

STATE OF NEW HAMPSHIRE  
PUBLIC UTILITIES COMMISSION

June 14, 2019 - 10:09 a.m.  
Concord, New Hampshire

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RE: DE 19-064  
LIBERTY UTILITIES (GRANITE  
STATE ELECTRIC) CORP. d/b/a  
LIBERTY UTILITIES: Notice of  
Intent to File Rate Schedules.  
(Hearing on Temporary Rates)

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

Sandy Deno, Clerk

APPEARANCES: Reptg. Liberty Utilities (Granite  
State Electric) Corp. d/b/a  
Liberty Utilities:  
Michael Sheehan, Esq.  
  
Reptg. the City of Lebanon:  
Clifton C. Below  
  
Reptg. Clean Energy NH:  
Elijah D. Emerson, Esq. (Primmer...)  
Brianna Brand

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

CERTIFIED  
ORIGINAL TRANSCRIPT

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**APPEARANCES: (C o n t i n u e d)**

**Reptg. Residential Ratepayers:**

D. Maurice Kreis, Esq., Consumer Adv.  
Brian D. Buckley, Esq.  
Pradip Chattopadhyay, Asst. Cons. Adv.  
James Brennan, Finance Director  
Office of Consumer Advocate

**Reptg. PUC Staff:**

Paul B. Dexter, Esq.  
Jay Dudley, Electric Division  
Richard Chagnon, Electric Division  
Kurt Demmer, Electric Division

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**PAGE NO.**

**WITNESS PANEL:            DAVID B. SIMEK  
                                 PHILIP E. GREENE**

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**E X H I B I T S**

<b>EXHIBIT NO.</b>	<b>D E S C R I P T I O N</b>	<b>PAGE NO.</b>
1	Direct Testimony of Philip E. Greene and David B. Simek on Temporary Rates, with attachments	premarked
2	Attachment HMT-1 Revised, Page 1 of 1, entitled "LED-2 Rate Calculation"	premarked
3	<b>RESERVED</b> (To provide the LED-2 tariff language found in Volume III, Bates Pages III-136 through III-139 of the permanent rate filing)	premarked

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

1  
2 CHAIRMAN HONIGBERG: We're here this  
3 morning in Docket DE 19-064, which is Liberty's  
4 rate case, a hearing on temporary rates.

5 Before we do anything else, let's  
6 take appearances.

7 MR. SHEEHAN: Good morning,  
8 Commissioners. Mike Sheehan, for Liberty  
9 Utilities (Granite State Electric) Corp.

10 MR. BELOW: Assistant Mayor Clifton  
11 Below, for the City of Lebanon. And if I may,  
12 I'd like to make one minor correction to the  
13 record from the prehearing conference. At one  
14 point Attorney Dexter referred to me as  
15 "Attorney Below". And while I'm a councilor,  
16 as in City Councilor, I am not an  
17 attorney-at-law, just for the record.

18 Thank you.

19 CHAIRMAN HONIGBERG: Okay.

20 MR. EMERSON: Eli Emerson, from  
21 Primmer, Piper, Eggleston & Cramer, on behalf  
22 of Clean Energy New Hampshire.

23 MR. KREIS: Good morning,  
24 Commissioners. I am D. Maurice Kreis, the

1 Consumer Advocate, here on behalf of  
2 residential utility customers. I am an  
3 attorney admitted to the practice in this  
4 state, and I just paid by Bar dues for the  
5 coming year. And I have my whole team with me  
6 here today.

7 MR. DEXTER: Paul Dexter, Staff  
8 attorney, appearing on behalf of the Commission  
9 Staff.

10 CHAIRMAN HONIGBERG: All right. Any  
11 preliminary matters we need to deal with this  
12 morning? Mr. Sheehan.

13 MR. SHEEHAN: Yes, sir. We have  
14 marked two exhibits.

15 The first, Exhibit 1, is the  
16 temporary rate testimony and temporary rate  
17 attachments to that testimony, which is at  
18 Bates II-001 through Bates II-062, the very  
19 beginning of Volume II, obviously. That would  
20 be "Exhibit 1".

21 As prestaged during the prehearing  
22 conference, Mr. Below is interested in having  
23 the LED-2 tariff implemented on a temporary  
24 basis. And in support of that, he has asked

1 that we mark as "Exhibit 2" a schedule, a  
2 revised schedule from the Company of the rates  
3 that would apply should the Commission approve  
4 the LED-2 tariff on a temporary basis. And  
5 we've marked that as "Exhibit 2".

6 And last, should the Commission  
7 approve that request, we've identified the  
8 tariff language from the permanent rate filing,  
9 which is at Bates III-136 through Bates  
10 III-139. Our proposal would be, if the  
11 Commission approves it, we would pull those  
12 pages out and file them as "Exhibit 3" as a  
13 record request, rather than trying to  
14 incorporate the rest of that tariff section.

15 CHAIRMAN HONIGBERG: That gets  
16 complicated at the end of the hearing today,  
17 because it being marked as conditioned on our  
18 taking a particular type of action after we  
19 close the record, doesn't it?

20 MR. SHEEHAN: Well, we could  
21 certainly mark it. You could accept it as an  
22 exhibit and decide whether to approve it or  
23 not.

24 CHAIRMAN HONIGBERG: That I think is

1 the better way to proceed. So, I think you  
2 basically identified it, but we'll make clear  
3 at the end that that's going to be Exhibit 3,  
4 because I think that's the only way to avoid  
5 the logic problem of how to do that in steps.

6 Can you go back and tell us again  
7 which pages constitute Exhibit 1? Because we  
8 have a bunch of subsets of your filing, I want  
9 to make sure we have in front of us the pages  
10 you just identified as "Exhibit 1".

11 MR. SHEEHAN: Sure. II-001 through  
12 II-062. It is the testimony and attachments  
13 for temperature rates.

14 CHAIRMAN HONIGBERG: All right.  
15 Anything else before we have the witnesses  
16 sworn in?

17 MR. SHEEHAN: Just a very high level,  
18 there are no motions, other than those we  
19 discussed at the prehearing conference. And we  
20 did meet the other day with the parties, and we  
21 do not have a formal agreement, but our  
22 expectation is the parties will not object to  
23 the Company's request for temporary rates.

24 CHAIRMAN HONIGBERG: Okay. Anything

[WITNESS PANEL: Simek|Greene]

1 else from anybody else before we begin?

2 [No verbal response.]

3 CHAIRMAN HONIGBERG: All right.

4 Mr. Patnaude, would you do the honors please.

5 (Whereupon **David B. Simek** and  
6 **Philip E. Greene** were duly sworn  
7 by the Court Reporter.)

8 CHAIRMAN HONIGBERG: Mr. Sheehan.

9 MR. SHEEHAN: Thank you.

10 **DAVID B. SIMEK, SWORN**

11 **PHILIP E. GREENE, SWORN**

12 **DIRECT EXAMINATION**

13 BY MR. SHEEHAN:

14 Q Mr. Simek, please state your name and your  
15 position with the Company?

16 A (Simek) David Simek, Manager of Rates and  
17 Regulatory Affairs.

18 Q And did you participate in drafting the  
19 testimony and attachments that have been marked  
20 as "Exhibit 1"?

21 A (Simek) Yes, I did.

22 Q Do you have any exchanges to those parts of the  
23 testimony that you are responsible for?

24 A (Simek) I do not.

[WITNESS PANEL: Simek|Greene]

1 Q This morning do adopt Exhibit 1 as your sworn  
2 testimony?

3 A (Simek) Yes, I do.

4 Q Part of your testimony discussed the rate  
5 impact of the proposed temporary rates. Could  
6 you point to where that is in the filing?

7 A (Simek) Volume II-019.

8 Q And the total rate request is what, 2 million  
9 and something?

10 A (Simek) Yes. It's \$2,093,000 -- I'm sorry,  
11 \$2,093,349.

12 Q And that could be found where?

13 A (Simek) Bates Volume II-007, on Line 18.

14 Q And going back to my first question, the rate  
15 impact, if the Commission were to approve that  
16 temporary rate increase?

