

STATE OF NEW HAMPSHIRE PUBLIC UTILITIES COMMISSION  
INTER-DEPARTMENT MEMORANDUM

Date: October 8, 2013

**TO:** Amy L. Ignatius, Chair and  
Commissioner Michael D. Harrington

**FROM:** F. Anne Ross, Hearing Examiner

**RE:** DE 11-250 PSNH  
Investigation of Scrubber Costs and Cost Recovery  
Deposition of Gary Long

**HEARING EXAMINER'S REPORT**

At your request, pursuant to Order No. 25,566 (Aug. 27, 2013) I presided over the September 16, 2013 deposition of Gary Long in the above referenced case.

**I. Parties Appearing at Deposition:**

Public Service Company of New Hampshire, by Robert Bersak, Esq. and Barry Needleman, Esq. of McLane, Graf, Raulerson & Middleton

TransCanada, by Doug Patch, Esq. and Rachel Goldwasser, Esq. of Orr and Reno

Conservation Law Foundation, by N. Jonathan Peress, Esq. and Ivy L. Frignoca, Esq.

Sierra Club, by Zachary M. Fabish, Esq.

Office of Consumer Advocate, by Susan Chamberlin, Esq.

New Hampshire Public Utilities Commission, by Suzanne Amidon, Esq. and Michael Sheehan, Esq.

**Also Attending:**

Mike Hachey and Cleve Kapala of TransCanada,  
Eric Chung, Lynn Tillotson, and Heather Tebbetts of PSNH,  
James Allmendinger, and Catherine Corkery of the Sierra Club and  
Steve Mullen of the NH PUC.

**II. Rulings on Objections made during deposition for which I request Commission approval:** (Refer to page number and line of the deposition transcript.)

1. Page 23 line 18

Question: Would you consider a critical point to be your decision as to whether or not to support legislation?

Objection: beyond the scope of the deposition.

**Ruling: Objection sustained.**

2. Page 24 line 10

Question: And I think there's a place in that letter where you said that PSNH crafted the legislation. So I guess I would like to know whether, in fact, that was the case. Seems to me that it's relevant from a discovery perspective, which is supposed to be a liberal standard, as to whether or not that was a critical point in PSNH's decision to proceed with the Scrubber.

Objection: beyond the scope of the deposition.

**Ruling: Objection sustained and suggested the questioner reframe the question to explore PSNH's understanding of the process of the installation of the scrubber.**

3. Page 46 line 18

Question: So, regardless of what the cost on the project had escalated to – let's assume for a minute it had escalated to a billion dollars – then it was a mandate, and you had no choice.

Objection: hypothetical question.

**Ruling: Objection overruled instructed the witness to answer.**

4. Page 53 line 24

Question: You don't believe that – you didn't participate in the lobbying and the legislative session of 2009? Is that what you're saying?

Objection: beyond the scope of the deposition.

**Ruling: Objection sustained and suggested the questioner reframe the question to explore PSNH's knowledge of the Scrubber project in that time frame.**

5. Page 134 line 9.

Question: So, I mean, I just find that hard to believe, given all the times that I know PSNH has gone to the legislature otherwise. You're telling me under no circumstances would you have approached the legislature to change the mandate and the law, regardless of what the cost had risen to. Is that what you're saying?

Objection: hypothetical and beyond the scope.

**Ruling: Objection sustained.**

6. Page 136 line 5

Question: So if – is there anything that would have stopped PSNH from filing something with the Commission asking to close the plant? And by “the plant,” I mean Merrimack Station.

Objection: calling for a legal opinion.

**Ruling: Objection overruled instructed the witness to answer.**

7. Page 148 line 8

Question: I'm talking about before the legislature, the PUC, anybody else, any and all times PSNH has made any efforts to try to change the effect of that provision. Again, it's part of the mandate that says you can only recover from default service customers. Have you made any effort to try to change that? You suggested that to the legislature. Have you suggested it to the PUC?

Objection: beyond the scope.

**Ruling: Objection sustained.**

8. Page 192 line 7

Question: Was that your testimony at the time?

Answer: Yes. And what I was describing as a prudency review was the prudency of complying –

Question: Excuse me. Let me –

Answer: --with the law.

Question: There is no question pending.

Objection: Not allowing the witness to fully answer the question.

**Ruling: Instructed the witness to answer the question without extensive elaboration in order to allow the deposition to proceed quickly.**

9. Page 225 line 11

Question: And so, when looking and doing the highly regarded and the monitoring of draft rules and forthcoming rules, is that done by folks internal to PSNH and/or Northeast Utilities, or outside consultants?

Objection: not relevant.

**Ruling: Objection overruled allowed the question as to background for environmental compliance costs.**

**III. The Following 10 Requests for Documents were made during the Deposition:**

1. Page 20-21 lines 24 – 3.

Request for all minutes of the Risk and Capital Committee of NU to extent not already produced.

2. Page 59 line 1 and Deposition Exhibit 6

Request for a copy of the analysis done by the Brattle Group underlying the report done for CL&P in August of 2008 which supports the statement, “Brattle Group analysis of future energy markets indicated that all coal generation, including Merrimac, will continue to operate economically.”

3. Page 65 line 24 – Page 66 line 6

Request for any documentation of conversations between Gary Long and his immediate supervisor, Lee Olivier, relating to Merrimack Station between July 15, 2008 and September 24, 2008.

4. Page 79 line 20 and Deposition Exhibit 8 page 15

Request for who prepared the \$11 per MMBtu price that was used as an assumption in this report submitted by PSNH to the Commission on Sept. 2, 2008, as well as any underlying materials relied upon by the person preparing the MMBtu price in the report.

5. Page 89 line 10

Request for copies of emails, correspondence or documentation of any sort concerning communications between Mr. Long and others at PSNH or NU regarding the price of natural gas or the price of coal between July 15<sup>th</sup> and Oct. 15, 2008.

6. Page 96 line 20 – Page 97 line 6

Requests for reports to Gary Long on generation and fuels beginning in the summer of 2008 through the fall of 2008.

7. Page 97 line 3

Request for any reports to Gary Long in the July 15, 2008 to Oct. 2008 timeframe on fuel markets and their impacts on PSNH generation.

8. Page 98 line 24

Request for copies of fuel forecasts or other reports reviewed by Mr. Long in preparation for the deposition.

9. Page 122 line 5 and Exhibit 15

Requested copies of any analyses that PSNH did in connection with testimony to the legislature and the newsletter dated February 12, 2009 estimating the cost of the Scrubber at 0.33 cents per kilowatt hour.

10. Page 127 line 12

Request for anything in writing describing specific goals regarding completion of the Scrubber related to Gary Long's or John McDonald's compensation package.

**I find that the 10 requests described above are for information which is relevant to the issues in this docket and I recommend that the Commission order production of the information to the extent not already produced.**

By   
F. Anne Ross, Hearing Examiner