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STATE OF NEW HAMPSHIRE

PUBLIC UTILITIES COMMISSION

December 11, 2009 - 1:06 p.m.
Concord, New Hampshire

DAY 2

NHPUC DEC31'09 AM11:52

RE: DE 09-180
PUBLIC SERVICE OF NEW HAMPSHIRE:
Proposed 2010 Default Energy
Service Rate.

PRESENT: Chairman Thomas B. Getz, Presiding
Commissioner Clifton C. Below
Commissioner Amy L. Ignatius

Sandy Deno, Clerk (until 2:15 p.m.)
Jody Carmody, Clerk (after 2:15 p.m.)

APPEARANCES: Reptg. Public Service of New Hampshire:
Gerald M. Eaton, Esq.

Reptg. TransCanada Power Marketing:
Douglas L. Patch, Esq. (Orr & Reno)

Reptg. Residential Ratepayers:
Meredith Hatfield, Esq., Consumer Advocate
Kenneth E. Traum, Asst. Consumer Advocate
Office of Consumer Advocate

Reptg. PUC Staff:
Suzanne G. Amidon, Esq.
Steven E. Mullen, Asst. Dir. - Electric Div.

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

ORIGINAL

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I N D E X

PAGE NO.

WITNESS: STEVEN E. MULLEN (resumed)

Cross-examination by Mr. Patch 4

Cross-examination by Ms. Hatfield 14

Cross-examination by Mr. Eaton 19

Interrogatories by Cmsr. Below 20

Interrogatories by Cmsr. Ignatius 20

WITNESS: MICHAEL E. HACHEY

Direct examination by Mr. Patch 22

Cross-examination by Ms. Hatfield 26

Cross-examination by Ms. Amidon 33

Cross-examination by Mr. Eaton 34

Interrogatories by Cmsr. Ignatius 39

Interrogatories by Chairman Getz 46

CLOSING STATEMENTS BY:

PAGE NO.

Mr. Patch 52

Ms. Hatfield 56

Ms. Amidon 59

Mr. Eaton 61

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
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P R O C E E D I N G

CHAIRMAN GETZ: Okay. Good afternoon, everyone. We'll resume the hearing in docket DE 09-180, and turning to the cross-examination of Mr. Mullen. But is there anything we need to address before that cross? Ms. Hatfield.

MS. HATFIELD: Thank you, Mr. Chairman. Yesterday, the OCA had made a record request that you suggested that we discuss further with PSNH. And, I think what I'd like to propose is, rather than have PSNH develop new information, I think we now understand that there's a data response that has the information we were seeking. So, I think what we'll do is ask that Staff -- the response, PSNH's response to Staff Data Request Set 1, Number 13 be placed into the record under that number. It is a confidential document. But the OCA will provide copies of that for the Commissioners and for the Clerk before the end of the hearing today.

CHAIRMAN GETZ: Okay. Is that acceptable to everyone?

(No verbal response)

CHAIRMAN GETZ: All right. Then, thank you for resolving that issue.

MR. EATON: Also, Mr. Chairman, we have

[WITNESS: Mullen]

1 an updated migration history, which was an exhibit
2 numbered -- was reserved "Exhibit 21". We have that
3 information and we'd like to pass it out now.

4 (Mr. Eaton distributing documents.)

5 CHAIRMAN GETZ: Okay. And, one other
6 procedural item, because I think I left the record in
7 disarray at the end of the hearing yesterday. The Public
8 Service Company Motion for Protective Order for
9 November 24 is granted, and the partial objection from
10 November 25 by TransCanada is overruled.

11 All right. Then, let's begin, Ms.
12 Hatfield, or who would like to go first? Mr. Patch?

13 MR. PATCH: Doesn't matter.

14 CHAIRMAN GETZ: Mr. Patch.

15 (Whereupon *Steven E. Mullen* was recalled
16 to the stand, having been previously
17 sworn.)

18 MR. PATCH: Good afternoon, Mr. Mullen.

19 WITNESS MULLEN: Good afternoon.

20 STEVEN E. MULLEN, PREVIOUSLY SWORN

21 CROSS-EXAMINATION

22 BY MR. PATCH:

23 Q. You're familiar with PSNH's claim in this docket that
24 the migration of customers from Default Service that

[WITNESS: Mullen]

1 they have experienced has caused the ES rate to be
2 approximately 5 percent higher than it would have been
3 absent migration, is that correct?

4 A. Yes, I am.

5 Q. Is it your understanding that that number is still
6 5 percent? Have they modified that at all?

7 A. I'm trying to think. They may have modified that.
8 But, if it's different than 5 percent, the number
9 escapes me at the moment.

10 Q. Okay. And, is it your understanding that, included in
11 that 5 percent, and I guess across the board, are what
12 you've characterized, and I'm looking at Page 6, Line 7
13 and 8 of your prefiled testimony, but what you've
14 characterized as "supply-related costs stemming from
15 power purchases or from PSNH's generating facilities",
16 is that fair?

17 A. Yes, that's fair. And, I think, if you look at Exhibit
18 Number 2, which is the November 23rd testimony of Mr.
19 Baumann, on Page 3, Lines 12 to 14, we had some
20 discussion there, and I'll quote from his testimony.
21 He said "These costs are closely linked with
22 maintaining PSNH's obligation to serve all customers
23 and are generally costs from PSNH's owned generation
24 and unit entitlements, the costs of IPP purchases and

{DE 09-180} [DAY 2] {12-11-09}

[WITNESS: Mullen]

1 the fixed purchase power costs."

2 Q. In your prefiled testimony, you questioned "whether the
3 collection of supply-related costs [from migrating
4 customers] might be considered a form of exit fee".
5 And, I'm looking at Page 6, Lines 8 through 11. Is
6 that correct?

7 A. Yes, that's what I said.

8 Q. And, exit fees, as you pointed out, under RSA 374-F:3,
9 XII, subparagraph (d), are not a "preferred recovery
10 mechanism", is that correct?

11 A. Yes. Now, when I say "I question whether they [might]
12 be considered a form of exit fee", typically, I think
13 of an "exit fee" as something that's charged to just
14 those customers that leave. As I understand PSNH's
15 Method 1, that would be charged to not only the
16 customers that leave, but to all customers. So, it's a
17 little bit different. But, also, as I think more about
18 it, too, I say "well, that would probably also apply
19 to, assume I'm a large customer that migrated to a
20 competitive supplier two years ago, now I would have
21 this other fee added on for some of PSNH's current
22 supply-related costs." So, that troubles me a little
23 bit as well.

24 Q. So, you wouldn't -- they would have already exited, but

[WITNESS: Mullen]

1 they would be getting a fee, in other words?

2 A. Yes.

3 Q. In your testimony, you had indicated that part of the
4 discussion about how to address the migration or cost
5 shifting issue should include consideration of, and I'm
6 quoting Page 8, Line 3, "utilization of competitive
7 solicitations". Is that correct?

8 A. Yes. That's one of the things I mentioned.

9 Q. Are you familiar with the method that National Grid and
10 Unitil followed to obtain the power needed to serve
11 Default Service customers?

12 A. Yes, I am.

13 Q. Could you just briefly summarize what that method is?

14 A. They use competitive solicitations. Unitil uses a
15 laddered approach, where it goes out for a portion of
16 the load every so often; whereas National Grid will go
17 out for the entire portion of the load for large
18 customers every three months and for small customers
19 every six months.

20 Q. And, who bears the risk of customer migration in each
21 of those situations?

22 A. I believe that is with the suppliers. But, you know,
23 with risk goes costs. So, you know, to the extent that
24 suppliers are assuming the risk, then there should be a

{DE 09-180} [DAY 2] {12-11-09}

[WITNESS: Mullen]

1 cost associated with that.

2 Q. That's the premium, I guess, that PSNH referred to
3 yesterday and in their rebuttal testimony, is that
4 correct?

5 A. Yes.

6 Q. Do you think it fair to say that an approach like that
7 would take at least some of the risks off the backs of
8 ratepayers, because those risks would be assumed by the
9 supplier?

10 A. Well, you know, as I just said, there's no free lunch.
11 So, to the extent that somebody else is assuming the
12 risk, well, that's going to come with a cost. And, no
13 matter what you do, I mean, still a lot of this is
14 subject to timing of when you hit the market.

15 Q. At least there would be certainty as a result of the
16 response to the RFP, though, correct?

17 A. There would be certainty. But considering that,
18 depending on the frequency of how often you go out,
19 there could be more volatility. And, how much of the
20 load, if you're doing a laddered approach or if you're
21 going out for 100 percent of the load. So, there's
22 different factors to consider.

23 Q. Uh-huh. One of the other issues that you raised in
24 your prefiled testimony or one of the other concerns

[WITNESS: Mullen]

1 you expressed was with regard to stranded costs, is
2 that fair to say?

3 A. Yes. I believe I mentioned that in reference to Method
4 1.

5 Q. Do you think it's fair to say that one of the important
6 issues underlying electric restructuring was to avoid
7 the creation of any new stranded costs?

8 A. Well, I'm not sure that the legislation specifically
9 says "no new stranded costs". I know that it does say
10 "no new deferred costs", which, to me, is a little bit
11 different.

12 Q. Do you think it would be better if the risk for
13 purchase power decisions could be assumed by somebody
14 other than the ratepayers?

15 A. Well, I go back to my "no free lunch" quote. Again,
16 like, as I mentioned, there's still -- a lot of this
17 risk has to do with the timing of when you go out to
18 market. And, you know, depending on what's better?
19 Well, what's better for customers? Are they happy to
20 be subject to potentially more volatility and with the
21 chance of getting lower rates at times, or do they want
22 more predictability in their rate? So, what might be
23 better for one customer may not be better for another
24 customer.