17 A (Simek) For a residential customer, using 650  
18 kilowatt-hours per month, the monthly impact  
19 would be \$2.48, or a 2.01 percent increase from  
20 distribution rates that are in effect today.

21 Q Thank you. Mr. Greene, could you please state  
22 your name and position with the Company?

23 A (Greene) Yes. My name is Philip Greene. I am  
24 a Senior Financial Regulatory Analyst with

[WITNESS PANEL: Simek|Greene]

1 Liberty Utilities New Hampshire.

2 Q And the same questions that I asked Mr. Simek.

3 Were you involved in the preparation of the  
4 testimony and exhibits that have been marked as  
5 "Exhibit 1"?

6 A (Greene) Yes, I was.

7 Q And do you have any changes to those portions  
8 of those -- that document that you were  
9 responsible for?

10 A (Greene) I do not.

11 Q And do you adopt that testimony as your sworn  
12 testimony today?

13 A (Greene) Yes, I do.

14 MR. SHEEHAN: Those are all the  
15 questions I have. Thank you.

16 CHAIRMAN HONIGBERG: Mr. Emerson, do  
17 you have any questions for the panel?

18 MR. EMERSON: I do not.

19 CHAIRMAN HONIGBERG: Mr. Below?

20 MR. BELOW: No, sir. Thank you.

21 CHAIRMAN HONIGBERG: Mr. Kreis.

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

23 Just a few questions.

24 **CROSS-EXAMINATION**

1 BY MR. KREIS:

2 Q I would direct the witnesses' attention to  
3 Exhibit 1, Page II-015. My first question has  
4 to do with Line 16, which is income taxes.  
5 Could you, and I don't really care which  
6 witness answers any of my questions or whether  
7 you both do, could you just briefly take us  
8 through that line and explain the impact of  
9 income taxes on your temporary rate increase?

10 A (Greene) Yes. I'm going to refer down to --  
11 sorry, let me just find it here. So, it is --  
12 I believe it's Line -- I'm sorry. So,  
13 beginning with Line 97, we have the pre-income  
14 tax -- no, let me go up one more time. The  
15 "Pre-tax income, normalized", Line 97, from  
16 there a calculation is completed to calculate  
17 the income tax based on the effective rates,  
18 both New Hampshire and the federal rates. That  
19 comes to an income tax amount normalized of 2.  
20 -- sorry -- 2,141,085. Deduct the income tax  
21 recognized per the books of 2,797,514, gives us  
22 the adjustment for the income tax expense that  
23 you see -- I'm sorry, the adjustment for the  
24 income taxes of 656,294. Hold on, give me one

[WITNESS PANEL: Simek|Greene]

1 second here. I'm sorry.

2 A (Simek) I'm sorry. I believe, for Line 102, he  
3 is referencing the "656,429".

4 A (Greene) Yes. Thank you. I'm going to refer  
5 back up to Line 54. If I could just have one  
6 second to look this over please.

7 A (Simek) So, for the income taxes, on Line 16,  
8 just to take a step back, the first column  
9 there is looking at the historic year-end, just  
10 basically what was on the books at year-end  
11 2018. And then, for the column that has  
12 temporary rate adjustments, which Mr. Greene  
13 was just referring to, the \$852,447 adjustment  
14 was meant to bring us back to where we should  
15 be on a normal year for distribution income  
16 going forward.

17 So, there are two adjustments that make up  
18 that 852,447. One of them Mr. Greene just  
19 walked through, which was on Line 102, which is  
20 the 656,429. The other adjustment is on  
21 Line 54. And that adjustment, for \$196,018, is  
22 related to excess taxes that have to do with  
23 tax reform. So, it's deferred taxes that the  
24 Company had accrued based on tax reform that

[WITNESS PANEL: Simek|Greene]

1 we're giving back to customers now.

2 Q And so, therefore, and you'll have to excuse  
3 me, because I'm an attorney and not a CPA, so,  
4 in the next to last column on that first page  
5 of Schedule T, which is Page II-015 of  
6 Exhibit 1, there is a temporary rate increase  
7 of "\$566,942" associated with taxes. And I'm  
8 just suffering from confusion about why that  
9 is?

10 A (Greene) I can take that. If you go down to,  
11 beginning with Line 105, there is a  
12 recalculation of -- I'm sorry, a calculation of  
13 the temporary revenue deficiency in that  
14 section, and that includes a gross up for the  
15 taxes, in addition to the operating income  
16 deficiency. The operating income deficiency  
17 grossed up for the effective tax rates  
18 currently in effect arrive at the 2 million --  
19 I'm sorry, the 2,093,349 temp increase being  
20 requested.

21 Q Okay. Thank you. Moving onto the next page of  
22 Exhibit 1, which is marked as Bates "II-016",  
23 Line 31 says "Prior year reversal". What's  
24 that?

[WITNESS PANEL: Simek|Greene]

1 A (Greene) That is just reversal of an adjustment  
2 that was made in the Provision for Refunds  
3 account. Based on our -- related to a prior  
4 year amount. It was an adjustment made during  
5 the year in that Provision for Refunds account,  
6 which is factored in as part of the  
7 distribution and transmission and commodity  
8 charges.

9 Q And going down that same page and looking at  
10 Line 50, there is an adjustment of \$1.2 million  
11 dollars that has to do with Docket DG 11-040,  
12 that was the -- that relates to the acquisition  
13 of Granite State Electric by Liberty Utilities.  
14 Can you explain that?

15 I was out of the jurisdiction when that  
16 happened. And so, it's always been a little  
17 confusing to me.

18 A (Simek) Yes. That's a commitment that the  
19 Company made by agreement in that acquisition  
20 in the Settlement Agreement, that relates to  
21 certain IT costs. And that was amortized over  
22 five years, with the assets going into effect  
23 at the end of 2014. So, that's almost off the  
24 Company's books now.

[WITNESS PANEL: Simek|Greene]

1 Q And Line 53 refers to "non-recurring energy  
2 efficiency incentive". Can you explain that?

3 A (Greene) Yes. That is the energy efficiency  
4 revenue amount that is -- goes to the Company  
5 for the incentive revenue. That amount, I have  
6 the amount broken out, is 146,500 or so of that  
7 total is related to that energy efficiency  
8 incentive revenue, removing that as  
9 non-recurring.

10 Q Super. Okay. I think this is the last thing I  
11 need to ask about. Now, I'd like you to look  
12 at Page II-019 of Exhibit 1, which is the page  
13 that lays out the residential bill impact.

14 Now, in your prefiled testimony on  
15 temporary rates, you indicated that there were  
16 no rate design changes contemplated as part of  
17 the temporary rate case of this proceeding.  
18 But we noticed that, under the "Distribution  
19 Charge", the per kilowatt charge goes from  
20 current rates that have a -- I guess a somewhat  
21 higher rate for the tail block relative to the  
22 head block, whereas the proposed temporary  
23 rates, the head block and the tail block, which  
24 is to say the rates for the first 250 kWh and

[WITNESS PANEL: Simek|Greene]

1 the rate for the consumption in excess of 250  
2 kilowatts are now the same. Can you explain  
3 why you adopted that apparent change in rate  
4 design?

5 A (Simek) Yes. In compliance with Docket Number  
6 DE 16-383, there were adjustments that came for  
7 the next three years in order to flatten that  
8 distribution rate. We did that, and that was  
9 effective May 1st.

10 So, in compliance with Docket DE 16-383,  
11 effective May 1st we leveled the rate. This  
12 filing was made on April 30th. So, the current  
13 rates that were currently in effect still had  
14 that block difference.

15 Q So, in other words, that change that you're  
16 making is not a change in the rate design that  
17 you're proposing here, you're actually  
18 complying with the Commission's order in the  
19 previous rate case?

