

STATE OF NEW HAMPSHIRE

PUBLIC UTILITIES COMMISSION

March 12, 2012 - 10:07 a.m.
Concord, New Hampshire

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RE: DE 11-250
PUBLIC SERVICE COMPANY OF NEW HAMPSHIRE:
*Investigation of Scrubber Costs and
Cost Recovery.*
(Hearing regarding temporary rates.)

PRESENT: Chairman Amy L. Ignatius, Presiding
Commissioner Michael D. Harrington

Sandy Deno, Clerk

APPEARANCES: Reptg. Public Service Co. of New Hampshire:
Sarah B. Knowlton, Esq.
Robert A. Bersak, Esq.

Reptg. the Sierra Club:
Zachary M. Fabish, Esq.

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

Reptg. the Conservation Law Foundation:
N. Jonathan Peress, Esq.

Sandy Dannis & Jim Dannis, *pro se*

COURT REPORTER: STEVEN E. PATNAUDE, LCR No. 52

ORIGINAL

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

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Stephen R. Eckberg

Donna McFarland

Office of Consumer Advocate

Reptg. PUC Staff:

Suzanne G. Amidon, Esq.

Matthew J. Fossum, Esq.

Steven E. Mullen, Asst. Dir./Electric Div.

I N D E X

PAGE NO.

STATEMENTS RE: MOTION FOR INTERVENTION
BY MR. & MRS. DANNIS

Mr. Dannis	11, 18
Ms. Knowlton	12
Mr. Fabish	15
Mr. Patch	16
Ms. Hollenberg	17
Ms. Amidon	18

STATEMENTS RE: MOTION TO DISQUALIFY

Mr. Dannis	20, 41
Mr. Peress	35
Ms. Hollenberg	37
Mr. Fabish	37
Ms. Knowlton	37

* * *

WITNESS PANEL: ROBERT A. BAUMANN
WILLIAM H. SMAGULA

Direct examination by Ms. Knowlton	48
Cross-examination by Mr. Peress	60
Cross-examination by Mr. Fabish	91
Cross-examination by Mr. Patch	107
Cross-examination by Mr. Dannis	108
Cross-examination by Ms. Hollenberg	118
Cross-examination by Ms. Amidon	130
Interrogatories by Cmsr. Harrington	134
Interrogatories by Chairman Ignatius	141
Redirect examination by Ms. Knowlton	147

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

I N D E X (continued)

PAGE NO.

WITNESS: STEVEN E. MULLEN

Direct examination by Ms. Amidon	149
Cross-examination by Ms. Hollenberg	152
Interrogatories by Cmsr. Harrington	153
Interrogatories by Chairman Ignatius	156

* * *

CLOSING STATEMENTS BY:

PAGE NO.

Mr. Fabish	168
Mr. Patch	170
Ms. Hollenberg	170
Ms. Amidon	170
Ms. Knowlton	171

E X H I B I T S

EXHIBIT NO.	D E S C R I P T I O N	PAGE NO
1	Joint Testimony of Robert A. Baumann and William H. Smagula, including attachments	47
2	Progress Report filed in Docket DE 08-103 (11-10-11)	47
3	Progress Report Addendum filed in DE 08-103 (11-18-11)	47
4	PSNH response to Data Request OCA-01, Q-OCA-002 (12-30-11)	62
5	CLF e-mail requesting information about NPDES permits for the purpose of disposing of Scrubber wastewater	67
6	N.H. Code of Administrative Rules Part Env-Ws 904 Standards for Pre- treatment of Industrial Wastewater	79
7	PSNH response to Data Request STAFF-01. Q-STAFF-002 (12-30-11)	127
8	PSNH response to Data Request OCA-01, Q-OCA-001 (12-30-11)	148
9	Direct Testimony of Steven E. Mullen, including attachments (02-24-12)	151
10	RESERVED (Record request on whether PSNH sought and obtained an Industrial Wastewater Discharge Permit)	166

1 P R O C E E D I N G

2 CHAIRMAN IGNATIUS: We are here today in
3 Docket DE 11-250, Public Service Company of New Hampshire,
4 investigation into Merrimack Station Scrubber Project and
5 cost recovery. As you know, this docket began in another
6 Commission docket, DE 11-215, a Default Energy Service
7 rate docket, in which PSNH filed testimony indicating that
8 its flue gas desulphurization system, known as the
9 "Scrubber Project", at Merrimack Station was placed in
10 service on September 28, 2011. This project was installed
11 at Merrimack Station pursuant to RSA 125-0:11. PSNH
12 proposed to begin recovery of the costs associated with
13 the Scrubber Project in the Energy Service rates on or
14 after January 1, 2012.

15 The Commission moved that issue into a
16 new docket and issued a secretarial letter stating that it
17 would take up the issue in a separate docket, which has
18 become 11-250. And, that docket will evaluate the
19 in-service status, PSNH's prudence, the appropriate rate
20 treatment of the costs of the scrubber.

21 An order of notice was issued on that
22 matter, which brings us all today to this hearing on
23 temporary rates, with more to come on the permanent rate
24 portion of the docket.

1 There are a number of procedural
2 matters, but why don't we take appearances, including one
3 entity that may be seeking intervention late, just
4 identify yourselves. And, then, we will take -- take up
5 those issues afterwards.

6 So, let's begin with appearances please.

7 MS. KNOWLTON: Good morning, and
8 welcome, Chairman Ignatius and Commissioner Harrington.
9 My name is Sarah Knowlton. And, I am here representing
10 Public Service Company of New Hampshire today. And, with
11 me also appearing on behalf of the Company is Robert
12 Bersak, Assistant Secretary and Assistant General Counsel.

13 CHAIRMAN IGNATIUS: Good morning.

14 MR. BERSAK: Good morning.

15 MR. FABISH: Hi. I'm Zach Fabish. I'm
16 an attorney with the Sierra Club. I'm here representing
17 the Sierra Club.

18 CHAIRMAN IGNATIUS: All right. And, Mr.
19 Fabish, it's hard to hear you back there. So, make sure
20 that, if you don't have a mike -- thanks. And, you don't
21 need to stand, if it's easier to get projected.

22 MR. FABISH: Sure.

23 CHAIRMAN IGNATIUS: Good morning. Yes,
24 sir.

1 MR. DANNIS: So, can you hear me? Is it
2 projecting?

3 CHAIRMAN IGNATIUS: I don't think it is.

4 MR. DANNIS: Sorry, we're farmers. My
5 name is Jim Dannis, and this is my wife, Sandy Dannis. We
6 are ratepayers from Dalton, New Hampshire. We are PSNH
7 ratepayers. And, as you know, we filed a Motion to
8 Intervene and a Motion to Disqualify.

9 CHAIRMAN IGNATIUS: Thank you. And,
10 please keep your voice up. You were dropping back there.
11 So, we'll give you high signs as we go. Mr. Patch.

12 MR. PATCH: Good morning. Doug Patch,
13 from the law firm of Orr & Reno, on behalf of TransCanada.

14 CHAIRMAN IGNATIUS: Good morning.

15 MR. PERESS: Good morning. Jonathan
16 Peress, on behalf of the Conservation Law Foundation.

17 CHAIRMAN IGNATIUS: Good morning.

18 MS. HOLLENBERG: Good morning. Rorie
19 Hollenberg, Stephen Eckberg, and Donna McFarland, here for
20 the Office of Consumer Advocate.

21 CHAIRMAN IGNATIUS: Good morning.

22 MS. AMIDON: Good morning. I'm Suzanne
23 Amidon. I'm here for Commission Staff, as is my
24 colleague, Matthew Fossum, who is to my far left today, he

1 is also appearing for Commission Staff. And, with us
2 today also is Steve Mullen, who is the Assistant Director
3 of the Electric Division.

4 CHAIRMAN IGNATIUS: Good morning, and
5 welcome, everyone. A couple of procedural matters I want
6 to address, and then we'll put it back to you for a couple
7 of items.

8 First of all, you should have received a
9 letter either Friday afternoon or today in hard copy,
10 Commissioner Scott has filed a letter in this docket
11 stating that he will not participate.

12 We also want to remind people that there
13 have been -- in a prior order we had encouraged the
14 similar entities, TransCanada and New England Power
15 Generators Association, to coordinate their efforts, to
16 the extent possible, because of common issues, and,
17 similarly, Sierra Club and the Conservation Law Foundation
18 to do the same. And, I hope people have prepared today
19 with that in mind.

20 We issued this morning a motion
21 addressing the -- or, excuse me, an order addressing the
22 Motion to Compel that had been filed by Conservation Law
23 Foundation and objected to by PSNH. It's Order 25,334.
24 That also should have been distributed this morning in

1 hard copy. And, I hope people have had an opportunity to
2 read it. If you have not, the gist of it is that the
3 request for further information that CLF was requesting is
4 being granted in part. The request we have found is
5 appropriate to continue to seek that information for the
6 permanent rate phase of this proceeding, but it not be
7 necessary to go forward today for the temporary rate
8 portion.

9 We also understand that late Friday,
10 although we only saw it this morning in our files, was the
11 Motion to Intervene filed by Mr. and Mrs. Dannis. So,
12 what I'd like to do is give the two of you an opportunity
13 to state anything, either summarize what's in your
14 pleading, for those who may not have read it, but you
15 don't need to restate everything, or if there's anything
16 in addition to that that you want to mention. I'll give
17 parties an opportunity to respond to that. And, then, we
18 will consider whether we can make a ruling on that this
19 morning or take it under advisement.

20 So, Mr. Dannis.

21 MR. DANNIS: Can you hear me okay?

22 CHAIRMAN IGNATIUS: I can, but try to
23 project a little.

24 MR. DANNIS: Even louder, okay.

1 CHAIRMAN IGNATIUS: There we go.

2 MR. DANNIS: So, my name is Jim Dannis,
3 and my wife is Sandy Dannis. We are PSNH ratepayers. We
4 live in Dalton, New Hampshire, on 117 McGinty Road. We
5 have filed a Motion to Intervene because we believe that
6 this proceeding can have an impact on our electricity
7 bills. As we understand it, this proceeding would involve
8 the potential addition of \$300 million, ballpark, to the
9 regulatory rate base. We understand that that would
10 involve an increase in the Default Energy Service rate.
11 And, therefore, we have a direct interest in seeing the
12 impact on our bills, which would obviously be an increase.
13 So, the principal reason for our intervention is our
14 direct interest in this proceeding as ratepayers.

15 We apologize for not knowing all of the
16 Commission's rules or practices. Indeed, we didn't even
17 know where to sit when we came in this room. And, so, we
18 have doubtless messed up one or another technical elements
19 of the filings. We apologize in advance for that. For
20 example, I know that we have a certificate of service that
21 was incorrect. We have copies of it here with us.

22 We did ask for advise and assistance
23 from a whole number of people as to how to convert our
24 feelings as ratepayers into an intervention in front of

1 the Commission. We spoke with a broad variety of
2 individuals who have experience, including Jonathan Peress
3 of CLF, who kindly gave us some pointers as to how we
4 might proceed.

5 But, in sum and substance, we have
6 intervened for that reason. We're sorry our intervention
7 is late. But we have only just recently begun to engage
8 in the importance of PUC proceedings to our own financial
9 standing as ratepayers.

10 CHAIRMAN IGNATIUS: All right. Are
11 there responses from any of the parties? PSNH, Ms.
12 Knowlton.

13 MS. KNOWLTON: Thank you. The Company
14 objects to the Petition to Intervene on a number of
15 grounds. The first is that it is late, and it's not just
16 late, it is extremely late. The order of notice in this
17 proceeding established a December 8th deadline for
18 petitions to intervene. And, certainly, this case has
19 been highly publicized. It's no secret that the Company
20 is seeking cost recovery of its scrubber investment. It's
21 been in the press on multiple occasions. There is
22 certainly no reason that I've heard so far as to why the
23 Dannises' intervention petition could not have been
24 submitted to the Commission by that December 8th deadline.

1 Certainly, the PUC has the authority to deny the petition
2 on that ground alone, being lateness.

3 The petition has certainly already been
4 disruptive to the orderly conduct of this proceeding. As
5 you indicated, Chairman Ignatius, it was filed after hours
6 on Friday, which effectively makes it filed the day today
7 of the hearing. We have time deadlines for a reason.

8 It appears to me that the only reason
9 for the intervention is the Dannises' attempt to
10 disqualify Commissioner Harrington from this proceeding.
11 Certainly, Mr. Dannis has been pursuing this issue in a
12 number of venues before this motion was filed, all
13 unsuccessfully. And, while I realize that we're not
14 addressing the Motion for Disqualification at this moment,
15 I do want to just point out that it is well settled in New
16 Hampshire that this issue of a pension and an entitlement
17 to a pension does not create a conflict of interest. We
18 have had decisions from the New Hampshire Supreme Court
19 Ethics Committee and the Attorney General, in this
20 specific instance, and other bodies.

21 What Mr. Dannis has stated is, as his
22 principal interest, is as a residential ratepayer, and,
23 excuse me, Mr. and Mrs. Dannis. The OCA already
24 represents that interest here. They are here to represent

1 the residential ratepayers. The OCA certainly can consult
2 with the Dannises, to the extent that they have expertise
3 to offer the OCA, and vice versa. And, the Dannises can
4 offer public comments, as the Commission regularly does
5 with individual ratepayers.

6 One thing that I would note, and I, you
7 know, Mr. Dannis has indicated that he did receive
8 assistance from others in submitting the pleading. And,
9 my understanding is, and, you know, I don't know who
10 drafted it, that CLF did have some involvement with that
11 pleading. I do want to just point out that, in New
12 Hampshire, those of us who are licensed to practice law,
13 are required to comply the Supreme Court Rules of
14 Practice. And, there is a rule of practice in New
15 Hampshire that requires that, when an attorney provides
16 limited representation to someone who is otherwise
17 unrepresented in drafting a document, that you have to
18 disclose that on the pleading that's filed. That it was
19 prepared in assistance with an attorney. In fact, the
20 rule gives us the language that we have to use on those
21 pleadings. And, so, while that's not why we're here
22 today, I do want to just point that out to the Commission.
23 And, I think it is important that we all follow the
24 professional rules of conduct.

1 In any event, I think there are multiple
2 grounds that I've stated that would allow for the denial
3 of this intervention petition. The Commission certainly
4 has the discretion to do so. And, the Company would ask
5 that the Commission deny the Dannises' petition.

6 CHAIRMAN IGNATIUS: Thank you. Any
7 other parties with a response? Mr. Fabish.

8 MR. FABISH: Sure. Is the microphone
9 doing its job?

10 CHAIRMAN IGNATIUS: Yes.

11 MR. FABISH: Great. I'd just like to
12 say, as an intervening party, I tend to look kindly on
13 other intervenors. And, I would just like to address
14 PSNH's points a little bit. I think that, though it may
15 be that the intervention is late, I don't really see any
16 prejudice stemming from it to any of the parties involved,
17 especially given the segmented way we're proceeding in
18 this docket. I think it would be a different situation if
19 discovery were being sought, you know, on the temporary
20 rate issues, but it doesn't appear to be.

21 So, I think that the -- while
22 technically late, I just don't see any prejudice involved
23 here. Nor do I think it's particularly disruptive to the
24 schedule that the docket has put in place. So, for what

1 it's worth, that's my opinion.

2 CHAIRMAN IGNATIUS: Thank you.

3 Mr. Patch.

4 MR. PATCH: TransCanada -- is the
5 microphone working?

6 CHAIRMAN IGNATIUS: Yes, it is.

7 MR. PATCH: Okay. Great. Thanks.
8 TransCanada supports the Motion for Intervention.
9 Believes it's important for ratepayers, if they are
10 interested, that they be allowed to participate in the
11 docket, especially a docket of this importance. I believe
12 the Commission rule or the Commission practice is that, if
13 there's a late intervention, then the party takes the
14 schedule as it is. You can't change the schedule, you
15 can't go back and redo things. And, so, -- and, we're
16 really at a very early stage of the full proceeding. This
17 is a hearing on temporary rates, but there's an awful long
18 way to go on permanent rates. So, I think it would be --
19 I think it would be very unfortunate if they weren't
20 allowed to participate.

21 And, TransCanada takes no position on
22 the Motion for Disqualification.

23 CHAIRMAN IGNATIUS: Thank you. Ms.
24 Hollenberg.

1 MS. HOLLENBERG: Yes. Thank you. The
2 OCA concurs with the statements of TransCanada. And, I
3 just also wanted to note that we view our office's role as
4 representing the collective residential ratepayer. And,
5 for that reason, we do not provide individual legal advice
6 to individual ratepayers or advocate on behalf of
7 individual ratepayers and their interests. So, I do
8 believe that there is a distinction between the OCA and
9 any other residential ratepayer. And, we would just ask
10 that the Commission continue to recognize that we have a
11 statutory right to participate, and that that right may
12 not be abridged. Thank you.

13 CHAIRMAN IGNATIUS: Let me ask you a
14 little bit about the general versus specific
15 representation.

16 MS. HOLLENBERG: Uh-huh.

17 CHAIRMAN IGNATIUS: I can understand if
18 this were a situation where someone as an abutter or
19 something particular about their service was at issue,
20 that you wouldn't represent in general. But Mr. Dannis
21 has said he's looking at the overall increase to Energy
22 Service rates if these costs were allowed. That seems to
23 be the general kind of impact that your office would be
24 looking at. So, how are those different?

1 MS. HOLLENBERG: Well, I guess, to the
2 extent that -- I don't necessarily say that there's not a
3 convergence of interests of what the OCA represents and on
4 what the Dannises seek to pursue in this proceeding, but I
5 do believe that there is a divergence of interest. In
6 that at any point in time, you know, an individual
7 ratepayer can have a very different position to what the
8 OCA might consider acceptable to the whole.

9 CHAIRMAN IGNATIUS: Thank you. One
10 moment, Mr. Dannis. Does Staff have a response?

11 MS. AMIDON: We do not have a position
12 on the Motion to Intervene.

13 CHAIRMAN IGNATIUS: All right. Mr.
14 Dannis, you get the last word.

15 MR. DANNIS: Just to address one point
16 of distinction. There's a concept in social science
17 literature called "audience costs". And, what "audience
18 costs" means is that, in some cases, people who
19 participate in regular fora, such as this, have a built-in
20 set of social expectations. We do not have a built-in set
21 of social expectations or, to put it in plain English, we
22 can speak directly and bluntly and forthrightly because we
23 have no audience costs. We know nobody in this room.
24 That gives us, we think, a great advantage as a ratepayer

1 intervenor, because we will be able to speak openly,
2 directly, with no cost in terms of social or other
3 relations, that can redound to the advantage of the
4 Commission.

5 Second, we believe that we represent --
6 "represent" is the wrong word, we are characteristic of an
7 increasing number of ratepayers, most of whom don't have
8 time or resources to be here. As you've seen in the
9 press, as you've seen in discussions in other public
10 forum, like the Legislature, there is increasingly a
11 concern about the impartiality and about the public
12 representation at state government agencies. And, we
13 would state that we represent, or not "represent", we are
14 characteristic of the group of ratepayers who have that
15 concern. We would be happy to provide, if it would help
16 the Commission in its determination, any number of
17 ratepayers who would support in writing our intervention.
18 We believe the perspective of scepticism, robust
19 scepticism of this proceeding can be represented very
20 effectively by an independent ratepayer.

21 CHAIRMAN IGNATIUS: All right. Anything
22 -- it sounds like we've been around, and, as the moving
23 party, you get the last word. I think, for the moment, we
24 will take the motion under advisement. Commissioner

1 Harrington and I will caucus in a moment to consider that.
2 Let's go ahead and hear arguments on the Motion to
3 Disqualify. That way we won't need to caucus twice.

4 So, Mr. Dannis, assuming you are granted
5 intervention, for efficiency, let's go ahead and give you
6 an opportunity to speak to your Motion to Disqualify.

7 MR. DANNIS: Thank you very much. And,
8 sorry for making this contingency difficult. So, we've
9 put together in a filing, and again we apologize that the
10 filing was as late in the day as it was. We did
11 everything we could to get it together for this
12 proceeding. And, the importance of this proceeding is
13 because this is the first time, as we understand it, that
14 Mr. Harrington is assuming his rule on the Commission for
15 purposes of a matter relating to PSNH or to Northeast
16 Utilities.

17 By way of background again, we are PSNH
18 ratepayers. Our understanding is that, in this
19 proceeding, there is a request by PSNH to add up to
20 \$300 million to its rate base, as we've described, as
21 ratepayers this will affect our default energy service.

22 As ratepayers, we believe we have a
23 legitimate interest to a full, fair, open, robust and
24 impartial proceeding, a proceeding that is completely free

1 of conflict of interest.

2 Commissioner Harrington previously
3 disclosed at a meeting we attended in Twin Mountain that
4 he has a vested right to a pension from Northeast
5 Utilities in respect of his 20 plus years of service at
6 Seabrook Station. Mr. Harrington refused at that meeting
7 -- excuse me, he refused subsequently to disclose the
8 amount of the pension. He refused to disclose the details
9 of the pension, such as the pension plan, the identities
10 of the obligors on the pension, or the payment terms of
11 the pension.

12 As you'll see, Responsible Energy
13 Action, which is a advocacy group which Sandy and I are
14 members, prepared a detailed analysis with the information
15 available to us and public information of the pension, and
16 we brought it to a conclusion that the pension, we
17 believe, represented a material conflict of interest and a
18 disqualification.

19 Among other things, we looked at
20 publicly available data on compensation and pension
21 levels, and we estimated that Mr. Harrington's pension,
22 and, again, I underline, we were forced to estimate,
23 because he did not disclose his amount, we estimated the
24 pension is in the range of \$20,000 to \$70,000 per year.

1 We looked at actuarial tables, and we estimated actuarial
2 life of the pension. And, in total, terms of total
3 payments, our estimate is \$400,000 to \$1.75 million of
4 payments that Mr. Harrington would be entitled to as
5 pensioner under the Northeast Utilities pension.

6 As we submitted in our materials to the
7 Commission, we believe this amount is so large that by
8 itself it creates an appearance of impartiality, an
9 appearance of conflict, and an actual conflict. I want to
10 emphasize that, because Mr. Harrington did not disclose,
11 at least to us or to Councilor Burton at the time of the
12 prior proceeding, the details of the pension, we do not
13 have, Madam Chairman, 100 percent certainty that we have
14 looked at the pension plan that covers his pension. We
15 have made the assumption, taking Mr. Harrington at his
16 word, that his pension is payable by Northeast Utilities.
17 And, so, for illustration, we looked at the Northeast
18 Utilities pension plan, which is on file on the Northeast
19 Utilities website for purpose of the illustration of our
20 analysis.

21 May I make a point of order, and I'm not
22 sure how it would work, given the contingent nature of
23 this discussion. It strikes me that Mr. Harrington should
24 not be sitting on a Motion to Disqualify himself. Looking

1 back to the only process I know, which is due process from
2 law school, and also from the process we use at the Board
3 of Selectmen in my town, when a motion was made to
4 disqualify, the person who was sought to be disqualified
5 would step down, so that there isn't an appearance he is
6 judging himself. So, could I request that Mr. Harrington
7 at least temporarily step down while we discuss this
8 matter?