{DE 09-180} [DAY 2] {12-11-09}

[WITNESS: Mullen]

1 Q. Well, what about the timing of when PSNH went out to
2 market for the known purchases that are the subject of
3 this proceeding?

4 A. Well, if I remember correctly, those were entered into
5 at different times, between 2002 and 2008. Some of
6 those relate to contracts that the Commission has
7 already ruled on in various dockets, such as the
8 Lempster proceeding, a couple of Pinetree dockets, and
9 the Bio-Energy proceeding. If you refer to the -- if
10 you're referring to some purchases they made in 2008,
11 well, that's something that will be looked at, in terms
12 of when we look at how PSNH -- how it met all its
13 supply obligations for 2010 when we review the entire
14 year.

15 Q. But, I mean, it's pretty clear at this point, isn't it,
16 that some of those purchases were not made at a very
17 good time, given the price that they paid?

18 A. Well, I think if you look -- it's always easy to look
19 in hindsight and say "well, if you didn't enter into
20 that contract, and knowing what we know now, here's
21 what the price is." But you have to look at, when the
22 purchase was made, what were the circumstances existing
23 at the time? What were the market conditions? What
24 else was going on? So, it's, you know, it's easy to

[WITNESS: Mullen]

1 look at things in hindsight, but you really have to
2 take a look at things, as the decision was being made,
3 what other things were being considered? What other
4 things were happening?

5 Q. That's what prudence is all about, really, isn't it?

6 A. Yes.

7 Q. And, isn't part of prudence decisions about the timing
8 of purchases?

9 A. That's part of it. Timing can work two ways. It can
10 work to the bad and it can work to the good.

11 Q. But isn't it pretty clear that the timing of it, of the
12 purchases that you were talking about, was not
13 consistent with what they laid out in their Least Cost
14 Plan?

15 A. Well, the Least Cost Plan, granted that's beyond what I
16 testified about, but, as I look at the excerpt and as I
17 look at the supplemental -- the supplement that was
18 filed, as I see that, here's how it all comes across to
19 me: In their Least Cost Plan, they say "Here's what we
20 typically do. Here's the things that we look at. And,
21 here's how we go about things." And, then, in the
22 supplement, they said "To illustrate how this works,
23 here's what we did in 2007." And, then, further, they
24 go onto say how they "continue to monitor things going

[WITNESS: Mullen]

1 on in the market, migration", all sorts of other things
2 that they take a look at, and they have -- their plan,
3 as they say, they "maintain some flexibility to be able
4 to adjust to those things."

5 When the Commission takes a look at
6 their Least Cost Plan, I think, in the Commission's
7 order on the Least Cost Plan, they have ruled that the
8 -- that the plan was adequate, that it had an adequate
9 planning process. To me, if a planning process does
10 not allow for flexibility to be able to adjust to
11 changing market conditions, changing migration,
12 changing operation of PSNH's plants, then I would kind
13 of question if that planning process is adequate.
14 Because, otherwise, it just becomes a "to do" list.

15 Q. There is a statutory requirement, though, isn't there,
16 that the utility, whenever it files of its own
17 initiative that it show that it is in conformity with
18 the prior Least Cost Plan as approved by the
19 Commission?

20 A. Yes, there is.

21 Q. And, so, it would not be correct or appropriate for
22 this Commission to ignore that statute, would it?

23 A. Certainly not.

24 Q. And, if PSNH, or any other utility for that matter, is

[WITNESS: Mullen]

1 laying out a process in a Least Cost Plan, and the
2 Commission's approving it, then, if that process is to
3 have any integrity, doesn't there need to be some
4 future review of that, as we're doing here, to
5 determine whether or not they followed what they put in
6 the plan?

7 A. Yes, there is. I haven't seen anything that says what
8 they have done is not in conformance with their plan.

9 Q. Well, should I take you back through some of the quotes
10 from the Least Cost Plan that I pointed out the other
11 day? Because, as I remember correctly, the Least Cost
12 Plan said starting in April or May of the prior year is
13 when they go out to market. And, clearly, the
14 purchases that you mentioned earlier were done long
15 prior to that, weren't they?

16 A. And, some of those were, like I say, some of those were
17 done to replace other contracts and, you know, for
18 other reasons.

19 Q. But, clearly, they were not consistent with what they
20 said in the Least Cost Plan that I just quoted to?

21 A. That's TransCanada's position.

22 Q. Well, I think it's clear from the language, isn't it?

23 A. I don't see it that way.

24 Q. Okay. Could you explain why you don't see it that way

[WITNESS: Mullen]

1 then?

2 A. I think I already did.

3 MR. PATCH: I have no further questions.

4 Thank you.

5 CHAIRMAN GETZ: Ms. Hatfield.

6 MS. HATFIELD: Thank you, Mr. Chairman.

7 Good afternoon, Mr. Mullen.

8 WITNESS MULLEN: Good afternoon.

9 BY MS. HATFIELD:

10 Q. On Pages 6 and 7 of your testimony, you describe PSNH's
11 proposal to move the VAR costs from Energy Service to
12 TCAM and the Bio-Energy cost from ES to SCRC. Do you
13 recall that?

14 A. Yes, I do.

15 Q. And, do you support those proposals of PSNH?

16 A. Yes, I do.

17 Q. And, you may recall yesterday, I discussed with Mr.
18 Baumann the fact that moving company use not related to
19 generation is not a part of PSNH's current proposal.
20 Do you recall that?

21 A. Yes.

22 Q. Do you support considering that further at a more
23 appropriate time?

24 A. Yes.

{DE 09-180} [DAY 2] {12-11-09}

[WITNESS: Mullen]

1 Q. On Page 8 of your testimony, on Line 6, I believe here
2 you're discussing in this section what we've been
3 calling the "Method 1 issues", is that correct?

4 A. Make sure I'm on the right spot, Page 8, Line 6?

5 Q. Yes. I'm really referring to that whole paragraph,
6 Lines 1 through 8.

7 A. Yes. And, migration, in general.

8 Q. And, at the end of that paragraph, beginning on Line 6,
9 you make a statement "Considering the complexity of the
10 issue, it may be better addressed in a proceeding that
11 does not have an impending rate change deadline as does
12 this." Did I read that correctly?

13 A. Yes. Although, the last few words were "as this one
14 does."

15 Q. Sorry about that. Thank you. When -- do you have any
16 suggestion as to when we could address those more
17 complex issues?

18 A. Well, it could be in a continuation of this proceeding,
19 as this proceeding will stay open normally anyhow for a
20 mid-year review. You know, I don't see any need to
21 delay. Now, how long this takes, as I mentioned, it's
22 a complex issue, and there's lots of varying interests.
23 So, it might take a while to resolve, but I don't see
24 any reason why it would have to be delayed much into

{DE 09-180} [DAY 2] {12-11-09}

[WITNESS: Mullen]

1 the future.

2 Q. Your testimony on Page 8 goes on to describe your
3 comments regarding Newington Station, is that correct?

4 A. Yes.

5 Q. And, on Page 9, beginning on Line 23, you discuss your
6 recommendation that "PSNH prepare a study regarding the
7 costs and benefits of its continued ownership and/or
8 operation of Newington Station." Can you just briefly
9 describe why you're making that recommendation?

10 A. Sure. And, as it is discussed just before that in my
11 prefiled testimony, as I've been involved in
12 proceedings over time, and as I've looked at the
13 operation of Newington Station and the economics
14 related to Newington Station, over the last few years
15 the capacity factor of the plant has been decreasing.
16 And, there's also been a situation where over time the
17 plant-related expenses have exceeded the plant-related
18 revenues. I know that PSNH, I quoted from a response
19 on Page -- top of Page 9 of my testimony, PSNH has
20 explained that, as they see it, Newington Station has
21 value as a hedge against high prices. And, so, I said
22 "Well, okay. What I'd like them to do, taking all this
23 into account, is to prepare a study that demonstrates
24 the value of continuing to own and operate the plant,

{DE 09-180} [DAY 2] {12-11-09}

[WITNESS: Mullen]

1 in light of all the circumstances", and in light of the
2 fact that, as I mentioned in the middle of Page 9, as I
3 look at the capacity revenue that they might be seeing
4 going forward, indications are that that will be
5 decreasing. So, just to take all that into the mix and
6 prepare a study to demonstrate the value of the plant.

7 Q. And, I believe in your testimony one thing that you put
8 out as a possibility is that PSNH could do that in
9 conjunction with its next Least Cost Plan that's due in
10 2010, is that correct?

11 A. Yes. I didn't tie it to -- that was one suggestion. I
12 also said it could be part of this case or it could be
13 filed independently. To me, it's more that the study
14 gets done and prepared. And, I'm assuming that,
15 whenever it does get done, it will get filed -- it will
16 get used in more than one docket anyhow. So, to me,
17 the more important thing is that the study be prepared,
18 and, you know, the right spot for it can be figured
19 out.

20 Q. And, these issues related to Newington Station have
21 been discussed among the parties in the last several
22 related cases over the last few years, is that true?

23 A. Yes.

24 Q. Do you recall that, in PSNH's updated filing that they

[WITNESS: Mullen]

1 made on December 7th, one of the changes they made was
2 to increase the use of Newington in 2010, do you recall
3 that?

4 A. Yes.

5 Q. And, do you -- have you reviewed that proposal?

6 A. Yes.

7 Q. And, do you agree that it does provide a net benefit to
8 customers?

9 A. That additional generation, based on PSNH's numbers,
10 does appear to provide a net benefit, in terms of when
11 you compare energy revenues against energy expenses.