20 A (Simek) Correct.

21 MR. KREIS: Thank you. Those are all  
22 the questions I have.

23 CHAIRMAN HONIGBERG: Mr. Dexter.

24 MR. DEXTER: Thank you.

[WITNESS PANEL: Simek|Greene]

1 BY MR. DEXTER:

2 Q So, I'd like to direct the witnesses' attention  
3 to Pages 15 through 19. This is the  
4 calculation of the temporary rates, is that  
5 correct?

6 A (Simek) Yes.

7 Q And would you agree that the underlying basis  
8 for the numbers included in the "Historic Test  
9 Year" column are the Company's books, books and  
10 records?

11 A (Simek) Yes.

12 Q And for example, if I were to look at the  
13 number on Line 5 of Page 15 for revenues, I see  
14 a figure there of \$101 million. I could find  
15 that number in the FERC Form 1 that the Company  
16 filed with the Commission recently, is that  
17 true?

18 A (Simek) Yes.

19 Q And similarly, concerning rate base, if I were  
20 to look at Page 17, Line 58, there's a utility  
21 plant figure there of \$232 million. If I were  
22 to open the Company's FERC Form 1, I could  
23 trace that number to the dollar to the plant  
24 numbers in the FERC Form 1. Is that true?

[WITNESS PANEL: Simek|Greene]

1 A (Greene) Yes.

2 Q And so, having started with the Company's books  
3 and records as the basis for the calculation,  
4 it's correct that several adjustments were made  
5 to the books and records to get to the revenue  
6 requirement requested, is that right?

7 A (Greene) That is correct.

8 Q And would it be correct to classify those  
9 adjustments, many of those adjustments, as an  
10 attempt to move from the books of the Company  
11 to the distribution portion of the Company's  
12 business, which is at issue in this case?

13 A (Greene) That is correct. Yes.

14 Q And adjustments, such as the first two  
15 adjustments on Page 15, in the magnitude of  
16 \$22 million and \$38 million being reduced from  
17 the revenues that were listed on that page,  
18 those are meant to take out items that are not  
19 distribution-related, correct?

20 A (Greene) Correct. Yes.

21 Q And what are some of those items that you took  
22 out?

23 A (Greene) Those are the revenue related to  
24 distribution and transmission, as well as the

[WITNESS PANEL: Simek|Greene]

1 commodity, which are not part of the  
2 distribution rates.

3 A (Simek) Yes. It's related to the annual retail  
4 rate filing and the passthrough that we do in  
5 that filing, those revenues. And also, as  
6 Mr. Greene stated, the commodity piece as well,  
7 that we do for energy service.

8 Q And the idea is to get down to a distribution  
9 operating income, which is listed about halfway  
10 through the page there, correct?

11 A (Simek) Correct.

12 Q And then, you made a few normalizing  
13 adjustments to the test year distribution  
14 operating income, which Attorney Kreis was just  
15 referencing. What's the point of those  
16 normalizing adjustments?

17 A (Simek) Typically, we normalize to take into  
18 effect the rates that were in effect at  
19 year-end, and make an adjustment as if they  
20 were in effect for the full year. So, for  
21 example, last year we made a reduction in rates  
22 on June 1. So, January through May had higher  
23 rates than what June through December had. So,  
24 basically, this normalization is bringing

[WITNESS PANEL: Simek|Greene]

1 January through May to the correct revenue for  
2 the year.

3 Q And there's an adjustment that Attorney Kreis  
4 referenced concerning income taxes. And I just  
5 want to ask sort of a summary question on  
6 income taxes. Is it correct that the temporary  
7 rates that you proposed reflect the reduced  
8 rates that were enacted as a result of the  
9 recent tax reform?

10 A (Greene) That is correct.

11 Q And that's both the operation side, as well as  
12 the accumulated deferred tax side, is that  
13 right?

14 A (Greene) That is correct. Yes.

15 Q And could you explain what capital structure  
16 and costs were used in the calculation of the  
17 proposed rates?

18 A (Greene) The capital structure was a 50 percent  
19 to 50 percent debt-to-equity ratio. Using a  
20 debt -- a cost of debt rate of 5.97 percent and  
21 the equity rate per the last rate case of  
22 9.4 percent.

23 Q And that's shown on Page 18, correct?

24 A (Greene) Yes.

[WITNESS PANEL: Simek|Greene]

1 Q The 50/50 equity -- debt/equity ratio for the  
2 capital structure was what was contained in the  
3 settlement in the last permanent rate case,  
4 correct?

5 A (Greene) Yes.

6 Q And will you agree that the temporary rate  
7 request in this case represents about 37  
8 percent of the permanent rate request?

9 A (Greene) Yes.

10 Q And would you agree that that is lower than  
11 what was requested in the Company's last  
12 temporary -- the last temporary rate request  
13 back in 2016?

14 A (Simek) I believe so, yes.

15 MR. DEXTER: Thank you. That's all  
16 the questions Staff has.

17 CHAIRMAN HONIGBERG: Commissioner  
18 Bailey.

19 BY CMSR. BAILEY:

20 Q I read in the testimony, I don't have an exact  
21 cite to it, but that you plan to introduce  
22 additional adjustments to other rates which are  
23 pending in different dockets?

24 A (Simek) I'm sorry, I have to find that.

[WITNESS PANEL: Simek|Greene]

1 Q Let me see if I can find it. It's on Page 11,  
2 Line 14, starts on Line 14.

3 A (Simek) Oh. Yes. The date that we made the  
4 filing was on April 30th. Effective May 1st,  
5 there were other distribution rate changes that  
6 took effect. That was part of the reference  
7 that was made to Mr. Kreis's about the block  
8 rate change that occurred on Bates Volume  
9 11-019. So, yes. When we were comparing  
10 rates -- this is about the bill impact section.  
11 So, when we were comparing rates, we actually  
12 used what was in effect on April 30th, which  
13 was the date of the filing, not what was in  
14 effect as of May 1st.

15 Q Okay. So, you don't have any other rate  
16 changes pending to go into effect July 1st,  
17 like TCAM or a reconciliation rate or anything  
18 like that?

19 A (Simek) I'm aware that, not -- as far as  
20 distribution goes, I don't believe so, no. We  
21 have, of course, the Energy Service that's  
22 going into effect August 1st, that we have that  
23 hearing next week. And as far as transmission  
24 goes, those rates have already been settled

[WITNESS PANEL: Simek|Greene]

1 earlier this year.

2 Q And they are in effect now?

3 A (Simek) Yes.

4 Q Okay. So, customers are going to see a rate  
5 increase on July 1st for temporary rates, if we  
6 approve this, and another increase, not to  
7 distribution, but to their -- on their bill.  
8 Oh, no, they're going to get a decrease on  
9 August 1st probably.

10 A (Simek) August 1st is a decrease, yes.

11 Q We talked about the possibility of making all  
12 the changes on the same day in another  
13 proceeding. Do you have any concern if we set  
14 temporary rates at current rates on July 1st,  
15 and then put these into effect on August 1st  
16 with the other rate change, just so that rate  
17 confusion to customers is minimized?

18 A (Simek) I'd have to think about that for a  
19 minute.

20 Q All right. And maybe you could talk it over  
21 with your attorney and he can address it on  
22 redirect.

23 A (Simek) Okay. Thank you.

24 Q Okay. Is there -- do you think that there is

[WITNESS PANEL: Simek|Greene]

1 any risk that the LED-2 tariff would not go  
2 into effect at the end of this proceeding?

3 A (Simek) At the end of the permanent proceeding?

4 Q Yes.

5 A (Simek) No, I do not.

6 CMSR. BAILEY: Okay. Thank you.

7 That's all I have.

8 WITNESS SIMEK: Thank you.

9 CHAIRMAN HONIGBERG: Commissioner  
10 Giaimo.

11 CMSR. GIAIMO: Good morning.

12 WITNESS SIMEK: Good morning.

13 BY CMSR. GIAIMO:

14 Q I just want to clarify what I thought I heard.  
15 Mr. Simek, I thought you said "2.1 percent  
16 increase to distribution rates", and maybe I  
17 misunderstood and you said "2.01"?

