the determination of the site.

2 A (Gallo) And the site design would have been  
3 included in that first item for \$100,000.

4 CMSR. GIAIMO: Okay. Thank you both.

5 BY CMSR. BAILEY:

6 Q I'm trying to find an exhibit that I reviewed  
7 that shows the costs that Horizons estimated that  
8 gets you to \$100,000. Can anybody tell me what  
9 exhibit that is?

10 A (Vaughan) I think that was a September 18th,  
11 Exhibit 23, I believe.

12 A (Gallo) And Page 5.

13 Q All right. That's probably what it is, because  
14 that's the one that I don't have with me. Yes,  
15 that's it.

16 Okay. So, Item 5, "Atmospheric Storage  
17 Tank Design". That was for the design that  
18 somebody else was going to perform to design a  
19 tank, not the siting?

20 A (Vaughan) Correct.

21 Q Why --

22 *[Court reporter interruption due to*  
23 *inaudible audio.]*

24 CMSR. BAILEY: Okay.

[WITNESS PANEL: Vaughan|Gallo]

1 BY CMSR. BAILEY:

2 Q Item 5, Exhibit 23, Bates Page 005, that's  
3 "Atmospheric Storage Tank Design" for "\$30,500".  
4 That was the amount that Horizons was going to  
5 pay another contractor to design the tank, not  
6 the site design of the tank, correct?

7 A (Vaughan) Yeah, virtually. And Horizons wouldn't  
8 have paid for that. That would have been a  
9 design that would have come by -- through the  
10 vendor, through the storage tank manufacturer.

11 A (Gallo) Yes. The vendor -- a vendor, typically,  
12 you know, many vendors, I should say, if you're  
13 going to buy a product, they will, you know,  
14 nowadays a lot of them will provide design  
15 services for that, for that product.

16 But, you know, Item Number 5, you know,  
17 the "Atmospheric Storage Tank Design", if you  
18 look back in the Scope of Services, it  
19 specifically states that it's for the site  
20 design, you know, the site and piping design.  
21 It's not -- it's not for the actual tank design.

22 Q Okay. Thank you. Can you show me where it says  
23 that in your Scope of Services?

24 A (Gallo) Page 3, Item 5. Says they "will

[WITNESS PANEL: Vaughan|Gallo]

1 complete" -- you want me to --

2 Q No, I can look at it. Okay. Thank you. And  
3 that's helpful. Thank you.

4 So, that's why you disagree with Staff  
5 that the \$30,000 shouldn't be removed, because  
6 you still want Horizons to do the site design for  
7 the tank?

8 A (Vaughan) Yes.

9 Q Okay.

10 A (Vaughan) And the site selection, as part of the  
11 overall siting of the facilities.

12 Q Yes. And, so, why has the estimated cost  
13 increased from 100,000 to up to 130,000?

14 A (Vaughan) We don't know that it's going to be  
15 130, Commissioner. But, you know, again, this --  
16 there's been a lot of conversation going back and  
17 forth, things change. And, when we first started  
18 out, we had a concept. And that concept has  
19 become a little bit more in focus. And even  
20 then, our estimate, our current estimate that  
21 we've thrown out is "100 to 130". And that,  
22 basically, is not in writing. It's a  
23 conversation that we have had with Horizons.

24 But the real price is not going to come

[WITNESS PANEL: Vaughan|Gallo]

1 in until the RFP has been responded to by  
2 Horizons, or some other consulting engineer.

3 Q All right. Can we go over the -- I think you've  
4 said, in a response to Attorney Getz, that a lot  
5 of the design will be stalled until we have  
6 easements. And then, you said you can't really  
7 do the easements, until you get the siting, which  
8 is part of the design.

9 So, when you say you think it will take  
10 eight to twelve months to get the design  
11 completed, will that include obtaining the  
12 easements?

13 A (Gallo) There will be a period in there that will  
14 include obtaining the easements. You know, the  
15 caveat that we made was, if there's a protracted  
16 negotiation in obtaining those easements. So,  
17 under the timeline we're proposing, we do -- we  
18 do expect the easements to be obtained during  
19 that time, provided that, again, it's not a  
20 protracted negotiation.

21 Q And you can't complete the design until it  
22 includes the easements, because, if you can't get  
23 the easements where the primary design is, then  
24 you have to go to Plan B?

[WITNESS PANEL: Vaughan|Gallo]

1 A (Vaughan) Let me suggest this. Horizons is going  
2 to be working with DES, as we've already  
3 discussed. And they will be working with us as  
4 an ongoing part of the design. They will come up  
5 with the design that they believe is ideal,  
6 irrespective of any agreement of an easement.  
7 But they are going to locate those positions, as  
8 an example, and what comes to mind is really the  
9 three pump stations there, although there are  
10 other appurtenances there. Therefore, the  
11 negotiation will start based on those locations.

12 If there is pushback from any of the  
13 associations, there's going to have to be a  
14 reconsideration of the engineering. As an  
15 example, we're going to have to go to Plan B and  
16 try this location. We may have to adjust some  
17 engineering, and then pursue that easement.

18 So, it's like anything else. It's like  
19 getting a permit. It's like getting everybody to  
20 agree, and that is a challenge. We hope it is,  
21 and we hope that we can convince all 400  
22 customers there that this is the appropriate  
23 design, and it has beneficial effects for  
24 everybody. We hope that's the outcome.