12 Q. If you turn to Page 5 of your testimony, Mr. Patch
13 asked you a question about "stranded costs". And, I'm
14 wondering if you can -- here you say that you -- you're
15 talking about the Method 1 possible ways to address
16 migration. And, you say "I question PSNH's
17 characterization of some of its supply-related costs as
18 stranded costs." And, can you just elaborate on that a
19 little bit, in light of your responses to Mr. Patch's
20 questions?

21 A. Sure. When I read PSNH's testimony and their
22 description of Method 1, they stated that "Method 1
23 would involve recovery of the added costs borne by
24 small customers on PSNH's supply as stranded costs

{DE 09-180} [DAY 2] {12-11-09}

[WITNESS: Mullen]

1 through a non-bypassable rate such as the SCRC." So,
2 then, I questioned whether their supply-related costs
3 really could be considered "stranded costs", because,
4 as I look at the statutory definition of what can be
5 considered a stranded cost, in RSA 374-F:2, IV, which
6 I've listed on the bottom of Page 5 and the top of
7 Page 6 of my testimony, I don't see how their
8 supply-related costs fit any of those definitions.

9 MS. HATFIELD: Thank you. I have no
10 further questions.

11 CHAIRMAN GETZ: Thank you. Mr. Eaton.

12 BY MR. EATON:

13 Q. Mr. Mullen, you answered some questions from Mr. Patch
14 about the RFP process for National Grid and Unitil.
15 What does the Commission see when those proposals are
16 made for approval?

17 A. Let's see. We'll see the RFP that goes out. It's been
18 a while since I've been directly involved in one of
19 those proceedings, but I'm going on memory here. We'll
20 see the RFP. Unitil and National Grid will also file
21 confidentially the results of their bid analyses. And,
22 the utilities will each file -- I believe they file
23 some testimony as to the results of that process.

24 Q. Do you see the actual bids?

{DE 09-180} [DAY 2] {12-11-09}

[WITNESS: Mullen]

1 A. Yes. That's filed confidentially.

2 Q. Do the bids contain all the elements that go into the
3 price? Like, what power supply is being used? Any
4 profit? Any risk premium?

5 A. No. My recollection is that there's just the bid
6 price.

7 Q. So, do you think that's transparent?

8 A. To a certain level only.

9 MR. EATON: Thank you. I have no
10 further questions.

11 CHAIRMAN GETZ: Commissioner Below.

12 CMSR. BELOW: Just one question.

13 BY CMSR. BELOW:

14 Q. On Page 6 of your testimony, at Line 10, you reference
15 the statute that mentions that "exit fees are not a
16 preferred recovery mechanism." Is it correct that's in
17 the context talking about "recovery of stranded costs"?

18 A. Let me dig that out. (Short pause) Yes, that's
19 correct.

20 CMSR. BELOW: Thank you. That's all.

21 CHAIRMAN GETZ: Commissioner Ignatius.

22 CMSR. IGNATIUS: Thank you.

23 BY CMSR. IGNATIUS:

24 Q. Mr. Mullen, this may become a subject that has more

{DE 09-180} [DAY 2] {12-11-09}

[WITNESS: Mullen]

1 study yet to come. But, on Newington Station, is there
2 an easy answer to why the capacity factor has been so
3 low? For example, price of fuel to run or reliability
4 of the unit, whether it's operational or it's been
5 under repair, that sort of thing?

6 A. It's more having to do with the fuel and the economics
7 of the plant. It's my understanding that the plant
8 typically has a high availability factor. It's just
9 that it hasn't been economic to dispatch.

10 Q. And, is it dual fueled?

11 A. Yes. It can run on oil or it can run on natural gas.

12 Q. Under both of those fuels, it has not been economic?

13 A. That's correct.

14 CMSR. IGNATIUS: Thank you.

15 CHAIRMAN GETZ: Ms. Amidon?

16 MS. AMIDON: I have no redirect. Thank
17 you.

18 CHAIRMAN GETZ: All right. Then, you're
19 excused. Thank you, Mr. Mullen. Mr. Patch.

20 MR. PATCH: I would call Michael Hachey
21 to the stand.

22 MR. HACHEY: Good afternoon.

23 (Whereupon *Michael E. Hachey* was duly
24 sworn and cautioned by the Court

[WITNESS: Hachey]

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Reporter.)

MICHAEL E. HACHEY, SWORN

DIRECT EXAMINATION

BY MR. PATCH:

Q. Could you please state your name for the record.

A. My name is Michael E. Hachey.

Q. And, by whom are you employed and in what position?

A. Well, I am employed by TransCanada USA Services, but I hold the position of Vice President and Director of Eastern Commercial for TransCanada Power Marketing. That will be a change I make to my testimony.

Q. And, you prefiled testimony in this docket dated December 2nd, 2009, is that correct?

A. Yes.

MR. PATCH: And, Mr. Chairman, I believe that's already been marked as an exhibit in this docket. I don't recall --

CHAIRMAN GETZ: As Exhibit 7.

MR. PATCH: Thank you.

BY MR. PATCH:

Q. And, is that testimony true and accurate to the best of your knowledge, other than the changes that you're going to make?

A. Yes, it is.

{DE 09-180} [DAY 2] {12-11-09}

[WITNESS: Hachey]

1 Q. And, are there any corrections that you would like to
2 make to your testimony?

3 A. Yes, there are. On Page 1, as I've just referred to, I
4 just wanted to get it technically correct. I am
5 employed by "TransCanada USA Services". And, in my
6 current position, I am Vice President and Director of
7 Eastern Commercial for TransCanada Power Marketing. On
8 Page 6, I want to change a few words, and then add a
9 phrase. On Line 3, I want to change the word "will" to
10 "may". And, I want to change on Line 4 the words
11 "about a third" to "some". And, I want to strike the
12 words on Line 4, that continue on Line 5, "at an
13 average price of \$43/MWH." The phrase I need to add is
14 I want to strike the word "this" on Page 5.

15 CHAIRMAN GETZ: Line 5?

16 WITNESS HACHEY: On Line 5, yes.

17 **BY THE WITNESS:**

18 A. And add the words "PSNH's failure to adequately address
19 migration risk." I need to make another change on Page
20 12. On Line 16, I need to strike the word "No", and
21 add the phrase "Other than three daily sales and one
22 year-long off-peak sale in 2002", and, on Line 17,
23 after the word "PSNH", I want to add the phrase "since
24 retail access."

{DE 09-180} [DAY 2] {12-11-09}

[WITNESS: Hachey]

1 BY MR. PATCH:

2 Q. Are those all the corrections you wish to make?

3 A. Yes.

4 Q. And, with those corrections, is this testimony true and
5 accurate, again, to the best of your knowledge?

6 A. Yes.

7 Q. Could you briefly tell the Commission why TransCanada
8 intervened in this docket and what your recommendation
9 is for the outcome of the docket?

10 A. Sure. We observed that PSNH was claiming that, because
11 of restructuring issues or unintended consequences from
12 restructuring, there was upward pressure on the ES
13 rate. They have said that their customers are
14 apparently behaving in an -- some of their customers
15 are behaving in an opportunistic manner, and they need
16 to impose new costs on the wires. As a competitive
17 supplier, that caught our attention. Because we
18 believe that one of the notions of customer choice was
19 rate unbundling, customers not being exposed to new
20 charges on the wires that were related to energy.

21 When I looked at PSNH's filing in this
22 matter, saw that in the rate category of "known
23 purchases" appeared a value of about a million
24 megawatt-hours in purchases at a cost of about

{DE 09-180} [DAY 2] {12-11-09}

[WITNESS: Hachey]

1 \$100 million. That the actual dollars per
2 megawatt-hour number was \$93 per megawatt-hour. When
3 we reviewed -- when I reviewed PSNH's Least Cost
4 Integrated Resource Plan, that price seemed completely
5 inconsistent with the timing of the purchases that were
6 laid out in the Least Cost Plan. So, we believe that
7 PSNH managed its supply -- that had PSNH managed its
8 supply in conformance with that Least Cost Plan, there
9 wouldn't have been the upward pressure on the ES rate.

10 So, we are here because we don't believe
11 there is any valid basis to say that there's a
12 restructuring issue, and that, as a result of that,
13 costs need to be pushed, energy costs need to be pushed
14 onto the wires.

15 The recommendations that we made are
16 essentially, you know, included as the conclusion that
17 I have in my testimony, and that we simply believe that
18 the Commission should limit recovery for the purchase
19 of any power that's -- purchase that was inconsistent
20 with PSNH's Least Cost Plan or that was not prudent and
21 reasonable. So -- and, we don't believe that the
22 Commission should allow PSNH to assess any of the
23 Method 1 costs, but we're very comfortable with the
24 Commission assessing the Method 2 costs.

{DE 09-180} [DAY 2] {12-11-09}

[WITNESS: Hachey]

1 We also recommend that the Commission
2 require PSNH, on a go forward basis, to follow an open
3 and transparent RFP process for the procurement of the
4 supplemental power or "known purchases" or
5 "supplemental power" or "gap power", however you'd like
6 to term it, since that number, as we've discovered in
7 this docket, depending on how much migration is going
8 on, could be on the order of 100 to \$200 million.

9 MR. PATCH: The witness is available for
10 cross.

11 CHAIRMAN GETZ: Ms. Hatfield.

12 MS. HATFIELD: Thank you, Mr. Chairman.
13 Good afternoon, Mr. Hachey.

14 **CROSS-EXAMINATION**

15 BY MS. HATFIELD:

16 Q. I want to make sure I just heard you correctly. The
17 figure that you just gave, the "100 to \$200 million",
18 is that the amount that you don't specify, but you
19 reference on the last page of your testimony, where you
20 state that you "recommend that the Commission limit
21 recovery for the purchase of any power that PSNH
22 obtained...that was not prudent and reasonable"?