18 A (Simek) Correct. That I meant to state that it  
19 was a "2.01 percent increase".

20 Q Okay. And I thought you said that the  
21 distribution -- to distribution rates, it's  
22 actually to the total bill, correct?

23 A (Simek) Correct.

24 Q Okay. Thank you for the clarification. In

[WITNESS PANEL: Simek|Greene]

1 President Fleck's testimony, she mentioned the  
2 temporary rates are needed for various reasons,  
3 but among them is "property taxes" and  
4 "hazardous tree removal". I'm just wondering  
5 if you can touch upon that and how these  
6 temporary rates can help?

7 A (Simek) I'm sorry. I was trying to find it in  
8 here. You said "property taxes" and what else?

9 Q I thought that, in her testimony, her prefiled  
10 testimony, and she's not here, so I'm just  
11 asking if you can speak to this, is that  
12 they're -- part of the reason why the rates are  
13 needed is get to fix property tax issues and to  
14 deal with hazardous tree removal.

15 And I'm wondering if you can discuss how  
16 these temporary rates will get to that, if the  
17 Company is satisfied that that will actually  
18 happen?

19 A (Simek) No. The temporary rates are not meant  
20 to take over or to help with those issues.  
21 That's meant to be in the permanent rate case  
22 and issues that should be addressed there.

23 Q Okay. All right. Fair enough. And I just  
24 have -- I'm just hoping for a clarification.

[WITNESS PANEL: Simek|Greene]

1 I'm looking at II-007, and it appears at  
2 various times, it talks about the primary  
3 reason the Company's earnings have been below  
4 the allowed rate of return, and it says "the  
5 primary reason relates to capital investments".

6 A (Simek) Correct.

7 Q I'm just wondering if you could provide a  
8 little bit of background on that?

9 A (Simek) Well, the Company -- the Company has  
10 made significant investments in capital,  
11 non-growth related projects. Actually, I have  
12 some detail here.

13 So, I have -- there's just been some IT  
14 investments, I'm just looking at some of the  
15 larger significant investments made since '16.  
16 It looks like there was -- let me just go  
17 through here.

18 MR. SHEEHAN: Most of the description  
19 of that is in the Rivera testimony, which  
20 starts on Page 177, which isn't part of this  
21 filing officially, but it's part of the  
22 evidence in this case, but that describes the  
23 capital investments.

24 **CONTINUED BY THE WITNESS:**

[WITNESS PANEL: Simek|Greene]

1 A (Simek) Yes. If we look at the permanent rate  
2 filing, in Volume II, Page 184.

3 BY CMSR. GIAIMO:

4 Q Mr. Simek, I'm just talking large scale. I  
5 don't need you to get too into the weeds,  
6 just --

7 A (Simek) Yes. There were some larger projects,  
8 the Pelham substation; there was some  
9 Walpole/Charlestown area, a widening of the  
10 road; Dartmouth College, looks like there was  
11 some investment there; then, of course, the  
12 Tuscan Village, it was a major investment that  
13 began, I believe, in '18.

14 CMSR. GIAIMO: That's great. Thank  
15 you.

16 BY CHAIRMAN HONIGBERG:

17 Q The only thing I wanted to pick up on, and  
18 maybe it's as much for Mr. Sheehan and Mr.  
19 Mullen, is what Commissioner Bailey asked you  
20 about a moment ago. Whether there's a way to  
21 structure this rate change and the August rate  
22 change, so there's not consecutive rate  
23 changes, one up and then one down, rather to  
24 combine them on August 1, whether that would be

[WITNESS PANEL: Simek|Greene]

1 what Commissioner Bailey said, which is zero  
2 percent on July 1, or whether it's this rate  
3 increase effective July 1, but deferred for a  
4 month? Doing the math is doable, but  
5 everything requires work. Do you agree with  
6 me, Mr. Simek, that that's doable, right?

7 A (Simek) Absolutely.

8 Q It's just a matter of whether it makes sense?

9 A (Simek) Yes.

10 Q Okay. And I guess we would ask you to  
11 consider, and confer with counsel, confer with  
12 the other parties, about what makes the most  
13 sense for you and for your customers. If you  
14 could --

15 A (Simek) Okay. Yes.

16 CHAIRMAN HONIGBERG: Thank you. I  
17 have to put it in the form of a question, don't  
18 I?

19 And that's all I had. Mr. Sheehan,  
20 do you have any redirect? Or do you want to  
21 confer with your witnesses before you ask them  
22 the questions?

23 MR. SHEEHAN: I wasn't going to ask  
24 them about that. I think I'm going to ask the

1 gentleman sitting next to me those questions.

2 I just had two clarifications.

3 **REDIRECT EXAMINATION**

4 BY MR. SHEEHAN:

5 Q The Line 16, \$566,000 income tax part of the  
6 temporary rate increase, is it fair to say  
7 those are the taxes that the Company would pay  
8 on the extra revenue that would come in due to  
9 the temporary rate increase?

10 A (Greene) I believe I know the answer. Just  
11 give me one moment.

12 Q Sure.

13 A (Greene) Yes. That is correct.

14 Q And the adjustment related to Docket 11-040, I  
15 think you said, but to be clear, those were --  
16 there was a cap on IT costs as part of the  
17 acquisition. And what's being reduced there is  
18 the Company's agreement not to recover some IT  
19 costs that exceeded that cap in 11-040, is that  
20 correct?

21 A (Simek) Yes, it is.

22 MR. SHEEHAN: Okay. That's all I  
23 have.

24 CHAIRMAN HONIGBERG: All right. I

1 think, are there other witnesses who are going  
2 to be called?

3 *[No verbal response.]*

4 CHAIRMAN HONIGBERG: All right. Off  
5 the record.

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

8 CHAIRMAN HONIGBERG: Back on the  
9 record. Okay. Why don't you gentlemen return  
10 to your seats, and we'll take whatever next  
11 steps are appropriate from there.

12 With no other witnesses, we will, and  
13 without objection, we'll strike ID on Exhibits  
14 1 and 2. And I guess we don't have a paper  
15 exhibit for 3, but you've described it. Right,  
16 Mr. Sheehan?

17 MR. SHEEHAN: That's correct.

18 CHAIRMAN HONIGBERG: All right. Why  
19 don't you put that on the record again, just so  
20 it's clear.

21 MR. SHEEHAN: Sure. Exhibit 3 will  
22 be the LED-2 tariff language that appears in  
23 the permanent rate case filing at Bates III-136  
24 through III-139. We will pull those pages out

1 and file them as a separate Exhibit 3 for  
2 purposes of this temporary rate hearing.

3 CHAIRMAN HONIGBERG: Sounds good.  
4 Thank you.

5 Anything else we need to do before  
6 the parties sum up?

7 *[No verbal response.]*

8 CHAIRMAN HONIGBERG: All right.  
9 Mr. Emerson, anything you want to say?

10 MR. EMERSON: Just that we have no  
11 objection to the temporary rates as proposed.

12 CHAIRMAN HONIGBERG: Thank you. Mr.  
13 Below.

14 MR. BELOW: No objection to the  
15 temporary rates as proposed.

16 We would -- the City of Lebanon would  
17 like to request that the LED-2 rate, as  
18 prepared for the permanent rate proposal, that  
19 the Commission authorize the utility to  
20 implement that as part of temporary rates,  
21 subject to reconciliation as other temporary  
22 rates are subject to reconciliation. It might  
23 be its own, you know, distinct reconciliation.

24 The City is prepared to accept the

1 possibility that the rates and tariff could be  
2 different, in terms of what's finally approved.  
3 And anything we do would be subject to that  
4 reconciliation.

5 I would like to just briefly sort of  
6 argue the legal point on this, and then also  
7 why it would be in the public interest for the  
8 Commission to do so.