9 CHAIRMAN IGNATIUS: You can make that
10 request. I'll deny it.

11 MR. DANNIS: Okay.

12 CHAIRMAN IGNATIUS: Other comments?

13 MR. DANNIS: Oh, yes. I have probably
14 five minutes of comments.

15 CHAIRMAN IGNATIUS: That's fine.

16 MR. DANNIS: Okay.

17 CHAIRMAN IGNATIUS: I'm not trying to
18 cut you off.

19 MR. DANNIS: Sure. So, for the reasons
20 stated, we believe that Mr. Harrington's pension clearly
21 constitutes a private interest within the meaning of the
22 conflict rules, a financial interest in PSNH and Northeast
23 Utilities, that may influence Commissioner Harrington and
24 that therefore disqualifies him from sitting as a

1 Commissioner on any matter relating to Northeast Utilities
2 or its subsidiaries or affiliates.

3 We would highlight just four points as
4 the key elements of this argument. And, with respect to
5 the points made by counsel for PSNH, we understand that
6 some may feel this is a settled area of law, we believe
7 the opinions and advice we've read so far are flatly in
8 error. They fail to account for the financial realities
9 of the situation, and also are analytically illogical.

10 Here are the four reasons why we believe that the --
11 support our position that the pension is a disqualifying
12 private interest.

13 First, Mr. Harrington's pension,
14 although it is payable in the future, is a current
15 financial interest. In financial terms, owning a vested
16 pension payable in the future is analogous to owning a
17 corporate bond with deferred interest payments. In each
18 case, one is exposed to the credit of the company. One
19 has a right, which is a vested right, a current ownership
20 right, to a stream of future payments. The pension is a
21 current financial interest just like owning a bond. So,
22 what I would ask you to do, as you think about this, is
23 say "would we be having the same discussion we're having
24 if we were looking at Mr. Harrington's ownership of a

1 portfolio of a million dollars of bonds, which would
2 roughly be equivalent to the return on the pension, as we
3 would have as regards the pension itself?" We will argue
4 these are financially equal.

5 Second, Mr. Harrington's pension, just
6 like a corporate bond, is materially exposed to the credit
7 risk of Northeast Utilities. The existing opinions on
8 this matter we think again are simply in error. Future
9 payments on a pension depend materially on the credit
10 quality of the sponsoring company, here, for
11 Mr. Harrington's disclosure, Northeast Utilities.
12 Securities set aside in a pension plan go up and down in
13 value. We all know, from financial crises, that moves can
14 be very, very large and very, very fast. Portfolios can
15 diminish extremely, extremely quickly, and in large
16 amounts.

17 The sponsoring company in this case,
18 Northeast Utilities, is on the hook for keeping the
19 pensions funded. They are on the hook as a matter of law.
20 U.S. tax and pension law requires minimum annual
21 contributions to pensions that are underfunded. Northeast
22 Utilities' own pension plan, and I refer to Section 10.1,
23 contains an undertaking by Northeast Utilities to make
24 contributions to fund the plan.

1 Northeast Utilities' credit is
2 absolutely critical here, given the materially poor
3 financial status of this pension plan. I would refer the
4 Commission to Note 10A to the financials of Northeast
5 Utilities filed in the 10-K Annual Report to the
6 Securities & Exchange Commission for the year 2011. Note
7 10A has details on Northeast Utilities' pension. As
8 you'll see, Northeast Utilities' pension plan was
9 underfunded by more than \$1 billion as of December 31st,
10 2011, more than \$1 billion.

11 CHAIRMAN IGNATIUS: Mr. Dannis, I don't
12 mean to interrupt you.

13 MR. DANNIS: Yes.

14 CHAIRMAN IGNATIUS: But I'm curious, is
15 that part of in the packet that you submitted? Is what
16 you're citing contained in the materials here?

17 MR. DANNIS: Yes, it is. It's in the
18 10-K excerpts for 2011.

19 CHAIRMAN IGNATIUS: All right. That's
20 the same time period you're talking about?

21 MR. DANNIS: Yes.

22 CHAIRMAN IGNATIUS: Thank you. Please
23 continue.

24 MR. DANNIS: Northeast Utilities'

1 pension funding ratio, at December 31st, 2011, is
2 65 percent. For those of you who follow the New Hampshire
3 Retirement Plan, you'll know that 65 percent is a very
4 poor number. In general industry practice, 80 percent is
5 viewed as the minimum funding standard for a pension plan
6 in sound financial status. Goldman Sachs, in a report
7 that we attached to our filing, highlights that Northeast
8 Utilities' pension plan is among the worst in the U.S.
9 among large companies, in terms of the materiality of the
10 underfunding to the fundamentals of the business.

11 Northeast Utilities, in its own pension
12 plan, I refer you to Section 14.1, and also to Northeast
13 Utilities' Form 5500 for 2010 filed with the Department of
14 Labor, in both those documents, Northeast Utilities
15 expressly reserves the right to terminate its pension
16 plan, when the pension plan may be underfunded, and lays
17 out a tiering of payment rights that makes it clear that
18 even the holder of a vested pension may not be paid in
19 full by Northeast Utilities if the pension plan is
20 terminated. In a word, if Northeast Utilities suffers
21 financial declines, Mr. Harrington's pension may not be
22 funded by the Company. Mr. Harrington's pension, his
23 financial interest, is thus materially exposed to
24 Northeast Utilities' credit, just as if we were talking

1 about a portfolio of bonds.

2 Third, because Northeast Utilities is a
3 holding company, with no business operations on its own,
4 Mr. Harrington's pension is directly exposed to the
5 financial performance of PSNH and other subsidiaries in
6 the group. Northeast Utilities depends entirely on the
7 performance of and dividends from its subsidiaries for its
8 credit quality.

9 In 2011, PSNH accounted for 23 percent
10 of Northeast Utilities' operating income, and 25 percent
11 of its net income. In financial terms, in deed, in
12 man-on-the-street terms, this is highly material. In
13 2011, PSNH paid a dividend of \$58.8 million to Northeast
14 Utilities. And, look at the pension contributions made to
15 this underfunded pension plan in 2011. In 2011, Northeast
16 Utilities contributed a total of \$143.6 million to its
17 underfunded pension plan. Of that amount, \$112.6 million,
18 78 percent, came from PSNH.

19 CHAIRMAN IGNATIUS: Mr. Dannis, the
20 source of that information, is that also in the --

21 MR. DANNIS: Note 10A of the financial
22 statements.

23 CHAIRMAN IGNATIUS: Thanks.

24 MR. DANNIS: On these facts, we think it

1 is beyond any serious argument that a pension holder, such
2 as Mr. Harrington, is materially exposed to the credit
3 quality of Northeast Utilities and its subsidiary, PSNH.

4 The fourth point: The financial
5 performance of PSNH, which, as we've just demonstrated, is
6 a driver of the credit quality of the parent company, and
7 thus a driver of Mr. Harrington's investment experience in
8 his pension, PSNH's financial performance, of course,
9 depends fundamentally on the regulatory decisions made by
10 the Public Utilities Commission. Northeast Utilities
11 itself admits in its 10-Ks filed with the U.S. Securities
12 & Exchange Commission that PUC regulatory matters relating
13 to PSNH, like this scrubber proceeding or like matters
14 relating to customer migration, are material to the
15 Company. The scrubber proceeding is highly material to
16 Northeast Utilities and PSNH. PSNH seeks to add
17 \$300 million to its rate base. \$300 million equals
18 75 percent of Northeast Utilities' 2011 consolidated net
19 income, 75 percent, 400 percent, four times PSNH's 2011
20 net income, and 500 percent, or five times PSNH's dividend
21 to Northeast Utilities last year of \$59 million. There
22 can be again no serious argument that this proceeding is
23 not material to PSNH, which is, in turn, material to NU,
24 which, in turn, is material to the investment experience

1 of the pension holder.

2 In sum, Mr. Harrington has a present
3 financial interest in Northeast Utilities and PSNH based
4 on his pension. His investment expectations for his
5 pension depend materially on PSNH's performance. This, in
6 turn, depends materially on the PUC's regulatory
7 decisions. Mr. Harrington's pension interest is therefore
8 in direct conflict with his role as PUC Commissioner on
9 matters relating to PSNH or its affiliates.

10 Let me close by referring to the
11 so-called settled law of pensions and conflicts. We
12 understand that in the past the PUC's General Counsel and
13 the Attorney General's Office have issued determinations
14 that pensions from utilities are not disqualifying
15 interests or conflicts of interest. With all due respect,
16 we believe these determinations simply misunderstand or do
17 not take into account the financial realities we just
18 spoke about. They also make five clear and obvious
19 analytical mistakes.

20 First, the opinions refer to the fact
21 that pensions are defined benefit plans and involve a
22 fixed stream of future payments, and somehow say that this
23 makes it all okay. It's a fixed stream of payments, so
24 how can it be a financial conflict? Again, there's simply

1 no logic to that. If that were the test, i.e., an
2 investment like a stock can be a conflict, because it's
3 variable, but an investment in a fixed stream is not
4 because it's a fixed stream. Well, by that token, you
5 would say "anybody who sits on the PUC could own an
6 unlimited portfolio of PSNH bonds." That's just
7 ridiculous.

8 In both cases, pensions and bonds, the
9 fact that it's a fixed stream of payments means nothing
10 more than you're exposed as a credit matter to the
11 sponsor's ability to make that fixed stream of payments.

12 Second, the opinions rely on the fact
13 that pension plans have some assets set aside in a plan to
14 pay the pensions. Again, that's just irrelevant. The
15 pension plan at issue here, Northeast Utilities, as we've
16 disclosed and described, is materially and hugely
17 underfunded. Markets move. At the end of the day, the
18 ability of Mr. Harrington to receive his pension from
19 Northeast Utilities depends on the ability of NU to top up
20 underfundings on this plan. With a billion dollars
21 underfunding, and with NU's reliance on PSNH for such a
22 large part of funding those pension shortfalls, it's
23 obvious that the credit of these companies is involved,
24 and the assets in the pension plan are not a critical

1 factor.

2 Third, the opinions rely on the fact
3 that pension plans have a plan administrator. They seem
4 to suggest that, because there's a plan administrator,
5 "well, all this is run by somebody else, and the companies
6 are not involved." Again, with all due respect, that's
7 ridiculous. A bond trust -- a bond issue has a bond
8 trust. An administrator is an administrator, a trustee is
9 a trustee. Their credit is simply not involved. It's
10 just irrelevant.

11 Fourth, the assertion in the opinions --
12 the assertions made in the opinions that, for these
13 reasons, and others that we can't understand, pension
14 payments are somehow not dependent on the credit quality
15 or the performance of the company sponsoring the plan. We
16 would respectfully submit that's just flat wrong for the
17 reasons we described. Obviously, the credit of Northeast
18 Utilities and PSNH is highly material to whether
19 Mr. Harrington receives his pension payments from the
20 plan.

21 Finally, there is an odd reference in
22 one of the opinions to a PBGC guarantee. PBGC guarantees
23 are highly limited in scope. They have pages upon pages
24 of definitional terms and limitations on timing, amounts,

1 and all sorts of other factors. There are strict coverage
2 limits that can haircut pension holders right and left.
3 Without a clear demonstration that there is a full PBGC
4 guarantee based on the explicit terms of a pension, a
5 reference to the PBGC simply is meaningless.

6 CHAIRMAN IGNATIUS: Can you help me?

7 MR. DANNIS: Sure.

8 CHAIRMAN IGNATIUS: I don't even know
9 what those letters stand for.

10 MR. DANNIS: Oh, I'm sorry. "Pension
11 Benefit Guarantee Corporation". It's a federal agency
12 that was set up to guarantee, not our 401ks, but our
13 defined benefit pension plans. And, in one of the
14 opinions, I believe in an opinion by Ms. Ross, there was a
15 reference to a "PBGC guarantee". And, so, the argument
16 would appear to have been at least thought about that, if
17 a PBGC guarantees a pension, then there is no credit
18 quality issue from the issuing company. Our position is
19 that you can't make that argument responsibly without
20 first demonstrating that the pension itself is, in fact,
21 per its terms, fully guaranteed by the PBGC, subject to
22 all the exclusions and limitations. And, in any event,
23 the PBGC has a multimillion dollar deficit. As a
24 professional investor, I would not rely heavily on the

1 PBGC going forward.

2 I think counsel for PSNH also mentioned
3 an advisory opinion involving a judicial -- a judicial
4 committee. I'm not sure what the exact name of it is, but
5 I did read the advice. That opinion was to the fact that
6 a lawyer or a judge, I'm sorry, a judge would not be
7 disqualified because she receives a pension from a law
8 firm who appears before her. Well, there's a vast
9 difference between a law firm, who is an agent of a party
10 in interest and a party in interest. A law firm is simply
11 there to provide legal advice. In this case, the pension
12 conflict involves the financial results of companies who
13 are here before the Commission for purposes of regulation.
14 So, again, with all due respect, I find that citation to
15 be irrelevant.

16 For all these reasons, we would
17 respectfully request that Mr. Harrington be disqualified
18 from sitting in this proceeding.

19 CHAIRMAN IGNATIUS: Thank you very much.
20 PSNH, response?

21 MS. KNOWLTON: Thank you, Commissioner
22 Ignatius. If there's others that are in -- if there's
23 anyone that's in support of the Dannises' Motion for
24 Disqualification, I'd like to ask whether it's possible

1 for those to state their position, so that the Company can
2 respond to any and all comments that support a Motion for
3 Disqualification?

4 CHAIRMAN IGNATIUS: All right. That's
5 probably a good idea. Are there others that are in
6 support of the motion? And, we can group those together,
7 and then take those in opposition together. Mr. Peress.

8 MR. PERESS: Madam Chair, Conservation
9 Law Foundation would like to be heard on this matter. Our
10 perspective is that the issues raised by the Dannises
11 really do not have any bearing on whether or not
12 Mr. Harrington will render an objective decision. I have
13 -- conservation Law Foundation has had the pleasure of
14 working with Mr. Harrington in dozens, if not hundreds of
15 NEPOOL meetings. We supported his appointment to this
16 Commission.

17 That being said, the standard is a
18 precautionary standard. It's one that errs on the side of
19 caution. And, in fact, under the Commission's rules --
20 I'm sorry, under the statutes governing this Commission,
21 RSA 363:12, VII, a Commissioner must "disqualify himself
22 from proceedings in which his impartiality might be
23 reasonably questioned." That's not to suggest that we or
24 anyone else thinks that there will be an issue with

1 whether or not Mr. Harrington will render an impartial
2 decision. The question is whether his "impartiality can
3 reasonably be questioned" as a matter of statute.

4 And, for better or for worse, in a
5 matter of this magnitude, we believe that the Company and
6 the ratepayers require an enduring decision that
7 ratepayers, the citizens of New Hampshire, and the parties
8 can be assured was made with the appropriate statutory
9 standards and with the integrity that's required of all
10 governing officials.

11 Mr. Dannis has brought to light facts
12 that suggest that there is a reasonable basis for
13 questioning Commissioner Harrington's impartiality. The
14 Conservation Law Foundation thinks that's unfortunate, but
15 that's the reality.

16 Let me just say that, and indeed the
17 Conservation Law Foundation did materially assist Mr.
18 Dannis in preparing this motion. Mr. Dannis is not my
19 client. I think it's obvious -- for our client, it's
20 obvious that he understands the law and can eloquently
21 represent himself. So, thank you.

22 CHAIRMAN IGNATIUS: Thank you. Anyone
23 else who is in support of the motion? Ms. Hollenberg.

24 MS. HOLLENBERG: Thank you. The OCA

1 concurs with the comments just made by CLF and we support
2 the motion.

3 CHAIRMAN IGNATIUS: All right. Mr.
4 Fabish.

5 MR. FABISH: Sure. I guess the Sierra
6 Club would like to take the position of not necessarily
7 supporting the motion, but supporting the seriousness of
8 the motion and the importance of investigating it. And, I
9 sort of echo what CLF has said. In that, I mean
10 everything I've heard is that Commissioner Harrington
11 would execute his office in general very well. But,
12 again, these are serious issues that ratepayer Dannis has
13 raised, and I think that they deserve a full airing, just
14 to protect the integrity of the process.

15 CHAIRMAN IGNATIUS: Thank you. If there
16 are no other parties in support of the motion, are there
17 parties in opposition?

18 MS. KNOWLTON: The Company is in
19 opposition. And, if I may provide the Company's position.
20 First, I'd like to point out that I think this is a prime
21 example of the disruption to the orderly conduct of this
22 proceeding that is occurring as a result of a very late
23 petition to intervene. Again, we have rules for a reason.
24 And, apparently, this has been an issue that the Dannises

1 have been concerned about for some time. And, this was a
2 very lengthy pleading that was filed. I can't imagine
3 that it was thrown together at the last minute. We got it
4 after close of business on Friday. I certainly have not
5 examined every aspect of it or its attachments, and, you
6 know, don't feel that I have a full opportunity to respond
7 to it, but I will share some preliminary thoughts.

8 This has been an issue that's already
9 been decided at the Executive Council, which is actually
10 one of many venues that have decided this issue. The
11 Dannises raised this issue, apparently, in many forums,
12 including the Executive Council, the Governor and Council
13 have taken action. Commissioner Harrington's nomination
14 was confirmed. He's sitting here today. Our Attorney
15 General's Office has issued an opinion, none of which was
16 done lightly.

17 This is a similar issue that's been
18 dealt with at the Air Resources Council, regarding the
19 presiding officer Donald there, who also is a pension
20 holder. It's been considered in another context by our
21 Supreme Court Advisory Committee on Judicial Ethics, in
22 Docket Number 2009-ACJE-04, when the Advisory Committee
23 looked at Justice Conboy's receipt of a pension from the
24 Mack law firm, and whether that created any kind of

1 conflict of interest for attorneys from that firm that
2 were appearing before the Supreme Court. And, as a former
3 equity partner of that law firm myself, I don't really see
4 any difference in the issue that was raised in Justice
5 Conboy's case that is being raised here. The McLane law
6 firm has a pension, and its employees participate in that
7 pension. And, whether the firm has the funds to put
8 towards that pension depends on the firm's financial
9 success. And, that is exactly the argument that
10 Mr. Dannis is making here.

11 I also think that Mr. Dannis is seeking
12 to convert this agency into an agency that is going to
13 make some determination and evaluation of the financial
14 strength of the Northeast Utilities' pension system. And,
15 that certainly is well outside the ambit of this agency.
16 As Mr. Dannis acknowledged, there is a federal agency,
17 which is called the "Pension Benefit Guarantee
18 Corporation", which has responsibilities to guarantee
19 pensions. And, I don't think that it would be appropriate
20 for this Commission to engage in the type of examination
21 of the NU pension that Mr. Dannis seeks, to match it up
22 against what the PBGC does. We have a PBGC for a reason.
23 And, I think this Commission can rely on the expertise of
24 that agency to ensure that all the pension laws are

1 complied with.

2 Mr. Dannises' motion -- or, Mr. and
3 Mrs. Dannis's motion would have an impact that would be
4 very extreme. They're asking that Commissioner Harrington
5 not sit on any PSNH case. And, while he thinks that the
6 decisions that have been made in the past are wrong, I
7 would note that the Commission's former Chairman was in
8 this exact same position, and presided over many, many
9 cases. We sit here in a room named after him. And, he
10 presided over many, many cases involving this company.

11 And, so, in conclusion, I want to
12 reserve the right to provide further information to the
13 Commission on this issue, if the Company deems it
14 appropriate. But, second, ask that the motion be denied.
15 I think the Commission has lots of law that's well settled
16 in this area that it can rely on to support that
17 conclusion.

18 And, again, I just also want to point
19 out that, you know, the Dannises are not parties, and, you
20 know, yet here we are and hearing a motion from them,
21 which, you know, is I think quite disruptive to our
22 proceeding. And, again, in a situation where this is
23 something that is not a new thought that happened on
24 Thursday or Friday afternoon, it's been something that's

1 been lurking out there, and considered and reviewed and
2 rejected repeatedly. So, I would ask that the Commission
3 do the same.

4 CHAIRMAN IGNATIUS: Thank you. Any
5 other? Does Staff have a position?

6 MS. AMIDON: No, we do not.

7 CHAIRMAN IGNATIUS: All right. You had
8 already stated you did not. Thank you. Mr. Dannis, as
9 the moving party, if there's anything additional that you
10 feel needs to be addressed, please do so. But --

11 MR. DANNIS: Just very quickly, to
12 address the points just made by counsel for PSNH. Number
13 one, I don't believe this is a disruption. I believe this
14 is a critically important discussion and decision to
15 ensure that the Commission act with the integrity that the
16 public and ratepayers have the right to expect. Second,
17 counsel for PSNH suggests that we have been after this
18 issue for a really long time. We have been after this
19 issue from the time that Mr. Harrington was nominated to
20 the PUC. That means we have had only one bite at the
21 apple, which is the Executive Council confirmation. This
22 is -- that was a political decision. We provided you with
23 a copy of the memo we provided to them. This is a very
24 different decision. This is a conflicts decision by the

1 PUC as a quasi-judicial agency. This is not a political
2 decision. It is a decision that requires an investigation
3 and analysis and application of the legal standards.

4 Third, again, counsel for PSNH has
5 referred to various matters she believes are precedents;
6 the AG's opinion, ARC, the Judicial Ethics memo. For the
7 reasons we stated, and, again, we would love the
8 opportunity to go into this in more detail at a later
9 point, if that's appropriate. We believe it is clear
10 those are not applicable here. If you look at any of the
11 opinions that were provided, there has been zero analysis
12 of the financial realities of the pension, zero analysis
13 of the credit exposure a pension holder has to the
14 sponsoring company. That is the fundamental point here,
15 fundamental point.

16 Finally, counsel suggests that -- I'm
17 sorry, second to finally, that the PBGC can be relied
18 upon. Procedurally, that makes no sense. The PBGC does
19 not make determinations whether a PUC Commissioner has a
20 conflict. You could call up the PUC and ask for their
21 views and -- PBGC, excuse me, and they would say "it
22 simply is not within our permit." They are a guarantor of
23 certain pensions to a certain extent. This is a matter
24 squarely before the PUC. If a person owns a current

1 financial interest that is exposed to the credit of a
2 utility regulated by the PUC, is there or is there not a
3 conflict?

4 And, now finally, reference has been
5 made by PSNH's counsel to two prior cases. I would
6 respectfully submit, Sandy and I would respectfully submit
7 that two wrongs do not make a right. We have read those
8 prior cases, we have read the ARC proceedings, we have
9 read the opinions. We believe, to state again, there has
10 simply not been an analytically proper analysis of the
11 fundamental point here, which is "does a conflict exist
12 because a pension holder has material exposure to the
13 credit quality of a company regulated by the Commission?"
14 Thank you.

15 CHAIRMAN IGNATIUS: Thank you. We're
16 going to take a brief recess to discuss all of this. And,
17 I can't predict what time, so I won't even guess at one,
18 but we'll try to be back to you as soon as we can. Thank
19 you.

20 (Whereupon a recess was taken at 11:00
21 a.m. and the hearing resumed at 11:21
22 a.m.)