23 A. No. No, that was a reference to the amount of power
24 that PSNH could be purchasing. And, I developed those

[WITNESS: Hachey]

1 values from the original Baumann testimony, which
2 showed that they, in the "known purchase" category,
3 they had about a \$100 million of purchases. And, then,
4 I looked at the "no migration" case, and, you know,
5 there's -- maybe there was another \$80 million there.
6 The point is, there's a tremendous dollar volume of
7 power that's being purchased. And, as, you know, those
8 of you who have followed the data requests in this
9 matter, now it's certainly not very open or very
10 transparent how that power is being procured. I think
11 that TransCanada is an effective competitor in the
12 market. We'd like to compete, and we'd like to know
13 how to do that.

14 Q. And, do you have an estimate for that amount that you
15 reference in the last page of your testimony, when you
16 recommend that "the Commission limit recovery" in this
17 case?

18 A. Well, the amount that we believe is inconsistent with
19 the Least Cost Plan, I derived by looking at the value
20 of the power. And, this would be subject to revision
21 on the basis of a lot of information we don't know,
22 because we weren't provided. But, just on the bare
23 facts that we were allowed to look at, that power was
24 purchased at a cost of \$93 per megawatt-hour. Had that

{DE 09-180} [DAY 2] {12-11-09}

[WITNESS: Hachey]

1 power been purchased at the time laid out in the Least
2 Cost Plan, which would have been in the May to November
3 time frame of 2009, I've developed in my testimony, I
4 show a graph, and just a rough cursory average would
5 show that that power could have been available or was
6 available in that time frame within the -- call it \$65
7 per megawatt-hour range. So, if I subtract the 93 --
8 I'm sorry, the 65 from the 93, I get \$28 per
9 megawatt-hour. And, I could multiply that times the
10 1 million megawatt-hours, and it's \$28 million. That
11 seems to be what's at issue here, in terms of what's
12 inconsistent with the Least Cost Plan. With the caveat
13 that, again, that we weren't provided any of the
14 details. So, as has been mentioned, you could have a
15 Bio-Energy contract in there on a completely different
16 basis. And, so, that, you know, wouldn't appropriately
17 be considered in the manner that I just have.

18 Q. Are you familiar with the Method 1 and Method 2
19 proposals that are set forth in Mr. Baumann's testimony
20 on November 23rd?

21 A. I've read the testimony, and I'm generally familiar.

22 Q. And, did you testify that TransCanada doesn't object to
23 removing the two costs that Mr. Baumann described under
24 the Method 2 approach?

[WITNESS: Hachey]

1 A. That is correct.

2 Q. And, in terms of Method 1, is it your testimony that
3 TransCanada doesn't support some form of non-bypassable
4 charge generally or are you interested in exploring
5 that further?

6 A. Well, as laid out, in these circumstances, we wouldn't
7 support the non-bypassable charge, because it seemed to
8 be more a supply management issue than anything else.
9 And, I don't see that's a justification to impose new
10 costs on customers. I think it's a signal to take a
11 very close look at the procurement process.

12 Q. So, is it your position that the costs that PSNH has
13 identified that the captive customers are now unfairly
14 paying could be addressed in some way other than a
15 non-bypassable charge?

16 A. Well, I think one of the things we said was, our
17 recommendation that the Commission should look at, in
18 terms of PSNH's conformance with its Least Cost Plan,
19 and that to the extent, again, as I understand it, and
20 a caveat that I'm not an attorney, as I understand it,
21 requires conformance with that Least Cost Plan. To the
22 extent that they didn't comply with that Least Cost
23 Plan, that those dollars would not be recoverable.

24 Q. Do you recall that during discovery PSNH asked you to

{DE 09-180} [DAY 2] {12-11-09}

[WITNESS: Hachey]

1 provide TransCanada's forecast of PSNH's Energy Service
2 migration for 2010?

3 A. Yes.

4 Q. And, do you recall that your -- that at least in part,
5 your response was that "TransCanada does not forecast
6 PSNH's Energy Service migration"?

7 A. Yes.

8 Q. And, then, in your response, do you recall that you
9 went on to state that "TransCanada's methodology for
10 managing migration risk is confidential and
11 proprietary"?

12 A. Yes.

13 Q. So, by that response, can I -- is it fair to say that
14 TransCanada does have a methodology for managing
15 migration risk?

16 A. Oh, absolutely, yes.

17 Q. Can you talk a little bit, without going into any
18 confidential information, why TransCanada manages for
19 that and what types of things you take into
20 consideration?

21 A. In the earliest days of our power activity in the New
22 England market, which goes back to the late '90s, we,
23 as part of one of the utility restructurings, took on
24 Standard Offer load in Massachusetts and Rhode Island.

{DE 09-180} [DAY 2] {12-11-09}

[WITNESS: Hachey]

1 And, that was on a fairly long-term basis. We took the
2 Massachusetts load on for the duration of the existence
3 of the Standard Offer, which was through 2004, and the
4 Rhode Island Standard Offer portions that we took on
5 continue to this day. They end this year. So, as a
6 result, we had the very issue that's here today of
7 customer migration and what could happen over that
8 time.

9 So, if I'm recalling your correction --
10 your question, it was "why did we" -- "how did we get
11 into that?" And, of course, other ways we get into
12 that is we compete on the -- on a wholesale basis to
13 supply utility Standard Offer load. It's a little bit
14 -- quite a bit different scenario, because they are
15 typically shorter term services, and they involve
16 specific customer classes. In the case of the Standard
17 Offer that we served on a long-term basis, it was the
18 entirety of the Standard Offer. So, it involved all
19 the customer classes.

20 Q. Would you, as a competitive supplier, look at migration
21 forecasts or trends in, for example, PSNH's service
22 territory, in order to make marketing decisions about
23 which of their customers you might want to try and go
24 after and when?

{DE 09-180} [DAY 2] {12-11-09}

[WITNESS: Hachey]

1 A. No. We'd look more to what the utility rate is and
2 what the market price is, to see whether it's
3 worthwhile. But, quite frankly, we often, the way the
4 market has evolved, somewhat to my surprise, there's a
5 broker market out there on the retail level that's
6 extremely active. So, it doesn't really matter what we
7 do any more, the brokers are actually much more apt to
8 bring the customers to us than we have to go to them.
9 So, it's really the brokers who are watching that
10 situation today, at least as regards TransCanada. I
11 can't speak for all suppliers.

12 Q. And, do you recall testimony by PSNH earlier in this
13 proceeding that they do not have a migration forecast?

14 A. Yes.

15 Q. Do you believe that they should?

16 A. I believe it's an issue that they need to be focusing
17 on. I was a little surprised by that answer. Because
18 I think their Least Cost Plan goes into the issue of
19 migration that has to be taken into account as they're
20 setting up their procurement. So, I'm still not sure I
21 understand all the ins and outs and explanations for
22 that, for that answer. So, I've heard it, but it's
23 just not sinking in altogether.

24 Q. If the Commission decides to either keep this docket

[WITNESS: Hachey]

1 open or have another proceeding to explore what we've
2 been calling the "Method 1" issues, do you know if
3 TransCanada would be willing to participate in that
4 process?

5 A. We'd certainly be willing to participate in that
6 process, yes.

7 MS. HATFIELD: Thank you. I have no
8 further questions.

9 CHAIRMAN GETZ: Thank you. Ms. Amidon.

10 MS. AMIDON: Thank you. Good afternoon.

11 WITNESS HACHEY: Good afternoon.

12 BY MS. AMIDON:

13 Q. I'm looking at your testimony on Page 11, and at the
14 bottom of the page there's a question that you answer.
15 And, the question is "Are there steps that PSNH could
16 try to keep the costs down?" In your answer, you say
17 "PSNH should use an RFP process, similar to what Unitil
18 and National Grid use, to obtain the power it needs to
19 supplement the power that it [gets] from its own
20 generating [units]." Or, "Alternatively," and I'm
21 going onto the next page, "PSNH could buy the entirety
22 of its remaining energy needs on a competitive basis,
23 and sell the output from its generators into the
24 market." Do you recommend one of those approaches over

[WITNESS: Hachey]

1 the other?

2 A. Those two are kind of a range. And, based on what I've
3 heard through this docket, and what I've learned, I
4 would certainly recommend the use of competitive RFPs,
5 initially at least, to procure the supplemental power.

6 MS. AMIDON: Thank you. That's it.

7 CHAIRMAN GETZ: Mr. Eaton.

8 BY MR. EATON:

9 Q. Mr. Hachey, do you have your data requests in front of
10 you?

11 A. The ones that you asked of us?

12 Q. Yes. Your responses.

13 A. Not yet.

14 Q. Could you look --

15 A. Excuse me. Just not yet.

16 Q. Okay.

17 A. Okay.

18 Q. Could you turn to Number 6.

19 A. I'm there.

20 Q. Okay. And, your response stated that, and I'll read
21 this, "TCPM does not believe that the exercise by
22 customers of opportunities to save on their electric
23 rates that are provided in the utility tariffs or by
24 third parties is properly characterized as "misuse"."

{DE 09-180} [DAY 2] {12-11-09}

[WITNESS: Hachey]

1 Did I read that correctly?

2 A. Yes.

3 Q. Did you answer the last part of our question, which was
4 "What would you deem to be a "misuse" of Default
5 Service? If not, I'd ask you to answer that now
6 please.