9 Just looking at the temporary rate  
10 statute, RSA 378:27, temporary rates, I'll just  
11 read a portion of it, paraphrasing and leaving  
12 some words out: "In any proceeding involving  
13 the rates of a public utility brought either  
14 upon motion of the Commission or upon  
15 complaint, the commission may, after reasonable  
16 notice and hearing, if it be of the opinion  
17 that the public interest so requires,  
18 immediately fix, determine, and prescribe for  
19 the duration of said proceeding reasonable  
20 temporary rates".

21 Of course, we're used to primarily  
22 seeing temporary rates in the context of  
23 existing tariffs that are proposed to increase,  
24 and temporary rates being sort of a shortcut,

1 with minimal investigation and subject to  
2 reconciliation. That's the key point, that  
3 there be reconciliation.

4 In this case, this is, obviously, a  
5 proposed new tariff, but it's one that was  
6 contemplated in the last distribution rate  
7 proceeding. And I don't think it is out of the  
8 use of the temporary rate statute.

9 And I'll just give an example. Say,  
10 hypothetically, there was a new water  
11 distribution utility that was formed to serve a  
12 new residential development. It was not  
13 affiliated with any existing investor-owned  
14 water utility. Its franchise is approved. It  
15 has a viable business plan. It executes that  
16 plan, develops the water system, is ready to  
17 place it in service and start taking customers,  
18 it proposes tariffs, permanent tariffs. But it  
19 would need temporary tariffs, which might be  
20 the proposed permanent tariffs, in order to  
21 begin serving those customers with that new  
22 service. You know, that would seem to be an  
23 entirely appropriate application of the  
24 temporary rate statute.

1           And I actually described that it  
2           hasn't been used in that way in the past,  
3           although I have not had the opportunity or the  
4           time to research back to 1941, when this was  
5           first enacted. But, obviously, in recent  
6           years, we've had very few brand-new utilities  
7           started off that weren't already affiliated  
8           with an existing utility with an existing  
9           tariff structure.

10           CMSR. BAILEY: Mr. Below?

11           MR. BELOW: Yes.

12           CMSR. BAILEY: I don't understand why  
13           they would need temporary tariffs, in your  
14           water case example?

15           MR. BELOW: Well, in that water case  
16           example, they would come to the Commission and  
17           say "Here is our proposed tariffs. But we've  
18           just completed construction." So, the  
19           Commission would want to review whether, you  
20           know, the rate base is correct, whether the  
21           expenses were prudently incurred. But, at the  
22           same time, they would be in a position saying  
23           "We need to start serving customers while  
24           this -- we just finished construction, we just

1 got the final bills for that. We need  
2 temporary rates until there's time to fully  
3 investigate our proposed rate structure."

4 That would be my hypothesis in such a  
5 hypothetical.

6 CMSR. BAILEY: Thank you.

7 MR. BELOW: I think the reason this  
8 would be for the public interest, which is the  
9 criteria in temporary rates, it is a couple  
10 fold.

11 First, in the last distribution rate  
12 case, DE 16-383, in the Settlement that was  
13 filed, the provisions of that Settlement  
14 included language that says "The Company will  
15 work collaboratively with Staff and the City to  
16 develop an LED tariff that allows customers to  
17 install LED fixtures. The Company" --  
18 "Municipal customers shall have the right to  
19 have maintenance performed by private line  
20 contractors...subject to agreement with the  
21 Company and other related conditions." And  
22 "the Company shall work with the City...to  
23 explore alternative options with respect to  
24 offering LED street lighting service."

1           We've been in those discussions with  
2           Liberty for the past two years. More than a  
3           year ago, the City -- what the City wanted to  
4           do really began to crystalize. And we  
5           initiated a capital improvement program project  
6           for consideration by our City Council that --  
7           and that was approved last December, with an  
8           appropriation sufficient to fund a complete LED  
9           street lighting conversion, including control  
10          nodes that would provide for network street  
11          lighting with built-in revenue-grade metering.  
12          That's a somewhat separate matter, but it's  
13          also directly related to, I think, the public  
14          good consideration.

15                 I would like the Commission to take  
16          administrative notice of its Order Number  
17          26,029, in DE 16-576, the development of  
18          alternative net metering tariffs, in which the  
19          Commission approved it conceptually, the idea  
20          of a proposed real-time pricing pilot, and  
21          directed Liberty Utilities to work with the  
22          City to develop the proposed pilot for filing  
23          with the Commission.

24                 Our biggest obstacle, the reason that

1 has not been done yet so far, is because we  
2 have found it difficult to find a way to  
3 cost-effectively deploy interval meters that  
4 could -- where the data could be collected on a  
5 daily basis to make a real-time pricing  
6 settlement feasible.

7 In the process of exploring that, we  
8 identified the fact that networked street  
9 lighting controls can actually serve that  
10 function of being able to allow interval meter  
11 data collection on a daily basis.

12 And around January of this year, the  
13 City and Liberty somewhat independently came to  
14 the same conclusion, there was a particular  
15 product that could work for this very purpose  
16 that was consistent with Liberty's plans for  
17 eventual smart grid/smart meter deployment.  
18 So, we have been continuing the discussions  
19 about how we could proceed with that.

20 Enabling the LED tariff to go forward  
21 would allow the City to go ahead and procure  
22 the street lights, so that we could begin to  
23 install them this year. And it would allow us  
24 to go ahead and spend the funds for the control

1 nodes, which also function as photocells. They  
2 can just operate in photocell modes for the  
3 time being, consistent with the proposed  
4 tariff. But they would also be sort of ready  
5 to go to potentially support interval metering  
6 with our proposed pilot.

7 And obviously, we expect to come in  
8 with a different proposal for that part of the  
9 application, but this would lay the groundwork  
10 for that to go ahead.

11 We realize the alternative would be  
12 to do a separate filing of a proposed tariff.  
13 That doesn't seem to make much sense, since  
14 that tariff is proposed in this case and will  
15 be investigated as part of the consideration of  
16 the permanent rates.

17 The other alternative is to propose a  
18 special contract, and we may well pursue that,  
19 if the Commission decides not to approve the  
20 LED-2 tariff as part of temporary rates.

21 However, that itself, although not necessarily  
22 an adjudicative proceeding, will take some more  
23 time. We have some time that we have to allow  
24 for our procurement process, because, as a

1 public entity, we need to do a public RFP,  
2 which will take at least a month to six weeks.  
3 And so, we may well run out of time, in terms  
4 of deploying this before this winter season.  
5 It's not something we really want to be doing  
6 in the middle of the wintertime.

7 So, that's -- I think, for those  
8 reasons, I think the Commission could find that  
9 it's for the public good to allow the LED-2  
10 tariff to go into place as proposed in the  
11 permanent rates. I would note that it is  
12 essentially modeled on their existing tariff,  
13 and uses some of the exact same rates.  
14 There's, you know, 50 -- you pay the  
15 undepreciated cost of the fixtures that are  
16 being removed, and either \$50 for the permanent  
17 removal, we have some of those, or \$50 for the  
18 conversion.

19 What it does have is two new rate  
20 elements, which are primarily service charges.  
21 They're not really adding to the capital of the  
22 Company, because the municipality or the state  
23 would be providing the fixtures. But there's a  
24 charge for a distribution rate component, and

1 the exhibit -- the item marked as "Exhibit 2"  
2 shows the correct numbers for how that's  
3 calculated. And my understanding is that's  
4 consistent with how they allocate other rates,  
5 you know, half towards a demand charge and half  
6 towards a per kilowatt charge. I think the  
7 tariff -- it appears as though the tariff would  
8 just need to be corrected to conform to that  
9 Exhibit 2, which came up in discovery in the  
10 proceeding so far.

11 And then there's a separate proposed  
12 rate, if the customer wants the Company to  
13 maintain the fixture or to install a brand-new  
14 fix.

15 And again, you know, the basis for  
16 those can be investigated as part of permanent  
17 rates, but -- and we accept that those could be  
18 more or less than what's proposed. Those  
19 provisions are not ones the City would expect  
20 to take advantage of.