23 CHAIRMAN IGNATIUS: We are back. We are
24 prepared to act on the Motion to Intervene. And, we'll

1 grant the Dannises' Motion to Intervene. There have been
2 a number of cases in other matters before the Commission
3 where individual ratepayers sought intervention and were
4 granted the ability to intervene. And, we have not been
5 given a reason today to change from that approach. So, we
6 will allow intervention. But we do note, as does Mr.
7 Dannis, that coming in late means that you take the
8 proceeding as it stands. There is not -- it would not be
9 appropriate today to say "well, I haven't had a chance to
10 prepare for witnesses or there's discovery I would like on
11 temporary rates", that opportunity is gone. But, going
12 forward, those opportunities are present on the permanent
13 rate proceeding. On -- yes, Ms. Knowlton?

14 MS. KNOWLTON: Might I, before we move
15 on, if we're about to move onto another topic, might I ask
16 the Commission, given that it's granted the intervention
17 status, to require that the Dannises coordinate their
18 participation with the OCA? I think that's consistent
19 with what the Commission has done with other similar
20 interests in this docket, CLF and Sierra Club, NEPGA and
21 TransCanada. And, I think that same kind of coordination
22 would be appropriate here, in terms of discovery and
23 cross-examination.

24 CHAIRMAN IGNATIUS: I'm not going to

1 require that. I think, to the extent that that is
2 possible to do today, and during a break for the two
3 entities to talk, I think that's a good idea for
4 efficiency generally. But, I think, to make a sort of
5 formal requirement that they do so, I'm not going to make
6 that request.

7 On the Motion to Disqualify, we do not
8 feel prepared to respond to it today, cannot yet make a
9 ruling on it. We need to evaluate the materials that have
10 been submitted, and want to give parties the opportunity
11 to respond, if they so choose. Our rules allow for a ten
12 day period of time to respond to motions. And, so,
13 counting from the Friday afternoon filing, that would mean
14 the close of business next Monday, the 19th of March for
15 any responses. So, we will take that Motion to Disqualify
16 under advisement.

17 That then leaves what we do today. It
18 is my firm belief that we need to keep moving. And, that
19 it would not be appropriate to send everyone home today
20 and await further pleadings and a ruling on the Motion to
21 Disqualify. So, we will continue with the temporary rate
22 hearing that was scheduled for today. I remind everyone
23 that temporary rates are fully reconcilable. And, if
24 ultimately there are other determinations that would

1 require any change to the temporary rate results that
2 would come from this hearing, that can be done, because
3 it's really an accounting mechanism that's in place
4 through temporary rates. So, this is not a final issue on
5 the merits of the petition overall, it's just one early
6 proceeding in the process.

7 And, so, we will go forward today.
8 After we have had a chance to fully digest the Motion to
9 Disqualify and any responses, we will issue a decision on
10 that. And, we will take it -- take it as it comes after
11 we've had a chance to do that.

12 So, in terms of the proceedings today,
13 is it the Company's intention to call Mr. Baumann and
14 Mr. Smagula as a panel or separately?

15 MS. KNOWLTON: Yes. The Company would
16 call Mr. Baumann and Mr. Smagula as a panel. And, we have
17 three exhibits that we would like to mark for
18 identification this morning.

19 CHAIRMAN IGNATIUS: All right.

20 MS. KNOWLTON: The first is the
21 October 14th, 2011 Testimony of Robert A. Baumann and
22 William H. Smagula, PE. That has three attachments that
23 was filed, along with the Company's Motion for Temporary
24 Rates. We propose to mark for identification as "Exhibit

1 2" the November 10th, 2011 Progress Report that was filed
2 in DE 08-103. And, we propose for identification as
3 "Exhibit 3" the November 18th, 2011 Progress Report
4 Addendum that was also filed in DE 08-103.

5 CHAIRMAN IGNATIUS: Any objection to any
6 of that being marked for identification?

7 (No verbal response)

8 CHAIRMAN IGNATIUS: Seeing none. Is
9 that right that we're at 1, 2, and 3?

10 MS. DENO: Yes.

11 CHAIRMAN IGNATIUS: All right. Thank
12 you.

13 (The documents, as described, were
14 herewith marked as **Exhibits 1, 2, and 3,**
15 respectively, for identification.)

16 MS. KNOWLTON: With that, the Company
17 calls Robert A. Baumann and William H. Smagula.

18 MR. PATCH: Chairman Ignatius, while
19 they're coming to the stand, could I just ask whether the
20 Company brought copies of the 08-103 filings? They
21 haven't been filed in this docket. I don't know if they
22 copies with them.

23 MS. KNOWLTON: Sure. They were. I have
24 copies. They were both filed as attachments to the motion

1 for establishment of temporary rates. And, I'm glad to
2 give you copies.

3 CHAIRMAN IGNATIUS: If you look at the
4 November 18th, 2011 submission, I believe those -- those
5 documents were made part of it. So, if you don't have it
6 in your file, we'll make sure you get it.

7 (Whereupon **Robert A. Baumann** and
8 **William H. Smagula** were duly sworn by
9 the Court Reporter.)

10 CHAIRMAN IGNATIUS: All right. We need
11 just one moment to get papers together.

12 (Short pause.)

13 CHAIRMAN IGNATIUS: All right. I think
14 we have our papers ready. Thank you.

15 **ROBERT A. BAUMANN, SWORN**

16 **WILLIAM H. SMAGULA, SWORN**

17 **DIRECT EXAMINATION**

18 BY MS. KNOWLTON:

19 Q. Mr. Baumann, would you please state your full name for
20 the record.

21 A. (Baumann) My name is Robert Baumann.

22 Q. By whom are you employed?

23 A. (Baumann) I am employed by Northeast Utilities Service
24 Company.

1 Q. What is your position with that company?

2 A. (Baumann) My position is Director of Revenue Regulation
3 and Load Resources.

4 Q. And, would you describe your job duties please.

5 A. (Baumann) My job duties are generally regulatory in
6 nature, in that I am responsible for all the revenue
7 requirement calculations that are put forth for Public
8 Service Company of New Hampshire, as well as revenue
9 requirement calculations for our subsidiaries,
10 Connecticut Light & Power and Western Massachusetts
11 Electric Company.

12 Q. What are your educational qualifications?

13 A. (Baumann) I have a Bachelor's degree in Economics and a
14 Master's -- a Master's degree with a specialization in
15 Accounting. And, I am a Certified Public Accountant in
16 the State of Connecticut.

17 Q. Mr. Smagula, I'm going to ask you the same questions.
18 Would you please state your full name for the record.

19 A. (Smagula) My name is William Smagula.

20 Q. By whom are you employed?

21 A. (Smagula) I am employed by Public Service Company of
22 New Hampshire.

23 Q. And, make sure you can keep your voice up, so we can
24 hear.

1 A. (Smagula) Yes.

2 Q. What is your position with Public Service Company?

3 A. (Smagula) My position is Director of Generation for
4 PSNH.

5 Q. What do you -- what does your job in that capacity
6 entail?

7 A. (Smagula) I am responsible for the overall
8 operations/maintenance of our generating facilities.
9 And, in that, we provide customers with the supply of
10 energy. And, we do that with our facilities in
11 compliance with all state, local, and federal
12 regulations.

13 Q. Please state what your educational qualifications are
14 for that position.

15 A. (Smagula) I have a Bachelor of Science degree in
16 Mechanical Engineering from the University of New
17 Hampshire and a Master's of Science from Northeastern
18 University.

19 Q. Mr. Baumann, I'll start with you. We marked for
20 identification as "Exhibit 1" testimony, joint
21 testimony by you and Mr. Smagula that was dated
22 October 14th, 2011. Do you have that in front of you?

23 A. (Baumann) Yes.

24 A. (Smagula) Yes.

1 Q. Are you familiar with this testimony?

2 A. (Baumann) Yes, I am.

3 A. (Smagula) Yes.

4 Q. Was that prepared by you or under your direction?

5 A. (Baumann) It was prepared by me, generally, yes.

6 Q. Do you have any corrections or updates to it?

7 A. (Baumann) No.

8 Q. And, am I correct that this testimony has three
9 attachments to it?

10 A. (Baumann) Yes, I believe it does.

11 Q. Would you identify for the record what those
12 attachments are.

13 A. (Baumann) I believe the first attachment -- well, the
14 attachment to my testimony has supporting schedules
15 marked as "Attachment RAB-5", and it's a calculation of
16 a Energy Service rate, including scrubber costs.

17 Q. And, that was marked "RAB-5" because it was originally
18 filed in Docket DE 11-215, the Energy Service docket?

19 A. (Baumann) That's correct.

20 Q. Okay. And, what have you included as Attachment 2 to
21 this testimony?

22 A. (Baumann) As Attachment 2?

23 Q. Attachment 2 to this testimony. I believe, if you
24 look, the next attachment is RAB-6, which you included

1 as "Attachment 2" to your October 14th testimony?

2 A. (Baumann) Yes.

3 Q. Would you identify what that is please.

4 A. (Baumann) RAB-6 attachment is a summary of Merrimack
5 scrubber costs, and the impact of those costs,
6 specifically costs associated with O&M, depreciation,
7 property taxes, return. It's supportive of Attachment
8 RAB-5 that has the total costs in it.

9 Q. Am I correct that Attachment 3 to this testimony is
10 your affidavit?

11 A. (Baumann) That would be the third attachment, yes.

12 Q. Thank you. And, if I were ask you the questions that
13 are contained in this testimony today, would your
14 answers be the same?

15 A. (Baumann) Yes.

16 Q. Mr. Smagula, do you have before you what's been marked
17 for identification as "Exhibit 1", your joint
18 testimony?

19 A. (Smagula) I do, yes.

20 Q. And, are you familiar with this testimony?

21 A. (Smagula) I am, yes.

22 Q. And, was it prepared, the portion that relates to you,
23 was it prepared by you or under your direction?

24 A. (Smagula) It was prepared both by me, as well as with

1 some assistance under my direction.

2 Q. Do you have any corrections or clarifications to your
3 testimony today?

4 A. (Smagula) I do not.

5 Q. Mr. Baumann, --

6 MS. KNOWLTON: Well, let me just ask,
7 Chairman Ignatius. Traditionally, the way that we've
8 proceeded is to do very limited direct examination and
9 make the witnesses available for cross-examination. My
10 assumption is is that that is the Commission's continued
11 preference?

12 CHAIRMAN IGNATIUS: Yes.

13 MS. KNOWLTON: I have one brief question
14 I'd like to ask Mr. Baumann with regard to the testimony
15 that was filed by Staff, by Mr. Mullen.

16 BY MS. KNOWLTON:

17 Q. If he could just, Mr. Baumann, please state, first of
18 all, have you reviewed Mr. Mullen's testimony that was
19 filed in this docket?

20 A. (Baumann) Yes.

21 Q. And, do you have an opinion as to that testimony or a
22 position on it?

23 A. (Baumann) Sure. How about I give you a little overview
24 to introduce, and then talk about Mr. Mullen's

1 testimony?

2 Q. Okay. Thank you.

3 A. (Baumann) Thank you. Commissioner, we're here today
4 because, on September 28th, 2011, the "Scrubber
5 Project", as we've referred to, went into service and
6 was used and useful as of that date. So, today, PSNH
7 is here to support our request for temporary rate
8 relief, beginning April 1st, 2012. And, we -- our
9 initial request for rate relief that would have begun
10 on January 1st has now been delayed, and for reasons
11 that we all are aware of, but -- so, today, we are
12 looking at a proposed rate that PSNH had filed as part
13 of a Tech -- Tech 1 response of 1.58 cents per
14 kilowatt-hour for the scrubber costs. And, I'm kind of
15 drawing a couple lines here so that we know the breadth
16 of the issue. That 1.58 cents per kilowatt-hour really
17 attempted to collect the remaining costs in 2012, April
18 through December, associated with the scrubber, the
19 unrecovered costs for January, February, and March 2012
20 of approximately \$4.1 million. And, it attempted to
21 recover unrecovered costs from 2011 of approximately
22 \$13.1 million. So, the -- and that was requested over
23 a three year amortization. So, you really have three
24 buckets of costs. You have your 2011 under-recovery of

1 13.1, your 2012 quarter number one under recovery of
2 14.1, and the remaining costs for the year.

3 CHAIRMAN IGNATIUS: Can I ask, I think
4 you gave two different numbers. January through
5 March 2012 is "14.1" or "4.1"?

6 WITNESS BAUMANN: It's 14.1.

7 CHAIRMAN IGNATIUS: Thank you.

8 **CONTINUED BY THE WITNESS:**

9 A. (Baumann) So, just to frame it, there's really three
10 blocks of costs embedded in these calculations, which
11 I'm sure we'll get into, for 2011, generally the fourth
12 quarter, and the first quarter 2012, and then the
13 ongoing costs for the remainder of the year.

14 With the exception of the three year
15 amortization of the 2011 costs, we have requested all
16 of those costs in our 1.58 cent rate to be recovered in
17 the calendar year 2012. And, that, in effect, would
18 leave about a little under \$10 million unrecovered at
19 the end of year. And, that 10 million was really
20 associated with the 2011 costs that were being
21 amortized over three years.

22 The testimony of Mr. Mullen recommended
23 an increased level in temporary rates to begin the
24 recovery, without prudence presumption, but to begin

1 the recovery of a portion of all of those costs. And,
2 in effect, his recommendation was a rate of 0.98 cents
3 per kilowatt-hour. So, the spectrum is, you put no
4 costs in rates, which would give you a zero rate on the
5 scrubber, or a possible recommendation of 0.98 cents,
6 or the Company's request for 1.58 cents, for the rates
7 beginning April 1st. We believe that that is
8 consistent with -- the beginning of recovery is
9 consistent with the law that governs the scrubber
10 costs. That that really allows for all prudently
11 incurred costs related to the Scrubber Project.

12 The positive points on Mr. Mullen's
13 testimony: It is an increase to the rates associated
14 with the scrubber that is more graduated in nature than
15 our rate increase, which, from a customer perspective
16 and a rate smoothing perspective, is a benefit. We
17 believe the 0.98 cents is a rate that falls reasonably
18 within the band of recovery options, between zero and
19 1.85 cents [1.58?]. We feel the rate reflects a
20 partial recovery to begin with on a temporary basis of
21 scrubber costs, again, certainly, pending a final
22 review, which we think is positive. And, we believe,
23 in general, the testimony is balanced. It was well
24 presented, and, based on the numbers that he assumed,

1 was accurately presented and calculated.

2 The only concern really that we have is
3 that the lower rate, as recommended by the testimony,
4 Mr. Mullen's testimony, does have less what I'll call
5 the matching of current costs with current recovery.
6 It slows down the process. Albeit in a much more rate
7 smoothing way. So, you vary from the matching concept
8 of recoveries with expenses. But, certainly, the
9 Commission has done that in the past, and we have --
10 and PSNH has recommended in the past that we vary from
11 that concept as well, because of rate stability issues.

12 But, to be clear, our proposal, the 1.58
13 cents, would leave about \$9.8 million, let's say
14 \$10 million still unrecovered in 12/31/2012.

15 Mr. Mullen's proposal would leave about \$31 million
16 unrecovered as of 12/31/2012. They're both very large
17 numbers. Obviously, 31 million is three times the
18 10 million number. And, that would, if Mr. Mullen's
19 proposal was accepted, that would create additional
20 rate strain in the future, which is not the subject of
21 today, *per se*, that would have to be dealt with either
22 as an increase, a one-time increase to future rates in
23 2013, or 2013 over multiple years.

24 But, in general, we are -- we are in

1 support of temporary rate relief. We believe it's
2 appropriate. And, whether you pick our number or
3 Mr. Mullen's number, we believe a significant amount of
4 recovery should begin today. The fact that the current
5 overall ES rate is higher than it -- higher today than
6 it was -- than it is in our filing, there is some room
7 to begin recovery. The ES rate, in effect, drops, and
8 the scrubber rate increases. So, there's a net impact,
9 which is a smoothing effect on rates as well. So, we
10 think the timing is certainly good, when one rate drops
11 and the other rate has to go up, you do have a
12 mitigation of the total rate increase to customers'
13 bills at the time. Thank you.

14 CHAIRMAN IGNATIUS: Thank you.

15 BY MS. KNOWLTON:

16 Q. Before we move to cross-examination, I would like to
17 have Mr. Smagula, please, if you have Exhibits 2 and 3
18 in front of you, Mr. Smagula?

19 A. (Smagula) I do.

20 Q. Would you just identify for the record what those
21 exhibits are?

22 A. (Smagula) Exhibit 2 is a progress report that was
23 issued to the Commission dated November 10th, which
24 provides a summary of the status of the project, from

1 the period of the prior update, presiding year, through
2 November 10th. And, then, the Exhibit 3 is an addendum
3 to that, which is dated November 18th, which provides
4 additional information on the status of the project and
5 the activities of operation of the project, showing
6 that much work had been completed and that the Scrubber
7 Project was operating and performing its intended
8 service.

9 Q. Were those reports prepared by you or under your
10 direction?

11 A. (Smagula) They were prepared by me.

12 MS. KNOWLTON: The witnesses are
13 available for cross-examination.

14 CHAIRMAN IGNATIUS: Thank you. When we
15 have a request that parties coordinate their
16 cross-examination, we'll leave it to you how you -- who
17 wants to go first, between Sierra Club and CLF. And,
18 similarly, I guess NEPGA is not here today, so, Mr. Patch,
19 your coordination will be easier. So, either Mr. Fabish
20 or Mr. Peress, who's taking the lead?

21 MR. PERESS: Thank you, Madam Chair. I
22 guess, at the outset, with respect to questioning of
23 Mr. Smagula, I will take the lead, if I may.

24 **CROSS-EXAMINATION**

1 BY MR. PERESS:

2 Q. Mr. Smagula, are you aware of the requirements of RSA
3 125-O:13 as it relates to the scrubber law, as called
4 the "scrubber law", which says that "The achievement of
5 this requirement is contingent upon obtaining all
6 permits and approvals of federal, state, and local
7 regulatory agencies and bodies"?

8 A. (Smagula) Yes.

9 MS. KNOWLTON: Mr. Peress, and can you,
10 Mr. Smagula, before you answer, would you please identify
11 which section of the law specifically you're referring to?

12 MR. PERESS: Roman 1.

13 MS. KNOWLTON: Of which section? I'm
14 sorry, if you said it and I didn't hear it, I apologize.

15 MR. PERESS: 125-O:13.

16 MS. KNOWLTON: And, Mr. Smagula, if I
17 might, I'd like to approach the bench and give Mr. Smagula
18 a copy of the statutes, so you might have that in front of
19 you.

20 CHAIRMAN IGNATIUS: That's fine.

21 **BY THE WITNESS:**

22 A. (Smagula) I'm familiar generally with the statute, but
23 I am not a student of the text.

24 BY MR. PERESS:

1 Q. Mr. Smagula, does your testimony provide a list of all
2 the necessary permits that PSNH has obtained?

3 A. (Smagula) I believe, in some of the interrogatories,
4 there was a response to that effect. I do not believe
5 it's listed in my testimony.

6 Q. But your testimony does not include that?

7 A. (Smagula) That's correct.

8 Q. Would you say that all necessary permits as are
9 referenced in that foregoing statute that we just
10 discussed would be required for this equipment to be
11 considered useful, in terms of the Commission's "used
12 and useful" test?

13 A. (Smagula) I do.

14 MR. PERESS: I'd like to mark for
15 identification a response, PSNH's response to OCA-01,
16 Question 002. And, I have a number of copies. I don't
17 have like dozens of copies.

18 CHAIRMAN IGNATIUS: Well, do all of the
19 parties have a copy, either in their own materials or
20 copies you've prepared today? Does anyone not have a copy
21 of the information?

22 MS. KNOWLTON: Jonathan, do you have a
23 copy for the witness?

24 MR. PERESS: Oh, yes. They don't --

1 CHAIRMAN IGNATIUS: This will be marked
2 as "Exhibit 4". I'm sorry.

3 MS. DENO: Well, I'm sorry. They
4 premarked one --

5 CHAIRMAN IGNATIUS: We're off the
6 record.

7 (Brief off-the-record discussion
8 ensued.)

9 CHAIRMAN IGNATIUS: So, all right. Back
10 on the record. So, we will mark for identification the
11 response to Data Request OCA-01 as "Exhibit 4". Thank
12 you.

13 MS. DENO: Thank you.

14 (The document, as described, was
15 herewith marked as **Exhibit 4** for
16 identification.)

17 MS. KNOWLTON: To clarify for the
18 record, is it 01-002?

19 MR. PERESS: It is OCA 001-2, that's
20 correct.

21 CHAIRMAN IGNATIUS: Thank you.

22 MR. PERESS: May I continue?

23 CHAIRMAN IGNATIUS: Please do.

24 MR. PERESS: Okay.

1 BY MR. PERESS:

2 Q. Mr. Smagula, can you read for the Commission the last
3 sentence in the question in what's now marked "Exhibit
4 4"?

5 A. (Smagula) Yes. It states "Please identify and provide
6 the status of "all necessary permits and approvals"."

7 Q. And, so, does PSNH's response to this request list all
8 of the necessary permits and approvals?

9 A. (Smagula) Yes.

10 Q. And, does it list all of the permits that you have
11 obtained, that PSNH has obtained to support operations
12 of the Scrubber Project?

13 A. (Smagula) Those are all the permits necessary to
14 support the construction of the -- and the operation of
15 the project, yes.

16 Q. Can you show me which permit in that list allows PSNH
17 to dispose of the scrubber wastewater?

18 A. (Smagula) There are none, there are no agreements
19 listed here that have to do with disposal of
20 wastewater.

21 Q. I'm sorry. Can you rephrase that? I don't believe I
22 asked you about "agreements", I asked you about
23 "permits". Is there a permit in this response that
24 allows you to dispose of wastewater from the scrubber?

1 A. (Smagula) There are no required permits necessary for
2 disposal of wastewater from the scrubber. I believe
3 that was the question.

4 Q. So, how is it that PSNH is disposing of the scrubber
5 wastewater?

6 A. (Smagula) When you have a large industrial or
7 generating facility, there are necessary permits that
8 are required for that facility to be built and to
9 operate. There are many other agreements, purchases,
10 contracts, and other forms of agreements, I guess you
11 could say, that are necessary to operate it and operate
12 it in a functional manner. We have agreements for
13 disposal of waste oil, of asbestos-containing
14 materials, of fluorescent light bulbs, of trash, of
15 metals, of wood, and we have agreements to remove other
16 materials, such as liquid waste. It is not a permit
17 that is required for the operation of this facility.

18 Q. In response to CLF's Motion to Compel, your counsel
19 attached an exhibit, which was an e-mail from counsel
20 to me, I believe it's Exhibit -- it is Attachment C.

21 A. (Smagula) It's Attachment C to what document?

22 Q. To PSNH's -- to PSNH's objection to CLF's Motion to
23 Compel. And, I just want to read you some language
24 from that attachment, and I'd like you to tell me if

[WITNESS PANEL: Baumann|Smagula]

1 you agree with it. It says "We continue to disagree
2 that we have not fully answered OCA 1-2 to the extent
3 that it requested "all necessary approvals and permits"
4 as the terms are used in RSA 125-O:13, I." Do you
5 agree with that statement?

6 A. (Smagula) Would you repeat it please. I don't have it
7 in front of me.

8 Q. Oh, you don't?

9 CHAIRMAN IGNATIUS: And, Mr. Peress,
10 it's a multipage attachment.

11 WITNESS SMAGULA: Yes.

12 CHAIRMAN IGNATIUS: So, where are you?

13 MR. PERESS: It's right on the front
14 page.

15 WITNESS SMAGULA: Which motion is this?

16 MR. PERESS: I have copies of it.

17 WITNESS SMAGULA: I just want to make
18 sure I'm --

19 (Atty. Peress distributing documents.)