[WITNESS PANEL: Vaughan|Gallo]

1                   But reality is such that there's always  
2 going to be dissenters and there's going to be  
3 objections. And that's what we're presenting as  
4 a caution.

5 Q   And you understand, as the operator of the  
6 utility and as Professional Engineers, that it's  
7 your job to make those tough decisions, is that  
8 correct?

9 A   (Vaughan) To make those customers, pardon me?

10 Q   To make those tough decisions?

11 A   (Vaughan) It is. It is. Absolutely. No  
12 question.

13 Q   All right. Can you tell what the status of the  
14 proposed tariff modifications in Exhibit 22 is,  
15 around Page 35, 37?

16 A   (Vaughan) Thirty-five and thirty-seven, okay.

17 Q   There's a bunch of tariff pages here.

18 A   (Vaughan) Oh, okay. Would that be Number 8, in  
19 particular? "Excessive system pressure"?

20 Q   Well, yes. On Page 37, is that where Number 8  
21 is?

22 A   (Vaughan) That's correct.

23 Q   Yes.

24 A   (Vaughan) "Pursuant to the State of New

[WITNESS PANEL: Vaughan|Gallo]

1 Hampshire, Department of Environmental Services'  
2 standard regarding maximum pressure". And I  
3 recollect that that did not become included in  
4 the tariff that was associated with that rate  
5 filing.

6 CMSR. BAILEY: Okay. All right. Thank  
7 you.

8 That's all the questions I have, Madam  
9 Chair.

10 CHAIRWOMAN MARTIN: Thank you.  
11 Commissioner Giaimo.

12 CMSR. GIAIMO: Good afternoon again.

13 BY CMSR. GIAIMO:

14 Q So, you said, Mr. Vaughan, I think you said in  
15 the very beginning of your testimony that the  
16 water tank, Plan IV, is off the table, because  
17 you were unable to get party support. Did I hear  
18 that right? Is that the only reason?

19 A (Vaughan) Probably that was the only reason.

20 Q Do you still think that's the best solution, but  
21 not necessarily the most cost-effective solution?

22 A (Vaughan) I do think that is the better solution,  
23 yes.

24 Q Mr. Gallo, do you concur as a -- I believe you're

[WITNESS PANEL: Vaughan|Gallo]

1 an engineer, right? Do you concur?

2 A (Gallo) That's correct. The location of that  
3 tank would provide storage and more favorable  
4 pressures in that area of the system.

5 Q But there is just a more cost-effective solution?

6 A (Vaughan) In the long run, yes.

7 Q Okay. I thought I heard that Horizons was never  
8 provided an RFP, but the Company frequently  
9 approached Horizons whenever the scope changed?  
10 Did I have that right?

11 A (Vaughan) Yes. We've not issued an RFP. And we  
12 have had several ongoing conversations and  
13 correspondence with Horizons.

14 Q Do you know how many times you've spoken with  
15 them?

16 A (Vaughan) Pardon me?

17 Q Do you know how many times you have spoken with  
18 them about changes?

19 A (Vaughan) Several.

20 Q Okay. I thought I heard you mention "\$81,000 in  
21 a deferred account". Did I hear that right?

22 A (Vaughan) That's correct, or give and take.

23 Q And that's money -- I want to understand, what  
24 does that 81,000 represent?

[WITNESS PANEL: Vaughan|Gallo]

1 A (Vaughan) It's a deferred account. It's not an  
2 operating account. It's a deferred account. And  
3 it represents all the effort, all the expenses  
4 that have gone into this whole project. As an  
5 example, and I mentioned it earlier, our time  
6 right now will ultimately go into that account.

7 Q Okay. So, basically, the meter is running, and  
8 that's how much -- that's how much has been spent  
9 to date?

10 A (Vaughan) Yes. And that's typical. You know, in  
11 not only this project, but other projects. Those  
12 costs and charges cannot be allocated to the  
13 System of Accounts in the O&M schedule.

14 Q Okay. This case has clearly been going on for a  
15 while, and at one point I recall us asking  
16 questions, and being sensitive about the \$100,000  
17 design number, thinking that that number was  
18 really high, and we wanted it to be capped at  
19 100,000.

20 So, help me -- help resolve the cynic  
21 in me, where when I see Horizons Engineering, in  
22 Exhibit 23, coming in with a number of "\$99,700".  
23 Pure coincidence that's it's under the \$100,000  
24 that we set out as a number which we capped?

[WITNESS PANEL: Vaughan|Gallo]

1 A (Vaughan) Would you repeat the last part of that  
2 question please?

3 Q Well, in an order, during a hearing, and in an  
4 order, we specifically capped the design at  
5 \$100,000. And now, I was just asking how --  
6 could you allay my concerns, as a skeptic, when I  
7 see Exhibit 23 have a number of "\$99,700"?

8 A (Vaughan) Correct. And what is the -- the  
9 question is -- I want to understand what the  
10 question is please?

11 Q I want to -- I guess, my understanding was that  
12 we, a couple years back, were concerned that the  
13 design cost was going to be over \$100,000. And  
14 we had to, basically, requested capping at that  
15 amount, and now we see a number of "\$99,700".  
16 And I was asking, is it mere coincidence or is  
17 there something there?