21 We also realize that, as a temporary  
22 tariff, other municipalities or the state  
23 could, in theory, take advantage of this in the  
24 meantime. Lebanon is the only city within

1 Granite -- Granite State Electric -- within  
2 Liberty Utilities' territory. Which is  
3 significant, because, as a city, our  
4 legislative body is the council, and we've  
5 already approved the debt to do this. Other  
6 towns would have to go through their town  
7 meeting to approve an appropriation.

8 We know there are other towns that  
9 are interested in this. So, they want to start  
10 planning potentially for appropriations in  
11 their next town meeting. But that would, you  
12 know, they wouldn't be implementing until we  
13 have time to -- the Commission can consider the  
14 permanent rates in this case.

15 It's possible the state may want to  
16 take advantage of this. The DOT does have an  
17 appropriation to do LED conversions, and  
18 they're doing that in Eversource and Unitil  
19 territory, where there is a combination for the  
20 state providing -- purchasing, the state  
21 purchasing those LED fixtures. They're not  
22 doing that in Liberty's territory, because  
23 there's no provision for that. So, there's a  
24 chance that DOT, if this LED-2 tariff was

1 provided for as a temp rate, that there's a  
2 chance that DOT might incorporate that into  
3 their LED -- statewide LED conversion project.

4 So, for all those reasons, I believe  
5 it would be for the public good to allow LED-2  
6 as a temporary rate.

7 CHAIRMAN HONIGBERG: Mr. Below, I  
8 have a question for you, a then maybe a  
9 question that the others will want to weigh in  
10 as well, and the second one is procedural. And  
11 I guess I'll start with that one, actually.

12 You asked us to take administrative  
13 notice or official notice of an order from  
14 another docket. I'm not sure we need to do  
15 that. I think our own orders are authority  
16 that can be cited by anyone and relied on.

17 MR. BELOW: Fair enough. Yes.

18 CHAIRMAN HONIGBERG: Do the counsel  
19 in the room agree with that?

20 MR. SHEEHAN: Yes.

21 MR. KREIS: Yes.

22 MR. DEXTER: Yes.

23 (Atty. Emerson nodding in the  
24 affirmative.)

1 CHAIRMAN HONIGBERG: Okay. Thank  
2 you.

3 More specifically to you, though, Mr.  
4 Below, just to understand the legal part of  
5 your argument. Is that, under the statutes  
6 that govern temporary rates, you don't see  
7 anything prohibiting us from doing that?

8 MR. BELOW: Correct.

9 CHAIRMAN HONIGBERG: You suspect it  
10 may have happened somewhere along the line, you  
11 don't know that it has, but, because it's not  
12 prohibited, you feel like we can do it and, in  
13 this instance, should do it for the other  
14 reasons you've said, right?

15 MR. BELOW: Correct.

16 CHAIRMAN HONIGBERG: Okay. Thank  
17 you.

18 CMSR. BAILEY: Would another way of  
19 looking at this, and I'd like to hear from  
20 everybody in the room on this, that you are  
21 asking us to approve the LED tariff -- well, I  
22 guess the only rates in the complete tariff  
23 that are temporary are the distribution rates.  
24 So, you would ask us to include -- to approve

1           this tariff for now, and then set the rates as  
2           temporary so that they can be adjusted  
3           throughout the rate case. And do we have any  
4           notice problems with doing that? Do we have to  
5           have a hearing to implement a new tariff?

6                     I don't think we do. But those are  
7           the kinds of things I'd like to hear people's  
8           opinions about.

9                     CHAIRMAN HONIGBERG: Well, Mr. Below,  
10          do you want to respond to that?

11                    MR. BELOW: Sure. Thank you.

12                    Obviously, the LED-2 tariff was part  
13          of the proposed permanent rates. And I think  
14          the statute allows proposed permanent rates to  
15          also be allowed as temporary rates. Obviously,  
16          there was general notice about that this is a  
17          proposed new tariff. It was also, in fact,  
18          part of the Commission's order in approving the  
19          Settlement last time, the expectation that this  
20          would be proposed.

21                    It is true the Company didn't propose  
22          it as part of temporary rates at the prehearing  
23          conference, where interested parties in the  
24          permanent rates presumably would have been

1 represented, but did indicate that this is  
2 something the City would like to have  
3 considered.

4 And in conversations with the parties  
5 came to realize that, you know, certainly  
6 Liberty didn't object to that and seemed  
7 supportive of it, and perhaps -- and other  
8 parties can speak for themselves. But that  
9 would be my argument.

10 CHAIRMAN HONIGBERG: Commissioner  
11 Giaimo.

12 CMSR. GIAIMO: Mr. Below, you  
13 mentioned timing is an issue, and the special  
14 contract may not lend itself to having it done  
15 by the end of the construction season. Are you  
16 sure, if there was a tariff change as you  
17 proposed, that that timing issue still wouldn't  
18 present itself?

19 MR. BELOW: It may still present  
20 itself. We have a draft RFP ready to finalize  
21 and issue. It is true that many trades and  
22 contractors are filling up their book of  
23 business for this calendar year.

24 And in talking with Liberty, one

1 option is to have them do the conversions.  
2 They may have some availability for that, may  
3 not be able to complete the project, but we may  
4 be able to get a head start on it for early  
5 next spring, if we have a mild winter.

6 It would also potentially allow us to  
7 begin to sort of test out the control nodes,  
8 and begin to sort of figure out if this can  
9 actually work for the other purposes of the  
10 real-time pricing pilot and being able to  
11 cost-effectively deploy interval meters.

12 CHAIRMAN HONIGBERG: Mr. Kreis.

13 MR. KREIS: Thank you. Thank you,  
14 Mr. Chairman. I guess there are two distinct  
15 issues for me to address here.

16 The first issue is the Company's  
17 temporary rate request, and that one is very  
18 easily dispatched. The requested temporary  
19 rates easily meet the standard articulated in  
20 RSA 378:27 for approval of temporary rates.  
21 And therefore, it is the recommendation of the  
22 Office of the Consumer Advocate that you  
23 approve the Company's temporary rate request.

24 To sort of cut to the chase on that

1 issue, the Company's temporary rate request is  
2 37 percent of their permanent rate request.  
3 And I, you know, my rule of thumb for looking  
4 at these things is that it is more likely than  
5 not that, at the end of this case, you will end  
6 up approving at least 37 percent of the rate  
7 increase that this Company has requested on a  
8 permanent basis. It's essentially laying down  
9 a bet that that's what you are going to do at  
10 the end of the case. And in these  
11 circumstances, it is reasonable to do that.  
12 And so, therefore, approving the permanent  
13 rates creates a smooth rate past -- path,  
14 excuse me.

15 And I will say that, for the reasons  
16 that Commissioner Bailey articulated, I do  
17 think it would make some sense, if we can  
18 figure out a reasonable way to do that that  
19 doesn't drive everybody crazy, to actually make  
20 the rate change effective on August 1st to  
21 eliminate confusion, and to make the world seem  
22 like a more rational and reasonable place than  
23 it already is.

24 So, that's the easier of the two

1 issues, because I think Liberty has done an  
2 exemplary job of making a temporary rate  
3 request to you that you can easily approve, and  
4 should do so.

5 The second question has to do with  
6 implementing the LED-2 tariff. And that's  
7 actually a difficult question for us, because  
8 it doesn't fit very well within the temporary  
9 rate statute. I've been looking at the New  
10 Hampshire Supreme Court's decision in *State*  
11 *versus New England Telephone & Telegraph*  
12 *Company*, which is reported at Page 394 of  
13 Volume 103 of the New Hampshire Reports. It's  
14 a 1961 case. And in that case, the court  
15 offered up a brief but helpful disposition on  
16 why we have a temporary rate statute. It turns  
17 out that RSA 378:27 dates from 1941. And  
18 according to the court a couple of decades  
19 later, it was enacted to "protect utilities  
20 against confiscatory rates and to permit  
21 recoupment of any deficiency in return suffered  
22 under a temporary order".

