

STATE OF NEW HAMPSHIRE  
PUBLIC UTILITIES COMMISSION

December 3, 2018 - 10:05 a.m.  
Concord, New Hampshire

NHPUC 4JAN19PM4:06

RE: DW 18-161  
AQUARION WATER COMPANY OF  
NEW HAMPSHIRE, INC.:  
Petition for Approval of 2019 WICA.  
(Prehearing conference)

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

Sandy Deno, Clerk

**APPEARANCES:** Reptg. Aquarion Water Co. of N.H.:  
Marcia A. Brown, Esq. (NH Brown Law)

Reptg. the Town of Hampton:  
Mark Gearreald, Esq.  
Selectman Regina Barnes

Reptg. PUC Staff:  
Christopher Tuomala, Esq.  
Jayson Laflamme, Asst. Dir./Gas&Water  
Anthony Leone, Gas & Water Division  
Joseph Vercellotti, Safety Division

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

CERTIFIED  
ORIGINAL TRANSCRIPT

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1  
2 CHAIRMAN HONIGBERG: We are here this  
3 morning in Docket DW 18-161, which is Aquarion  
4 Water Company's 2019 WICA filing. We're here  
5 for a prehearing conference. Although, I know  
6 from the filing that there's a lot of things  
7 that have already happened. Following the  
8 prehearing conference, there will be a  
9 technical session.

10 Before we do anything else, let's  
11 take appearances.

12 MS. BROWN: Good morning,  
13 Commissioners. My name is Marcia Brown, with  
14 NH Brown Law, representing Aquarion Water  
15 Company. And with me today is Debra Szabo, who  
16 is Director of Rates & Regulation; and to her  
17 right is Carl McMorran, who is the Manager  
18 of -- our Operations Manager for the Company;  
19 and in the table behind me is Dan Lawrence, who  
20 is Director of Engineering & Planning; to his  
21 right is Josh Unger, who is a Senior Regulatory  
22 Compliance Specialist; and to his right is  
23 Huijing Shi, who is also a Senior Regulatory  
24 Compliance Specialist.

1 Thank you.

2 MR. GEARREALD: Good morning, Mr.  
3 Chairman. My name is Mark Gearreald. I'm the  
4 Town Attorney for the Town of Hampton. We have  
5 pending a Petition to Intervene. And with me  
6 is Selectman Regina Barnes.

7 MR. TUOMALA: Good morning,  
8 Commissioners. Christopher Tuomala,  
9 representing the Staff of the Public Utilities  
10 Commission. With me, to my left, I have the  
11 Assistant Director of the Water & Gas Division,  
12 Jayson Laflamme; to his left, Utility Analyst  
13 Anthony Leone; and behind is Jim Vercellotti  
14 from the Safety Division.

15 CHAIRMAN HONIGBERG: Taking the  
16 intervention first, does the Company or does  
17 Staff have any position on Hampton's  
18 intervention?

19 MS. BROWN: The Company does not  
20 oppose the intervention. However, it notes  
21 that, in discovery, the Town was discovering  
22 outside of issues noticed for this docket, and  
23 would just object to delving issues that are  
24 not directly in the Order of Notice.

1 CHAIRMAN HONIGBERG: All right. The  
2 key phrase was the first one, "no objection" to  
3 their intervention status. You just want to  
4 make sure that the scope doesn't creep, right?

5 MS. BROWN: Right. Thank you.

6 CHAIRMAN HONIGBERG: Staff?

7 MR. TUOMALA: Staff has no objection.

8 CHAIRMAN HONIGBERG: The motion is  
9 granted.

10 MR. GEARREALD: Thank you.

11 CHAIRMAN HONIGBERG: All right. Any  
12 preliminary matters we need to deal with before  
13 we hear from the parties on their summary  
14 positions?

15 MS. BROWN: The Company would just  
16 like to note that it did file the affidavit of  
17 publication, and also notified the towns and  
18 the North Hampton Water Commission of the Order  
19 of Notice. Just wanted to state that for the  
20 record.