18 A (Vaughan) I think, early on, we used this number  
19 to say the design and the engineering fees would  
20 be in the order of \$100,000.

21 Q Okay.

22 A (Vaughan) As this has progressed and, you know,  
23 other issues have come to the forefront, Horizons  
24 has said that, you know, it's more likely in the

[WITNESS PANEL: Vaughan|Gallo]

1 range of 100,000 to 130,000.

2 Q Okay. And it really may have been that we relied  
3 on yours and Horizons' initial statement that it  
4 would be approximately 100,000, that's why we set  
5 it at that number. Does that sound like a  
6 possibility?

7 A (Vaughan) Yes.

8 Q Okay. Because I may have been confused, and now  
9 I think I understand what the situation was. It  
10 was set at that number for this specific reason,  
11 because that's what Horizons initially thought  
12 the costs would be?

13 A (Vaughan) Right.

14 Q Okay. Thank you. Thanks for quieting the cynic  
15 in me.

16 CHAIRWOMAN MARTIN: Commissioner  
17 Giaimo, do you have many more questions? Do you  
18 mind if I interrupt for a moment off the record?

19 *[Brief off-the-record discussion*  
20 *ensued.]*

21 CHAIRWOMAN MARTIN: All right,  
22 Commissioner Giaimo. Back on the record.

23 CMSR. GIAIMO: Okay. Thank you.

24 BY CMSR. GIAIMO:

[WITNESS PANEL: Vaughan|Gallo]

1 Q So, I want to just make sure I understand  
2 something that was said. I heard -- what I  
3 thought I heard was that the Company had initial  
4 discussions with DES, but hadn't done anything  
5 formally, with respect to looking at groundwater  
6 funds and other such things, which provide  
7 low-cost financing, but that the Company is  
8 committed to doing that, is that right?

9 A (Vaughan) Yes.

10 Q Okay. Great. In your discussion with Attorney  
11 Getz, I'm paraphrasing here, but I think he asked  
12 "Is there a potential for a future rate case?"  
13 And, Mr. Vaughan, you said "Yes." And then, Mr.  
14 Getz said "When?" And I think your response was  
15 "In the future."

16 I guess I'm going to give you an  
17 opportunity to provide a little more clarity on  
18 that maybe?

19 A (Vaughan) Yes. I think, if we can get recovery  
20 on our engineering fees, that, in itself, won't  
21 command or dictate a rate case, but it depends on  
22 timing. And, you know, obviously, if we go  
23 through -- when we go through with the  
24 construction on the first phase here, that's

[WITNESS PANEL: Vaughan|Gallo]

1 going to definitely dictate a rate case. That  
2 was originally projected in 2019. Now, that  
3 project has moved over to 2021.

4 And, you know, I would say it's likely,  
5 almost definite, that a rate case will occur  
6 before, or after that, subsequent. And it may be  
7 that we need something in 2021. So, you know,  
8 it's -- three or four years would probably be the  
9 longest range.

10 Q Okay. That's helpful. Thank you. And Attorney  
11 Getz says said -- asked you "whether a rate case  
12 might supersede recovery of Step II?" It's  
13 certainly possible that that could be part of the  
14 negotiation during settlement discussions?

15 A (Vaughan) Very possible.

16 Q Okay. Thank you.

17 A (Vaughan) And there are a lot of factors that are  
18 occurring here. You know, there's a falloff in  
19 revenue could affect us, you know, expenses, any  
20 number of things. So, it really is a moving  
21 target.

22 But, to confirm your question, it could  
23 supersede the recovery.

24 Q Okay. And my last couple of questions deal with

[WITNESS PANEL: Vaughan|Gallo]

1 Exhibit 26, which is the DES report. And I'm  
2 just wondering how the Company has responded to  
3 this report, in a couple of areas. It seems like  
4 there was a request to develop, like, an asset  
5 management plan. Has the Company done that?

6 A (Vaughan) Yes. You know, we have provided a  
7 CapEx plan. And I think, you know, we had one in  
8 our last rate case. It was a five-year CapEx  
9 plan, with the projected improvements,  
10 replacements, *etcetera, etcetera*. And,  
11 obviously, this would be morphed into that CapEx  
12 plan. There could be some miscellaneous items.  
13 So, anything, you know, we would address maybe  
14 some significant deficiencies that might occur  
15 through a sanitary survey, any number of things.

16 Q So, but your system hasn't changed since this  
17 letter? It's just, you think it could be  
18 incorporated into items which you put in during  
19 the last rate case?

20 A (Vaughan) I'm having difficulty hearing you.  
21 Could you repeat that again please?

22 Q Sure. Well, I'll just read one of the  
23 recommendations that they had. On Page 2 of  
24 Exhibit 26, in Page 2 of the letter, I'm sorry,

[WITNESS PANEL: Vaughan|Gallo]

1           it says "Develop an Asset Management Program for  
2           achieving and maintaining the desired level of  
3           service at the lowest appropriate cost to  
4           customers."

5                        So, the question is, has the Company  
6           done that?

7   A       (Vaughan) We have not done that.

8   Q       Okay. However, you think -- it sounded like your  
9           answer was that you think that certain parts of  
10          that had been incorporated into what you did in  
11          the prior rate case under a CapEx?