23 So, obviously, implementing an  
24 entirely new tariff is outside the four corners

1 of what you are explicitly authorized to do in  
2 the temporary rate context. And we're  
3 concerned about the kind of precedent it would  
4 set to take action like that.

5 That said, what we really have here  
6 is (a) a good and innovative new tariff, to  
7 which no party in this case objects; and (b) a  
8 bit of leftover business from the previous rate  
9 case, that the Company for whatever reason  
10 could have, but didn't, propose to you prior to  
11 now. So, the rate case that's now pending  
12 becomes a convenient vehicle for you to put  
13 this rate in effect. And for the reasons given  
14 by Assistant Mayor Below, in what was  
15 essentially testimony that you just heard,  
16 there's no practical reason to delay putting  
17 that tariff into effect now.

18 So, I guess I would suggest that the  
19 Commission find some way of approving this  
20 proposal, maybe in an entirely separate order,  
21 that makes clear that this is really an unusual  
22 situation that is not going to have  
23 precedential value for future requests under  
24 RSA 378:27.

1           Hope that's helpful. I know I sort  
2           of talked out of both sides of my mouth. But  
3           that is essentially what I have to say about  
4           this.

5           I will say, I started out feeling  
6           very opposed to what Assistant Mayor Below is  
7           proposing. And I've come around to the idea  
8           that it essentially is in the public interest  
9           for you to allow the City and any other  
10          municipalities in the service territory to take  
11          advantage of this tariff sooner rather than  
12          later. The problem is, it doesn't fit very  
13          well into RSA 378. But the perfect should not  
14          become the enemy of the good.

15          CHAIRMAN HONIGBERG: Well, one of the  
16          things you talked about and you characterized  
17          this as a "new tariff". Is maybe that too  
18          strict a view of what the tariff amendment  
19          would actually be?

20          I looked at that tariff. It's not --  
21          there is an outdoor lighting tariff. That page  
22          exists. The amendments to it are relatively  
23          straightforward, although they do take some  
24          knowledge and understanding of what they're

1 talking about to see what's going on. So, it's  
2 not really a new tariff. It's an amendment to  
3 an existing tariff. I mean, I'm just -- I'm  
4 trying to help you with your desire to support  
5 Mr. Below's proposal here. Would you agree  
6 with that?

7 MR. KREIS: I would agree with that.  
8 But I don't know that the outcome here really  
9 turns on that question. I mean, basically, the  
10 LED-2 tariff, whether it is an entirely sort of  
11 a new rate class or you can think of it as an  
12 amendment to the existing LED tariff, but the  
13 fact is is it is not necessary to implement  
14 that tariff here in order to make sure that  
15 this Company is unable to earn a reasonable  
16 return on its investment during the pendency of  
17 this rate case.

18 CMSR. BAILEY: And the LED-1 tariff  
19 is not subject to temporary rates during this  
20 investigation. Those rates are what they are  
21 and they will be what they're going to be. Is  
22 that true?

23 MR. KREIS: Well, I suppose it's  
24 possible that at the end of the case, as part

1 of the settlement agreement, say, could involve  
2 revisions to the LED-1 tariff, and, of course,  
3 I think all of the Company's retail rates are  
4 up for discussion and reexamination in the  
5 course of the temporary rates.

6 And so that goes to the question of  
7 the risk that both the Company and the City of  
8 Lebanon would be taking that, at the end of the  
9 docket, you might -- at the end of the rate  
10 case, you might find it necessary to change the  
11 LED-2 tariff from what you're being asked to  
12 approve now. But you've heard the City say  
13 it's willing to undertake that risk.

14 CMSR. BAILEY: Okay. Thanks.

15 CHAIRMAN HONIGBERG: And as you  
16 observed, some of the information Mr. Below  
17 provided to us, it was in the nature of  
18 testimony, like the one you just alluded to,  
19 that the City is raring to go and has done what  
20 it needs to do. Those are things that having  
21 its representative say it probably should have  
22 been under oath. I think we'll understand  
23 that, as a nonlawyer, making essentially what  
24 would be an offer of proof. But I am sensitive

1 to that observation.

2 MR. KREIS: Thank you. And I  
3 apologize if that came across as a little glib,  
4 but I am concerned about the process that we  
5 use here. And one of the things I'm concerned  
6 about is factual testimony that's admitted, but  
7 isn't under oath. And so, characterizing it as  
8 an "offer of proof" I think is a pretty  
9 helpful -- a pretty helpful way of thinking  
10 about it.

11 CHAIRMAN HONIGBERG: Well, yes. Let  
12 me stop for a moment. Do any of the others,  
13 Mr. Kreis, Mr. Dexter, Mr. Sheehan, would you  
14 want to ask questions of Mr. Below? Are we in  
15 a position where we should reopen the record,  
16 have Mr. Below sworn in, have him adopt what he  
17 said earlier as testimony?

18 MR. SHEEHAN: To the extent there's  
19 any question, that would take 30 seconds, and I  
20 would not have any cross-examination for him.  
21 So, he could simply adopt what he just said,  
22 just as our witnesses adopted what they had  
23 previously written.

24 CHAIRMAN HONIGBERG: Mr. Dexter, any

1 thoughts on this?

2 MR. DEXTER: Staff wouldn't have  
3 questions for Mr. Below.

4 CHAIRMAN HONIGBERG: Mr. Kreis?

5 MR. KREIS: I would have no  
6 questions.

7 CHAIRMAN HONIGBERG: Mr. Emerson?

8 MR. EMERSON: None.

9 CHAIRMAN HONIGBERG: All right. Why  
10 don't we just do that. I think you can stay  
11 where you are, Mr. Below.

12 Mr. Patnaude, why don't you swear Mr.  
13 Below in, and we'll have him adopt his earlier  
14 statement as testimony.

15 (Whereupon **Clifton Below** was  
16 duly sworn by the Court  
17 Reporter.)

18 CHAIRMAN HONIGBERG: And, Mr. Below,  
19 with that all having been set up in advance,  
20 you adopt the earlier statements you made as  
21 your testimony here?

22 MR. BELOW: I do.

23 CHAIRMAN HONIGBERG: All right.

24 Thank you.

1 I think we're up to you, Mr. Dexter.

2 MR. DEXTER: Thank you. I'd like to  
3 start with comments on the proposed temporary  
4 rate request, and then to address the LED  
5 tariff question.

6 Staff performed its I guess what I'd  
7 call a "typical review" of the temporary rate  
8 request. We issued data requests. We  
9 participated in the technical session. We,  
10 with the Company's help, tied the numbers that  
11 were presented in the file to the FERC Form 1  
12 to determine that the rates were based on the  
13 books and records. We reviewed the adjustments  
14 that the Company made, both to get down to a  
15 distribution operation base on which to base  
16 rates, as well as the adjustments that were  
17 characterized as "normalizing" to get a  
18 representative cost of service calculation.

19 And as part of the discovery process,  
20 we reviewed the most recent two years' capital  
21 budgets and actual expenditures. Just as a  
22 note, I know Commissioner Giaimo asked about  
23 that. If you'd like, we could refer you to  
24 Staff Data Request 1-2, where there's a list of

1 those projects detailed, with the actual versus  
2 budgeted amounts.

3 Based on that review, and based on  
4 the consideration that the OCA just referred  
5 to, which was the percentage of the temporary  
6 rate request as compared to the permanent rate  
7 request, that percentage being 37 percent,  
8 Staff concluded that the temporary rates were  
9 just and reasonable and recommended their  
10 approval.

11 To state the obvious, our position on  
12 the temporary rates should not be interpreted  
13 as our position on the permanent case,  
14 particularly with respect to some of the  
15 normalization adjustments that were made, would  
16 seem reasonable for temporary rate purposes,  
17 but we would like the opportunity to  
18 investigate those fully in the permanent rate  
19 case.