7 A. Well, I was reading this from the vantage point of the
8 customer. And, if it's a tariff, if it's playing by
9 the rules, if it's -- it's not a misuse. So, I was
10 struggling with how they could misuse an offer, in
11 effect, that PSNH or if it were the case of a supplier
12 that was made to them. So, I struggled a little bit
13 with that. The customers that I know are looking for
14 the best opportunities. They're not privy to all of
15 the niceties of the design and all that sort of thing
16 of Default Service and the theory behind it. They're
17 simply "what do I do to lower my costs?" And, if it's
18 a valid offer in front of them, I don't see where
19 that's a misuse.

20 Q. So, you don't know what "misuse" is?

21 A. I know what the word means.

22 Q. Do you know -- do you have any opinion as to what
23 "misuse of Default Service" is?

24 A. I don't know how you misuse an open offer. I'm sorry,

{DE 09-180} [DAY 2] {12-11-09}

[WITNESS: Hachey]

1 I'm struggling. Maybe you can help me out a little bit
2 more with where you'd like to go with this.

3 Q. Well, you cited at Page 11 of your testimony that the
4 statutory "provisions in the New Hampshire
5 restructuring law that I believe are relevant to this
6 issue", and I was quoting from Line 7 to Line 8 of
7 Page 11, and you quoted some statutes there that
8 include the provision that says "the Commission may
9 implement measures to discourage misuse, or long-term
10 use, of default service." So, you did not -- you did
11 not form an opinion as to what "misuse" would be?

12 A. Well, now, let's move to the vantage point of the
13 overall market theory and design. If it was set up --
14 you know, deal with generalities first. If the idea of
15 setting up a design of default service was that, for
16 example, customers would leave and then not return, to
17 just pick an example, and customers were returning,
18 well, that may have been a misuse of the design, but it
19 wasn't a misuse on the part of the customer.

20 So, where I'm going with this is to say,
21 if the design structure is, in the view of the
22 designers, is not appropriate, then it's incumbent on
23 the designers to fix it. So, I can't pin -- so, I'm
24 being careful as to who's -- how we view the word

{DE 09-180} [DAY 2] {12-11-09}

[WITNESS: Hachey]

1 "misuse". If we're talking the customers being
2 opportunists or misuse of a valid offer, I don't think
3 it's a customer problem. If we're looking to the
4 overall theory of the design of default service, that's
5 something else again. And, that's where, if -- it may
6 have been something that the designers forgot as a
7 design element, and now they need to go back and
8 actually restructure the service. Perhaps, in the
9 instance I've used, it may be as simply -- as simple as
10 saying "you can't go back to default service." So, I'm
11 not trying to design default service here, but just
12 giving an example.

13 Q. Could you turn to, again, your data requests, your
14 responses to our data requests, and the same one that
15 Attorney Hatfield, it's PSNH 10. And, she read
16 everything in that response except for the final two
17 lines, which I'll read: "However, in no instance does
18 TCPM pass on the cost of incurred risk to the customers
19 or any third party." Did I read that correctly?

20 A. Yes.

21 Q. And, I'm curious as to what the term "incurred risk"
22 means?

23 A. Well, if we are serving default service, and let's say,
24 in our own shop, we assumed we had one percent

[WITNESS: Hachey]

1 migration, and, in fact, we incurred five percent
2 migration, we've got nowhere to go. In other words,
3 our pricing, if our pricing had been based on the
4 assumption of one percent, and we got -- and we
5 incurred five percent, we don't get to pass that on.

6 Q. Do you assume the risk of the one percent?

7 A. We assume the risk of -- well, we assume the risk. If
8 we're serving default service, we assume whatever the
9 risk is, typically is the way they have been designed.

10 Q. And, that's -- and, that risk assumption is included in
11 your price?

12 A. The price would be formulated on the basis of an
13 assumption of the risk, I suppose, yes. Now, in fact,
14 Attorney Hatfield had asked, you know, where this
15 instance had come up, and I mentioned the Massachusetts
16 and Rhode Island Standard Offers that we -- we didn't,
17 obviously, supply them all, but we supplied portions of
18 them, for a couple of companies. And, in that case, we
19 didn't even get to bid the price. We simply were told
20 what the price was.

21 MR. EATON: Thank you. That's all I
22 have.

23 CHAIRMAN GETZ: Commissioner Below?

24 CMSR. BELOW: No questions.

[WITNESS: Hachey]

1 CHAIRMAN GETZ: Commissioner Ignatius?

2 CMSR. IGNATIUS: Thank you.

3 BY CMSR. IGNATIUS:

4 Q. Mr. Hachey, I want to ask you to describe a little more
5 of what you know of what we're calling "known" -- what
6 the Company has called "known purchases".

7 A. Uh-huh.

8 Q. And, I understand that you have some limitations
9 because of what you've been able to see.

10 A. After yesterday's testimony, I have some huge
11 limitations, because our attorney cross-examined for
12 over two hours, and I was completely perplexed by the
13 end of the cross-examination, until Attorney Hatfield
14 got to the core of my perplexity. So, I'm still
15 reeling from yesterday, but I'm a little better today,
16 I think.

17 Q. Well, if you can answer this, let's give it a try.
18 You've said in your testimony that "imprudent purchases
19 should not be passed on." And, so, I guess, are you
20 able to identify what in your mind is an "imprudent
21 purchase" within that "known purchases" category?

22 A. I think so. What -- and I need to step back a little
23 bit here. Because what -- I mentioned we first, to
24 understand better how this evolved and to understand,

[WITNESS: Hachey]

1 because I was coming into this a little bit fresh, and
2 I went to the Least Cost Plan to say "well, okay, I see
3 they bought a lot of expensive power, \$93 a
4 megawatt-hour", which was, my basic familiarity with
5 the markets, said "that had to have been 2008, when the
6 market was at the peak timing." So, at that point, I
7 went to the Least Cost Plan, which I thought was fairly
8 clear. Apparently, there's very much in dispute. But
9 that would have had them, as I understand that plan is,
10 I believe the words say "purchasing in 2009". So, we,
11 at the technical session, had a bit of a dialogue on
12 that, and that's where I learned that I think PSNH, I'm
13 not trying to in any way be pejorative, but had an
14 expansive view of the language, much more so than I
15 did. I mean, I think, hopefully, that's a fair
16 characterization, and not prejudiced in any way. And,
17 then, I listened very carefully at that session, and
18 also yesterday. And, what I heard and what -- and
19 what's troubled me is that what I heard was that the
20 purchases were, I suppose the right word is to say
21 "encouraged" or "driven" by the view -- by the view
22 that oil had gone to \$140, and, of course, other
23 related markets, gas, in particular, had also started
24 to move upward dramatically. And, the view, everybody

{DE 09-180} [DAY 2] {12-11-09}

[WITNESS: Hachey]

1 was saying that "oil was going to 200", so that's why
2 some of the power was bought. Now, I heard that at the
3 technical conference, and I believe that's on the
4 record from yesterday.

5 And, the problem that I have with that
6 is I regard that as "market timing". That's taking on
7 a view of what the market is going to do and acting on
8 that. And, that's a risky strategy. One of the
9 problems that I think we have today, and we have
10 Congressional hearings going to this issue as we speak,
11 is that, when you look at NYMEX or you look at some of
12 the commodities markets, they're not driven by people
13 or parties or entities or companies that are the
14 producers and the buyers, they're driven by financial
15 players, some would use the word "speculators". So,
16 when you start jumping to what a NYMEX or a commodity
17 market is doing, you're not necessarily reacting to
18 fundamentals in the market. If there had been a
19 dramatic change in the market fundamentals, and like a
20 massive supply curtailment or something like that,
21 that, you know, that was going to last for a long time,
22 you know, I could hear more arguments. But, to,
23 essentially, you know, leave aside your strategy and
24 say, you know, "we need to jump, because we have the

{DE 09-180} [DAY 2] {12-11-09}

[WITNESS: Hachey]

1 view that the market is just going to keep going on
2 up", that's market timing. And, that's a risky
3 strategy. And, that's where we took on the view that
4 we did.

5 Q. So, to avoid the risks of the market timing concern
6 that you have, in your view, it would have been sounder
7 to make smaller purchases and continue to watch where
8 the market moves?

9 A. Well, the plan I can't argue with, in fact, in the
10 Least Cost Plan, which says "over the period of May to
11 November", or I think it's "May to November", "we'll be
12 making those purchases. Obviously, you know, we've
13 testified that we'd like to see some RFPs, because we'd
14 like to compete for, to provide value to New Hampshire.
15 We're certainly doing it at retail. We'd like to find
16 -- we do it with other companies at wholesale, we'd
17 like to do it with PSNH at wholesale. And, we think
18 that there's a lot of sense to a competitive -- open,
19 transparent competitive RFP, if that answers the
20 question.

21 Q. That's helpful. Did you hear the testimony yesterday
22 from the Company that it made certain purchases and had
23 some in the pipeline preexisting, and then, as the
24 market fell, the demand fell, they simply didn't need

{DE 09-180} [DAY 2] {12-11-09}

[WITNESS: Hachey]

1 to buy more?

2 A. That's what I heard, yes.

3 Q. Do you have any reason to disagree with that, from your
4 understanding of the market or the evidence in the
5 case?

6 A. It's consistent with what I would have expected. One
7 of the problems I had along the way was the -- of
8 course, PSNH has a specific load profile, and I'm not
9 privy to that. And, I'm trying to -- I'm using very
10 imprecise ways to figure out some precise calculations.
11 And, it's certainly in the right direction, given the
12 volume of load that they have lost. And, I was looking
13 between the Baumann -- the original Baumann scenario
14 and the "no migration" scenario. And, certainly,
15 stopping seems to be the sensible thing. But, again,
16 I'm not privy to the detail of the day-to-day and what
17 they would be seeing in the specific gaps that they may
18 have in specific months, and whether it's on-peak and
19 off-peak and that sort of thing.