21 CHAIRMAN HONIGBERG: Anything else?

22 MR. TUOMALA: No, Mr. Chairman.

23 CHAIRMAN HONIGBERG: All right. Ms.  
24 Brown, why don't you start us off.

1 MS. BROWN: Thank you, Commissioners.  
2 My remarks are going to be a little bit more  
3 detailed, because we've had an opportunity to  
4 conduct discovery, and it has changed the  
5 filing a little bit and I would like to inform  
6 you all of those changes.

7 This is Aquarion's tenth WICA filing.  
8 And to recap, there are three critical  
9 approvals that the Commission -- that the  
10 Company needs from the Commission.

11 First is Commission approval of the  
12 prudent, used and useful 2018 construction  
13 costs and assets.

14 Second is the Commission approval of  
15 the planned 2019 projects and budget.

16 And then, lastly, preliminary  
17 approval of projects planned and budgets  
18 estimated for 2020 projects.

19 With respect to the 2018 project, it  
20 was one project. It was the Mill Road  
21 replacement project in North Hampton. It  
22 involved 4,000 feet of 8-inch asbestos cement  
23 main, which was replaced with a 12-inch high  
24 density polyethylene main. The project cost

1 over a million dollars.

2 The project was originally scheduled  
3 for 2019. But, as explained in the May 2018  
4 update letter that the Company filed, the  
5 project was moved up and expanded, because the  
6 New Hampshire Department of Transportation  
7 changed its paving schedule. And that change  
8 in paving schedule and the synergy of doing a  
9 combined project saved the Company between 200  
10 and \$300,000 in paving and road reconstruction  
11 costs.

12 Importantly, New Hampshire DOT has a  
13 five-year moratorium on opening up the road  
14 after it is paved. And the Company did not  
15 want to postpone this project for five years.

16 With respect to the 2019 planned  
17 projects, they were estimated in Attachment  
18 CM-1 to Carl McMorran's testimony. However,  
19 they have been updated in the Company's  
20 response in Staff 2-1, which you do not have  
21 yet. But, to summarize, the main project for  
22 2019 will be a project along Route 101. This  
23 is being done in conjunction with the Town of  
24 Hampton's sewer project. And this project will

1 allow the Company to abandon a main that goes  
2 through 4,000 feet of salt marsh. The salt  
3 marsh main already has a small leak. And if it  
4 fails, Hampton Beach will lose about two-thirds  
5 of its water source. So, it is a high priority  
6 for the Company.

7 In addition, by combining the project  
8 with the Town of Hampton's sewer project, the  
9 Company can also save on paving and road  
10 reconstruction costs.

11 In addition to that project, the  
12 Company is also chipping away at smaller  
13 projects. And so, it is including main  
14 replacements on 7th, Ninth, and Tenth Streets,  
15 in Hampton.

16 With respect to the 2020 projects,  
17 the Company is planning on replacing a main on  
18 Route 1, Lafayette Road, in North Hampton. And  
19 in this section, it crosses the old B&M rail  
20 line in the intersection of North Road. New  
21 Hampshire DOT is replacing this bridge. It is  
22 on its red list, and work may start in 2020.

23 Plans are still being finalized, but  
24 the Company is aware that Lafayette Road may be

1 regraded in this area. And if so, the road  
2 will be lowered, and it will require replacing  
3 many hundreds of feet of the Company's main on  
4 either side of this bridge.

5 This main is also a priority, because  
6 this area of Lafayette Road is now heavily  
7 developed, and the main that feeds all the  
8 services off of Lafayette Road north of the  
9 bridge, there is no redundancy of mains. There  
10 is only that one main, which makes the project  
11 a priority.

12 With respect to the surcharge, as  
13 noted in the testimony and attachments of Debra  
14 Szabo, the present WICA is at 7.08 percent, and  
15 that surcharge recovers for projects installed  
16 in 2013, '14, '15, '16, and '17. With the  
17 addition of the 2018 project, which was over a  
18 million dollars, that will increase the  
19 surcharge from 7.08 to the cap of 7.5.

20 Now, as you are aware, the Company  
21 has also proposed to address the Tax Cuts and  
22 Jobs Act in this WICA filing, and that was in  
23 response to the Commission's order in Docket IR  
24 18-001.