12   A       (Vaughan) Yes. Certain components of the CapEx  
13          would contain that.

14   Q       Okay. And my understanding is, moving to the  
15          next page, it says "RW is required to retain an  
16          operator certified at a grade 1 treatment level  
17          and a grade 1 distribution level." And then, it  
18          later said "Operators are reported to be onsite  
19          three days per week to check on the system." Has  
20          that been done?

21   A       (Vaughan) We're doing that, yes.

22   Q       You're in the process of -- it's not been done,  
23          you're in the process of doing it?

24   A       (Vaughan) No, no, no. We are doing it.

[WITNESS PANEL: Vaughan|Gallo]

1 Q Oh, you are doing it. Okay. Okay.

2 A (Gallo) Could I step back for a moment,  
3 Commissioner, on one of your previous questions?

4 Q Sure.

5 A (Gallo) You had -- you had asked about potential  
6 alternative funding sources?

7 Q Yes.

8 A (Gallo) Our Finance Department did submit an  
9 application for SRF funding last month.

10 CMSR. GIAIMO: All right. That's great  
11 to hear.

12 Madam Chair, I think those are all the  
13 questions I have at this time. Gentlemen, thank  
14 you very much.

15 WITNESS VAUGHAN: Thank you.

16 WITNESS GALLO: Thank you.

17 CHAIRWOMAN MARTIN: I don't have any  
18 questions that haven't already been answered.

19 Oh, Commissioner Bailey, do you have  
20 something else? Okay. Go ahead.

21 CMSR. BAILEY: Yes. Thank you. I  
22 forgot to ask a couple questions about the  
23 document that Commissioner Giaimo was just  
24 referring to, in Exhibit 26.

[WITNESS PANEL: Vaughan|Gallo]

1 BY CMSR. BAILEY:

2 Q Can you look at Page 4 that delineates the  
3 significant deficiencies noted by DES? And I  
4 think that the first item, number 1, is what  
5 we've been talking about. And you haven't done  
6 that yet.

7 Could you tell me if you've done 2, 3,  
8 and 4?

9 A (Vaughan) Yes. We have done 2; 3 we have not  
10 done; and 4 we have not done.

11 Q Why have you not done those, if they're  
12 significant deficiencies?

13 A (Vaughan) Because we were going to incorporate  
14 those into the project.

15 CMSR. BAILEY: Okay. Thank you. Thank  
16 you, Madam Chair.

17 CHAIRWOMAN MARTIN: You're welcome.  
18 Attorney Brown, do you have any redirect?

19 MS. BROWN: I do. Thank you.

20 **REDIRECT EXAMINATION**

21 BY MS. BROWN:

22 Q Mr. Vaughan, I direct your attention to Exhibit  
23 26, while you have it in front of you, I believe.

24 A (Vaughan) Correct.

[WITNESS PANEL: Vaughan|Gallo]

1 Q And the very last page, or the second to last  
2 page has the Company's response as of a year ago  
3 to some of the deficiencies. Do you see that?  
4 In particular, Page -- the last page?

5 A (Vaughan) Yes. That is correct, yes. I see  
6 that, yes.

7 Q And, so, on Item Number 3, where "There is  
8 currently no chemical containment at the well  
9 station", you have a response in there that  
10 indicates that it will be "part of the pressure  
11 reduction", is that --

12 A (Vaughan) Correct.

13 Q Okay. Thank you. And you have DES's support, do  
14 you, on using the pressure reduction design  
15 project to resolve some of these Sanitary Survey  
16 deficiencies, do you?

17 A (Vaughan) Yes.

18 Q Okay. Thank you. Now, Mr. Vaughan, I have a  
19 fund/money question for you. You were asked by  
20 Mr. Mueller about having funds in the 2018 New  
21 England Service Company Annual Report. Is it  
22 easy to transfer funds between companies or  
23 accounts?

24 A (Vaughan) It is not. What we're relying on is

[WITNESS PANEL: Vaughan|Gallo]

1 the Company, Abenaki, really as a stand-alone  
2 company.

3 Q Thank you. And that consolidated report is for  
4 both regulated and unregulated entities, is that  
5 accurate?

6 A (Vaughan) Yes.

7 Q And, when I say "that report", I'm referring to  
8 Exhibit 25, the 2018 New England Service Company  
9 Report.

10 A (Vaughan) Yes.

11 Q Just for the record. Mr. Vaughan, you were asked  
12 why, under cross-examination with Attorney Getz,  
13 you were asked if you could have technically  
14 signed a contract, assuming an RFP was done and,  
15 you know, you had selected Horizons, that you  
16 could technically have signed a contract with  
17 Horizons? Do you recall that answer that you  
18 gave him?

19 A (Vaughan) Yes.

20 Q And is it that you -- and you did not go forward  
21 and do that, correct?

22 A (Vaughan) Correct.

23 Q And would it have been a benefit to have signed a  
24 contract with Horizons in 2019, not knowing what

[WITNESS PANEL: Vaughan|Gallo]

1 the scope -- approved cost recovery scope would  
2 be until mid-October of 2019?