20 Q. Also, there was discussion yesterday about, if we were
21 to transition to a process using RFPs, it would take a
22 number of years before we could fully implement that.
23 And, I'm not sure I'm getting it right. I think there
24 was talk of 2012 as an ES year. Though, if I have that

{DE 09-180} [DAY 2] {12-11-09}

[WITNESS: Hachey]

1 wrong, I don't mean to be putting that into the record
2 if I've got it wrong. But do you have a sense of how
3 long it would take, from a marketer's perspective, to
4 make that transition to RFPs for the gap amount of
5 power, the supplemental amount for PSNH?

6 A. I'd like to deal with the two pieces. The one from
7 what I heard from PSNH about the time, and then from a
8 marketer's perspective. And, I didn't understand at
9 all why it would take so much time. Because they're
10 procuring power now somehow, that is a bit of a black
11 box to me. You know, they either call a broker or
12 something, I don't know. I mean, what I learned
13 yesterday for the first time that they were buying unit
14 contingent purchases. Those are a little bit more
15 structured. It's not something, at least our people
16 tell me, you call up a broker and "here's the unit
17 contingent purchase market." That's a bit customized.
18 So, the point I'd want to make is, well, why is it
19 going to take two years to say, if I need to buy, let's
20 say, 50 megawatts on peak for Cal 10 -- sorry, calendar
21 2010, why is it I can't send out an RFP? What, in the
22 plan, precludes that? The plan is not prescriptive
23 down to that level of how they conduct the purchase. I
24 didn't see it. Maybe I missed something. But just go

{DE 09-180} [DAY 2] {12-11-09}

[WITNESS: Hachey]

1 out and buy it using a competitive RFP. How much of a
2 difference is that than whatever it is they're doing
3 today? And, I don't know how they're doing it today.
4 And, in that manner, you will test a much broader set
5 of -- segment of the market. In the rebuttal
6 testimony, there's lots of references to "well,
7 somebody could be building in profit." Well, I presume
8 that somebody is building in profit today in their
9 purchases. I don't know that for a fact, but I'd be
10 shocked if they weren't. So, I didn't see anything
11 that was going to require a multi-year delay to run an
12 RFP for a simple purchase, a strip purchase.

13 So, from a marketer point of view,
14 marketers respond to these things all the time. I have
15 two examples with me that came into our shop; one from
16 NYPA, which is a big one, the New York Power Authority,
17 and another one from the Town of Norwood, in
18 Massachusetts. These are strip purchases. These
19 aren't -- or block purchases, these aren't load
20 service. So, it's done, it's done all the time. They
21 show up in the shops. We don't -- we respond to them.
22 I suspect that's the same in other shops throughout the
23 whole wholesale marketplace.

24 CMSR. IGNATIUS: Thank you. Nothing

{DE 09-180} [DAY 2] {12-11-09}

[WITNESS: Hachey]

1 further.

2 CHAIRMAN GETZ: Good afternoon,
3 Mr. Hachey.

4 BY CHAIRMAN GETZ:

5 Q. On Page 5 of your testimony, Exhibit Number 7, Line 15,
6 --

7 A. Page 5, Line 15?

8 Q. Yes.

9 A. Yes.

10 Q. And, the sentence says "The fuel price run-up in
11 mid-year 2008 clearly posed significant risk of
12 customer migration in the event energy market prices
13 softened."

14 A. Yes.

15 Q. When did the energy market prices soften and why?

16 A. Well, I have an exhibit in the end that shows
17 graphically what happened. That, in fact, if I recall,
18 the PSNH purchases were made in September, October of
19 2008, you can see the prices were on the downswing.
20 So, there was quite a downswing all the way into --

21 Q. So, are you referring to that Attachment 7?

22 A. I'm sorry. You know, I -- my exhibit is blurred. So,
23 I'll defer to counsel.

24 Q. The "Cal 10 NYMEX NEPOOL"?

{DE 09-180} [DAY 2] {12-11-09}

[WITNESS: Hachey]

1 A. Yes. So, there's the softening in the prices. And,
2 you can see that, you know, in January of '09 through
3 the present, they're pretty soft. And, the "why?" You
4 know, I don't ever try to figure out the whys. In the
5 literature, you know, one of the things that's blamed
6 is the speculative run-up in the first place. We
7 certainly, you know, had an economic downturn. I don't
8 know the overall effect on the supply/demand balance or
9 anything like that. But, you know, those are a couple
10 of factors that are out there.

11 Q. And, on Page 9, there's a question and answer starting
12 on Line 11, that talks about the -- I guess the
13 reasonableness of the power purchase decisions.

14 A. Uh-huh. Yes.

15 Q. And, on that page, it seems to, and on the next page,
16 it seems to largely be making the conclusion based on
17 what -- how it turned out. That you're looking to the
18 fact that you could have gotten lower prices later. Is
19 that the appropriate standard to be using?

20 A. Well, I don't think this -- well, let's start with your
21 summary. I don't think that's at all the case, that
22 it's largely how it turned out. What I think I've said
23 here is that "it wasn't done in conformance with its
24 Least Cost Plan." Had it been done, and had it been

[WITNESS: Hachey]

1 seeing the migration that it was aware of that Mr.
2 Baumann referred to, it may have tailored things quite
3 differently, or it may not have been seeing the
4 migration. The point is that, when you engage in a
5 market timing strategy, it's risky. The other thing,
6 and you're quite --

7 Q. You're saying that, to the extent that they departed
8 from their Least Cost Plan, which is your position, --

9 A. It's their Least Cost Plan and their internal
10 procedures, which are consistent, I would argue,
11 certainly.

12 Q. And a departure from that constitutes a "market
13 timing", in your view?

14 A. No. What constitutes "market timing" was what I heard
15 both at the technical session and in the testimony
16 yesterday, that "we saw oil hitting \$140 and everybody
17 said it was going to 200." Now, that was one
18 gentleman's testimony. Another gentleman, I think it
19 was Mr. Baumann, said "and others were saying it could
20 go down." So, it was inconsistent between the two.
21 But what constitutes "market timing" is taking on the
22 market view that prices are just going up, and so now
23 is the time to buy. In fact, --

24 Q. Is there ever a situation where you have a plan, and

[WITNESS: Hachey]

1 the facts would suggest that it would be reasonable to,
2 you know, divert from the plan?

3 A. Well, I gave one example, which was, in the event of a
4 severe supply disruption, you'd certainly be
5 reassessing the plan in that instance to say "how long
6 is this going to last? Should we -- do we believe
7 there's going to be consequential roll-up of prices,
8 continuing roll-up of prices, a rise in prices?" You
9 know, those are the sorts of things. But, to say based
10 on "oil hit 140 and everybody thought it was going to
11 200", that's market timing.

12 That said, I will say that, in our
13 retail work, we're often asked by customers "what do we
14 think the purchase strategies ought to be?" And, we
15 said "well, look, we can't -- we don't even ever try to
16 predict markets." Because, obviously, you know,
17 customers, if you get it wrong, and typically you're
18 going to get it wrong, customers tend to remember that,
19 so it's not very useful advice. And, often -- well,
20 typically, the case, we have no idea where markets are
21 going.

22 Q. I've had this conversation with my financial adviser.

23 A. Yes. But, where I do want to go, I do want to make one
24 point, which is, because I have said this, and probably

[WITNESS: Hachey]

1 since the beginning of the retail market, I said "it's
2 not a bad idea that, when markets, given the cyclical
3 nature that we've seen over time," and, unfortunately,
4 I have to say I go back to watching the Arab oil
5 embargoes in time, so I've seen a lot of cycles, "in
6 general, if you have to buy at the peak conditions in
7 the market, go short. If, on the other hand, the
8 market is at historic lows, you probably won't regret
9 going long." That's about as far as we've gotten.
10 And, that's probably, you know, consistent with what
11 you might do on CDs and that sort of thing. So, that's
12 why, in my -- that's my personal view, not a corporate
13 view. And, that's why I was surprised to see PSNH
14 electing to go long, out through 2010, at a time when
15 the market was peaking. That just didn't feel right.

16 CHAIRMAN GETZ: All right. Anything
17 else? Mr. Patch, redirect?

18 MR. PATCH: Could I have just one minute
19 with the witness?

20 CHAIRMAN GETZ: Sure.

21 (Mr. Patch conferring with Witness
22 Hachey.)

23 MR. PATCH: Nothing for direct. Thank
24 you.

{DE 09-180} [DAY 2] {12-11-09}

[WITNESS: Hachey]

1 CHAIRMAN GETZ: Okay. Then, the witness
2 is excused. Thank you.

3 WITNESS HACHEY: Thank you.

4 CHAIRMAN GETZ: Ms. Hatfield?

5 MS. HATFIELD: Thank you, Mr. Chairman.
6 I have copies of what I believe will be "Exhibit 19" that
7 I could provide now. Although, I should note that there's
8 not a redacted version. So, I will not be able to give a
9 copy to Mr. Patch.

10 CHAIRMAN GETZ: Okay. And, I'll note
11 that we appear to have Exhibit Number 6, I assume provided
12 by Mr. Rodier. So, that's now part of the record.

13 MS. CARMODY: And that is this?

14 CHAIRMAN GETZ: Yes. That's the Concord
15 Monitor, article from October 9th, 2009.

16 Is there any objection to striking the
17 identifications and admitting the exhibits into evidence?

18 (No verbal response)

19 CHAIRMAN GETZ: Hearing no objections,
20 they will be admitted into evidence. Is there anything
21 else to address before opportunity for closings?