1           In Aquarion's case, the tax savings  
2           resulting from the Tax Act will be -- in 2018,  
3           the savings will be about \$262,000. And the  
4           Company recommends the Commission -- the  
5           Company recommends the Commission allow the  
6           savings to be passed on to customers through  
7           this WICA. This is not the first time a change  
8           in the tax treatment at the federal level has  
9           produced a temporary windfall among the  
10          utilities. And just to remind the Commission,  
11          in 2013, federal tax changes resulted in a  
12          \$905,000 tax windfall to the Company. And in  
13          2014, in Docket DW 14-075, Staff recommended  
14          that the Commission authorize Aquarion to use  
15          the WICA to pass the savings on to customers.  
16          And at the time, the OCA, the Town of Hampton,  
17          and North Hampton Water Commission concurred  
18          with that recommendation.

19                 Now, in the 2014 docket, the  
20          Commission split that 905,000 over three years,  
21          and authorized the Company to spread the  
22          savings through the WICA through 2015, '16, and  
23          '17. And the 2017 Tax Act windfall is a little  
24          bit less than those incremental one-year

1 credits, and it's about \$260,000, as I said.

2 Applying that tax savings to the WICA  
3 surcharge would lower the surcharge down from  
4 the cap to 4.43 percent. And to put this cap  
5 in perspective, if the cap were not in place,  
6 and all of the projects from 2018 were included  
7 in the WICA, it would be -- the surcharge would  
8 be at an 8.2 percent. The difference between  
9 the 7.5 cap and the 8.2 is about \$48,000 worth  
10 of project costs.

11 Aquarion believes it is beneficial to  
12 incorporate the Tax Act savings into the WICA,  
13 because of the relatively small size of the tax  
14 savings and credits to the customers, the ready  
15 availability of the WICA mechanism, and that  
16 using the WICA is a simpler way and least cost  
17 way of passing the savings on to customers than  
18 using a full rate case.

19 As noted earlier, with respect to the  
20 intervention of Hampton, the Company does have  
21 a concern that, in discovery, issues were  
22 attempted to be discovered on, such as adoption  
23 of inclining block rates, cost of service  
24 studies, below-the-line consulting costs, and

1 return on equity, and the Company's position  
2 that those are not appropriate for discussion  
3 or are not noticed in this proceeding.

4 The reason why the Company raises  
5 this is because, in the last two dockets, the  
6 Commission has been express in informing  
7 intervenors of the proper scope of the docket,  
8 and has ruled that those issues are not  
9 properly vetted in this particular proceeding.  
10 So, we express the concern because the scope  
11 seems to still be expanding, and not by Staff,  
12 but by intervenors.

13 One last thing. Since the filing,  
14 the audit has been conducted. And the Audit  
15 Staff discovered that the tariff was  
16 incorrectly filed, and the Company is aware of  
17 that. In 2012, in the rate case, there was a  
18 settlement. And the first \$50,000 of  
19 emergency/reactive valves, services, and  
20 hydrants were excluded from WICA. The Company  
21 has been making its filings consistent with  
22 that, but the exact language did not -- was not  
23 added correctly to the tariff. We are aware of  
24 that and we'll fix that tariff page in the

1 compliance filing.

2 And with that, thank you very much  
3 for your time.

4 CHAIRMAN HONIGBERG: Was the  
5 Company's last rate case the 2012 rate case?

6 MS. BROWN: Yes, DW 12-085.

7 CHAIRMAN HONIGBERG: When was the  
8 last time the Company did a cost of service  
9 study?

10 MS. BROWN: I'm not sure if it was in  
11 that one. I know that it needs to file a cost  
12 of service study in its next rate case.

13 CHAIRMAN HONIGBERG: When do you  
14 anticipate the next rate case taking place?

15 MS. BROWN: I don't believe the  
16 Company has a decision yet. I'll just check.

17 *(Atty. Brown conferring with*  
18 *Company representatives.)*

19 MS. BROWN: The Company has not  
20 decided yet.

21 Even though the cap is reached, the  
22 WICA Program is to help recover costs. But, if  
23 the Company seeks to not place or recover  
24 assets in the WICA Program, the cap will just

1 stay at 7.5 until the next rate case comes in.  
2 And at that point, the rate case will see the  
3 addition of the plant that has been added.