20 With respect to the use of the LED  
21 tariff, approval of the LED tariff, LED-2  
22 tariff in the temporary rate phase, I think the  
23 Consumer Advocate summarized our position as  
24 well. We are very concerned about the

1 precedent it would set. We don't know of a  
2 situation where temporary rates were approved  
3 to do anything other than to provide the  
4 Company earnings during the course of the  
5 pendency of the permanent case, to allow them  
6 to earn, as the statute says, "not less than a  
7 fair, reasonable return on the plant invested  
8 in public service". We would be very fearful  
9 of what might come down the road in a temporary  
10 rate case, in terms of new tariffs.

11 And I guess I would view this as a  
12 new tariff. There is -- there have been  
13 outdoor lighting tariffs for years. There was  
14 an LED tariff implemented in the last rate  
15 case. This is a different type of tariff,  
16 where the customer will own the fixtures,  
17 rather than the utility, which is I think a  
18 fairly significant change in the operation of  
19 outdoor lights.

20 I do note that there are special  
21 contract provisions in the statutes, in  
22 particular 378:20 and is entitled "Contracts  
23 with Municipalities and Other Utilities", and  
24 allows a public utility to enter into a

1 contract with a municipality, and the standard  
2 for review is "consistent with the public  
3 good". There is no requirement, in the statute  
4 anyway, that that go to a hearing. My  
5 understanding is that special contracts have  
6 been approved without hearing. And we believe  
7 that could be done quickly, in order to meet  
8 the City's timeline.

9 So, while we are not opposed to the  
10 idea of the City installing lights this summer  
11 that will save them energy and save them money,  
12 we don't believe it's an appropriate use of the  
13 temporary rate statute. So, we would recommend  
14 that you not approve the LED tariff in the  
15 temporary phase.

16 CHAIRMAN HONIGBERG: Thank you,  
17 Mr. Dexter. Mr. Sheehan.

18 MR. SHEEHAN: Thank you. I'll  
19 address the LED first.

20 We support Mr. Below's request, but  
21 we acknowledge the reservations by the OCA and  
22 Staff. A plain reading of the statute,  
23 however, does not contain the limitations that  
24 they're worried about. It does say that "the

1 commission may...prescribe for the duration of  
2 said proceeding reasonable temporary rates."

3 And what you would be approving are reasonable  
4 temporary rates for the LED-2 tariff, and, of  
5 course, the language that goes along with it.

6 So, to address the precedent concern,  
7 and certainly there are many factors here that  
8 are unique. The prior rate case order that  
9 encouraged us to do this; the ability -- the  
10 situation of the City being the only entity in  
11 our service territory that could do this now  
12 without having to wait for a town meeting; the  
13 Chairman's suggestion that this isn't a really  
14 new tariff, it's a partially new tariff.

15 Ms. Tebbetts just whispered in my ear  
16 that this tariff does not provide for the City  
17 to own the lights. We would still own the  
18 fixtures, the City would just pay the upfront  
19 cost. So that makes it a little bit less of a  
20 change than outright ownership.

21 So, for the reasons that everyone has  
22 expressed on that side of the scale militating  
23 towards approval, we agree with those and think  
24 the Commission has the authority to, and could

1           limit this in such a way that, should the next  
2           one come along, you could easily distinguish  
3           this order from whatever comes down the road  
4           that may be more troublesome.

5                       CHAIRMAN HONIGBERG: Well, let me  
6           stop you there, since you seemed to have  
7           reached an end point on that issue and are  
8           going to move onto other things.

9                       You heard what Mr. Dexter said a  
10          moment ago about an agreement with the City as  
11          a possibility to do something quickly, and  
12          Mr. Kreis I think -- I think I remember him  
13          saying something along the lines of peeling  
14          this out and dealing with it in a separate  
15          order.

16                      MR. SHEEHAN: I mean, the route we  
17          would take, if you do not approve it, would be  
18          most likely a special contract. The special  
19          contract would have the exact same tariff  
20          language and the exact same rates, in the  
21          context of a special contract proceeding.

22                      Mr. Dexter is correct, when we met  
23          the other day, I pulled up one of the Concord  
24          Steam special contracts we did. If you recall,

1           there were some, in fact, we did some financing  
2           for a couple customers that was --

3                         CHAIRMAN HONIGBERG:   Still  
4           traumatized by it.

5                         MR. SHEEHAN:   And the one I pulled up  
6           went for filing a Staff recommendation and  
7           order in six or seven weeks.  And I suspect we  
8           would get similar treatment here, given  
9           everyone's onboard.  So, that process is  
10          available.  But it is a process that there's an  
11          agreement we don't need to undertake because  
12          it's teed up right now.

13                        So, I have notes scribbled  
14          everywhere, I have to make sure I hit them all.

15                        On the temporary rate request, we  
16          appreciate the support of the others in the  
17          room.  We tried very hard to make this filing  
18          in general, and the temporary filing in  
19          particular, to be clean, reasonable,  
20          defensible.  And although we acknowledge that  
21          no parties have committed themselves to  
22          positions later, we do appreciate the support  
23          for our request here, and we ask that the  
24          Commission approve the temporary rates as

1 filed.

2 To address Commissioner Bailey's  
3 question about implementation, as Mr. Simek  
4 said, we could certainly do that, implement it  
5 August 1, rather than July 1. Of course,  
6 making July 1 still the date that temporary  
7 rates went into effect.

8 The -- I guess "concern" is not the  
9 word. The issues we have would be, first, it  
10 would be, back-of-the-envelope calculation,  
11 \$175,000 that we would not recover in 2018 --  
12 '19 that we otherwise would. We do change  
13 rates frequently. As we discussed, rate  
14 changes go into effect May 1. These changes  
15 were to go into effect July 1. Energy Service  
16 is August 1. And there are -- so that the fact  
17 of rate changes is somewhat -- is the nature of  
18 the beast anyway. Our commercial customers get  
19 rate changes every month under the Energy  
20 Service. So, those people are always seeing  
21 rates move. And this is a relatively modest  
22 change, two or three dollars is what the impact  
23 is.

24 So, we would prefer that it not go

1 that route, that you would approve it as  
2 requested. But, as we stated, we could  
3 certainly accommodate it, if that's the way the  
4 Commission goes.

5 It would also complicate the  
6 recoupment a bit. At the end of this case, the  
7 calculation would have to be a little more  
8 tricky to pick up this month, as opposed to any  
9 other months, which you're putting together an  
10 accounting issue to address it, it's just a  
11 complicating factor.

12 CHAIRMAN HONIGBERG: And I think you  
13 would agree that we don't want to  
14 overcomplicate the recoupment, because we've  
15 had that experience with the gas subsidiary --  
16 the Gas Division, right?

17 MR. DEXTER: Still traumatized.

18 MR. SHEEHAN: I won't tell you what  
19 goes on in our building.

20 That's all I have.

21 CHAIRMAN HONIGBERG: All right.  
22 Thank you. Mr. Emerson.

23 MR. EMERSON: Yes. We did not get an  
24 opportunity to comment on Lebanon's request.

1 CHAIRMAN HONIGBERG: I'm sorry.

2 MR. EMERSON: That's fine.

3 CHAIRMAN HONIGBERG: I should have  
4 circled to you first.

5 MR. EMERSON: No. No. No problem.  
6 Just I think for three reasons that have  
7 already been discussed, and I don't need to get  
8 into, CENH supports Lebanon's request.

9 One, I don't think it's prohibited by  
10 the statute. Two, it certainly is in the  
11 public interest. And, three, this is a unique  
12 enough circumstance so that you could  
13 distinguish it, and it likely would not set  
14 precedential value for future circumstances.

15 That's all.

16 CHAIRMAN HONIGBERG: All right.  
17 Thank you, Mr. Emerson. And I apologize for  
18 not giving you an opportunity earlier.

19 And if there's nothing else, we will  
20 close the record, adjourn, understand that we  
21 are on a tight timeline, and issue an order as  
22 quickly as we can. Thank you all.

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