3 A (Vaughan) Correct.

4 Q I was asking for your opinion of -- let me  
5 rephrase the question for you.

6 A (Vaughan) Beg your pardon. I'm sorry. We  
7 wouldn't have done that, only because there just  
8 was not enough time to complete the project.

9 Q So, the fact that a contract is signed, but can't  
10 be acted upon, wouldn't have been a factor?

11 A (Vaughan) Yes.

12 Q Okay. Thank you. Now, in your testimony, and I  
13 can't remember which person on cross it was, you  
14 evidenced an understanding of "prudent", "used  
15 and useful". Can you tell me your familiarity  
16 with that term, and when it is -- comes into  
17 play?

18 A (Vaughan) Yes. The term "used and useful",  
19 "known and measurable", "prudent", "useful",  
20 comes into play when plant is actually in service  
21 and can be included in rate base.

22 Q Okay. Thank you. And there's no plant in  
23 service that the Company is seeking a prudence  
24 review for this particular step extension

[WITNESS PANEL: Vaughan|Gallo]

1 request, is that correct?

2 A (Vaughan) That is correct.

3 Q Thus, the step extension is to establish a time  
4 of recovery, is that fair to say?

5 A (Vaughan) The Step II extension is, yes, yes, it  
6 is, to permit us the time to submit a petition  
7 for recovery.

8 Q Okay. Let me -- I poorly asked that question.  
9 You had discussed -- reviewed the Gantt chart,  
10 and the timing of expenditures and monies coming  
11 in. Is the timing of when you can recover some  
12 of these outlays of funds important to the  
13 Company?

14 A (Vaughan) Yes.

15 Q And does getting reinstatement -- reinstating  
16 the ability to recover the 100,000, that affects  
17 the timing of the cash coming back in for the  
18 expenditure, is that correct?

19 A (Vaughan) Yes.

20 Q And that is an important aspect of why you need  
21 the step, is for the -- is to secure timing of  
22 recovery, is that right?

23 A (Vaughan) Yes, it is.

24 Q Okay. I'd like to have you turn to Exhibit 21.

[WITNESS PANEL: Vaughan|Gallo]

1 A (Vaughan) Yes.

2 Q And what is the date of this document?

3 A (Vaughan) July 15th, 2019.

4 Q '19. Can you please turn to Page 2, third  
5 paragraph?

6 A (Vaughan) Third paragraph. Yes.

7 Q And it states "The course of the proceeding  
8 included two rounds of discovery propounded by  
9 the parties on Abenaki and one further technical  
10 session held March 20th, 2019." Do you recall  
11 participating in that discovery?

12 A (Vaughan) Yes.

13 Q Do you recall attending the technical session?

14 A (Vaughan) Yes.

15 Q And this was in March of 2019?

16 A (Vaughan) Yes.

17 Q Okay. And, turning back, on Page 1, this is  
18 Staff's Recommendation regarding the scope of the  
19 step, is that correct?

20 A (Vaughan) Yes.

21 Q So, is it that the parties were still trying to  
22 figure out what would comprise the step, as of  
23 March and July of 2019?

24 A (Vaughan) Yes.

[WITNESS PANEL: Vaughan|Gallo]

1 Q So, did you feel like you had a clear  
2 understanding of the recoverable scope of the  
3 step as of July 2019 from the Commission yet?

4 A (Vaughan) No.

5 Q And did you finally get that clarification on  
6 what could be recovered under the step in the  
7 October 2019 order?

8 A (Vaughan) Yes. In fact, at a technical meeting  
9 in March, I believe we were thinking about a  
10 12/31 filing date. And it never -- we never  
11 could meet that, because of the order occurring  
12 in mid-October.

13 Q Thank you for that clarification. Mr. Vaughan,  
14 you were asked about consolidating the project,  
15 the pressure reduction project, to one to two  
16 years. Do you recall that conversation you had  
17 with the Commissioners?

18 A (Vaughan) I do.

19 Q And has Abenaki looked at what that would, if the  
20 project were collapsed, what it would do to  
21 customer rates?

22 A (Vaughan) It would be a fairly significant rate  
23 shock, we believe. And that's why we broke this  
24 up.

[WITNESS PANEL: Vaughan|Gallo]

1 Q Thank you. Does Abenaki Water routinely apply to  
2 SRF or the Drinking Water/Groundwater Trust Fund  
3 for funds when it can?

4 A (Vaughan) Yes.

5 MS. BROWN: Okay. Those are, I  
6 believe, the only questions I have on redirect.  
7 Thank you very much.

8 CHAIRWOMAN MARTIN: Okay. Thank you.  
9 And, Attorney Getz, I believe you indicated you  
10 will not have a witness?

11 MR. GETZ: That is correct.

12 CHAIRWOMAN MARTIN: All right. So, we  
13 need to go to closing argument.

14 Before we do that, any objections to  
15 the exhibits being admitted as full exhibits?

16 MS. BROWN: No objection from the  
17 Company.

18 MR. TUOMALA: No objections, madam  
19 Chairwoman, from Staff.

20 CHAIRWOMAN MARTIN: Attorney Getz?

21 MR. GETZ: Thank you, Madam Chair.

22 At a very high level, Omni continues to  
23 oppose --

24 CHAIRWOMAN MARTIN: Attorney Getz,

1 before -- Attorney Getz, before we move on, I'm  
2 addressing the exhibits. And I asked if you had  
3 any objection to them being admitted as full  
4 exhibits?