4 CHAIRMAN HONIGBERG: When the WICA  
5 was established, did it contemplate that it  
6 would be used for other things, like the tax  
7 recoveries?

8 I guess my concern, I'm not able to  
9 articulate it well, is that, by using it the  
10 way I think you're proposing, you're getting  
11 more assets in to the WICA Program, that would  
12 exceed the cap, and using the tax "windfall",  
13 is the word you used, to bring yourself back  
14 down. And that seems like just a -- it seems  
15 luck that the WICA exists then.

16 MS. BROWN: Correct. But, if you  
17 take a look at other cost trackers, the water  
18 utilities don't have the cost trackers that gas  
19 and the electrics do; they only have this WICA.  
20 And the goal of the WICA was to mitigate rate  
21 shock and postpone costly general rate cases,  
22 which, given that the WICA has been in place,  
23 well, this present surcharge has covered 2013  
24 to 2018 projects, it's achieved that goal.

1           Was it, to answer your question, was  
2           it originally known that it would be used for  
3           other issues? No. But lacking any other  
4           mechanism akin to electrics and gas, it seems  
5           like the most appropriate vehicle, because it's  
6           an annual vehicle. And it's as much as you can  
7           get away from single-issue ratemaking as you  
8           can with a one-time tax benefit passthrough.

9           CHAIRMAN HONIGBERG: Okay. Thank  
10          you.

11          Mr. Gearreald.

12          MR. GEARREALD: Thank you, Mr.  
13          Chairman. Would you like me to stand or shall  
14          I sit?

15          CHAIRMAN HONIGBERG: Just make sure  
16          you're using the microphone.

17          MR. GEARREALD: Thank you. Is that  
18          good?

19          CHAIRMAN HONIGBERG: Yes.

20          MR. GEARREALD: Okay. Thank you so  
21          much. May it please the Commission, last  
22          year's WICA case, DW 17-154, for the 2018  
23          surcharge, approved at 7.08 percent, by Order  
24          Number 26,094, December 29, 2017. As you know,

1 whenever these WICA cases come up, not only is  
2 the current year's worth of projects calculated  
3 and proposed to be included in the WICA charge,  
4 but also there is a presentation of future  
5 projects, and also a projection as to what  
6 those will do in the WICA cap. And the revised  
7 attachment last year, TD-3, in DW 17-154,  
8 showed what would happen by the additional then  
9 proposed \$883,500 in projects that were to have  
10 been completed by September 30, 2018. And it  
11 was presented last year that there would be an  
12 8.69 percent WICA, which would, of course,  
13 exceed the 7.5 percent cap.

14 The Town of Hampton raised this to  
15 the Commission, and indicated in its  
16 recommendations filed in December last year,  
17 that Aquarion had indicated that this 2019 WICA  
18 proposed charge for this year was for  
19 illustrative purposes only, and that was in the  
20 testimony of the then rate person at Aquarion,  
21 Troy Dixon, at Page 7 of 9, Line 15.

22 In the Town of Hampton's  
23 recommendation, the Town noted that, at the  
24 December 2017 technical session, Aquarion

1 indicated that it might not -- it might simply  
2 not seek a general rate case to try and reset  
3 the WICA clock, as it did in DW 12-085, which  
4 is the last rate case as we've noted.

5 Alternatively, it said it could seek a WICA  
6 surcharge for 2019 only to the extent of the  
7 7.5 percent.

8 This year's WICA petition, in DW  
9 18-161, now answers the question in a new way.  
10 Aquarion seeks to lower its WICA cap to 4.43  
11 percent by applying \$262,000 of an unrelated  
12 tax benefit. And as noted, as admitted by  
13 Attorney Brown, this is a new use for the WICA  
14 Program. She has pointed in their Petition to  
15 the Order Number 25,750, January 12, 2015. In  
16 that order, the Commission allowed the  
17 imposition of a WICA surcharge, but allowed  
18 the -- over a three-year period an amortization  
19 of the then \$906,000 federal tax benefit to  
20 avoid customers having to pay the WICA charge  
21 at all, this WICA surcharge at all. It did not  
22 lower the cap. It was not used as a vehicle to  
23 lower the cap. That is brand new.