20 CHAIRMAN IGNATIUS: Can you help me,
21 because I couldn't find those words on the front page?
22 So, can you --

23 MR. PERESS: It's on Attachment C.

24 CMSR. HARRINGTON: Attachment C, which

1 is an e-mail?

2 MR. PERESS: Yes.

3 CHAIRMAN IGNATIUS: Well, why don't you,
4 Mr. Peress, why don't you sort out your document and let
5 us know. This is -- why don't you reintroduce, and
6 whatever foundation you need for the document you're
7 putting in. It doesn't appear to be attached to the PUC
8 filing, as you said. So, take a moment and figure out the
9 source of that.

10 MR. PERESS: Well, we can ask PSNH,
11 wasn't that Attachment 3?

12 MS. KNOWLTON: Jonathan, in the copy
13 that I have, in my file, actually is a different e-mail.
14 I think this is what was intended to be attached, whether
15 it actually was attached.

16 MR. PERESS: Do you have any objection,
17 counselor, to marking this for --

18 MS. KNOWLTON: No, that's fine.

19 MR. PERESS: I guess it will be
20 "Exhibit 5".

21 CHAIRMAN IGNATIUS: All right. So,
22 Exhibit 5 for identification is an email that, when you've
23 distributed it, let's get clearly identified what it is
24 and where it came from. Mr. Peress, the Clerk needs it

1 and the Commissioners need it.

2 MR. PERESS: It's Attachment 3.

3 CHAIRMAN IGNATIUS: Thank you. So,
4 we'll mark this for identification as "Exhibit 5".

5 (The document, as described, was
6 herewith marked as **Exhibit 5** for
7 identification.)

8 CHAIRMAN IGNATIUS: And, if you can
9 provide some foundation for the document, Mr. Peress.
10 Thank you.

11 BY MR. PERESS:

12 Q. Do you agree with your counsel's statement that, I'm
13 paraphrasing now, that PSNH fully answered OCA 01-002,
14 and now I'm quoting, "to the extent that it requested
15 "all necessary approvals and permits", as those terms
16 are used in RSA 125-O:13, I"?

17 A. (Smagula) Do I agree with that?

18 Q. Yes.

19 A. (Smagula) Yes, I do.

20 MS. KNOWLTON: I'm actually going to
21 object. I'm not sure if the -- the Commission has issued
22 -- CLF filed a Motion to Compel, the Commission has ruled
23 on it, with regard to this question. I don't think that
24 it's really proper for this witness to be asked questions

1 about the sufficiency of the response, when the Commission
2 has indicated its position on this question.

3 CHAIRMAN IGNATIUS: Well, to be clear,
4 the Commission order this morning said "the level of
5 detail being requested in the Motion to Compel was not a
6 reason to delay today, and could be further explored in
7 the permanent rate proceeding, and that the scope of
8 inquiry in a temporary rate proceeding is far more limited
9 than it is in a permanent rate proceeding."

10 Having said that, I think a
11 straightforward question are "is a permit required for
12 wastewater disposal?" is a fair question, and is not the
13 same as "provide every document that has anything to do
14 with wastewater", which is what the Motion to Compel was
15 getting at.

16 MS. KNOWLTON: And, I would agree with
17 that. What I heard Mr. Peress asking about was
18 Mr. Smagula's opinion about the sufficiency of the
19 response. If the question is "is a permit required?",
20 "what's the process?" That's a different issue.

21 MR. PERESS: I thank you for your answer
22 to the question, Mr. Smagula.

23 BY MR. PERESS:

24 Q. In OCA 01-002, you list a number of permits that you

1 obtained from the Town of Bow, is that correct?

2 A. (Smagula) Yes.

3 Q. Have you obtained any permits from other towns relating
4 to the operation of the Scrubber Project?

5 A. (Smagula) Did we obtain any other permits? We have not
6 received any permits that are required for operation of
7 the scrubber, no.

8 Q. That's not what I asked. My question was, have you
9 obtained any permits from any other towns in order to
10 operate the Scrubber Project?

11 A. (Smagula) Yes, we have.

12 Q. And, can you please list what permits, to the best of
13 your knowledge, you've obtained from towns in order to
14 operate the Scrubber Project?

15 A. (Smagula) We have a permit for the -- receiving
16 wastewater from Concord and from Allenstown. But they
17 are not necessary for the operation of the scrubber.
18 In fact, we have never used the Concord permit. We
19 have not brought wastewater to Concord.

20 Q. Have you disposed of wastewater at the Allenstown
21 Public Owned Treatment Works, POTW?

22 A. (Smagula) Yes, we have.

23 Q. But, from your standpoint, that's not necessary to
24 operate the scrubber?

1 A. (Smagula) Those two permits are not necessary, no. We
2 happen to use them, but they are not necessary. We
3 haven't used one of them, in fact.

4 Q. So, you are disposing of wastewater in other places,
5 besides Allenstown?

6 A. (Smagula) I am. And, I guess I question what the
7 relevance of this level of detail is with regard to
8 this temporary rate proceeding?

9 Q. Can you please set forth what other towns you're
10 disposing of wastewater at -- in?

11 A. (Smagula) I guess I'm not sure I understand the
12 relevance of that, with regard to setting these
13 temporary rates.

14 Q. Thank you for your objection. Can you please answer
15 the question?

16 A. (Smagula) Could you repeat it please.

17 Q. Can you please explain what other towns you are
18 disposing the scrubber wastewater in?

19 MS. KNOWLTON: Objection. The Company
20 has provided representative copies of agreements in
21 response to OCA, a supplemental response actually was
22 asked at the tech session in response to OCA 01-002. We
23 can consider marking that. I think the Commission has
24 clearly indicated in its order that was issued today that

1 all of the details of where the waste is going and what
2 those agreements are are for consideration in the
3 permanent phase of the proceeding. So, I don't -- I would
4 ask the Commission, you know, to deny this line of
5 questioning.

6 I think, if Mr. Peress wants to ask
7 about the costs that are included in the proposed
8 temporary rate that relate to the disposal of the scrubber
9 wastewater, that would be a relevant line of inquiry.

10 CHAIRMAN IGNATIUS: Mr. Peress.

11 MR. PERESS: I'll consider that a motion
12 as to the relevance of the question. As I understand it,
13 Public Service Company of New Hampshire is seeking to
14 collect rates pursuant to RSA 125-O:18. RSA 125-O:18 is
15 the provision of the scrubber law which authorizes PSNH to
16 collect from their default energy services the cost of
17 compliance. RSA 125-O:13, which we're discussing, states
18 that "the achievement of this requirement is contingent
19 upon obtaining all necessary permits and approvals from
20 federal, state, and local regulatory agencies and bodies."
21 I'm, therefore, trying to determine whether they have met
22 the requirement of the statute that would allow them to
23 initiate and begin cost recovery under the statute.

24 CHAIRMAN IGNATIUS: So, is it your

1 argument, Mr. Peress, that you believe there are some
2 unauthorized disposal taking place?

3 MR. PERESS: I'm not there yet. What I
4 believe is that they have not made an offer of proof in
5 any manner that demonstrates that they have obtained the
6 permits that are necessary to operate the scrubber, which
7 I think is their burden of production, not mine.

8 CHAIRMAN IGNATIUS: You've heard the
9 Company say it has what it believes are the necessary
10 permits. Do you have some basis to believe that that's an
11 inadequate list?

12 MR. PERESS: Yes, I do. That's exactly
13 what I'm --

14 CHAIRMAN IGNATIUS: And, do you have
15 something to rely on that, in your view, is inadequate?
16 And, if so, let's get to that, rather than parsing over
17 whether it's -- forget it, I won't finish that sentence.
18 I mean, I think we're all in agreement that this is an
19 issue that you can continue to explore. And, in a
20 temporary rate proceeding, one looks at the books and
21 records on file with the Commission and evaluates those,
22 unless there is some reason to doubt the credibility or
23 the reliability of those reports. So, are you suggesting
24 there is something that PSNH has on file with the

1 Commission that the Commission should not take --

2 MR. PERESS: Actually, I'm not. I'm
3 suggesting that PSNH has failed to put something on file
4 with the Commission that demonstrates that the scrubber is
5 used and useful, because they have not obtained all the
6 permits that they need to operate it. Mr. Smagula has
7 already testified that that's a complete list of permits.
8 So, by proceeding with my questioning, I will demonstrate
9 that they have not obtained all the permits that they need
10 to operate the scrubber, unless there's an issue with the
11 voracity of Mr. Smagula's testimony, which I'm not saying
12 there is.

13 CHAIRMAN IGNATIUS: Well, let's try a
14 little farther, and we may revisit this.

15 BY MR. PERESS:

16 Q. Mr. Smagula, are you familiar with the requirements of
17 the EPA's Industrial Pretreatment/Indirect Discharge
18 Program?

19 A. (Smagula) Generally.

20 Q. I'm sorry?

21 A. (Smagula) Generally, I am. Pretreatment and Discharge
22 Program. Could you be more specific.

23 Q. This is not something that you're familiar with?

24 A. (Smagula) The EPA's Pretreatment and Discharge Program?

1 Q. The Clean Water Act's requirements and its Industrial
2 Pretreatment and Indirect Discharge Program?

3 A. (Smagula) If you're referring to the NPDES permit
4 process, I am. But I'm not sure I'm familiar with the
5 description you've provided.

6 Q. So, are you familiar with the program that's
7 implemented by the New Hampshire Department of
8 Environmental Services requiring industrial discharge
9 applications and permits?

10 A. (Smagula) I am -- excuse me. I'm generally familiar
11 with that, yes.

12 Q. And, does that program require you to obtain an
13 approval from the state before sending any wastewater
14 to a municipally owned pretreatment facility?

15 A. (Smagula) It doesn't require me to obtain an approval,
16 no.

17 Q. Who does it require to obtain an approval?

18 A. (Smagula) We have spoken to state POTWs in New
19 Hampshire. And, they, in order for them to review our
20 interests and applications, seek authorization to
21 proceed from the New Hampshire DES. But it is not an
22 approval that PSNH has to obtain. The DES makes a
23 ruling and a determination to support those facilities.
24 PSNH may assist in providing information for that

1 process, but it's nothing that PSNH receives approval
2 of.

3 Q. So, is your facility subject, that is Merrimack and the
4 scrubber subject to the requirement for there to be an
5 indirect discharge approval from the state?

6 A. (Smagula) Not in this case.

7 Q. Not in this case?

8 A. (Smagula) No.

9 Q. So, you have not applied for an indirect discharge
10 approval?

11 A. (Smagula) We may have filed documents with the New
12 Hampshire DES, as I said earlier, in support of our
13 being able to take this wastewater to New Hampshire
14 POTWs, but -- and they provide a ruling and a
15 determination. But I don't -- to my knowledge, it was
16 not issued to PSNH.

17 Q. So, your testimony is, you don't know whether PSNH has
18 made application for an indirect discharge permit?

19 MS. KNOWLTON: Objection. I don't think
20 that was the witness's testimony.

21 MR. PERESS: I'm asking. I'm trying to
22 clarify what --

23 CHAIRMAN IGNATIUS: It seems to me the
24 two of you are asking and answering different questions.

1 So, let's take it step-by-step. On the question of
2 "whether the Department of Environmental Services has
3 issued something to allow the municipal facilities to
4 receive wastewater", is that one of the questions?

5 MR. PERESS: Yes.

6 CHAIRMAN IGNATIUS: And, the answer to
7 that is?

8 WITNESS SMAGULA: I'm sorry, I was
9 making my notes.

10 CHAIRMAN IGNATIUS: Whether the
11 Department of Environmental Services has authorized
12 municipal facilities to receive wastewater permits?

13 WITNESS SMAGULA: I believe they have
14 provided that authorization. And, I think PSNH provided
15 information to them to do that. But, to the best of my
16 knowledge, PSNH did not receive any approval for it to
17 proceed to do anything. But, rather, these approvals --
18 this approval was more so that other facilities could
19 receive the waste. That's my understanding.

20 CHAIRMAN IGNATIUS: All right. Now,
21 before we move to the other question, which was about an
22 indirect discharge approval, Ms. Knowlton, did you have --

23 MS. KNOWLTON: I saw Mr. Peress turning
24 to approach the witness box, and so I was trying to

1 interject myself. If he's going to show something to the
2 witnesses, I'd like to see it first.

3 CHAIRMAN IGNATIUS: Fair enough.

4 Mr. Peress, did you have another question about it, an
5 indirect discharge approval, whether that's something
6 other than what the municipal authorization was that was
7 just discussed?

8 MR. PERESS: I just want to clarify.

9 BY MR. PERESS:

10 Q. So, your testimony is that PSNH is not subject to the
11 permitting requirement of the DES Indirect Discharge
12 Program?

13 A. (Smagula) My testimony is that, to the best of my
14 knowledge, we provided information to the New Hampshire
15 DES so that they could work with the New Hampshire
16 POTWs, and in that way we would approach the POTWs in
17 order to obtain appropriate approvals or agreements to
18 bring wastewater there.

19 MR. PERESS: I'm going to ask the
20 Commission to take administrative notice of the
21 environmental regulations at Part Env-Ws 904, which are
22 the standards for pretreatment of industrial wastewater.

23 CMSR. HARRINGTON: Excuse me. What are
24 you reading that from? What is the document titled?

1 MR. PERESS: The New Hampshire Code of
2 Administrative Rules.

3 CHAIRMAN IGNATIUS: And, this is their
4 rule, WS-904?

5 MR. PERESS: Yes.

6 CHAIRMAN IGNATIUS: Any objection on
7 anyone's part?

8 MS. KNOWLTON: I don't have any
9 objection to making -- to taking administrative notice of
10 the rule. I mean, I'm going to again question the
11 relevancy of this line of questions. The Company, as
12 Mr. Smagula testified, that, in his opinion, the Company
13 has all of the permits that are necessary to operate the
14 facility. That the Company has worked with DES and the
15 POTWs. I don't understand, you know, what -- of what
16 relevance this line of questioning goes to. If DES
17 thought that this plant was not operating in accordance
18 with the law, DES would take the action that was
19 necessary. This Commission is not an environmental
20 regulator, and is not up to the determination of this
21 Commission whether that any necessary permit that should
22 be granted has been granted.

23 CHAIRMAN IGNATIUS: Mr. Peress, we'll
24 need a copy of the section that you have for the clerk's

1 records, if it's not voluminous. And, --

2 MR. PERESS: I'll have to make copies at
3 lunchtime, because I only brought one, I'm sorry.

4 CHAIRMAN IGNATIUS: Thank you. Can we
5 move on?

6 MR. PERESS: Yep.

7 BY MR. PERESS:

8 Q. Are you familiar at all with the provisions of the New
9 Hampshire Code of Administrative Rules, under Env-Ws
10 904.15, entitled "Discharge Permits"?

11 A. (Smagula) No.

12 Q. If I may, I'm going to give him a copy of that rule.
13 It's the only one I have, for him to read into the
14 record.

15 CHAIRMAN IGNATIUS: And, if we can mark
16 it as an exhibit for identification as number "6", I think
17 that would be easier than otherwise.

18 (The document, as described, was
19 herewith marked as **Exhibit 6** for
20 identification.)

21 MS. KNOWLTON: Can I ask in the future,
22 though, that if any counsel that are examining a witness
23 in this proceeding have documents that they're going to
24 show a witness, that they can bring copies in advance for

1 counsel, just as a courtesy, and the Commission.

2 CHAIRMAN IGNATIUS: Certainly.

3 MR. PERESS: My apologies. I was
4 thinking that Mr. Smagula would be familiar with the
5 permit requirements.

6 BY MR. PERESS:

7 Q. Can you read please this section of Env-Ws 904.15,
8 entitled "Discharge Permits", through sub (a) please?

9 A. (Smagula) "Env-Ws 904.15, Discharge Permits. The
10 discharge permit for significant indirect dischargers
11 issued pursuant to Env-Ws 904.14(h) shall contain the
12 following provisions: (a) Indirect discharger name,
13 street address, mailing address, and daytime telephone
14 number."

15 Q. I have a question about that section. Are you the
16 indirect discharger, when you are sending scrubber
17 wastewater to a municipal facility?

18 A. (Smagula) As I indicated a minute ago, I'm not familiar
19 with that document. PSNH conducts much of its very
20 technical work using outside consultants who are
21 experts in certain areas, in order for our ability to
22 perform our work efficiently and effectively. We do
23 have some employees who may be familiar with that, but
24 we do use a consultant on this issue of liquid waste

1 discharge. And, we rely on their expertise and
2 guidance with regard to appropriate procedural matters
3 and applications.

4 Q. So, you don't know whether PSNH has obtained an
5 indirect discharge permit, right?

6 A. (Smagula) I believe I've answered that question. And,
7 I'll repeat it again. That, to the best of my
8 knowledge, we have provided information, documents, and
9 other data to the New Hampshire DES. I am not
10 personally -- I have not personally reviewed all of
11 those documents, nor seen them as they were submitted.
12 I am generally aware of what the purpose of that was.
13 It was in order for the New Hampshire DES to provide --
14 to render an opinion to the New Hampshire POTWs so that
15 they would have the ability to do what they needed to
16 proceed to work with us in order to receive water from
17 our Merrimack Station.

18 Q. Do you know whether PSNH has applied for or been
19 granted the permit required under Env-Ws 904.15, the
20 section that you just read from?

21 A. (Smagula) I know that we have submitted information, I
22 don't know the form or format, to the New Hampshire
23 DES.

24 Q. That's a "yes" or "no" question. So, you don't know?

1 A. (Smagula) No, I don't think it is necessarily a "yes"
2 or "no" answer.

3 CHAIRMAN IGNATIUS: Then, go ahead and
4 answer it, Mr. Smagula.

5 WITNESS SMAGULA: Thank you.

6 **BY THE WITNESS:**

7 A. (Smagula) I understand that we have submitted documents
8 there. I'm assuming, based on a lot of what you're
9 asking, that it was to be considered some type of
10 application. And, I don't know whether it's an
11 application or just a data request. So, I am familiar
12 with the fact that we've done everything we've had to
13 do to appropriately get the approvals that we have in
14 place. Whether -- I don't know what the categorization
15 of authorization or approval that is ultimately
16 granted, nor do I know the title of the piece of paper
17 that was filled out to the state DES. But I do know
18 that the objective of that was to allow the New
19 Hampshire POTWs to proceed with their interests in
20 speaking with us about receiving wastewater.

21 So, implying that I know about it, the
22 answer is "yes". Do I know exactly what the document
23 was that was submitted? I do not.

24 BY MR. PERESS:

1 Q. Do you know whether PSNH is required to obtain an
2 Industrial Pretreatment Program under the Clean Water
3 -- the federal Clean Water Act, which will require PSNH
4 to meet certain effluent limitations, and to obtain
5 such permit from the State of New Hampshire prior to
6 disposing of its wastewater under Clean Water Act
7 Section 307(b) or 40 CFR Part 403?

8 MS. KNOWLTON: Objection, to the extent
9 that that question calls for a legal conclusion.
10 Mr. Smagula is not a lawyer.

11 CHAIRMAN IGNATIUS: Mr. Peress, your
12 response.

13 MR. PERESS: Madam Chair, in my prior
14 life, I managed the environmental permitting for 20 power
15 plants. I can't imagine that somebody who has the
16 responsibility of Mr. Smagula doesn't know whether he
17 needs an indirect discharge permit under the Clean Water
18 Act. I don't think that requires a legal conclusion.
19 It's either, he has the necessary permit or he -- either
20 they obtained the necessary permit or they did not.

21 CHAIRMAN IGNATIUS: Well, why don't you
22 ask him if he has obtained the permit first.

23 MR. PERESS: Okay.

24 BY MR. PERESS:

1 Q. Have you obtained a Clean Water Act -- a permit under
2 the Clean Water Act Industrial Pretreatment Program
3 regulations at 40 CFR 403 prior to disposing of your
4 wastewater?

5 A. (Smagula) I believe I've answered that question. This
6 is an area of expertise that I do not personally have
7 firsthand knowledge of. I do know that we submitted a
8 lot of information on forms to the DES. And, it was my
9 understanding that this effort was to allow approval by
10 the New Hampshire DES so that wastewater could be
11 brought from our facility to New Hampshire POTWs. And,
12 --

13 Q. Do you know -- I'm sorry.

14 A. (Smagula) And, I am -- I have not seen the documents
15 that were submitted, and I have not seen, to the best
16 of my knowledge, I have not seen documents received
17 from the New Hampshire DES.

18 Q. Do you know whether steam electric power plants are a
19 source category that are required to meet pretreatment
20 standards under the Clean Water Act?

21 A. (Smagula) I do not know that answer.

22 Q. Has Public Service Company of New Hampshire obtained a
23 NPDES permit, that is a National Pollution Discharge
24 Elimination System permit under the Clean Water Act to

1 discharge its scrubber wastewater?

2 A. (Smagula) No.

3 Q. Have you made application for such permit?

4 A. (Smagula) We have, yes.

5 Q. And, isn't it true that your plan was to obtain such a
6 permit in order to authorize the discharge of
7 wastewater from -- treated wastewater from the scrubber
8 into the Merrimack River?

9 A. (Smagula) Yes. We had worked -- excuse me, we had
10 worked for well over a year with the New Hampshire DES
11 in their review of our treated scrubber effluent. And,
12 after some rigorous review, and an obligation for us to
13 add additional treatment equipment, the New Hampshire
14 DES allowed us authorization, pending EPA concurrence,
15 to discharge the liquid from our treated effluent from
16 the scrubber. However, the EPA, as part of their NPDES
17 process or by their administering our current NPDES
18 permit, was not -- did not provide us with any permit
19 modifications to discharge the liquid. So, the ability
20 for us to discharge liquid from our scrubber treatment
21 process has not been authorized by the U.S. EPA. And,
22 as a result, we do not discharge any liquid from our
23 scrubber treatment process.

24 Q. So, as a consequence of EPA not approving your

1 discharge, have you had to change your plan for
2 disposing of scrubber wastewater?

3 A. (Smagula) Yes. We have developed alternate means of
4 managing this wastewater from our scrubber process.

5 Q. Did you discuss the design of your wastewater treatment
6 system that you built as part of the Scrubber Project
7 with EPA prior to filing an application for that NPDES
8 permit amendment?

9 MS. KNOWLTON: Objection. Questions
10 relating to the design of the plant are questions that
11 belong in the prudence phase of this proceeding. We're
12 here today on temporary rates. It's a limited inquiry.
13 And, again, to the extent that there's questions that
14 relate to costs associated with wastewater disposal, those
15 would be appropriate. But design of the plant go way
16 beyond the scope of the proceeding today.

17 CHAIRMAN IGNATIUS: I'm inclined to
18 agree with you. But, Mr. Peress, a response?

19 MR. PERESS: My response is that EPA
20 said that they didn't discuss this with them in advance of
21 building the facility, and that's why they have a problem
22 with respect to their authority to discharge wastewater.

23 CHAIRMAN IGNATIUS: Whether that's true
24 or not, how is that relevant to this temporary rate

1 proceeding?

2 MR. PERESS: I don't see how the
3 equipment could be considered "used and useful", if they
4 don't have all the permits they need to operate it.