5 MR. GETZ: Oh, I'm sorry. No, I don't.

6 CHAIRWOMAN MARTIN: Okay. And Mr.  
7 Mueller?

8 MR. MUELLER: No, I don't.

9 CHAIRWOMAN MARTIN: Okay. Then, we'll  
10 strike ID on Exhibits 12 through 28 and admit  
11 them as full exhibits.

12 And, now, Mr. Getz, you can proceed.  
13 Although, I had planned to start with Mr.  
14 Mueller. Did you all agree to a certain list?

15 MR. TUOMALA: Yes.

16 CHAIRWOMAN MARTIN: Okay. And,  
17 Attorney Getz, were going to go first?

18 MR. GETZ: I don't have any preference.

19 CHAIRWOMAN MARTIN: Okay. Then, why  
20 don't we start with Mr. Mueller.

21 MR. MUELLER: I'm sorry. I don't have  
22 any other further issues.

23 CHAIRWOMAN MARTIN: Do you have a  
24 closing argument?

1 MR. MUELLER: I do not.

2 CHAIRWOMAN MARTIN: Okay. Then, we'll  
3 go to Mr. Tuomala.

4 MR. TUOMALA: Thank you, Madam  
5 Chairwoman and Commissioners.

6 Staff urges the Commission to proceed  
7 with extreme caution in its consideration of the  
8 extension of this Step II Adjustment filing.

9 Staff's chief concern at this point is  
10 that considerable time has passed since the Step  
11 II was approved by the Commission in its December  
12 2018 rate case order for Abenaki. That rate case  
13 was based off of a hybrid test year, of the last  
14 quarter of 2016 and the first three quarters of  
15 2017. And, as you heard the Company testify,  
16 that this extension could be as late as mid to  
17 late 2021. If it were filed at that time point,  
18 at least four and a half years would have elapsed  
19 from those test year figures. Given that time  
20 elapsed, Staff would be concerned that these  
21 figures included in that test year would not  
22 properly reflect the Company's financial status  
23 at the time of the Step II filing, which poses a  
24 risk to both the Company and to its ratepayers,

1 as those older figures are used to set just and  
2 reasonable rates.

3 Also, this implementation of the Step  
4 II that far out from the underlying rate case  
5 increases the resemblance of this Step II to  
6 single-issue ratemaking, in fact, a rate increase  
7 far outside of a rate case. And Staff would be  
8 concerned as to that impact as precedential value  
9 to other utilities, where a step increase was  
10 approved far removed from a rate case.

11 So, with that, we would like the  
12 Commissioners to seriously consider the timing of  
13 these -- the test year, and the possibility of  
14 Abenaki's request not being filed until mid to  
15 late 2021.

16 Thank you very much.

17 CHAIRWOMAN MARTIN: Okay. Thank you.  
18 Attorney Getz.

19 MR. GETZ: Thank you, Madam Chair.

20 Omni opposes the Motion to Extend the  
21 Deadline. And I'd refer you to both the  
22 objection we filed on January 7 of this year, and  
23 the response that Omni made on July 25th to  
24 Staff's underlying Recommendation. And I'll try

1 not to be too repetitive.

2 But I would say, as a first issue, that  
3 Omni does not dispute that there is a water  
4 pressure issue that should be addressed. The  
5 issue that has come up through this Step II  
6 process is "what is the best and most  
7 cost-effective solution to addressing that  
8 problem?"

9 Earlier today, I believe Mr. Vaughan  
10 made some mention of pushback by Omni about the  
11 water tank. I think, to the extent there's been  
12 pushback by Omni as part of this process, it  
13 should be characterized as pushback about not  
14 having sufficient details about what's being  
15 proposed.

16 In May of last year, there was a  
17 request for concurrence and the scope of  
18 engineering that, from Abenaki to Omni, and  
19 Omni's, you know, the summary of that response,  
20 which is also included in a filing by Staff, was  
21 that Omni just did not have the information to  
22 make a judgment about what's the best and most  
23 cost-effective solution. And, of course,  
24 Horizons had never been contracted to produce

1           that, those engineering designs, so that a  
2           judgment could be made about that issue.

3                       With respect to the Motion itself made  
4           by Abenaki, Abenaki has not put forth a good  
5           reason for extending the deadline. The rationale  
6           that it supplied was primarily that there were --  
7           notwithstanding numerous contacts with Abenaki --  
8           Abenaki to Omni, that Abenaki was unable to  
9           commence discussions relative to easements. And  
10          that's just not the case. And I think the  
11          discussion with Mr. Vaughan about that issue  
12          bears that out. That there were no such timely  
13          contacts to Omni about easements.

14                      And there's the additional issue with  
15          respect to easements that now, that had never  
16          been raised, to my knowledge, prior to  
17          December 31st, 2019, now we understand it to be a  
18          critical bottleneck in the whole timeline for  
19          reaching a engineered -- engineering designs, as  
20          to what the best and most cost-effective solution  
21          would be.