22 (No verbal response)

23 CHAIRMAN GETZ: Hearing nothing, then
24 we'll begin with Mr. Patch.

1 MR. PATCH: Thank you, Mr. Chairman. As
2 Mr. Hachey indicated, TransCanada intervened when it first
3 heard of PSNH's proposal to at least consider trying to
4 pass off onto all customers some portion of the costs of
5 Default Service. So, that's why TransCanada came into
6 this docket. Once we intervened and reviewed the filings
7 and participated in the technical session, we came to
8 realize that there were other issues here that were tied
9 up with that non-bypassable charge issue; such as whether
10 the costs that PSNH was trying to recover and pass onto
11 all customers at least some portion of those costs met the
12 standard of the statute that authorizes recovery of
13 "actual, reasonable and prudent costs". That's the RSA
14 369-B:3 statute that's cited in your order of notice.
15 And, that there were also issues of whether PSNH's actions
16 were in conformity with the Least Cost Plan, as they must
17 be, according to RSA 378:41.

18 First, and perhaps most importantly,
19 from TransCanada's perspective, we strongly disagree with
20 any attempt to pass the costs of Default Service onto
21 other customers. We think the Commission should just say
22 "no" on that. We don't think there's really a need for
23 any further proceeding to address the issue. We think it
24 would be contrary to law and the principles underlying the

1 restructuring act to do that.

2 In the event that the Commission decides
3 otherwise, and decides to either extend this docket or
4 open a new docket, we think it's very important that there
5 be notice provided, even if it's an extension of this
6 docket and an opportunity for everyone who might have an
7 interest to participate in that, if that's the focus of
8 it, because we think that would be a critical issue in
9 many ways toward the market in New Hampshire.

10 In addition, we think it is clear from
11 the evidence here, if the Commission were to allow PSNH to
12 do this, that it would be allowing them to pass off onto
13 all customers what amounts to at least a portion of the
14 costs made based on imprudent decisions about purchasing
15 power, in effect, newly created stranded costs, and we
16 think you should say "no" to that issue.

17 We think there are a number of reasons
18 for limiting their recovery in this docket. Their actions
19 aren't in conformity with what they said in their recent
20 Least Cost Plan. If that process is to have any meaning,
21 and, obviously, it's a fairly extensive process that the
22 utility, the Commission, other intervenors go through, and
23 if it's to have any meaning, and RSA 378:41 clearly says
24 that it is, then you need to limit their recovery, because

1 they didn't follow the process that they outlined in the
2 plan. It's their burden to show you that they did. In
3 fact, I didn't see anything in their initial filing that
4 showed that they were in conformity with that plan. And,
5 it seems to me, based on what 378:41 says, they should
6 have shown that, they should have proven that.

7 On a going forward basis, TransCanada
8 believes that PSNH should be required to put out to bid at
9 least a portion of the Default Service that they need to
10 service customers, you know, at least above and beyond
11 what they generate from the assets they own. We think
12 this would be consistent with various provisions in the
13 restructuring law, such as 374-F:3, V(c), which says, and
14 I'm quoting, "Default service should be procured through
15 the competitive market". So, we think that's an important
16 issue going forward. We think it would be to the benefit
17 of ratepayers to do that. We think it ought to be an open
18 and transparent process.

19 And, perhaps most importantly, we think
20 an RFP could shift risks away from PSNH's ratepayers.
21 They could be assumed by the bidders or suppliers. When
22 you think about it, we expect an RFP process in state
23 government, in local government, in many business, for
24 amounts that are far smaller than the amount at stake

1 here. This is a huge amount of money, of ratepayer money
2 at stake. So, why shouldn't there be some sort of bidding
3 process that should be involved in order to obtain the
4 best price, especially if ratepayers are on the hook for
5 it? I believe the record in this docket supports the need
6 for a change in how power purchases are handled.

7 And, then, finally, just a couple of
8 things. One, I think Commissioner Ignatius had asked
9 Mr. Hachey that question about PSNH's testimony, where
10 they were suggesting that they couldn't begin until 2012.
11 I think that was based on an assumption that they would
12 have to put it in their next Least Cost Plan. The
13 Commission would have to approve it, and the earliest that
14 could happen would be 2012. But, I think, if you look at
15 the statutory authority that you have under 369-B:3,
16 IV(b)(1)(A), which is, again, the statute cited in the
17 order of notice, it talks about "supplemental power
18 purchases in a manner approved by the Commission". So, to
19 me, it's clear, the Commission would have the authority to
20 order them to do it now, or as soon as the Commission
21 deemed reasonably possible.

22 And, then, I guess, finally, one final
23 point -- actually, I think that covers all my points. I
24 appreciate very much the Commission's allowing TransCanada

1 to intervene in this docket. I think it's important for
2 the Commission to hear the views of competitive suppliers.
3 And, I hope the Commission appreciates the time and effort
4 that TransCanada put into this. I think there are very
5 important issues in this docket. And, I urge you to
6 consider our arguments carefully. Thank you.

7 CHAIRMAN GETZ: Thank you. Ms.
8 Hatfield.

9 MS. HATFIELD: Thank you, Mr. Chairman.
10 The OCA does not take a position on PSNH's proposal for
11 Energy Service rates for 2010, but we do have positions on
12 particular aspects of it that I would like to share with
13 the Commission. We greatly appreciate the fact that PSNH
14 itself brought forward the issues that it describe as
15 being related to migration that negatively impact or will
16 negatively impact in 2010 the small business customers and
17 the residential customers who are captive to Energy
18 Service. And, we also greatly appreciate PSNH putting
19 forward specific proposals under what they call "Method 2"
20 to remove costs that we agree are more appropriately
21 recovered through the TCAM and through the Stranded Cost
22 Recovery Charge. And, we also appreciate that both the
23 Company and Staff are willing to discuss moving company
24 use costs not related to generation out of Energy Service.

1 We also support Staff's proposal that
2 the Company be required to do -- to undertake a study
3 related to future operation of the Newington plant. We
4 also support Staff's proposal that the important issues
5 that have been raised in this case related to migration
6 are better considered either in a continuation of this
7 docket or in a separate proceeding as soon as possible in
8 2010, in light of the fact that this is a rate proceeding
9 and you do need to make a decision on a rate prior to
10 January 1st.

11 We -- actually, in PSNH's first
12 testimony in this case, they made a reference to DE
13 05-164. And, when I went back and reread the final order
14 in that docket, I was reminded that there have been
15 several times over the last few years when competitive
16 suppliers have participated in these cases and have raised
17 these same issues. And, in the past at least, we've said,
18 you know, "this party has raised important issues, we
19 don't have time to review them", and it seems like now we
20 really should take the time in early 2010 to look more
21 deeply into these issues. And, the OCA would certainly
22 appreciate having the opportunity to do that. Keeping in
23 mind that we should do it as soon as possible in 2010, in
24 light of the fact that PSNH is continuously making

1 decisions about how to make purchases to supply Energy
2 Service to customers. So, we would be planning to
3 participate in that docket. So, we would urge the
4 Commission to either keep this docket open for that
5 undertaking or to open up a separate docket. And, we
6 agree with Mr. Patch that, regardless of which way you
7 decide to do that, more notice to other interested parties
8 would be appropriate.

9 Lastly, I do also want to say that we
10 are concerned, in light of Mr. Baumann's use of the term
11 "undue burden", and the fact that it has been identified
12 that the captive customers, largely residential and small
13 businesses, are paying for some of the costs resulting
14 from how PSNH did purchase its portfolio and resulting
15 from migration. And, so, that is something that we want
16 to continue to discuss. And, the fact that we know that
17 they're paying those costs now or as of January 1st is a
18 concern to us. And, I think you probably picked that up
19 during my cross, that we're aware of it now, and if we're
20 saying we're not going to address the problem into the
21 future, I think we need to think about how we make
22 customers whole, if they have been paying costs that they
23 are unfairly shouldering on behalf of all other customers.
24 Thank you very much.

1 CHAIRMAN GETZ: Thank you. Ms. Amidon.

2 MS. AMIDON: Thank you. We agree with
3 the proposal that was put forward by PSNH that the VAR
4 costs be moved to TCAM and the PSNH energy use by moved to
5 distribution at the appropriate time. And, therefore, we
6 support the 8.9 cents Default Service rate proposed by
7 PSNH in its December 7th filing.

8 With respect to customer migration, a
9 lot has been discussed here. I think, you know, pursuant
10 to Mr. Mullen's testimony, Staff doesn't believe that
11 Method 1 is acceptable, and we do believe it is a larger
12 issue that's best dealt with in another -- within the
13 context of this docket, as it continues at least until
14 July 2010, or in any other proceeding as the Commission
15 may determine is appropriate. But we agree with the OCA
16 that it would be appropriate to do that probably in 2010,
17 early in 2010, and to make sure that the proceeding is
18 noticed in such a way as to involve everyone who may be
19 interested in the issue.

20 We support, obviously, it was in Mr.
21 Mullen's testimony, studying on the economics of the
22 continued ownership and operation of Newington. And,
23 again, that can be done in the context of this docket.
24 But, as Mr. Mullen pointed out, that has implications for

1 other PSNH proceedings, but we do believe that the Company
2 should proceed with that in 2010, and I believe that we
3 have their agreement that they would do that.

4 And, finally, as Mr. Mullen testified,
5 there's -- we see nothing in this filing that is
6 inconsistent with the Least Cost Plan approved by the
7 Commission in the last Least Cost Plan docket, which is DE
8 07-108, particularly in light of the fact that that plan
9 allowed for flexibility to PSNH in making its decisions.
10 That's it. Thank you.

11 CHAIRMAN GETZ: Okay. Before we hear
12 your closing statements, Mr. Eaton, there's a couple of
13 data responses that still need to be filed or have they
14 all been filed, the record requests?