5 CHAIRMAN IGNATIUS: Well, we're going in
6 circles. The question of the design of the facility,
7 seems to me you're getting into another issue than where
8 we were on whether there is authorization to discharge.
9 And, again, I don't see the relevance for a temporary rate
10 proceeding to whether the --

11 MR. PERESS: Can I confer with counsel
12 for Sierra Club?

13 CHAIRMAN IGNATIUS: Please do. We're
14 off the record.

15 (Brief off-the-record discussion
16 ensued.)

17 CHAIRMAN IGNATIUS: We'll go back on the
18 record.

19 MR. PERESS: I'd like to file a motion
20 verbally?

21 CHAIRMAN IGNATIUS: You may.

22 MR. PERESS: I move for the dismissal of
23 their Petition for Temporary Rates for their failure to
24 demonstrate that the equipment is useful, by virtue of

1 their failure to produce documents saying that they have
2 obtained all required permits as mandated by statute prior
3 to being entitled to collect the costs in rates.

4 CHAIRMAN IGNATIUS: And, before we have
5 responses to that, is there anything that you're basing
6 that on that's come out today or is this the same position
7 that you would have been at from what was prefiled and
8 what you had seen through discovery?

9 MR. PERESS: No. I was trying to give
10 Mr. Smagula the opportunity to demonstrate that they
11 actually had obtained the required permits by listing them
12 in their so-called "truthful and complete answer" to OCA
13 01-002. But, since that so-called "truthful and complete
14 answer" does not contain the necessary permits, and since
15 there's nothing on the record that has been offered by the
16 Company containing the necessary permits, that's the basis
17 for my motion.

18 CHAIRMAN IGNATIUS: Responses? Ms.
19 Knowlton.

20 MS. KNOWLTON: CLF and Sierra Club have
21 not offered any evidence that the Company doesn't have the
22 permits that are necessary. And, I would submit that the
23 Company has filed progress reports that are on file with
24 the Commission in DE 08-103, that regularly detailed the

1 status of the scrubber, including all of the various ins
2 and outs relating to wastewater scrubber discharge. Two
3 of those are included here as exhibits in this docket.
4 So, I think there certainly is sufficient evidence of
5 record.

6 Mr. Smagula has testified how it is that
7 the Company is disposing of scrubber wastewater, in
8 compliance with the law. And, I don't think that there's
9 any question that the Company has this asset in service
10 now, providing benefit to the Company's customers.

11 So, I would ask that the motion be
12 denied.

13 CHAIRMAN IGNATIUS: Any other parties
14 want to speak to that? Don't feel you need to, if nothing
15 comes to you.

16 MR. FABISH: If I could just address
17 that?

18 CHAIRMAN IGNATIUS: Yes, Mr. Fabish.

19 MR. FABISH: I mean, Sierra Club
20 supports CLF's motion. And, to the extent that an
21 indirect discharge permit is a necessary permit for the
22 operation of the facility, and to the extent that
23 testimony today has indicated that PSNH does not have such
24 a permit, I think that that forms the basis -- or, that

1 that supports the motion.

2 MR. PERESS: May I reply?

3 (Chairman Ignatius and Commissioner
4 Harrington conferring.)

5 CHAIRMAN IGNATIUS: I'm going to deny
6 the motion, with the understanding that, at the end of the
7 hearing, if you still feel that there's not sufficient
8 evidence and feel that that's an appropriate motion, you
9 may do so, but not truncate the evidence at this point.

10 So, we are at 12:30. We're going to
11 take a break. If everyone can be back by -- ready to
12 begin at 1:45, that's an hour and 15 minutes, please do
13 so. Thank you.

14 (Whereupon the lunch recess was taken at
15 12:31 p.m. and the hearing reconvened at
16 1:51 p.m.)

17 CHAIRMAN IGNATIUS: Welcome back. Mr.
18 Peress, you were questioning the panel.

19 MR. PERESS: Thank you, Madam Chair. I
20 am going to leave the indirect source permitting issue,
21 and then defer to my colleague from the Sierra Club,
22 except that I've bought additional copies of what has been
23 marked "Exhibit 6", I've already provided one -- this is
24 Exhibit 6, which is the DES requirements.

1 CHAIRMAN IGNATIUS: Thank you.

2 MR. PERESS: If anyone would like one?

3 (Atty. Peress distributing documents.)

4 CHAIRMAN IGNATIUS: Mr. Fabish.

5 MR. FABISH: So, I just have a few
6 questions. Hopefully, they won't take very long to get
7 through. First of all, can everyone hear? All right.
8 Thank you.

9 BY MR. FABISH:

10 Q. So, I'll just direct it at the panel. The Scrubber
11 Project was undertaken to fulfill the requirements of
12 the scrubber law, correct?

13 A. (Smagula) Yes.

14 Q. Okay. And, that would be the main purpose of the
15 Scrubber Project?

16 A. (Smagula) Yes. The Scrubber Project was a requirement
17 by legislation in New Hampshire, and we are proceeding
18 in concert with fulfilling that obligation.

19 Q. Okay. And, were there any other rationales, reasons
20 behind the Scrubber Project?

21 A. (Smagula) No. The scrubber was required as a result --

22 Q. That's okay. I understand. Let's do this quick, "yes"
23 or "no". So, aside from fulfilling the requirements of
24 the scrubber law, there's no -- there's no function to

1 the Scrubber Project other than that, is that correct?

2 A. (Smagula) I don't understand your question.

3 Q. Instead, let me rephrase that. Is there any aspect of
4 the Scrubber Project that does otherwise than to
5 fulfill the requirements of the scrubber law?

6 A. (Smagula) No. The entire project was built and funded
7 to fulfill that law and build a wet flue gas
8 desulphurization system.

9 Q. Okay. Thank you. So, what is the functional mercury
10 removal rate of the Scrubber Project?

11 A. (Smagula) The law requires the removal rate --

12 Q. I'm sorry. Excuse me. I just, what is the removal
13 rate of the project, not what the law requires?

14 CHAIRMAN IGNATIUS: And, before you
15 respond, Mr. Bersak.

16 MR. BERSAK: May the witness please be
17 allowed to answer the question.

18 CHAIRMAN IGNATIUS: I think that's fair,
19 Mr. Fabish. Well, from the court reporter's point of
20 view, --

21 MR. FABISH: Sure.

22 CHAIRMAN IGNATIUS: -- he can only get
23 one voice at a time. And, if you ask a question, you
24 ought to let him give a shot at an answer.

1 MR. FABISH: No, I understand. No, I
2 understand that.

3 CHAIRMAN IGNATIUS: Something
4 objectionable, you can always object. But you're not even
5 letting him get a start, so --

6 MR. FABISH: Okay. I apologize for
7 that. My intention is just to stick to answering just the
8 question that's asked.

9 WITNESS SMAGULA: Okay. Will you please
10 reask your question again?

11 MR. FABISH: Yes.

12 BY MR. FABISH:

13 Q. What is the functional, as functioning, mercury removal
14 rate of the scrubbers?

15 A. (Smagula) The law requires that we remove mercury from
16 our coal-fired plants in the aggregate of 80 percent.
17 In order to achieve that, the scrubber at Merrimack
18 Station has to overcomply to a certain amount and
19 achieves a reduction rate of over 80 percent, to
20 compensate for two small emitting units in Portsmouth.

21 Q. So, what you're talking is right now the scrubber is
22 removing more than 80 percent of the mercury?

23 A. (Smagula) That is correct.

24 Q. That is correct. And, how do you know that?

1 A. (Smagula) The scrubber, when initially operated with
2 Unit 1, starting in late September, came on line with
3 -- actually, remarkably well. There were no shutdowns
4 caused by equipment. All of the equipment and the
5 support systems needed for the scrubber activities
6 performed very reliably and very well. The continuous
7 emission monitors that were required by the state on
8 the inlet and outlet of the scrubber were providing
9 their readings reliably, and as overseen by the New
10 Hampshire DES.

11 Q. Can I just make a quick --

12 A. (Smagula) Well, I'd like to finish my response please.

13 Q. Sure. I'd like to object, because you're responding
14 about CEMs, which, my understanding is, don't measure
15 mercury.

16 A. (Smagula) Well, I'd like to just complete my train of
17 thinking and --

18 Q. Sure. If you could keep your answer to the mercury
19 question, would be great. Thank you.

20 A. (Smagula) I was going to move in that direction.

21 Q. Great. Thank you.

22 A. (Smagula) As a result, all of the elements of gas
23 treatment were working well. And, the scrubber was
24 removing sulfur and mercury at that time, upon initial

1 start-up and continued through its operations today.

2 Q. So, have you done any tests to determine how much
3 mercury is being removed?

4 A. (Smagula) Yes. We have conducted tests, as has the New
5 Hampshire DES. And, those tests were concluded the
6 latter part of last month. And, we do not have any
7 draft reports to substantiate that. However, we have
8 received some verbal information on the results of
9 those tests, indicating that the collection of mercury
10 from the scrubber was well over 80 percent. However,
11 we will await the final documentation on that before
12 we're able to provide a submittal and substantiate it.
13 But the preliminary information, which we received
14 verbally, illustrates that it had been working
15 satisfactorily. And, as a result, I believe it has
16 been working satisfactorily since its initial
17 operation.

18 Q. So, when you say that "it's been working
19 satisfactorily", you mean that the machine has been
20 running?

21 A. (Smagula) It's been running and meeting its sulfur and
22 mercury reductions from the first day it went on line.
23 Yes, that's what I mean.

24 Q. I'd like to separate out the issues from sulfur from

1 mercury, because I understand there's the CEMs,
2 correct, for sulfur?

3 A. (Smagula) Yes.

4 (Court reporter interruption.)

5 BY MR. FABISH:

6 Q. A CEMs, Continuous Emissions Monitoring System, is that
7 correct, a correct formulation of the acronym?

8 A. (Smagula) Yes.

9 Q. Okay. Great. So, my understanding is there is a CEMs
10 for SO2 at Merrimack Station associated with the
11 Scrubber Project?

12 (Court reporter interruption.)

13 BY MR. FABISH:

14 Q. So, there's a Continuous Emissions Monitoring System
15 for sulfur dioxide at Merrimack, correct?

16 A. (Smagula) Correct.

17 Q. Is there a Continuous Emissions Monitoring System for
18 mercury at Merrimack?

19 A. (Smagula) No. There is no federally approved
20 continuous emission monitoring equipment for mercury in
21 the United States. The mercury reductions are
22 monitored and measured through conducting a stack test.

23 Q. Uh-huh. Yes. And, so, when you say that "it is
24 reducing mercury", this is based on the hypothetical

1 engineering of the facility, and verbal assurances from
2 the people that have done the tests?

3 A. (Smagula) Well, I wouldn't characterize it as
4 "hypothetical". I think, for those of us who work in
5 the technical world, we understand that, when equipment
6 is running, and running well, functioning reliably, and
7 functioning as intended, that, if a test is conducted
8 to demonstrate its performance, that illustrates that
9 it's performing properly. It's not unlike, if you
10 install a new pump at a piece of equipment, and the
11 pump comes with certain flow characteristics, flow rate
12 capabilities, efficiencies, and so on, when you put the
13 pump in service, it's working and it's performing its
14 duty. You know it's pumping and you know it's doing
15 its work well. However, whether it be a few days later
16 or a few weeks later, you do then go and perform a
17 efficiency test or some type of performance test, in
18 order to demonstrate that it's been operating properly.
19 This is very typical in our industry. And, if it
20 demonstrates on day 6 or day 10 or day 30, it is an
21 illustration that it was performing that way from the
22 first day.

23 So, I will be able to provide, at some
24 point soon, I hope, a documentation of this. But,

1 based on my technical education and experience, it is
2 -- it is very clear to me that that equipment was
3 running and removing its mercury from the initial
4 start-up of Unit 1 on September -- in September.

5 Q. But you have no written documentation of that?

6 A. (Smagula) I do not at this time.

7 Q. And, no written documentation concerning the mercury
8 removal rate has been submitted in this docket?

9 A. (Smagula) Not at this time.

10 Q. It was not submitted as part of the petition for
11 recovery of temporary rates?

12 A. (Smagula) No, it was not.

13 Q. Do you expect that it will be submitted at some point
14 in the future?

15 A. (Smagula) Yes. Absolutely.

16 Q. Do you know when?

17 A. (Smagula) We expect to receive a draft report, which
18 includes a narrative and other things, for our review
19 sometime this month. That often has questions
20 regarding representation of information and text and so
21 on. So, it does go through a review by our engineering
22 company, who has overseen this project, and by others.
23 So, I would like to have it soon, but it will likely be
24 next month.

1 Q. So, next month will be when you would submit something
2 in this docket with the Commission concerning the --

3 A. (Smagula) Well, that's when we will get it. And, then,
4 we'll make a determination when and how best to provide
5 that, as needed.

6 Q. Uh-huh. So, at least a month away?

7 A. (Smagula) Yes. That's my best estimate. Right.

8 Q. Your best estimate?

9 A. (Smagula) Yes.

10 Q. And, what's the chance that that would change?

11 A. (Smagula) Low.

12 Q. Low? Okay. I'm going to ask some questions about,
13 it's my ignorance here, I'm not exactly sure of the
14 term, but is it correct that -- is it your position,
15 again, this is for the panel, I don't know who would be
16 better to answer this, is it your position that a delay
17 in setting rates to recover for the Scrubber Project
18 incurs additional costs?

19 A. (Smagula) Absolutely, it does.

20 Q. What is the additional cost incurred by, say, a one
21 month delay?

22 A. (Baumann) Just to be clear, when you say "additional
23 cost", is that a delay in the in-service date
24 declaration or a delay in the beginning of the recovery

1 of temporary rates?

2 Q. I guess the latter.

3 A. (Baumann) If the temporary rates are delayed, then we
4 will continue to incur costs associated with the
5 scrubber that are not in rates, and those costs would
6 be deferred to be recovered in future rates. And, the
7 under-recovery would accrue a carrying charge.

8 Q. Sure.

9 A. (Baumann) So, yes. There would be additional carrying
10 charges, as well as additional deferral charges,
11 probably in the vicinity of about \$5 million a month,
12 which would increase the under recovered deferral on
13 the books and put additional stress on future rates.

14 Q. So, the carrying charge is \$5 million a month, is that
15 roughly --

16 A. (Baumann) No. The costs are, for the scrubber, are
17 approximately \$5 million a month.

18 Q. Sure.

19 A. (Baumann) That would be deferred, and then there would
20 be carrying charges on top of those deferral balances.

21 Q. Sure. But the \$5 million would be paid now or later,
22 so -- is that correct?

23 A. (Baumann) Yes.

24 Q. Okay. So, just the carrying costs, what is that

1 figure?

2 A. (Baumann) What is that amount?

3 Q. What is that figure? What is the amount of the
4 carrying costs for a one month -- a hypothetical one
5 month delay?

6 A. (Baumann) Currently now, since these costs would not be
7 in the Energy Service rate?

8 Q. Sure.

9 A. (Baumann) It would be probably incurred at a cost of
10 capital rate, which is, off the top of my head, roughly
11 9, 10 percent.

12 Q. So, you're saying about 450,000? 500,000?

13 A. (Baumann) Pretax.

14 Q. Pretax.

15 A. (Baumann) Ten percent of \$500,000 -- or, 10 percent of
16 \$5 million is about \$500,000, on an annual basis.

17 Q. Uh-huh.

18 A. (Baumann) If you use those assumptions.

19 Q. Sure. So, what you're saying is, the additional cost
20 to the ratepayer of delaying implementing some sort of
21 recovery is about 450 to 500,000 per month, roughly? I
22 mean, I'm not, you know, --

23 A. (Baumann) Well, as your deferral gets larger --

24 Q. Sure.

1 A. (Baumann) -- from month-to-month, you would incur
2 carrying costs after the first month.

3 Q. Sure.

4 A. (Baumann) And, then, in the next month, if you had
5 delayed it a second month, you would have carrying
6 costs on the balance from the first month and the
7 second month. So, it's not a simple straight line of
8 carrying costs.

9 Q. No. No. I understand.

10 A. (Baumann) Your carrying costs would increase if you
11 delayed recovery, all or a partial recovery of those
12 costs.

13 Q. So, we're talking about 500,000 the first month?

14 A. (Baumann) Taking the \$5 million under-recovery, --

15 Q. Sure.

16 A. (Baumann) -- which is approximately where it would be,
17 times a 10 percent cost of capital, --

18 Q. Uh-huh.

19 A. (Baumann) -- that would be a \$500,000 carrying cost for
20 a year.

21 Q. Uh-huh.

22 A. (Baumann) So, if you wanted the one month, you would
23 have to take that and divide it by 12.

24 Q. Sure. Sure. Okay. And, the 10 percent cost of

1 capital, that figure comes from where?

2 A. (Baumann) Well, I would use the -- either the allowed
3 cost of capital from the last distribution rate case,
4 or you could use the stipulated cost of capital that is
5 used in the Energy Service rate today.

6 Q. So, why wouldn't the number be just the interest rate
7 that a large commercial entity could borrow at?

8 A. (Baumann) Well, there are certain carrying cost
9 directives that have been established in Connecticut,
10 either in a distribution case; in the Energy Service
11 case, when it comes to collecting capital; in the
12 Energy Service case, when it comes to collecting
13 over/under recoveries; as well -- as our other tracking
14 mechanisms, such as stranded cost and transmission.

15 With respect to this forum, if costs are
16 not allowed in the Energy Service rate, then it would
17 be our opinion that those costs would not be accrued at
18 the Energy Service rate level of under-recovery cost of
19 capital, it would be accrued at a more generic cost of
20 capital that we've used in distribution cases, and the
21 same cost of capital perhaps that we use in the Energy
22 Service case that is used to calculate the return on
23 capital plant in the Energy Service case. Just to be
24 clear, the over/under recoveries today for Energy

1 Service costs that are part of the Energy

2 Service Charge are accrued at the prime rate.

3 Q. And, so, that what -- what would that work out to then?

4 A. (Baumann) What would what work out to?

5 Q. Sorry. Using the prime rate, how would that impact the
6 analysis?

7 A. (Baumann) Well, the prime rate is lower than the
8 weighted cost of capital.

9 Q. Yes.

10 A. (Baumann) So, the carrying charges using a prime rate
11 would be much lower.

12 Q. How much lower?

13 A. (Baumann) Depending on your assumption of what prime is
14 today, I'll say it's around 3 percent, I really haven't
15 checked it recently. But 3 percent versus 9 or
16 10 percent, so you're talking about a third --

17 Q. Sure.

18 A. (Baumann) -- of a factor of the cost of capital.

19 Q. So, the carrying charge could be as low as a third of
20 the \$500,000 figure you said earlier?

21 A. (Baumann) Using a \$5 million item, then, yes, it would
22 be 3 percent of 5 million, about 150,000 in this
23 example, versus the 500,000 that we were talking about
24 before. And, that's on an annual basis.

1 Q. An annual basis.

2 A. (Baumann) So, you have to divide that by 12 for a
3 monthly impact.

4 Q. And, just to, because I'm -- just to refresh my memory,
5 the \$5 million figure comes from where again?

6 A. (Baumann) Well, if you look in the filings, the overall
7 costs, total costs of the Scrubber Project, on an
8 annual revenue requirements basis, is approximately
9 60 million.

10 Q. Uh-huh.

11 A. (Baumann) So, I've just divided that by 12 to come up
12 with my 5.

13 Q. Okay. Can I ask you -- I'm going to ask both of you, I
14 guess, a few questions about your -- what is this, the
15 October 14th, 2011 testimony. I guess that's not
16 really a question, it's a statement. My question is --

17 A. (Baumann) Excuse me. October 14th?

18 Q. Is that what it says? October 14th, 2011? Is that the
19 date of your testimony?

20 CHAIRMAN IGNATIUS: You're talking about
21 Exhibit 1 in this docket?

22 MR. FABISH: Yes, I am. Indeed.

23 WITNESS BAUMANN: Thank you. We're
24 there.

1 MR. FABISH: Okay. Great.

2 BY MR. FABISH:

3 Q. So, on the first page of your testimony, Line 11,
4 there's a question "What is the purpose of your
5 testimony?" And, Line 12 through 4 of the next page
6 answers that. Is it a true statement that the purpose
7 of that testimony was to essentially reflect costs
8 associated with the Merrimack Scrubber Project?

9 A. (Baumann) Yes. The purpose says "to reflect the
10 addition of costs associated with the Merrimack
11 Scrubber Project." And, that's on Lines 13 and 14.

12 Q. Okay. Is there any other additional purposes for that
13 testimony?

14 A. (Baumann) That's our purpose.

15 Q. That's your purpose. That's the universe of purposes?

16 A. (Baumann) The "universe of purposes"?

17 Q. The entirety of the purposes for which the testimony is
18 offered?

19 A. (Baumann) That's our testimony.

20 MR. FABISH: Great. Okay. Okay. Those
21 are all the questions I have for right now.

22 CHAIRMAN IGNATIUS: Thank you. Does
23 that conclude any questioning from both CLF and Sierra
24 Club for these two witnesses?

1 MR. PERESS: Yes.

2 CHAIRMAN IGNATIUS: Thank you. Mr.
3 Patch.

4 MR. PATCH: Thank you. I just have a
5 few questions for Mr. Baumann.

6 BY MR. PATCH:

7 Q. Mr. Baumann, what's the current ES rate?

8 A. (Baumann) 8.31 cents per kilowatt-hour.

9 Q. And, so, what you're proposing to do is to add 1.58
10 cents per kilowatt-hour to that, is that correct?

11 A. (Baumann) No.

12 Q. Okay. Could you explain that?

13 A. (Baumann) The 8.31 cents per kilowatt-hour was the rate
14 allowed effective January 1st, 2012, this year. And,
15 it is still in effect. We have, since that rate was
16 filed, we have filed an update to that rate. And, I
17 believe that rate was 7.77 cents per kilowatt-hour.
18 So, our proposal would be to add the scrubber impact to
19 that 7.77 cents per kilowatt-hour.

20 Q. So, if my math's correct, you end up at a rate of 9.35
21 cents a kilowatt-hour, if the Commission approves what
22 you've requested?

23 A. (Baumann) I'm sorry, what was your rate?

24 Q. 9.35.

1 A. (Baumann) That's correct.

2 Q. And, as I understand Mr. Mullen's testimony, he
3 presents a number of scenarios to the Commission, but I
4 think where he ends up, in terms of what he recommends,
5 is taking that 7.77 cents and adding 0.98 cents to
6 that. Is that your understanding as well?

7 A. (Baumann) Yes.

8 MR. PATCH: Okay. That's all my
9 questions. Thank you.

10 WITNESS BAUMANN: You're welcome.

11 CHAIRMAN IGNATIUS: Mr. Dannis.

12 MR. DANNIS: I'll just shout. So, I
13 just have a couple of questions.

14 BY MR. DANNIS:

15 Q. The 9 to 10 percent rate of return that you mentioned,
16 I may have misheard, but did you state that as a
17 weighted average cost of capital or is that an equity
18 return?

19 A. (Baumann) It's weighted with debt and equity.

20 Q. What is the current equity return then that you use in
21 your modeling?

22 A. (Baumann) Well, I referred to two different returns.
23 One was, if you use the weighted cost of capital as
24 allowed in the most current rate case, distribution

1 rate case, versus the allowed weighted cost of capital
2 that is used in the Energy Service rate filing.