24 The Town of Hampton would prefer a

1 rate case now, in order to have the Commission  
2 deal with a number of matters of concern that  
3 Aquarion seeks to avoid by taking -- by talking  
4 about in its data requests, the requests that  
5 the Town of Hampton has propounded in this  
6 case.

7 The first is the exceedance by  
8 3.57 percent in allowed return on equity that  
9 was set in the 2012 case in the year ended  
10 December 31, 2016. We believe that amount of  
11 exceedance of earnings to have been \$540,540.  
12 The extra percentage over the 9.6 percent  
13 allowed return on equity that the Town fought  
14 for back in the 2012 case that this Commission  
15 imposed.

16 Again, there was an exceedance by  
17 0.69 percent in allowed return on equity in the  
18 year ended December 31, 2017. And this is  
19 according to the annual returns filed by  
20 Aquarion with the Commission. We believe that  
21 amount translates to \$106,260.

22 So, there's been, we believe,  
23 although we've asked Aquarion to quantify this,  
24 "what are the excess earnings that had been

1 earned?" And we believe that will amount to  
2 about \$646,800.

3 Aquarion seeks to now apply an  
4 unrelated return, a "windfall" as it has said,  
5 of 262,000 to the -- to the WICA charge, to  
6 lower it for its benefit to the 4.43 percent  
7 new WICA, rather than exceeding the cap as it  
8 would otherwise do. We submit that, if  
9 Aquarion is allowed to apply an unrelated to  
10 WICA tax credit of 262,000 in this case, to  
11 lower the WICA cap below 7.5 percent without a  
12 rate case, it is only fair and reasonable to  
13 apply \$646,800 in overearnings on an allowed  
14 return on equity to similarly reduce the WICA  
15 cap. We don't believe Aquarion should have it  
16 both ways. But, first of all, we would prefer  
17 a rate case now, in order to have the  
18 Commission deal with issues like this.

19 There are other issues involved that  
20 we have asked about in our data requests. We  
21 believe Aquarion should be implementing  
22 inclining block rates, as its affiliate does in  
23 Massachusetts, which would charge customers who  
24 use more water a higher per gallon rate for use

1 of that water as an incentive for conservation.

2 We believe that the rate case would  
3 bring about -- would bring to the fore another  
4 issue, that is Aquarion's reliance upon local  
5 firefighters, rather than using its own  
6 resources, to remove snow and ice from  
7 hydrants. This is a privilege of the  
8 availability of water that Hampton alone pays  
9 over \$500,000 to this company for. And they  
10 are relying on Hampton firefighters, who are  
11 highly trained for other purposes, to shovel  
12 out their hydrants.

13 Another issue that we would bring to  
14 the fore in a rate case, which should occur at  
15 this point, is Aquarion spending unknown  
16 amounts of money on a public relations firm to  
17 deal with town officials, which is what they  
18 have done in the last year.

19 All of these are items that Aquarion  
20 seeks to avoid by saying they belong in a  
21 general rate case and are denying answering any  
22 discovery.

23 The Commission is correct in citing  
24 in its Order of Notice that Aquarion did not

1 articulate in its Petition a proposed surcharge  
2 prior to including the tax savings. It has  
3 only now done so in relation to some data  
4 requests from Staff.

5 In Staff 1-6, it admits that the WICA  
6 projects for 2018 that have been completed now  
7 amount to \$1,045,877, and that a surcharge of  
8 8.2 percent would result that would exceed the  
9 7.5 percent.

10 In response to Staff 1-7, Attachment  
11 A shows that, for 2018, the WICA projects of  
12 1,045,877, a surcharge of 7.5 percent, at the  
13 cap, could not be achieved without applying the  
14 credit of \$48,748 from this tax windfall. So,  
15 without the tax windfall, the cap is going to  
16 be exceeded. Aquarion should not be allowed,  
17 again, to have it both ways.