15 MR. EATON: There are three outstanding,
16 I believe.

17 CHAIRMAN GETZ: And, just when would
18 they be available?

19 MR. EATON: Next week.

20 CHAIRMAN GETZ: Okay. Yes, I have four.
21 But, if it's three, we'll just verify that.

22 MR. EATON: We provided one today as
23 Exhibit 21.

24 CHAIRMAN GETZ: Okay. Okay. Thank you.

1 MR. EATON: And, Meredith provided one,
2 which was Exhibit 19. I'm sorry, Attorney Hatfield.

3 CHAIRMAN GETZ: Okay. Well, let's just
4 see that those get in as early as possible next week. So,
5 you're closing statement please.

6 MR. EATON: Yes. The standard for
7 default service is that the Commission approve the
8 Company's actual, prudent and reasonable costs.
9 Obviously, we don't know what the actual costs of 2010
10 are, because 2010 hasn't begun. Prudence is an after
11 look, once the costs are incurred, and the Commission
12 looks at that based upon what the management of the
13 Company knew at the time, and what a prudent manager would
14 have done. So, all the Commission can really do right now
15 is determine whether our estimates are reasonable.
16 Because this rate is completely reconcilable, the
17 Commission has held a prudence review starting in May of
18 the costs incurred in the previous year, and that's when
19 prudence is decided.

20 Even if the purchase that Mr. Hachey has
21 focused on so closely, we don't agree that it's imprudent,
22 but, even if it were, it's only 6 percent of the load that
23 PSNH will incur in 2010. That was Mr. Errichetti's
24 testimony yesterday when he corrected himself and went

1 from 2 to 6 percent. So, I think you ought to accept the
2 rate as it is filed, and not make any determination of
3 prudence of any costs until the reconciliation provision.

4 Next, I would like to refer the
5 Commission to why we had a statutory justification for
6 what we proposed for the migration element. I refer to
7 the first two sentences of RSA 374-F:3, VI, which says
8 that "Restructuring of the electric utility industry
9 should be implemented in a manner that benefits all
10 customers [equally] and does not benefit one customer
11 class to the detriment of another. Costs should not be
12 shifted unfairly among customers." Now, that probably
13 needs a lot more evidence than we have here, but that's at
14 least a way of couching this issue of migration. It
15 appears that large customers are getting most of the
16 benefits of restructuring, and because of the way PSNH's
17 cost structure in Default Service is made, with a lot of
18 fixed costs, there are other customers who are not getting
19 the benefits, and they are getting the detriment of those
20 fixed costs. So, that's at least a basis for why the
21 migration proposal could come up.

22 I also believe, if you look at 378 --
23 I'm sorry, 374-F:3, V, you can see that "The Commission
24 should establish transition and default service

1 appropriate to the particular circumstances of each
2 jurisdictional utility." And, because we're required to
3 use our plants, I think our situation is different, and it
4 might be appropriate to look at different ways of
5 providing it. In Section (e) of that, of that statute,
6 default service could "minimize customer risk, not unduly
7 harm the development of competitive markets, and mitigate
8 against price volatility without creating new deferred
9 costs." There's plenty of statutory authority for doing
10 what we had proposed.

11 There isn't an adequate record to go to
12 an RFP process. And, the Commission said, in 2007, that
13 there wasn't an adequate record in that case, and they
14 told Constellation to file a detailed proposal on the
15 implementation of a process whereby PSNH would solicit
16 supply for its power requirements not supplied from its
17 own resources. That was in docket DE 07-096, Order
18 24,814. We don't believe it's our duty to come forward
19 with a case to replace a process that the Commission has
20 consistently found to be prudent and reasonable. I've
21 looked to all the reconciliation cases that I've been
22 involved with, and I think I have done them all, and the
23 Commission's expert, Liberty Consulting, has never found
24 that our procurement practices were imprudent. So, we

1 should not jump off this ship to the prices that Mr.
2 Baumann talked about yesterday, of 12 cents and 11 cents,
3 that our Connecticut affiliate has for its competitively
4 bid standard offer or default type of service.

5 Now, I'd like to move to the Least Cost
6 Plan and how it's been characterized by Attorney Patch as
7 a bible that we may not deviate from. Well, first of all,
8 there's nothing in the supplemental power plan in the
9 Least Cost Plan in that docket that talks about an "RFP
10 process". He can't have it both ways. If that's
11 absolutely inviolate, and we cannot change that, then we
12 cannot do an RFP, because it's not in the Least Cost Plan.
13 That's why our testimony was that we have to include it in
14 the next Least Cost Plan to be filed in May of 2010. And,
15 those cases don't settle out really quickly. They usually
16 take more than a year to do. So, that's why our testimony
17 said it would be 2012 before an RFP process could be
18 approved. As long as Mr. Patch is correct, that you can't
19 do anything unless it's in the Least Cost Plan.

20 But, in the Least Cost Plan proceeding,
21 the parties filed a Partial Settlement Agreement. And, in
22 that, they provided that "the approval of this Partial
23 Settlement Agreement", and I'm reading from Page 7 of
24 Exhibit 6 in that proceeding, I'll start again: "The

1 approval of this Partial Settlement Agreement, and a
2 determination that PSNH's LCIRP filing is adequate under
3 378:38-41, shall not be deemed as adoption by the
4 Commission of any proposed actions by PSNH contained in
5 the plan nor a requirement nor approval that PSNH carry
6 out any action contained in the plan, unless otherwise
7 considered by the Commission in another proceeding." And,
8 as the Commission described the partial settlement, that
9 was described in Order Number 24,945 at, Page 7, and I
10 won't read that section in, but it essentially parrots
11 much of what was in the Partial Settlement Agreement.
12 TransCanada was a party to that proceeding, and I believe
13 a signatory to the Settlement Agreement.

14 So, what -- the obvious question is
15 "what the devil does 378:41 mean?" It does not mean that
16 absolutely every order has to comply with the Least Cost
17 Plan. It says "any proceeding before the Commission
18 initiated by a utility shall include within the context of
19 the hearing and decision reference to the conformity of
20 the decision with the Least Cost Integrated Resource Plan
21 most recently filed and found adequate by the Commission."
22 With the record you have here, you can definitely say
23 there was enough description, especially in the Supplement
24 3, which has been marked as an exhibit, I think Exhibit 9

1 in this proceeding, that we showed you what we did in 2006
2 and 2007 to buy supplemental power. But the language in
3 the plan that was -- that is made part of this record says
4 "we shouldn't be bound by what we did in 2006 and 2007 out
5 into the future", and I don't think we can be. That
6 statute, if it were applied as it's written, would mean
7 that you would have to do the Least Cost Plan for every
8 water crossing, because they're initiated by a utility;
9 every railroad crossing; every franchise change. And, I
10 don't believe that's consistent with the rest of that
11 Least Cost Planning statute, which says you're supposed to
12 look at our Least Cost Plan to see if the snapshot we took
13 in September of 2007 showed that we had adequate planning,
14 because things change after September 2007, and we can't
15 keep updating the plan as we go through it. You should
16 see what we did, and you will see on May 3rd of 2010, what
17 our planning process is. And, that's the purpose of the
18 Least Cost Plan.

19 Now, if we had taken the Least Cost Plan
20 and gone ahead with some of the supply side items in there
21 and said "well, we mention in the Least Cost Plan that,
22 you know, here's a possible scenario for investing in wind
23 or investing in solar, so we're authorized to do that,"
24 we'd be crucified. It's not a document that requires us

1 to do certain things. It's an important proceeding and a
2 very involved proceeding, where the Staff and the
3 Commissioners and all the parties get to review our
4 planning process, and that's what it's about. Or else,
5 you know, you've got a lot of orders to go back and write
6 378:41 into it, to make sure that when Liberty Consulting,
7 or now Accion Group, when they do a water crossing, they
8 better cite to 378:41, because that's a proceeding
9 initiated by PSNH, and asking for a Commission order that
10 we could put wires over a body of water.

11 Now, finally, the Newington continuing
12 unit operation study: We don't oppose it, we don't
13 welcome it. But it really should be part of the next
14 Least Cost Plan filing. And, we have talked with our
15 people back at Energy Park and said that, "in order to do
16 that, we would need more time than we have between now and
17 May 3rd, when the next Least Cost Plan is being filed."
18 Now, it doesn't make sense, without an order directing us
19 to do that, we would file a Least Cost Plan, which
20 essentially is a projection of the next five years, and we
21 would probably have Newington in there as a resource we
22 would have for the next five years. It doesn't make much
23 sense to go through all that process, and then the
24 integration of the different supply and demand side

1 resources to do that, and then have a Newington unit
2 operation -- continuing unit operation study come out
3 sometime in July or August, when you've got a whole
4 different set of assumptions. So, if you decide to go
5 forward with that, we would like to have the filing date
6 for the next Least Cost Plan delayed until at least
7 September, because we'll need to get an outside expert to
8 do this, and there's a lot of assumptions in a continuing
9 unit operation study, and it will take many months to do
10 that. And, once that's done, we'll have to integrate that
11 with all the other integration that we're supposed to do
12 as part of the Least Cost Plan. So, again, we don't
13 oppose it, we just can't get it done by May 3rd, and don't
14 think it's an appropriate or a good use of our resources
15 to file the plan on May 3rd without the results of that
16 study, and then try to incorporate it and redo the whole
17 plan, now that we have a big different assumption
18 depending on what the results of that study are.

19 That concludes my remarks.

20 CHAIRMAN GETZ: Okay. All right. Thank
21 you, everyone. We'll close the hearing and take the
22 matter under advisement.

23 (Whereupon the hearing ended at 2:51
24 p.m.)