3 Q. Okay. So, I'd like to ask about the rate case. What
4 is the equity -- what is the rate of equity return
5 implicit or used in your rate case? What is the debt
6 return? And, what is the WAC?

7 A. (Baumann) I don't have the weighted cost of capital in
8 front of me.

9 Q. The reason I ask is that a 10 percent weighted average
10 cost of capital seems high, given that you look at
11 equity rates of return I think in the same 9-10 percent
12 range that you cited.

13 A. (Baumann) My testimony said it was the pretax weighted
14 cost of capital. So, that capital structure has
15 grossed up the equity component for taxes, because
16 that's a two for one in calculating revenue
17 requirements. And, I think the previous questions were
18 "what would you use to calculate the revenue
19 requirements?"

20 Q. Okay.

21 A. (Baumann) So, you have to gross it up. The after-tax
22 weighted cost of capital, which is probably what you're
23 thinking of, --

24 Q. Right.

1 A. (Baumann) -- is probably in the seven and a half
2 percent range.

3 Q. Okay. Let me ask it from a ratepayer perspective. So,
4 if I were building an asset, and if my asset were
5 delayed, and if I had a business counterparty, and I
6 said "I've got to allocate to you the cost of that
7 delay", why would I allocate any cost other than my
8 cost of funding? Or, to put the question more
9 specifically, what is fair about allocating a weighted
10 average cost of capital to ratepayers, which is, by
11 definition, higher than a funding cost that is -- that,
12 for example, is even a short-term debt funding cost for
13 a rate?

14 A. (Baumann) Well, your --

15 Q. Is there a profit margin?

16 A. (Baumann) You asked a lot of little questions in that
17 question. But your presumption that you would fund
18 your entire project with debt, I believe it was in that
19 question, that you said "short-term debt".

20 Q. Let me break it down to make it really clear and easy.
21 So, how do you fund -- how have you funded the
22 scrubber? What mix of debt and equity?

23 A. (Baumann) The scrubber was funded through the entire
24 cost of capital on the Company's books. The Company

1 carries a weighted cost of capital, in a weighted
2 capital structure approximately 50/50 debt and equity.
3 And, any project of this magnitude would be funded with
4 that total cost of capital structure. And, it would
5 not be funded through short-term debt, as you presumed
6 in your question. So, that's why there's a little
7 difference. And, that's why you would use a cost of
8 capital in funding and in calculating the carrying
9 costs on your project.

10 Q. So, did some entity inside the Northeast Utilities
11 group raise equity capital as part of this project?
12 Was there a share issuance? A public offering?

13 A. (Baumann) Again, this project was funded by the total
14 capital structure of the Company. And, I am unaware of
15 how we specifically went about calculating that and/or
16 funding that. You're asking me a funding question on a
17 project. I don't know the answer to that.

18 Q. Right. And, the reason I'm asking the funding question
19 again is there are theoretical rates, there are rates
20 that are used for rate review purposes, there are rates
21 that are used for other purposes, and there are actual
22 funding costs. I guess the question I'm asking again
23 is, is there any light you can shed on the difference
24 between the actual funding costs on this project and

1 the costs you are proposing to recover from ratepayers?

2 A. (Baumann) Well, again, the cost to fund this project
3 were a balance. We don't specifically fund every
4 single project on our books specifically. We fund the
5 portfolio of capital additions on our books through the
6 weighted cost of capital. You talked about a
7 "theoretical". There's nothing theoretical here. We
8 maintain a weighted capital structure as closely as we
9 can throughout the year. To the extent we have cash
10 flow needs, we have to go out and finance and/or apply
11 equity to those cash flow needs. And, generally
12 speaking, we're at about a 50/50 split of that funding
13 requirement.

14 Now, you're perfectly right, there is
15 short-term debt on our capital structure -- or, on our
16 books. And, that short-term debt is used primarily to
17 fund AFUDC. So -- And, it's certainly *de minimis* with
18 respect to the funding of this large capital project.

19 Q. Last question to try to bring it home more clearly. If
20 I were building a widget in my backyard, I could give
21 you -- I could construct for you my weighted average
22 cost of capital in my family. But, if I'm constructing
23 a widget in my backyard, and if I tell you that I have
24 not gone out and raised any equity funding, and I can

1 prove from my -- from my sources and use of funds I
2 have not raised any equity funding, and I constructed
3 my widget, in fact, by going to the bank and borrowing
4 money at 3 percent, or by borrowing money intercompany
5 or what have you, but I did not raise any equity
6 capital, but I've constructed my widget, I would ask
7 you the question. If I constructed my widget on that
8 basis, why should I be able to charge you back a cost
9 of equity when I didn't raise any?

10 MS. KNOWLTON: I'm going to object on
11 the basis that Mr. Baumann has testified repeatedly this
12 afternoon that the Company did not pursue individual
13 project-specific funding for the scrubber, that it was
14 funded with the Company's overall capital that it had
15 access to. And, I don't think that the hypothetical
16 widget has relevance here. This is a regulated utility
17 that's subject to the orders of this Commission, including
18 the rate of returns that should be applied.

19 MR. DANNIS: May I respond, Madam
20 Chairman?

21 CHAIRMAN IGNATIUS: Please.

22 MR. DANNIS: Which is, could I then have
23 an answer to my question, has Northeast Utilities or
24 another company in the group raised equity capital that

[WITNESS PANEL: Baumann|Smagula]

1 was used for this project during the time of this project?

2 CHAIRMAN IGNATIUS: Counsel for the
3 Company just said "they did not". Do you have reason to
4 doubt that?

5 MR. DANNIS: I didn't hear her say "they
6 did not". I heard her say there was a rate of return
7 capital.

8 CHAIRMAN IGNATIUS: Well, let's --

9 MR. DANNIS: Just to have a clear
10 answer, was equity capital --

11 CHAIRMAN IGNATIUS: Let's clarify the
12 question. Mr. Baumann, do you know the answer to that?

13 WITNESS BAUMANN: Well, I have to ask a
14 question to understand it. When you say "raise equity
15 capital", what do you mean by that?

16 MR. DANNIS: I guess, just as an
17 old-fashioned person, when you raise equity capital means
18 you sell shares that are common shares or preferred shares
19 or other equity securities.

20 WITNESS BAUMANN: Can you also apply
21 earnings to that as equity?

22 MR. DANNIS: I've asked you if you've
23 raised any external equity capital?

24 WITNESS BAUMANN: Well, I'll answer my

1 own question then.

2 MR. DANNIS: Could I ask that he answer
3 my question?

4 CHAIRMAN IGNATIUS: I think he's trying.

5 WITNESS BAUMANN: It's equity capital.

6 As I said before, we did not go out and specifically fund,
7 whether it's equity or debt, this project on a specific
8 stock purchase plan, bonding. We funded it through total
9 capital structure. And, to be clear, an equity funding
10 just doesn't come from selling stock. You fund equity
11 through earnings as well, and is certainly a large part of
12 that funding of equity. So, we didn't go out and say
13 "here you go, there's bonds or stock to finance the
14 Scrubber Project." I think that's where you were going.
15 Although I love to answer questions about widgets, I
16 won't.

17 But, no, we do not have specific
18 funding, be it equity or capital -- equity or debt
19 associated with the Scrubber Project. And, the equity, to
20 clarify, was, again, your thought of equity is selling
21 stock and/or my addition of application of earnings into
22 equity.

23 MR. DANNIS: Thank you.

24 WITNESS BAUMANN: You're welcome.

1 CHAIRMAN IGNATIUS: Well, now, I'm
2 confused.

3 WITNESS BAUMANN: Oh, boy.

4 CHAIRMAN IGNATIUS: Did you issue any
5 stock? Sounds like the answer is "no", for this project?

6 WITNESS BAUMANN: Not specifically for
7 this project.

8 CHAIRMAN IGNATIUS: Did you apply
9 earnings for this project?

10 WITNESS BAUMANN: Commissioner, I think
11 the answer is, when we knew we had to do this project, we
12 look at all of our, not only this project, but any other
13 project that we might have. Transmission projects. There
14 are other very large projects on the NU system. And, so,
15 for PSNH, they're a part of those projects. And, so, the
16 -- while I'm not an expert in this, the Company would look
17 at the cash flow and cash needs for certain projects, and
18 attempt to fund those projects, while maintaining a
19 balanced capital structure. So, if -- that might mean you
20 may have to go out and issue more debt for future capital
21 projects. It might mean that you need to transfer funds
22 between entities, subsidiaries and parent, to maintain the
23 capital structure of about 50/50. So, equity can move
24 from parent to subsidiary, debt can be issued by a

1 subsidiary. And, our Treasury Department looks to
2 maintain a balanced capital structure for each of our
3 operating subsidiaries, one being PSNH, knowing what the
4 total expenditures are in the future that all of our
5 subsidiaries will incur.

6 But we didn't specifically go out and
7 say "Gee, we've got a \$400 million need. Let's go --
8 Let's go look at some debt for that need or let's see if
9 the parent can transfer equity into the subsidiary."

10 CHAIRMAN IGNATIUS: But, in fact, both
11 of those things may have happened?

12 WITNESS BAUMANN: Yes. We have debt
13 issuances in all of our subsidiaries. And, I know the
14 Commission approves them here in New Hampshire, as well as
15 in Connecticut and Massachusetts. And, then, there's the
16 balancing again of equity as well. But it's more on a
17 global company basis, recognizing you need to maintain
18 capital structures. And, in fact, in the last
19 distribution rate case, we -- I think there's a clause in
20 there where we have to maintain a capital structure that's
21 pretty close to what was allowed in the distribution rate
22 case.

23 CHAIRMAN IGNATIUS: And, Mr. Mullen, be
24 warned, there may be some questions to you on this when

1 you're on the stand. All right. Mr. Dannis, other
2 questions of these two witnesses?

3 MR. DANNIS: No. Thank you very much.

4 CHAIRMAN IGNATIUS: Thank you. Ms.
5 Hollenberg.

6 MS. HOLLENBERG: Thank you.

7 BY MS. HOLLENBERG:

8 Q. I was just trying to look back, Mr. Baumann, and maybe
9 you remember off the top of your head, I'm only newly
10 involved in the PSNH docket. But hasn't the Company,
11 in the last year or so, applied for approval of
12 financing in amounts over 200 million, and I think
13 there was a 150, or maybe just one of those?

14 A. (Baumann) Yes. I don't have any specifics.

15 Q. Okay.

16 A. (Baumann) But, certainly, we do -- we have come in for
17 some large funding requests. Whether or not we go out
18 and fund that much, whether or not there are other debt
19 components that are retired or are retiring, I really
20 don't have any details.

21 Q. Okay.

22 A. (Baumann) But, yes. We, I think -- I know we've come
23 in for some large debt funding requirements.

24 Q. Yes. And, I mean, do you recall or know, and maybe you

1 don't know the answer to this, and, certainly, these
2 would be -- this would be information that the
3 Commission would have in its files, but whether or not
4 any of those financings related specifically to
5 Merrimack Station?

6 A. (Baumann) I don't have that information. I'm sorry.

7 Q. Another question for you, Mr. Baumann. Just to see if
8 I understand what your testimony is today, because you
9 did present a summary of your direct, and then you
10 responded to Mr. Mullen's testimony. Would it be fair
11 to say that PSNH prefers to have its proposed revenue
12 requirement approved, but that you would not object to
13 the Commission approving Staff's revenue requirement?

14 A. (Baumann) That's accurate. Yes.

15 Q. Okay. Thanks. Mr. Smagula, you were asked on
16 cross-examination, by either CLF or Sierra Club, some
17 questions about the functioning of the scrubber and the
18 removal of mercury. And, do you recall that line of
19 questioning?

20 A. (Smagula) I do, yes.

21 Q. Thank you. I think before, you were also making the
22 statement that, basically, "if the equipment is
23 working, it's doing what it's supposed to do"?

24 A. (Smagula) That's correct.

1 Q. Okay. So, if the equipment, you know, from your
2 technical perspective, if the equipment is working,
3 it's removing mercury?

4 A. (Smagula) Yes.

5 Q. Okay. The equipment, can you tell me, is it -- what is
6 your understanding about the amount or the level of
7 mercury that it removes?

8 A. (Smagula) Again, I'll go back to some of the verbal
9 information that I have been just receiving as a result
10 of the stack tests done by an independent third party,
11 that the mercury removal is over 80 percent. So, it's
12 meeting the guarantees or somewhat exceeding the
13 guarantees that were provided --

14 MR. PERESS: I object. Obviously, it's
15 hearsay. And, I understand the rule of evidence doesn't
16 apply here. And, I think -- I wasn't going to object to
17 the fact that is reciting what someone has told him. But,
18 to conclude on the basis of that information that it's
19 obviously meeting the guarantees, seems to take it a
20 little bit too far on the basis of such hearsay
21 information.

22 CHAIRMAN IGNATIUS: Ms. Knowlton, a
23 response?

24 MS. HOLLENBERG: And, it's actually not

1 my question, but --

2 CHAIRMAN IGNATIUS: Well, why don't you
3 rephrase your question. Thank you.

4 MS. HOLLENBERG: Okay. Thanks.

5 BY MS. HOLLENBERG:

6 Q. I guess my question is that what is your understanding
7 of, setting aside what it's actually doing at Merrimack
8 Station, the equipment, as manufactured, what level of
9 mercury is it guarantied to remove?

10 A. (Smagula) It's guarantied to remove approximately 84 or
11 85 percent of the mercury emitted from Merrimack
12 Station, which provides the 80 percent removal from
13 Merrimack, as well as the incremental amount needed for
14 the two smaller coal units at Schiller Station in
15 Portsmouth.

16 Q. And, you would agree that, to this point in this
17 docket, there is no evidence in the record about the
18 amount of mercury that that equipment is removing?

19 A. (Smagula) That's correct.

20 Q. You testified about some wastewater permits or
21 agreements, I was having a little difficulty following
22 what they were called. And, you described the Concord
23 and Allenstown permits or agreements for wastewater
24 disposal at those public disposal facilities as being

1 "unnecessary". Do you recall that?

2 A. (Smagula) I mentioned that the Concord agreement was
3 one that we have not employed or used. And, as a
4 result, on any given day each one of these is not
5 individually necessary.

6 Q. Okay. But do you agree that -- what I thought I heard
7 you say, and you can certainly correct me if I'm wrong,
8 but that "those permits for Concord and Allenstown were
9 not required for the functioning of the scrubber", I
10 think you said something to that effect?

11 A. (Smagula) That's correct.

12 Q. Okay. Are there costs associated with obtaining those
13 permits?

14 A. (Smagula) There were no -- to my knowledge, there were
15 no fees. There were no fees regarding those permits.

16 Q. Okay. And, you, I guess just to clarify, are there any
17 costs associated with those permits included in the
18 temporary rate amount proposed by the Company?

19 A. (Smagula) Yes. There are some fees related to the
20 disposal. There is a charge per gallon of water
21 provided to that facility for disposal. And, those are
22 in the costs that are -- that have been identified in
23 the documents filed.

24 Q. But am I following that your position is that the

1 disposal is not necessary for the functioning of the
2 scrubber?

3 A. (Smagula) No. We have to have disposal of liquid to
4 have the functioning of the scrubber perform. And, I
5 think -- there's been a lot of questions on this. And,
6 I've tried to come up with maybe the best way to
7 present this information or to summarize it. And, I
8 knew that there were some text that I think might be
9 best for you, as part of this response, to maybe
10 review. And, I'd like to take a minute and read
11 something that's already on the file. Because I think
12 this clarifies, in my mind, to a great extent.

13 Q. Well, actually, I mean, I asked if the costs were
14 included in the filing. And, so, I guess I'm not quite
15 sure what you said they were.

16 CHAIRMAN IGNATIUS: But then you went on
17 to ask whether there was no requirement for any sort of
18 disposal, and I think he was responding to that next
19 question.

20 MS. HOLLENBERG: Okay.

21 WITNESS SMAGULA: Right.

22 **BY THE WITNESS:**

23 A. (Smagula) And, I guess, just to be clear, the NPDES
24 permit that we have is for us to treat water and

1 discharge it to the river. We do not discharge water
2 to the river. We are obligated to bring our water
3 elsewhere, at least at this point in time. And, if we
4 look at Staff Data Requests, Set 1, Question 2, it asks
5 a question with regard to the status of permits and
6 approvals required to operate the wastewater treatment
7 system as part of the scrubber. And, I think it's
8 important, and I think -- I hope it helps put in
9 context what we've been seeking to do. It says that
10 "PSNH has all [the] permits necessary to place the
11 Clean Air Project in service and reduce emissions as
12 mandated by the mercury reduction law. As noted in
13 responses to Staff-001, EPA chose [not] to address the
14 new scrubber effluent discharge as part of the overall
15 Merrimack Station NPDES permitting process, rather than
16 entertaining a more timely permit modification or any
17 other type of interim discharge authorization. Because
18 finalization of the NPDES permit is expected to be a
19 lengthy process, PSNH is presently precluded from
20 discharging treated scrubber wastewater to an on-site
21 treatment pond and ultimately to the Merrimack River.
22 The primary wastewater treatment system is currently
23 operating as designed, allowing treated wastewater to
24 be brought to permitted [wastewater] treatment

1 facilities for disposal. To process wastewater
2 effluent going forward, additional treatment equipment
3 is being installed to reduce the quantity of any
4 wastewater significantly resulting in additional
5 disposal [costs] including one that does not need to be
6 -- does not need to discharge."

7 So, that I think is important to have
8 here, because I think we needed some clarity on this
9 issue. I think it may have been confusing to a lot of
10 people, the sequence of questions. So, you know, right
11 now the scrubber is operating. It's being used. It's
12 being useful. It's reducing air emissions. And, I
13 think we have found a method to treat its wastewater
14 through the hands of others, to take our treated
15 wastewater and further treat it elsewhere.

16 So, you know, when we look at all the
17 permits required, if we didn't have a permit required
18 that would not allow us to operate this scrubber, a
19 federal or state agency would not allow us to operate
20 the scrubber. So, we have all the permits we need to
21 operate this facility.

22 And, I guess I'd be happy to continue to
23 answer questions on discharge and other things. But,
24 in my mind, I'm glad you asked some questions about it,

1 so I could have an opportunity to put this information
2 together, so that it hung together, rather than be
3 fractured in a number of different questions, and I
4 think be confusing to most people in the room.

5 MR. PERESS: Madam Chair, if I may just
6 for the record, since that Staff -- since that data
7 response is not in, it should be noted that that response
8 is from -- I'm sorry, I thought it was from Mr. Baumann,
9 but I guess it's from -- I guess it's technically from
10 both of them. So, I'll withdraw that.

11 CHAIRMAN IGNATIUS: All right.

12 BY MS. HOLLENBERG:

13 Q. Can you just clarify the last sentence of the Staff
14 question that you just read? Specifically, the
15 language including "one that does not need to
16 discharge"?

17 A. (Smagula) What would you like clarified?

18 Q. What does that mean?

19 A. (Smagula) Oh. It says "To process wastewater effluent
20 going forward, additional treatment equipment is being
21 installed to reduce the quantity of any wastewater
22 significantly resulting in additional disposal [costs]
23 including one that does not need to discharge." That
24 --

1 MS. KNOWLTON: Mr. Smagula, actually, if
2 I might, I don't know if we want to mark this, the data
3 response as an exhibit, but I believe it says "options",
4 not "costs".

5 CHAIRMAN IGNATIUS: Ms. Knowlton, it's a
6 document we've never seen. So, I've got nothing to mark.

7 MS. KNOWLTON: I know that. That's what
8 I was saying, is I'm offering we can mark it.

9 CHAIRMAN IGNATIUS: All right. Do you
10 have copies?

11 MS. KNOWLTON: Nope. But I can make
12 some on a break.

13 WITNESS SMAGULA: So, can I --

14 MS. KNOWLTON: What I'll do is I'll give
15 you -- may I approach the Bench, give the Commission my
16 copy, and then we'll get some copies made?

17 CHAIRMAN IGNATIUS: Okay. So, this is
18 Exhibit 7 for identification.

19 (The document, as described, was
20 herewith marked as **Exhibit 7** for
21 identification.)

22 **BY THE WITNESS:**

23 A. (Smagula) So, the sentence says that we are installing
24 some additional equipment that will allow us to reduce

1 the quantity of wastewater significantly by putting it
2 through equipment to reduce the volume. And, resulting
3 in additional disposal costs, including one that does
4 not need to discharge.

5 BY MS. HOLLENBERG:

6 Q. It says "additional disposal options".

7 A. (Smagula) Yes, "disposal" -- excuse me, "additional
8 disposal options".

9 Q. Okay. Including one --

10 A. (Smagula) "Including one that does not require
11 discharge." This means that this equipment can take
12 the current effluent that we believe should be allowed
13 to discharge to the river, but we don't have that
14 permit. So, we're bringing it to facilities that can
15 dispose of it. This equipment that we're installing
16 now will take that volume and reduce it, which creates
17 another disposal option of a lower volume. And, in
18 fact, it can take that reduced volume and reduce it
19 even further, so that there is no discharge.

20 So, just to clarify, "we will be
21 installing to reduce the quantity of any wastewater
22 significantly, resulting in additional disposal
23 options, including one that does not need to
24 discharge." So, this is equipment we're adding which

[WITNESS PANEL: Baumann|Smagula]

1 has multiple capabilities, where there's a reduced
2 volume or no volume of liquid. Does that help you?
3 Thank you.

4 MS. HOLLENBERG: Thank you. Thank you.
5 I don't have any other questions.

6 CHAIRMAN IGNATIUS: Thank you.

7 MR. PERESS: Madam Chair?

8 CHAIRMAN IGNATIUS: Mr. Peress.

9 MR. PERESS: Because that was new
10 information that hadn't been in the record before, I do
11 have some questions about the assertions that were just --

12 CHAIRMAN IGNATIUS: Mr. Peress, I don't
13 think it was new information. I mean, it was from a data
14 response that was distributed to everyone. So, unless
15 there's something in particular, I'm not inclined to
16 authorize any further questions.

17 MR. PERESS: Well, it wasn't in the
18 record. We didn't put it in the record. It just was put
19 into the record and --

20 CHAIRMAN IGNATIUS: Mr. Peress, the
21 entirety of discovery is available to you to consider, not
22 to us, we haven't seen it, but you have all seen it. And,
23 if there was something you wanted to explore, you had your
24 opportunity. I don't think that --

1 MR. PERESS: Thank you.

2 MS. KNOWLTON: I would also note that
3 that data response actually was an attachment to the
4 Company's objection to the CLF Motion to Compel. So, it's
5 been circulated multiple times at this point.

6 CHAIRMAN IGNATIUS: Thank you. Staff,
7 do you have questions?

8 MS. AMIDON: Yes. Thank you. Good
9 afternoon.

10 WITNESS BAUMANN: Hi.

11 BY MS. AMIDON:

12 Q. Mr. Baumann, I have a couple of questions for you. If
13 I understood the exchange between Attorney Patch and
14 you regarding the Energy Service rate, the Company has
15 updated that rate to 7.77 cents per kilowatt-hour, is
16 that correct?

17 A. (Baumann) Yes.

18 Q. So, you've provided that updated amount to the
19 Commission?

20 A. (Baumann) Yes, we did.

21 Q. And, your request -- or, the Company's request, I
22 should say, in temporary rates is to modify the current
23 Energy Service charge, to reduce it from I think it's
24 8.31 cents to 7.77 cents per kilowatt-hour, and then

1 add any temporary rate for the scrubber to that amount,
2 is that correct?