18 We have propounded some discovery  
19 that would show the impacts of these other  
20 issues. And we would ask that the Commission,  
21 as part of its procedural orders under Puc Rule  
22 203.15, order the compelling of this discovery  
23 that we have asked for, if the Commission is  
24 going to allow the WICA Program to be utilized

1 in the way that Aquarion is now proposing to  
2 use it.

3 So that -- that is the Town of  
4 Hampton's position. We oppose the WICA Program  
5 being used in this way. We believe that there  
6 should now be instead, because the cap is  
7 definitely going to be exceeded, by the way the  
8 Company is allowed to proceed in this fashion,  
9 there will not be another rate case until year  
10 2022. You can see that by virtue of tracking  
11 in their Petition the effect of using this tax  
12 cap and showing, on a year-by-year basis, when  
13 would the 7.5 percent be exceeded? And it's in  
14 the year 2022.

15 And I would like to answer a question  
16 that, Mr. Chairman, you asked, which is  
17 regarding the cost of service study, which is  
18 necessary in order for the inclining block  
19 rates to be imposed. And the answer is, this  
20 has not been updated since the year 2005.

21 So, we oppose the use of the WICA  
22 Program in this fashion. We, of course, have  
23 our objections to the way this has been used,  
24 which we've articulated in the past. But I

1 wanted to answer the particular new aspect  
2 that's now involved.

3 Thank you.

4 CHAIRMAN HONIGBERG: Mr. Tuomala.

5 MR. TUOMALA: Thank you, Mr.

6 Chairman. Staff's position regarding the WICA  
7 filing, the issue that we had, somewhat echoing  
8 what Mr. Gearreald said, is the tax implication  
9 and its use in the WICA, would be, as Counsel  
10 Brown had already pointed out, the Commission  
11 had previously approved a program where the  
12 WICA was calculated, and then the tax credit  
13 was applied. In this situation, the Staff's  
14 position is that the WICA is being calculated  
15 with that tax credit, which is a different  
16 procedure than has been applied in the past.

17 And that is -- the main issue is not  
18 only the tax credit, but also the calculation  
19 of that tax credit. And Staff is in the  
20 process now of trying to contract with an  
21 expert, Blue Ridge Tax Consultant, to help us  
22 examine that calculation itself.

23 Also, we wanted to use this  
24 opportunity to have the -- follow the proper

1 procedure for filing of interventions. And  
2 when the process had started, we realized that  
3 a number of towns had been involved in previous  
4 rate cases, and it was Staff's position that,  
5 in order to follow our own procedural rules, to  
6 have a prehearing conference today to allow for  
7 intervenors to file properly.

8 Thank you.

9 CHAIRMAN HONIGBERG: A couple of  
10 questions, Mr. Tuomala.

11 Should we do a hearing at the end of  
12 this proceeding, rather than issue this as an  
13 order *nisi*? I know that, with the prehearing  
14 conference, we arguably could not do that or we  
15 could schedule a hearing, then it couldn't  
16 happen if everybody agreed that it wasn't  
17 necessary.

18 MR. TUOMALA: I think, Mr. Chairman,  
19 in an abundance of caution, we should schedule  
20 a hearing at this point. And as you said, if  
21 the parties, after advancing today, find that  
22 the hearing is not necessary, if we're all in  
23 agreement, we can cancel that scheduled  
24 hearing. But, at this point, we would prefer

1 to schedule a hearing.

2 CHAIRMAN HONIGBERG: Mr. Gearreald  
3 has been here on WICA cases, WICA dockets in  
4 previous years, been filing things for years.  
5 And one of the things I think we said in each  
6 of the last two orders is that "Staff should be  
7 looking at whether it's time for this Company  
8 to file a rate case."

9 Has Staff had an opportunity to look  
10 at the Company's returns from last spring and  
11 draw any conclusions about how the Company is  
12 doing and whether it's time for a rate case,  
13 separate and apart from the WICA?

14 MR. TUOMALA: Staff has engaged, and  
15 I believe you're referring pursuant to the  
16 order --

17 CHAIRMAN HONIGBERG: The order from  
18 last December that Mr. Gearreald cited?

19 MR. TUOMALA: Yes. Staff did examine  
20 that, and determined that there was an  
21 overearning by the Company. But it was not to  
22 the level of egregiousness that would require  
23 them to come in for a full rate case. That the  
24 overearning at that point would be offset by

1 the costs associated with the rate case.