22                      I would also like to point out that  
23          this Step II really was an extraordinary  
24          opportunity, an extraordinary relief, for

1           Abenaki. This is not your normal, traditional  
2           type of step increase, where there's a capital  
3           addition after the close of hearings, and that  
4           the step is allowed, so that the regulated  
5           utility retains its ability to earn a reasonable  
6           return.

7                         This was an opportunity for something  
8           else entirely. Abenaki had that opportunity.  
9           They failed to -- they failed to proceed with the  
10          contracting of Horizons, and it failed to meet  
11          its deadline.

12                        And, lastly, I'd like to address the  
13          process. I had a number of questions to Mr.  
14          Vaughan about what exactly Abenaki is asking the  
15          Commission to do. Has it now shifted beyond a  
16          delay or an extension of the timeline, to asking  
17          for pre-approval? And I really don't know where  
18          we are. I'm confused about that.

19                        And the question by Ms. Brown, on  
20          redirect, has just increased my confusion. She  
21          asked Mr. Vaughan "whether a contract with  
22          Horizons made any sense, until the Commission has  
23          approved cost recovery scope?" So, there's been  
24          a recurring reference through these proceedings

1 about the "scope of cost recovery". I don't  
2 really know what that means.

3 What I'm focusing on is the Step II  
4 petition that you would need in order to make a  
5 judgment on whether Abenaki has produced the most  
6 cost-effective solution. That is what I  
7 understand that would need to be filed, that  
8 should have been filed before, and if you were  
9 going to entertain this Motion, would need to be  
10 filed in the future. And I don't know how such a  
11 filing could be made without Abenaki -- without  
12 Horizons already being contracted to produce that  
13 design.

14 So, I think there is still a lot of  
15 confusion about that issue. I don't think they  
16 have carried their burden, especially in  
17 extraordinary circumstances of this type of step,  
18 to get a delay. And we oppose that the delay --  
19 Motion for Delay be granted.

20 Thank you.

21 CHAIRWOMAN MARTIN: Okay. Thank you.  
22 Attorney Brown.

23 MS. BROWN: Again, thank you,  
24 Commissioners, for your time today and

1           considering Abenaki's request to extend the  
2           deadline for filing its cost documentation.

3                       As far as the confusion over what the  
4           scope is and what the mechanism is, I don't think  
5           there's any change in that. All Abenaki is  
6           asking for is the deadline to be moved. If there  
7           was confusion before on using this mechanism,  
8           which was an issue that Omni had raised in the  
9           underlying hearing on the merits, that hasn't  
10          changed.

11                      You know, Abenaki has done its best to  
12          explain where it's at, again, with Horizons. And  
13          it's simply -- it's not changing the mechanism  
14          that was previously approved. And, now that we  
15          know the scope, that hasn't changed. The only  
16          thing that is being requested is the deadline.

17                      Now, Mr. Gallo and Mr. Vaughan  
18          testified today that they still need to correct  
19          the pressure problem at Rosebrook. The  
20          Department of Environmental Services still  
21          considers this a significant deficiency and is  
22          supportive of the engineering design.

23                      Cash flow is an issue. As Mr. Vaughan  
24          explained, the cash flow between Abenaki, its

1 affiliates, and its parent, it's not something  
2 that it can -- it can't fund any more than the 81  
3 that it's already put into this project. Not  
4 without having assurance, by virtue of an order,  
5 will it dip into any line of credit. You know,  
6 Mr. Vaughan testified to the hesitancy of its  
7 lender to have any more outlays, given this  
8 regulatory lag climate, and not having a recovery  
9 on the horizon.

10 Cash flow is still an issue, as Mr.  
11 Vaughan had talked about, with the pandemic  
12 decreasing proceeds from customers. Makes it all  
13 the more reason why it needs to have an order.  
14 If, you know, parties are going to bail on this  
15 step adjustment mechanism that was agreed to at  
16 the Settlement Agreement, the Company needs  
17 assurance that it can seek cost recovery.

18 Now, the engineering dollars came up in  
19 cross-examination, about, you know, the 2012 --  
20 I'm sorry, 2018 dollars being different than the  
21 100 to 130 range that was given today. But the  
22 Commission has to keep in mind that those 2018  
23 numbers are stale. We're now in 2020.

24 But, again, notwithstanding that,

1 Abenaki is not asking for the ceiling of the  
2 100,000 to be increased. It will deal with that  
3 in its next rate case.

4 Now, I know Staff expressed some  
5 concern about the step being delayed. But,  
6 knowing that the Staff just recommended approval  
7 in June of 2019, the Commission just issuing an  
8 order in October, and even though we're in July,  
9 there's been a delay in getting this hearing on  
10 the Motion.

11 Suggesting that Staff will no longer  
12 support the step that it supported up until June  
13 of 2019 prejudices the Company. Because as I,  
14 you know, brought out in testimony, the Company  
15 could have pursued the financing. If it had  
16 known that people would -- that parties would  
17 still be arguing about the use of this mechanism,  
18 and knowing that financing is a much cleaner  
19 option, it could have pursued that.

20 So, understanding that Staff is now  
21 seeing the time delay, which is a large part due  
22 to regulatory lag, impacting or causing a late  
23 single-issue ratemaking, I would ask the  
24 Commission to focus on the fact that the Company

1 does need a recovery mechanism in order to -- if  
2 it's going to pursue this step request.