3 A. (Baumann) That is correct.

4 Q. Okay. Thank you. And, you read Mr. Mullen's
5 testimony, is that right?

6 A. (Baumann) Yes, I did.

7 Q. And, I know we haven't marked that for identification,
8 but do you have his testimony before you?

9 A. (Baumann) Yes, I do.

10 Q. Thank you. And, on Page 13, could you tell me when
11 you're there?

12 A. (Baumann) Yes. I'm there.

13 Q. And, if you notice, after Line 8, Mr. Mullen has a
14 comparison between PSNH's proposals and Staff proposals
15 based on the duration of recovery. For example, the
16 0.98 cents per kilowatt-hour is based on a 12-month
17 recovery period for -- as used by Staff, is that
18 correct?

19 A. (Baumann) Yes.

20 Q. And, what PSNH has asked for is 1.58 cents per
21 kilowatt-hour on a 9-month recovery?

22 A. (Baumann) Yes.

23 Q. So, in essence, recovering most of the costs associated
24 with 2012 in a 9-month period, assuming temporary rates

1 would take effect April 1, is that correct?

2 A. (Baumann) Yes.

3 Q. So, could you give us your opinion about the difference
4 of a 9-month versus a 12-month period for recovery of
5 costs.

6 A. (Baumann) Well, first of all, the little comparison
7 chart that was on Page 13 of his testimony, I thought
8 it was helpful, because it does compare more apples and
9 apples. We always try to stay away from more detail
10 than necessary in our filings, because these numbers
11 start to get very confusing. But I found it was an
12 interesting and valid comparison, to start.

13 With respect to 9-month versus 12, I
14 think the overriding principle here is to get some
15 temporary rates. Because we believe, certainly, that
16 the costs associated with the scrubber were prudent,
17 and in compliance with the law. And, that's really our
18 first concern. The level of which you get, you can
19 take under recoveries. I like to get rid of under
20 recoveries as quick as possible, in effect, to match
21 costs with the recoveries, in terms of who's paying
22 those costs that have already been incurred.

23 Certainly, a 9-month rate does that quicker than a
24 12-month rate. But, in the realm of ratemaking, three

1 months I don't think is -- you know, could be argued is
2 not that long a period.

3 So, I had no problem with his analysis
4 using a 12-month rate. Like I said before, it was at a
5 sound basis. It was slightly different than our basis.
6 Part of the reasons we went to a 9-month rate was, I
7 mean, we felt we wanted recovery of costs currently.
8 And, it also allowed for a better understanding, I
9 believe, to the magnitude or the outer bound of
10 ratemaking, with respect to collecting all these costs
11 by the end of the calendar year. But I don't think a
12 12-month rate or a 9-month rate analysis, I think both
13 are valid, and other things have to be taken into
14 consideration, such as the impact to customer rates
15 currently and in the future.

16 MS. AMIDON: Thank you. One moment
17 please.

18 (Short pause.)

19 BY MS. AMIDON:

20 Q. Okay. We have an additional question going back to
21 Exhibit 7. Mr. Smagula, you talked about the response
22 to Staff's question, and the last sentence it talked --

23 A. (Smagula) Yes.

24 Q. I'm sorry. Are you there?

1 A. (Smagula) I am, yes.

2 Q. Okay. I apologize if I was going too fast. You talked
3 about "additional treatment equipment is being
4 installed to reduce the quantity of any wastewater."

5 A. (Smagula) Yes.

6 Q. Are the costs associated with this installation that's
7 referenced in that sentence included in the claim for
8 temporary rates?

9 A. (Smagula) No.

10 MS. AMIDON: Thank you. I have nothing
11 further.

12 CHAIRMAN IGNATIUS: Thank you.
13 Commissioner Harrington.

14 CMSR. HARRINGTON: Yes, I've got a few
15 questions.

16 BY CMSR. HARRINGTON:

17 Q. Basically, just a quick question. On your last answer,
18 that the costs associated with the additional, what is
19 it, additional equipment is not included in the
20 temporary rates, is that correct?

21 A. (Smagula) That's correct.

22 Q. Okay.

23 A. (Smagula) It's currently not in service.

24 Q. But the costs included -- the costs associated with

1 disposal of the waste at either the Concord or
2 Allenstown municipal facility are?

3 A. (Smagula) Yes.

4 Q. Okay. So, just see if we can kind of wrap this waste
5 permit issue up. If I think I've got this straight,
6 what you're saying is that, originally, you intended to
7 discharge using your NPDES permit into the river, and
8 that that permit is on hold at the EPA at this time.
9 Is that correct?

10 A. (Smagula) That's correct.

11 Q. So, you came up with Plan B, for lack of a better term,
12 which was to use the municipal facilities to discharge
13 the wastewater into them?

14 A. (Smagula) In fact, Plan B was to install additional
15 treatment equipment, and try to have that equipment in
16 place and operational by the time we started up the
17 scrubber. However, after our November 2010 meeting
18 with EPA, where we -- it was clear that they were not
19 going to assist us with any type of permit
20 modifications, we had to install -- we had to pick a
21 path in order to treat this wastewater and not
22 discharge it to the river. Otherwise, the project
23 would not be able to become operational, because we had
24 to find a place to treat it. So, we began to build --

1 buy equipment and build this additional treatment
2 equipment at the facility.

3 However, we were concerned that the
4 deliveries of equipment and the installation may run
5 beyond our schedule. And, so, we looked for an
6 alternate interim plan to deal with this wastewater.
7 And, as a result, we began exploring, at the beginning
8 of last year, those options. And, as we learned more,
9 we found that we could obtain the ability to bring it
10 to -- to take our treated wastewater and bring it to
11 facilities where they would accept it. So, we pursued
12 that as a -- in parallel with building the equipment.
13 And, as it's turned out, our equipment schedule is
14 taking a little longer, and we are using the POTWs as
15 places to bring our water as an interim means.

16 Q. So, is it correct to say that you have all necessary
17 permits and approvals to discharge the wastewater in
18 the way you're currently doing it?

19 A. (Smagula) Yes.

20 Q. Okay. Getting off the wastewater for a little bit. On
21 the mercury removal, you said there were not continuous
22 monitors associated with this, --

23 A. (Smagula) That's correct.

24 Q. -- because there's no technology?

1 A. (Smagula) There are continuous emission monitors in the
2 industry, but they have not been approved and accepted
3 by the EPA. They still are in development.

4 Q. Okay. So, I assume you're using some type of grab
5 sample then?

6 A. (Smagula) Yes. We're using a stack test. Where we put
7 equipment into the stack, take samples, and remove it.
8 And, these are approved -- these are stack methods that
9 are acceptable to the New Hampshire DES and EPA.

10 Q. And, this is -- I'm trying to just figure out how this
11 works. Do you take a grab sample from the untreated
12 portion of the stack and then one from the post
13 scrubber portion, and then that's how you determine how
14 much is being removed?

15 A. (Smagula) We do that concurrently. The answer is
16 "yes".

17 Q. And, so, that's where you get the 80 percent factor
18 from?

19 A. (Smagula) Correct.

20 Q. Okay. There's a section of 125-0:13 called
21 "Compliance". In III, it says "The owner shall test
22 and implement, as practicable, mercury reduction
23 control technologies or methods to achieve early
24 reductions in mercury emissions below the baseline

1 mercury emissions. The owner shall report the results
2 of any testing to the department and shall submit a
3 plan for [departmental] approval before commencing
4 implementation." Has that been done?

5 A. (Smagula) The state has also conducted mercury tests.
6 And, upon their confirmation of the mercury emissions,
7 we will be able to seek early reduction credits for
8 mercury. However, there is a question that is
9 currently being raised regarding the mercury baseline
10 determination established by the DES. So, there is
11 some questions we've raised, and we've appealed one of
12 their positions on that. So, we're gathering the data.
13 I believe there are questions currently. Those will be
14 resolved at some point this year. So, we'll be able to
15 look back retrospectively and be able to make that
16 calculation. We don't -- we're not able to make it in
17 the short term.

18 Q. So, I guess the quick answer would be "this hasn't been
19 complied with as of yet", you're working on it?

20 A. (Smagula) As of yet, that's correct.

21 Q. In the RSA 378:27, it talks about temporary rates.
22 And, in there, among other things, it says "rates shall
23 be sufficient to yield not less than a reasonable
24 return on the cost of the property of the utility used

1 and useful in the public service less accrued
2 depreciation, as shown by reports of the utility filed
3 with the Commission." How are we supposed to grant
4 temporary rates on documentation that doesn't exist and
5 hasn't been filed with the Commission, as to the
6 effectiveness of the scrubber? I think what I'm
7 hearing is, you do not have -- you haven't filed
8 anything with the Commission that shows that you get
9 the 80 percent reduction. You have some verbal tests
10 that were done. And, I'm not quite sure, my
11 association with testing has always been you get
12 written results, but --

13 A. (Smagula) We will be getting written results. We have
14 just received some verbal information at this point.
15 The scrubber equipment operates -- it either operates
16 properly or it's not. And, all of the equipment is
17 operating. The limestone is being mixed, it's being
18 sprayed in with the gas stream. We're removing acid
19 gases, removing sulfur, removing -- everything is
20 performing exceptionally well. We just don't have the
21 final test for mercury as yet. I think we explained
22 that. And, I guess -- I believe it will demonstrate,
23 and it's intended to demonstrate retrospectively, that
24 the law requires the DES to come in and do some stack

1 testing 60 days after operation to determine what early
2 reduction credits we are able to garnish. Those
3 reduction credits will be from when the project began
4 operation. It won't be from the day they took the
5 test.

6 So, I think the wording there is I think
7 implied, I don't think -- it's not clearly stated, in
8 my opinion.

9 Q. Well, I understand what you're saying here. The idea
10 is the system is up and running. And, if you test it
11 on April 15th, since it's running with the same
12 parameters that it was running on December 15th, you
13 can make the assumption that, whatever mercury
14 reduction you found on April 15th was also happening on
15 December 15th.

16 But my concern here is it says "as shown
17 by the reports the utility filed with the Commission",
18 and you haven't filed any reports yet. Now, presuming
19 these tests are not something people are doing just
20 because they think they're a good idea, that there's
21 some question at least that the scrubber will reduce
22 mercury in the way it's claimed to do. Otherwise, you
23 just turn it on and say "it's operating, therefore, we
24 get 80 percent." But I think that the law and the

1 intent here is it's operating, we think we're getting
2 80 percent, but now we have to show it by taking some
3 tests.

4 A. (Smagula) Right.

5 Q. And, am I correct in saying there are no reports of the
6 utility filed with the Commission showing the
7 efficiency of the scrubber?

8 A. (Smagula) We have not filed a report as yet.

9 CMSR. HARRINGTON: Thank you. Those are
10 all the questions I have.

11 BY CHAIRMAN IGNATIUS:

12 Q. When were tests actually done by the Department of
13 Environmental Services?

14 A. (Smagula) They were done in February. We had conducted
15 some tests in January. We conducted some additional
16 tests in February. And, they conducted their tests
17 right, you know, the day preceding our tests in
18 February.

19 Q. Your best guess of when the results will be received is
20 what?

21 A. (Smagula) I think I had indicated we hope to get a
22 draft shortly, and that they would be finalized by next
23 month. But I'm gathering from the questions here that
24 I'm going to leave and seek opportunity to expedite

1 that when I leave the room.

2 Q. So that you thought sometime during March you would
3 receive a draft, and something final in April?

4 A. (Smagula) Yes.

5 Q. How does the requirement of the 80 percent reduction
6 work? Is it that each time it's tested you must have
7 at least 80 percent reduction from a baseline, or is it
8 over time?

9 A. (Smagula) I think it's 80 percent on an annual basis.
10 The 80 percent, as I indicated, is a collective
11 80 percent, even though we're going to do it at
12 Merrimack, we're not going to be reducing mercury with
13 installed equipment at Schiller. So, in order to
14 achieve the fleet reduction, we have to effectively
15 achieve 84-85 percent at Merrimack, which is what we'll
16 be able to demonstrate.

17 Q. So, do you not know the final percentage until 12
18 months has gone by and you can look back, if it's an
19 annual requirement?

20 A. (Smagula) We'll know, at the day of the test results,
21 we'll know. The state is also doing test results to
22 confirm it in their own mind. And, then, the
23 requirements for mercury in the industry are to test
24 periodically. And, I think there's a testing program

1 that is outlined in our permit. And, it has a
2 frequency to it. I don't know whether it's every 12
3 months or every 6 months, I'd have to check. I think
4 it's annually.

5 Q. But, ultimately, the test results on a particular day
6 will have to feed into a series of test results over
7 the course of a year to be able to demonstrate an
8 annual reduction?

9 A. (Smagula) I think, for a mercury test, it's like a
10 particulate test. We have obligations to not emit a
11 certain amount of particulate matter. And, we, in
12 order to test that, we have to do a stack test. And,
13 the state has the ability to come in at any time and
14 call for one. As a matter of fact, they did a
15 particulate test concurrent with them doing their
16 mercury test last month. So, they used that as an
17 opportunity to do it. That is the nature of the
18 technology and the statute and the permits we have in
19 New Hampshire right now.

20 I suspect, over time, the emergence of
21 that technology will grow, the requirements from
22 federal authorities may grow, and the engineers will
23 develop that to be continuous. But, at the moment, the
24 stack testing is the method, the approved method.

1 Q. A couple more questions on the wastewater issue. You
2 said you have not yet disposed of any wastewater
3 through the Concord agreement?

4 A. (Smagula) That's correct.

5 Q. Have you disposed of wastewater through the Allenstown
6 agreement?

7 A. (Smagula) Yes.

8 Q. And, how about any other municipalities?

9 A. (Smagula) Regarding ones here, we've got -- we haven't
10 used Concord yet. We've used Allenstown. We've used
11 Hooksett. We've used the DES regional facility in
12 Franklin. And, the only other municipality we used was
13 the City of Lowell, in Massachusetts.

14 Q. And, those are all pursuant to agreements that you've
15 executed with the disposal sites?

16 A. (Smagula) Yes.

17 Q. Are there costs of the wastewater system that you
18 design for ultimate disposal into the river that you're
19 not -- which you're not able to use right now, are any
20 of those costs included in the requested temporary rate
21 recovery?

22 A. (Smagula) Yes, they are. Because we are taking the
23 water from the scrubber, we're treating it to a very
24 high degree, and that quality of water is what allows

1 us to bring it to these other facilities.

2 Q. So, the wastewater treatment facilities in the project
3 that are designed for ultimate disposal into the river
4 are also serving the purpose of treating the water,
5 even though, in this case, it's not actually going into
6 the river?

7 A. (Smagula) Oh, yes. It's meeting what it otherwise
8 would have met with the state review, and we had hoped
9 the federal review, but that didn't happen. So, the
10 quality of the water coming out of the original
11 wastewater treatment facility is meeting all of its
12 expectations. And, as a result, the municipalities
13 have reviewed it in detail and have found it to be
14 fully acceptable to them.

15 Q. Is it fair then that it's only the -- the final
16 disposition of the wastewater that's different, instead
17 of being directed into the river, it's being trucked
18 off-site?

19 A. (Smagula) It's being brought to another facility,
20 where, in fact, it is treated further at their
21 facility. We bring it to the beginning of their
22 facility and they treat it further. And, it has to
23 meet, you know, their discharge obligations that they
24 have permits for.

1 Q. Are the continuing emissions monitors demonstrating
2 reductions in the sulfur dioxide level as well?

3 A. (Smagula) Yes.

4 Q. And, is there a set percentage you're required to
5 reduce for those?

6 A. (Smagula) The law does not have a requirement, but
7 rather has a statement in there that says that we would
8 try to achieve 90 percent. And, I believe there's been
9 some exchange of some data indicating that we are well
10 exceeding that, exceeding that to a great extent much
11 further, through the continuous emission monitoring
12 system.

13 CHAIRMAN IGNATIUS: All right. No other
14 questions. Thank you very much, gentlemen. Oh, before
15 you go, is there redirect from the Company?

16 MS. KNOWLTON: Well, Commissioner
17 Ignatius, I was going to do some redirect on that issue of
18 the SO2 reductions and the CEMs. And, if I might, I have,
19 as Mr. Smagula just indicated, there is some data that we
20 produced in discovery that shows CEMs, from the CEMs
21 system the reductions from a snapshot in time. So, if I
22 might, I'd like to ask Mr. Smagula about those reductions.

23 **REDIRECT EXAMINATION**

24 BY MS. KNOWLTON:

1 Q. And, Mr. Smagula, do you recall responding to a data
2 request from the Office of Consumer Advocate, OCA
3 01-001?

4 A. (Smagula) I do, yes.

5 Q. Do you have that before you? Does that data request
6 provide any quantification --

7 A. (Smagula) Yes. Yes, it does provide quantification.

8 Q. Let me just finish my question.

9 A. (Smagula) Oh. Okay. Sorry.

10 Q. Does it provide any quantification of the SO2
11 reductions as a result of the construction and
12 operation of the scrubber technology at Merrimack
13 Station?

14 A. (Smagula) Yes. It does. It provides an explanation,
15 but it also provides a one-page example of a -- from a
16 data logger from the CEM piece of equipment, which
17 identifies on a -- every couple of minutes what the
18 sulfur SO2 removal efficiency is.

19 MS. KNOWLTON: I propose that we mark
20 for identification, as "Exhibit 8", the Company's response
21 to OCA 01-001. And, this has been distributed to the
22 parties. And, if I might approach the Bench, I can give a
23 copy to the Commissioners, and then make further copies.

24 CHAIRMAN IGNATIUS: That's fine.

1 (The document, as described, was
2 herewith marked as **Exhibit 8** for
3 identification.)

4 BY MS. KNOWLTON:

5 Q. Mr. Smagula, do you have before you what we marked as
6 "Exhibit 2", which is the November 10th, 2011 Progress
7 Report?

8 A. (Smagula) I do, yes.

9 Q. If you would turn to Page 8 of that report.

10 A. (Smagula) I have it, yes.

11 Q. And, you'll see that there's a II paragraph titled
12 "Summary of Project's In-Service Status"?

13 A. (Smagula) Yes.

14 Q. And, the third paragraph begins with, and I'll quote,
15 it says "The new CEMs have indicated that the scrubber
16 is achieving initial SO2 reductions of 90 percent or
17 more with Unit 1 on-line; however, it is early in the
18 project operating life with tuning and testing to occur
19 later in 2011 and early 2012." Is the information that
20 we just marked as "Exhibit 8" that show the
21 quantification of the sulfur reductions consistent with
22 what the Company stated here in this Progress Report
23 about what it expected?

24 A. (Smagula) It is, yes.

1 MS. KNOWLTON: I have nothing further
2 for the witnesses.

3 CHAIRMAN IGNATIUS: Then, thank you very
4 much, gentlemen. You're excused. I believe the only
5 other witness is Mr. Mullen from Staff, is that correct?
6 All right. Then, Mr. Mullen.

7 Yes, let's take a ten minute break.

8 (Whereupon a recess was taken at 3:11
9 p.m. and the hearing reconvened at 3:24
10 p.m.)

11 CHAIRMAN IGNATIUS: All right. We're
12 back. And, it looks like copies of Exhibit 7 and 8 have
13 been distributed now. Thank you very much. So, anything
14 else, before we begin with Mr. Mullen?

15 (No verbal response)

16 CHAIRMAN IGNATIUS: If not, Ms. Amidon.

17 MS. AMIDON: Thank you. Good afternoon.

18 (Whereupon **Steven E. Mullen** was duly
19 sworn by the Court Reporter.)

20 **STEVEN E. MULLEN, SWORN**

21 **DIRECT EXAMINATION**

22 BY MS. AMIDON:

23 Q. Would you please state your full name for the record.

24 A. My name is Steven E. Mullen.

[WITNESS: Mullen]

1 Q. And, could you please explain your employment, for whom
2 you're employed and your position?

3 A. I'm the Assistant Director of the Electric Division
4 here at the New Hampshire Public Utilities Commission.

5 Q. Have you previously testified before the Commission?

6 A. Yes, I have.

7 Q. And, did you file testimony in this docket?

8 A. Yes, I did.

9 Q. And, is the date of that testimony February 24th, 2012?

10 A. Yes, it is.

11 Q. And, correct me if I'm wrong, but it consists of about
12 15 pages of testimony, and three attachments, which
13 constitute another twelve pages?

14 A. That's correct.

15 Q. Do you have any corrections to this testimony?

16 A. No, I do not.

17 Q. And, if you were asked the questions under oath today,
18 would your answers be the same?

19 A. Yes.

20 MS. AMIDON: Thank you. I'd like to
21 mark Mr. Mullen's testimony for identification as "Exhibit
22 9".

23 CHAIRMAN IGNATIUS: So marked.

24 (The document, as described, was

[WITNESS: Mullen]

1 herewith marked as **Exhibit 9** for
2 identification.)

3 MS. AMIDON: Thank you.

4 BY MS. AMIDON:

5 Q. Mr. Mullen, would you please summarize your testimony.

6 A. The purpose of my testimony was to provide a
7 recommendation with respect to PSNH's request for
8 temporary rates related to its costs of installing the
9 Scrubber Project. After going through various options
10 and looking at the costs and alternatives related to
11 recovery periods, I'm recommending a establishment of
12 temporary rates effective April 1st, 2012 at a level of
13 0.98 cents per kilowatt-hour for a 12-month period.

14 Q. And, did you want to elaborate any further on any
15 aspect of your testimony?

16 A. That will be my summary.

17 MS. AMIDON: Thank you very much. He's
18 available for cross.

19 CHAIRMAN IGNATIUS: Thank you. I
20 suppose we go to the Company, and then we'll work around.
21 PSNH?

22 MS. KNOWLTON: I have no questions for
23 Mr. Mullen.

24 CHAIRMAN IGNATIUS: Mr. Patch?

[WITNESS: Mullen]

1 MR. PATCH: No questions. Thank you.

2 CHAIRMAN IGNATIUS: Mr. Fabish or

3 Mr. Peress?

4 MR. PERESS: No questions from me.

5 CHAIRMAN IGNATIUS: Ms. Hollenberg. Mr.

6 Dannis, excuse me?

7 MR. DANNIS: No questions. Thank you.

8 CHAIRMAN IGNATIUS: Ms. Hollenberg.

9 MS. HOLLENBERG: I think I just have one
10 question.

11 **CROSS-EXAMINATION**

12 BY MS. HOLLENBERG:

13 Q. Mr. Mullen, you heard earlier the Company's witnesses,
14 and I believe it was Mr. Baumann in particular, talking
15 in response to questioning, I believe, that about the
16 additional cost to customers, if PSNH's recommended
17 level isn't approved for temporary rate purposes. Do
18 you recall that testimony?

19 A. Yes.

20 Q. And, is a correct statement that you would have
21 considered that impact on customers when formulating
22 your recommendation for temporary rates?

23 A. That was one of the many factors I took into account,
24 yes.

[WITNESS: Mullen]

1 MS. HOLLENBERG: Okay. Thank you. No
2 other questions.

3 CHAIRMAN IGNATIUS: Commissioner
4 Harrington.

5 BY CMSR. HARRINGTON:

6 Q. Mr. Mullen, maybe you can just give us a brief
7 explanation of how you arrived at, I mean, I've read
8 your testimony, I just want to make sure I get it
9 clearly, how you arrived at the particular figure you
10 did? What was the basis of that?