2 CHAIRMAN HONIGBERG: Okay. That's  
3 worth having a discussion with the Company and  
4 Mr. Gearreald about, I think, because the costs  
5 of the rate case are not insignificant. And  
6 the WICA was put in place to avoid them, but  
7 not forever. So, eventually, this Company is  
8 going to have to come in for a rate case. At  
9 some point, it's going to have to do a cost of  
10 service study. So, this stuff has got to  
11 happen. And putting it off, putting it off,  
12 and putting it off, eventually it's going to  
13 come due.

14 And you would agree with that,  
15 wouldn't you, Mr. Tuomala? It's not really a  
16 question.

17 MR. TUOMALA: I would.

18 CHAIRMAN HONIGBERG: Yes. Ms. Brown,  
19 you look like you want to say something?

20 MS. BROWN: Yes. With respect to the  
21 issue on overearnings, I'd like to point out  
22 that the tax credit of 2013, '14, and '15  
23 impacted what the rate of return achieved was.  
24 It artificially inflated it.

1           And also, right now, the Company is  
2           waiting on two major projects to get into plant  
3           in the books, and so that is also skewing the  
4           cost of equity.

5           CHAIRMAN HONIGBERG:  What do you mean  
6           "artificially"?  I mean, that money -- that  
7           money doesn't get paid to one government or  
8           another, because the taxes are reduced.  So,  
9           why is that "artificial"?

10          MS. BROWN:  Oh.  I was talking about  
11          the -- oh, okay.  Understood.  I first was  
12          responding to address the projects that are on  
13          the books, that that is skewing the cost of  
14          equity.

15          CHAIRMAN HONIGBERG:  Yes.  I was  
16          asking about the thing you said right before  
17          that.  You said that the tax -- the tax changes  
18          from earlier, that were returned over a  
19          three-year period, that that's -- that's not  
20          "artificial".  I think that was the word you  
21          used.  That's real.  The Company doesn't have  
22          to pay taxes to whatever government it is  
23          that's lowered the taxes.

24          MS. BROWN:  Correct.  Correct.  I

1           guess I was -- I should have used a different  
2           word than "artificial". It just is an event  
3           outside of the norm of a general rate case that  
4           impacted how the returns were calculated. So.  
5           I just wanted to raise it.

6                         CHAIRMAN HONIGBERG: Unless those  
7           rates go back up, that's -- that gets worked  
8           into the Company's revenue requirement. And if  
9           they are earning money above what they needed  
10          and it gets -- I mean, Staff has said it's  
11          over, but not so over that they feel it's  
12          essential at this time. But we're getting  
13          there, aren't we?

14                        MS. BROWN: But the 2013, '14, and  
15          '15 -- or, the credits from the earlier tax  
16          were not a rate change, a formula change, it  
17          was just a one-time change from capitalization  
18          to expense. So, it was finite.

19                        CHAIRMAN HONIGBERG: Okay.  
20          Understood. But the one we've just  
21          experienced, the one that passed a year ago --

22                        MS. BROWN: Yes. Correct. That is a  
23          different tax change. But I was just speaking  
24          to the complaint, the criticism of the

1 Company's returns being "higher than normal",  
2 there were some perturbations to the regular  
3 calculation that, you know, the one-off of the  
4 calculation expense credit and the fact that  
5 we've got -- the Company has a couple of major  
6 projects that haven't made it to the books.

7 But the Company is not opposed to  
8 looking at its returns and coming in for a rate  
9 case when it's appropriate. But just felt that  
10 the conversation and the issues that were  
11 raised today, I just wanted to elaborate a  
12 little bit more, because I thought they were a  
13 little on the one-sided nature.

14 CHAIRMAN HONIGBERG: That's always  
15 the way it is, Ms. Brown.

16 MS. BROWN: Yes.

17 CHAIRMAN HONIGBERG: You come in here  
18 for a request, and everybody else points out  
19 all the problems with your request. You know  
20 how that goes.