3 Yes, the Commission can deny this, but  
4 it doesn't move the Company forward. And we're  
5 halfway -- you know, most of the way down this  
6 path of using the step to recover the funds for  
7 the engineering. And we should continue with it.

8 As far as timing, given the delays with  
9 getting Horizons, landowner approval of use of  
10 the land for appurtenances, you know, the  
11 estimate now is ten to twelve months. And, yes,  
12 twelve months is a long time, and Abenaki doesn't  
13 know when it's coming in for its next rate case.  
14 But we ask for an extension of ten to twelve  
15 months, and use the order as the triggering.  
16 Because, you know, before, Abenaki committed to a  
17 hard date at the end of the year, presuming that  
18 the order would have been issued in late July and  
19 August, and it didn't happen. You know, no fault  
20 of, you know, the Commission. It's got a lot on  
21 its plate. But it happened.

22 So, the better recommendation, we  
23 think, is to just base it off of the date of the  
24 issuance of the order, and then the Company now

1 knows that it can seek cost recovery through the  
2 step mechanism, and can get its ducks in order,  
3 and issue the RFP, and get Horizons on task on  
4 the scopes.

5 So, in conclusion -- oh. I do want to  
6 address Paragraph 5 of the Motion. And I do want  
7 to apologize to Omni, because that paragraph does  
8 paint Omni as the holdup, and that is not  
9 correct. As, you know, you've heard in the  
10 testimony, we should have filed a amended motion  
11 to reflect the facts that we were hearing today.  
12 There were other reasons. But, at the time of  
13 filing the Motion, that's what we put in. And it  
14 stands to be corrected, and I would like to, you  
15 know, expressly note that. There were other  
16 issues. Such as, you know, availability of  
17 Horizons, and the inability, physically, to do  
18 the level of design that was needed for all of  
19 the pump stations, water main, sub design, could  
20 not be done in the six weeks that the Company  
21 had.

22 So, the Company takes its obligation to  
23 provide safe and adequate service seriously, and  
24 would appreciate the Commission approving the

1 step again, and with the deadline, promptly.  
2 Because, if the Company knows that this step is  
3 not going to be used, it needs to start looking  
4 at other mechanisms, such as what were under  
5 contemplation in late 2018, prior to the  
6 settlement on the step mechanism.

7 So, with that, again, the Company  
8 thanks the Commissioners for your time today.  
9 And respectfully requests the Commission approve  
10 the Motion, with the revision that the  
11 deadline -- a firm deadline not be used, but a  
12 months from the order be used.

13 Thank you.

14 CHAIRWOMAN MARTIN: Okay. Thank you,  
15 everyone. We'll take the matter under  
16 advisement. And we are adjourned.

17 *[Brief off-the-record discussion*  
18 *ensued.]*

19 CHAIRWOMAN MARTIN: Okay. Attorney  
20 Getz.

21 MR. GETZ: Well, two things.

22 First, I want to thank Attorney Brown  
23 for clarifying the record on the issue about the  
24 outreach to Abenaki.

1           Second, if I may, I would like to  
2           respond to a statement she made in closing, about  
3           us being "most of the way down the line on Step  
4           II". I don't think we've really begun on Step  
5           II, until there's a -- as I understand the  
6           timeline, until an RFP is issued. So, I think  
7           we're quite ways away from that.

8           And Abenaki has had the opportunity to  
9           and has been authorized well before the October  
10          order of last year to proceed, and it didn't.

11          So, again, I would ask that you deny  
12          the Motion to Extend.

13          Thank you.

14          MS. BROWN: I believe the Company has  
15          the last word.

16          CHAIRWOMAN MARTIN: Just a moment. Mr.  
17          Tuomala, given that Attorney Getz had a second  
18          bite at the apple, do you have anything else to  
19          say?

20                 *(Atty. Tuomala indicating in the*  
21                 *negative.)*

22          CHAIRWOMAN MARTIN: Okay.

23          MR. TUOMALA: Nothing at this time,  
24          Madam Chairwoman. Thank you.

1 CHAIRWOMAN MARTIN: All right. Thank  
2 you.

3 Attorney Brown.

4 MS. BROWN: I would like to clarify,  
5 with respect to "being most of the way down this  
6 path of the Step II".

7 Correct, it has not been started on.  
8 The engineering design has not started. As you  
9 heard, with the hurdle of not knowing that they  
10 could recover, they have not spent any  
11 additional -- more funds.

12 When I say "we're down the road", I'm  
13 talking about the mechanism. We had a choice at  
14 the Settlement, back in December of 2018, of  
15 going financing or Settlement -- or step, and the  
16 Settlement chose step. That's what I'm talking  
17 about.

18 We've had over a year now, you know, if  
19 you take December 2018 to today's hearing, that  
20 the Company has been waiting for, you know, use  
21 of the step. And, so, that's what I was talking  
22 about, that we were this far down the path on, it  
23 was the mechanism.

24 Thank you.

1 CHAIRWOMAN MARTIN: Okay. Thank you.

2 This time, we are actually adjourned.

3 MR. TUOMALA: Thank you.

4 MR. GETZ: Thank you.

5 CHAIRWOMAN MARTIN: Thank you, Steve.

6 ***(Whereupon the hearing was adjourned***

7 ***at 2:08 p.m.)***

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24