11 A. Okay. If you turn to Attachment SEM-2, which is Bates
12 Page Number 23. And, we can just run right through
13 that schedule and explain how I got to where I got.
14 The amounts shown on Lines 1 through 4 are amounts
15 provided by PSNH in an updated discovery response that
16 is included as Attachment SEM-1 to my testimony. Those
17 are the PSNH's forecasted annual costs for 2012.
18 That's \$55.5 million. Then, if you stay in the "Staff
19 Proposal" column, you'll see that, to that
20 \$55.5 million, I applied a temporary rate cost
21 percentage of 66 percent.

22 Q. Okay. Let me just stop you right there. Two questions
23 I have. On Line 7, there's a amortization of 2011
24 scrubber cost recovery for three years, that figure is

[WITNESS: Mullen]

1 on the PSNH line, but not on yours. And, the second
2 question I guess would be, where did the 60 -- what was
3 the basis for the 66 percent?

4 A. Okay. Addressing the first one, PSNH, as Mr. Baumann
5 explained, they took the \$13.1 million 2011 scrubber
6 under-recovery, and they propose amortizing that over
7 three years. So, the 4.367 million you see in the
8 "PSNH" column, that's one third of that amount. If you
9 look at Line 11 on the schedule, I have the
10 \$13.1 million in full. Okay? So, that's why you don't
11 see anything up above for me on that.

12 Now, as to the 66 percent, that is
13 detailed at the bottom of Attachment SEM-2, Lines 36
14 through 39. And, there I take the original Scrubber
15 Project -- Scrubber Project cost estimate of
16 \$250 million, which is, when I say "original", that's
17 when the legislation was first being discussed, and it
18 was discussed -- generally discussed that it was not to
19 exceed \$250 million. I divide that number by
20 378,773,000. That was provided or was derived up above
21 on Lines 18 through 34, and comes from a discovery
22 response provided by PSNH. What that number represents
23 is the 13-month average of the gross plant in service
24 related to the scrubber during 2012. By dividing those

[WITNESS: Mullen]

1 two, I come up with a temporary rate cost percentage of
2 66 percent. As I explained in my testimony, on Page --
3 beginning on Page 14, around Line 10, I use the
4 250 million as the numerator, because taking into
5 account some of the requirements in the -- in the RSA
6 378:27 regarding temporary rates, using the books and
7 records on file with the Commission, unless there's
8 reason to question. I said, "Well, I know that there's
9 going to be significant questions brought up." So,
10 then I said, "Well, how can I come up with a way to try
11 to balance a lot of what's going on here and still
12 provide some method of providing some beginning cost
13 recovery?"

14 So, I used the 250 million as -- I at
15 least give it -- say it's a valid reference point for
16 purposes of determining a temporary rate level, that
17 would at least allow PSNH to begin some recovery. And,
18 it takes into account, yes, there may be some questions
19 with some of the books and records and reports on file,
20 but at least, again, it was a balancing. Trying to say
21 "okay, the interests of the Company, the interests of
22 customers", and some of these other arguments that you
23 heard about even today.

24 Q. And, just the number, the "378,773" there that's at

[WITNESS: Mullen]

1 Line 35, that represents what? What's been placed in
2 service to date? Is that a new total cost for the
3 Scrubber Project or just what's been placed in service
4 to date and we expect that to go higher?

5 A. That, if you look at Page 23, you'll see that those --
6 that number was derived by using the monthly balances
7 for each month of 2012. So, those include some
8 forecasted capital additions, which is typical for how
9 PSNH's Energy Service rate is done, in terms of it's a
10 forecasted rate, which is later reconciled. And, so,
11 what I did was took the 13-month average of those
12 balances --

13 Q. Okay.

14 A. -- as my denominator.

15 CMSR. HARRINGTON: All right. That's
16 all the questions I have. Thank you.

17 BY CHAIRMAN IGNATIUS:

18 Q. You've also heard questioning earlier today about the
19 cost of equity and weighted cost of capital that had
20 been assumed for different purposes by this Commission.
21 Can you describe a little more what those rates are and
22 how they're applied?

23 A. Well, I think, for purposes of PSNH's distribution rate
24 case, if I recall correctly, the return on equity in

[WITNESS: Mullen]

1 that proceeding was 9.67 percent. The last determined
2 return on equity related to PSNH's generation is I
3 believe 9.81 percent. For purposes of how they're
4 applied, the overall cost of capital gets applied to
5 PSNH's rate base. Again, that's a weighted average
6 cost of capital, using debt and equity. And, as Mr.
7 Baumann said, it's -- the pretax weighted average cost
8 of capital is roughly 10 percent, which, after tax, is
9 somewhere around 7 and a half, 8 percent. So, that
10 applies to all of PSNH's rate base. I don't know if
11 you had any further questions?

12 Q. Well, that's helpful as a start. And, then, on Line 4,
13 on Page 23, where it says "Scrubber Return on Rate
14 Base", what did you use to reach that calculation?

15 A. Okay. If you turn to Page 22, this is Page 7 of
16 Attachment SEM-1, if you look on Line 23, the
17 \$34.8 million comes from Line 23. Okay? So, this is
18 PSNH's calculation, using it's then current overall
19 cost of capital. If you look at Line 22, the return
20 says "0.8878 percent". That's a monthly pretax number.
21 So, if you took that number, multiplied it by 12, that
22 would give you the overall pretax cost of capital,
23 which I think is somewhere about 10.8 or so.

24 Q. Is there anything unusual in this case for you to use

[WITNESS: Mullen]

1 those numbers or for PSNH to have used those numbers?

2 A. No.

3 Q. And, when you did your own calculation on 23 and
4 running them side-by-side, you applied the same overall
5 cost of capital?

6 A. Correct.

7 Q. Mr. Mullen, in your view, is the Scrubber Project --
8 well, first of all, do you agree with PSNH that it is
9 operational?

10 A. Well, again, that's going to be further explored in the
11 remainder of this proceeding. But, for purposes of
12 temporary rates, we look to the reports that are on
13 file with the Commission. PSNH has filed status
14 reports, they filed testimony, stating that the project
15 is on line and in service.

16 Now, there may be parties that may
17 challenge that, and during the remainder of this
18 proceeding. But, if you look at what's on file in this
19 proceeding, that's what we have. It says the scrubber
20 is on line and operational. If, for some reason, the
21 Commission, during the latter part of this proceeding,
22 were to determine that, you know, September 28, 2011 is
23 not the date or, you know, some other conclusion, that
24 would all be figured into the temporary rate

[WITNESS: Mullen]

1 reconciliation that would happen.

2 Q. And, what's the mechanism that you would use if there
3 is either a finding that -- assume it was found to be
4 in service, and then later evidence suggesting it
5 wasn't or that it was in service but wasn't performing
6 as intended, what mechanism is available to sort of
7 undo the impact of an earlier ruling?

8 A. Well, typically, with temporary rate reconciliations,
9 if there were some sort of overcollection, then that
10 would be done through a refund to customers.

11 Q. So, by your identification of a separate adder for
12 scrubber costs, which you propose to be 0.98 cents per
13 kilowatt-hour, you then could use it as a separate
14 removal item per kilowatt-hour as well?

15 A. Correct.

16 Q. By using the calculations you did to get to that
17 66 percent, are you recommending that, for permanent
18 rates, that relationship of the original cost and the
19 ultimate cost continue to be compared that way?

20 A. No. I only use it for the limited purpose of trying to
21 make a recommendation for temporary rates for this
22 hearing. That's the only significance it has.

23 Q. And, why did you recommend April 1st as an effective
24 date?

[WITNESS: Mullen]

1 A. Next possible date for a rate change calendarwise. I
2 mean, it could happen at any date, I suppose. But, you
3 know, April 1st, it's always -- it's always good to
4 have, for accounting purposes and many other reasons,
5 it's always good to have a month-end or quarter -- a
6 month-beginning or quarter-beginning rate change.

7 CHAIRMAN IGNATIUS: Thank you. I have
8 no other questions. All right. Then, Ms. Amidon, any
9 redirect?

10 MS. AMIDON: No thank you.

11 CHAIRMAN IGNATIUS: All right. Then,
12 Mr. Mullen, you're excused. Thank you. Do we have any
13 other business today? Mr. Peress.

14 MR. PERESS: Madam Chair, I would like
15 to reassert my motion to dismiss their petition for their
16 failure to meet their statutory burden to demonstrate that
17 they have obtained all necessary permits and approvals
18 from federal, state, and local regulatory agencies. May I
19 continue?

20 CHAIRMAN IGNATIUS: Please do.

21 MR. PERESS: Madam Chair, this is simply
22 a matter of statutory construction. In order for them to
23 obtain cost recovery, they must demonstrate that they have
24 met the requirements of the statute. That's pursuant to

1 RSA 125-O:18. The requirements of the statute are very
2 explicit with respect to the need to obtain all necessary
3 permits and approvals from federal, state, and local
4 regulatory agencies and bodies.

5 Now, we are not going to focus on what
6 they repeatedly call "agreements" among local regulatory
7 agencies, but instead focus on the required state permit
8 that we have put into evidence the need for under Exhibit
9 6, which are the relevant DES regulations. We've asked
10 that the Commission take administrative notice of 40 CFR
11 423, which are the pretreatment standards that apply to
12 Merrimack Station. And, we have made reference to and put
13 into evidence Exhibit 2 [Exhibit 4?], which PSNH's witness
14 say is a comprehensive list of all permits that are
15 required for them to operate the scrubber system.

16 In the first instance, the statute RSA
17 378:27, which allows the granting of temporary --
18 temporary rates, requires that the reports of the utility
19 filed with the Commission demonstrate that the equipment
20 is "used and useful". Equipment that has not obtained all
21 necessary permits cannot be useful.

22 More so, PSNH has not put anything into
23 the record with the Commission, and has not undertaken any
24 attempt to demonstrate that it is required -- that is has

1 obtained all the permits necessary pursuant to RSA
2 125-0:13 as a condition precedent for it being allowed to
3 obtain cost recovery. Exhibit -- I'm sorry, I might have
4 gotten my exhibits wrong. I think I was referring to
5 Exhibit 4 is OCA 002.

6 In Exhibit 2, at Page 12, which is their
7 status report dated November 10th, 2011, PSNH says that
8 "Due to EPA's refusal to modify or amend the Station's
9 current [wastewater] discharge permit, and the
10 indeterminate time until a new permit becomes effective,
11 alternate wastewater disposal arrangements have been made
12 to ensure compliance with RSA 125-0 requirements." Those
13 RSA 125-0 requirements include that requirement to obtain
14 all necessary permits.

15 In the Commission's questioning, PSNH's
16 witness acknowledged that they have been shipping their
17 wastewater from the Scrubber Project to POTWs in
18 Allenstown, Hooksett, and the DES regional facility in
19 Franklin.

20 I am going to ask the Commission to take
21 administrative notice of one more docket [document?] as
22 part of this argument, which are the instructions for
23 applications for indirect discharge permits under the DES
24 regulations, which I've just downloaded today prior, at

1 lunch.

2 May I approach and provide copies?

3 CHAIRMAN IGNATIUS: You may. And,
4 Ms. Knowlton?

5 MS. KNOWLTON: I have an objection to
6 taking administrative notice to this. I mean, Mr. Peress
7 is making a motion to dismiss here, which needs to be
8 based on, you know, what evidence is in record here. This
9 is the first, you know, that he's introduced this. And, I
10 don't think it's proper to do that as part of an oral
11 argument. So, I would ask that it be denied.

12 MR. PERESS: Madam Chair, this is
13 actually the legal basis. This is just demonstrating,
14 further demonstrating the legal basis. I have already set
15 forth the factual basis.

16 CHAIRMAN IGNATIUS: Well, since I'm not
17 certain what it is that you're asking us to take a look
18 at, it's a little hard to know. Why don't you go ahead
19 and distribute it and we'll take a look at it.

20 (Atty. Peress distributing documents.)

21 CHAIRMAN IGNATIUS: So, Mr. Peress, just
22 some foundation of what it is that you've asked us to look
23 at?

24 MR. PERESS: This is from the DES

1 website. It is the instructions for Industrial Wastewater
2 Indirect Discharge Request applications. And, if you
3 notice, the first sentence of it says "The owner of the
4 indirect discharger from which industrial waste is or will
5 be discharged to a POTW that has its wastewater treatment
6 plant located in New Hampshire shall apply for approval of
7 the discharge accordance prior to discharging any
8 industrial waste." And, I could go on. I've already set
9 forth the regulatory basis as to why such a permit is
10 required.

11 CMSR. HARRINGTON: Yes. Just are you
12 asserting then that the owner of the indirect discharge,
13 in this case Public Service, does not have this permit and
14 is in violation of this rule?

15 MR. PERESS: I don't know.

16 CMSR. HARRINGTON: You're just saying
17 you don't know, they haven't shown --

18 MR. PERESS: Commissioner, because we
19 have -- they responded to a data request from the OCA,
20 which, in testimony today, they asserted contained all
21 permits necessary for them to operate the scrubber system.
22 What I do know is that this is a necessary permit for them
23 to operate the scrubber system.

24 CMSR. HARRINGTON: And, you're saying

1 that there has been no evidence offered, given that shows
2 that they do have this permit?

3 MR. PERESS: That's correct.

4 CMSR. HARRINGTON: Okay. Thank you.

5 MS. KNOWLTON: I'm going to object
6 again. I mean, Mr. Peress has not put on a witness. He's
7 attempting to testify himself as an attorney here, to the
8 extent that he claims that there is no -- that there's a
9 requirement that there be a permit based on this
10 information that he's just handed out. He's now
11 testifying as a fact witness on that, and I think that's
12 improper. And, I'd ask that that -- at least that
13 statement be struck.

14 CHAIRMAN IGNATIUS: Let me just be
15 certain I understand the dispute. The question of whether
16 the Company has obtained a permit under this provision of
17 the Industrial Wastewater Indirect Discharge is not in
18 dispute? Am I correct, there is no such permit?

19 (Atty. Knowlton conferring with Mr.
20 Smagula.)

21 MS. KNOWLTON: Commissioner Ignatius, I
22 mean, I'm just looking at this handout that Mr. Peress has
23 just given us. I really don't know what this is. What I
24 can tell you, which is consistent with Mr. Smagula's

1 testimony, is that the Company is trucking wastewater from
2 the scrubber to various municipal POTWs. The DES has
3 reviewed this. The municipal POTWs have reviewed it.
4 They have all approved it. Whether -- if there is some
5 other legal requirement, I'm not aware of that. And,
6 everything that the Company is doing is lawful in its
7 operations. So, I don't -- I can't say that this is
8 correct. I don't know that.

9 CHAIRMAN IGNATIUS: Well, then, you both
10 got a chance to do some testifying from the Bench.

11 MS. KNOWLTON: Yes, I guess I did.

12 CHAIRMAN IGNATIUS: I mean, from the
13 counsel's table. This is what I'd recommend. I'd like to
14 reserve a record request for, which would be number --

15 MS. DENO: Ten.

16 CHAIRMAN IGNATIUS: -- 10, thank you,
17 for an answer from the Company as to whether it has
18 sought, and, secondly, obtained, if it has sought, a
19 permit under this provision of the Industrial Wastewater
20 Indirect Discharge Request. And, that would be
21 distributed to all parties and placed in the file.

22 **(Exhibit 10 reserved)**

23 CHAIRMAN IGNATIUS: Secondly, I think it
24 might be appropriate for briefing on the legal

1 requirements, whether PSNH is required to have this or any
2 other permit before operating in the way that it's
3 operating, prior to any cost recovery on a temporary rate
4 basis; not permanent, but temporary. We usually are
5 discouraging people from briefing things. But, on the
6 legal issue alone, not on persuasiveness of what's right
7 and wrong, but just on the legal requirement. Is there a
8 requirement? And, if so, has the Company met it or has
9 the Company failed to meet it? I think would be helpful.

10 I would think, is a week sufficient
11 time?

12 MR. PERESS: Yes.

13 CHAIRMAN IGNATIUS: Yes? And, the
14 record request, certainly no longer than a week, I would
15 think that could come in sooner than that. As soon as the
16 information is available that be submitted and put in the
17 file.

18 As for the motion to dismiss the case,
19 we'll deny that. But we're obviously looking at the
20 issues that you're raising.

21 MR. PERESS: Thank you.

22 CHAIRMAN IGNATIUS: Is there anything
23 further?

24 (No verbal response)

1 CHAIRMAN IGNATIUS: If not, then any
2 objection to striking for identification -- excuse me,
3 striking the identification from the exhibits and making
4 them full exhibits?

5 (No verbal response)

6 CHAIRMAN IGNATIUS: No objection seen,
7 we will do so. We've taken the question of
8 disqualification under advisement. I don't think there's
9 anything else to do. Are we done? We had a hearing date
10 scheduled for tomorrow held, in case it was necessary.
11 Obviously, it's not. You don't need to come here. I'm
12 sure there's plenty of other things to do.

13 Ms. Amidon, yes?

14 MS. AMIDON: Were you planning to take
15 closings statements from the parties?

16 CHAIRMAN IGNATIUS: Oh. Yes. I guess
17 the briefing addresses some issues, but doesn't address
18 all. So, thank you for reminding me. We will do
19 closings. We will work around the room, with PSNH going
20 last as the moving party. So, either Mr. Peress or Mr.
21 Fabish?

22 MR. FABISH: So, I guess, just by way of
23 a quick closing statement, I think that Sierra Club's
24 position is that, absent some sort of documentation as to

1 -- well, let me back up.

2 The purpose of the Scrubber Project is
3 to comply with the scrubber law. The scrubber law states
4 that 80 percent or more reduction in emissions of mercury
5 is required. PSNH has not submitted any documentation
6 showing that they are, in fact, complying with the law,
7 which, again, was the entire purpose of the Scrubber
8 Project. Thus, I think it is not -- their petition does
9 not carry the burden of establishing that the Scrubber
10 Project is both in use and useful sufficient to warrant
11 temporary rates.

12 Nor do I think that it's been
13 established that it would be in the public interest to
14 grant temporary rates. There's been no testimony or
15 submissions concerning the public interest or lack thereof
16 of temporary rates. And, moreover, there seems to be a
17 very nominal additional monthly expense associated with
18 delaying rate recovery, as the witness indicated, that
19 could be as low as 150,000 or 500,000, in terms of
20 hundreds of thousands of dollars, given that the prudence
21 determination will be determining what portion of a
22 \$422 million project is eligible for recovery, even a
23 very, very small reduction in the amount that's
24 recoverable against that \$422 million total would

1 completely swamp any addition -- or, completely swamp any
2 savings associated with issuing temporary rates.

3 So, on that basis, I think that it has
4 not established that it's in the public interest to raise
5 rates now against later recovery.

6 CHAIRMAN IGNATIUS: Thank you. Mr.
7 Peress, anything you want to add to that?

8 MR. PERESS: No thank you.

9 CHAIRMAN IGNATIUS: All right. Then,
10 Mr. Patch.

11 MR. PATCH: TransCanada has no position
12 on temporary rates. Thank you.

13 CHAIRMAN IGNATIUS: All right. Mr.
14 Dannis.

15 MR. DANNIS: We have no closing
16 statement. Thank you.

17 CHAIRMAN IGNATIUS: All right. Ms.
18 Hollenberg.

19 MS. HOLLENBERG: Thank you. The Office
20 of Consumer Advocate has no position on temporary rates.

21 CHAIRMAN IGNATIUS: Ms. Amidon.

22 MS. AMIDON: Thank you. Staff has
23 reviewed the filing, and we believe that the Company has
24 records at the Commission that show that the project is

1 used and useful. And, we believe that temporary rates
2 should be set not as requested by the Company, but as
3 proposed by Staff. The two steps would be to reduce the
4 Energy Service rate to 7.77 cents per kilowatt-hour, and
5 to add a -- what I'll call a "scrubber adder" of 0.98
6 cents per kilowatt-hour. And, we believe that rates
7 should take effect on April 1st, if possible, to allow the
8 Company to begin recovery of the rates and to a smooth
9 rate change for customers.

10 CHAIRMAN IGNATIUS: All right. If
11 nothing further, then -- Ms. Knowlton.

12 MS. KNOWLTON: Thank you. The Company
13 would ask that the Commission approve a rate of 1.58 cents
14 per kilowatt-hour to take effect April 1st of 2012, in
15 order to recover the costs set forth in the Company's
16 filing and as updated in Mr. Mullen's testimony with the
17 technical session response.

18 The Company -- well, first, let me step
19 back and say that the Legislature has mandated the
20 installation of the scrubber, and it's found in RSA
21 125-O:11, Roman Numeral number VI, that the installation
22 of this technology is in the public interest. The
23 Legislature also mandated cost recovery for the scrubber.

24 The Company has presented testimony that

1 all of the scrubber assets that are included in the
2 proposed temporary rates are used and useful and they're
3 providing benefits to customers today and from the date
4 that they were in service. That's been documented in
5 Exhibits 1, 2, 3, and 8, all of which are on file with the
6 Commission now.

7 As Mr. Smagula testified, the scrubber
8 is currently reducing SO₂, which the statute recognized as
9 one of the benefits of the scrubber technology. And,
10 that's expressly stated in 125-O:11, II. As Mr. Smagula
11 -- and, we've presented evidence as well in Exhibit 8
12 actually quantifying those SO₂ reductions. As Mr. Smagula
13 also testified, the Company has preliminary information
14 from the stack testing that mercury reductions are
15 occurring.

16 The plant is operating lawfully, and
17 that is the only evidence of record in this case. That
18 the Company has all of the permits necessary to operate
19 the scrubber. That the wastewater from the scrubber is
20 being disposed of lawfully, as approved by DES, and at a
21 DES-run facility in Franklin, among others.

22 CLF and Sierra Club put on no witnesses.
23 They attempted to make their case through
24 cross-examination. But, again, there is absolutely

1 nothing, there's no evidence of record to demonstrate that
2 the plant is doing anything but operating lawfully and
3 with all the permits that are required.

4 The Company believes that it's in the
5 public interest to implement a rate now, and the Staff
6 agrees with that. The Company has made a significant
7 investment. And, it's legally entitled to begin recovery,
8 and we believe that it's in the customers' interest to do
9 so.

10 The rate proposed by the Company is just
11 and reasonable, and we believe is a fair compromise of the
12 competing interests of the Company's right to cost
13 recovery and customers' interests and having a rate go
14 into effect now, to not incur significant under-recoveries
15 in the future.

16 The rate is fully reconcilable, as Mr.
17 Mullen testified. And, so, to the extent that there is
18 any adjustments that are later needed in the rate, once
19 the prudence review has occurred, there's a mechanism to
20 do so.

21 For all of those reasons, we ask that
22 the Commission approve the 1.58 cents per kilowatt-hour
23 for April 1st. And, we appreciate all of your time today.

24 CHAIRMAN IGNATIUS: Thank you. Thank

1 you, everyone. I think, unless there's anything further,
2 we will take the remaining issues under advisement. And,
3 we'll await the briefing and await the record request
4 filing as soon as possible, and issue orders as well.
5 Thank you.

6 (Whereupon the hearing ended at 3:59
7 p.m.)