21 MS. BROWN: If I can also speak to  
22 the -- if there's an oral motion to compel --

23 CHAIRMAN HONIGBERG: No, we're not  
24 entertaining an oral motion. Mr. Gearreald is

1 going to have to cue that up as a motion.

2 I think, in general, if you were to  
3 look at the way we've processed WICA cases over  
4 the last few years, at least since I've been  
5 here, the scope is limited.

6 If Mr. Gearreald wants to expand the  
7 scope of the WICA, and he can't do that, he  
8 wants you to come in for a rate case. He wants  
9 us to order you to come in for a rate case, if  
10 you don't do it voluntarily. As long as we all  
11 can keep the issues and the cases separate in  
12 our minds, we will all be better off going  
13 forward.

14 But if there's discovery that Mr.  
15 Gearreald wants to take and it's outside the  
16 scope of this, he'll probably get an order he  
17 doesn't like. But, if he can bring it within  
18 the scope, may be a different story.

19 MS. BROWN: If I can also just state,  
20 too, the request about a hearing, if the WICA  
21 is including the tax, I think, under the  
22 statute, we have to have either a merits  
23 hearing or an order *nisi*.

24 CHAIRMAN HONIGBERG: That's all the

1 more reason to schedule a hearing. I think  
2 that's a good point.

3 MR. GEARREALD: Mr. Chairman?

4 CHAIRMAN HONIGBERG: Mr. Gearreald.

5 MR. GEARREALD: Thank you so much.  
6 Understandable that the PUC Staff might say  
7 that a 0.69 percent, in the year 2017 return,  
8 would not perhaps be enough to offset the  
9 amount of a rate case expense. I understand  
10 that.

11 But, in the year 2016, there was an  
12 exceedance by 3.57 percent over the return on  
13 equity, which amounts to over \$500,000. I  
14 believe that's significant.

15 If there is not a rate case now, Mr.  
16 Chairman, what's going to happen is that, in  
17 the year 2022, under the current proposal,  
18 which would be the time for the next rate case,  
19 there would be a test year that would be only a  
20 couple of years before that, and the year 2016  
21 would be totally lost.

22 CHAIRMAN HONIGBERG: Well, one thing  
23 I think the Company might take issue with, and  
24 I think Staff might as well, is the assumption

1 that, just because they won't get to the cap  
2 under the current plans until 2022, is that  
3 even they wouldn't say "we need a rate case  
4 before then". So, just putting that issue  
5 aside.

6 I think it's perfectly appropriate  
7 for you to make your case to Staff and the  
8 Company that it's time now, that it's worth the  
9 expense of the rate case to do a lot of good  
10 things, to get all the work that they have done  
11 over the last five or six years into rate base  
12 and resets the WICA clock, or at least will  
13 argue, as I think I expect you would, that the  
14 WICA should be ended or replaced with something  
15 else going forward.

16 But you should, in the first  
17 instance, make that case to Staff and the  
18 Company. We are always the last to know about  
19 stuff like that.

20 MR. GEARREALD: Thank you, Mr.  
21 Chairman.

22 CHAIRMAN HONIGBERG: Anything else we  
23 need to do before we leave you to your  
24 technical session?

1 MR. GEARREALD: We do favor a --

2 [Court reporter interruption.]

3 MR. GEARREALD: We would be in favor  
4 of a hearing also.

5 CHAIRMAN HONIGBERG: Yes. I think  
6 Mr. Tuomala is going to work with the  
7 schedulers of the room and make sure that we  
8 can find you a hearing date that makes sense.  
9 But I think this -- I think in your papers, Ms.  
10 Brown, I think it's your papers, you wanted an  
11 order by the end of year. But failing that,  
12 you want one by March 1, I think, something  
13 like that. Whatever it is, we'll work it out.  
14 Mr. Tuomala may be on top of that, and we'll  
15 find you a hearing date to get it worked out.

16 All right. If there's nothing else,  
17 we will adjourn the prehearing conference and  
18 leave you to your technical session. Thank you  
19 all.

20 **(Whereupon the prehearing**  
21 **conference was adjourned at**  
22 **10:42 a.m., and a technical**  
23 **session was held thereafter.)**

24