

STATE OF NEW HAMPSHIRE  
PUBLIC UTILITIES COMMISSION

DE 11-250

PUBLIC SERVICE COMPANY OF NEW HAMPSHIRE  
INVESTIGATION OF SCRUBBER COSTS AND RECOVERY

DEPOSITION OF GARY LONG

This deposition was taken pursuant to  
Order No. 25,566, an Order Compelling Deposition,  
and held at the Offices of Orr & Reno, 45 South  
Main Street, Concord, New Hampshire, on  
September 16, 2013, commencing at 9:02 a.m.

PRESIDING: Anne Ross  
N.H. Public Utilities Commission

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15 Eric Chung, PSNH  
16 Lynn Tillotson, PSNH  
17 Heather Tebbetts, PSNH  
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21 Court Reporter: Susan J. Robidas, LCR/RPR  
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23 Registered Professional Reporter  
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I N D E X

WITNESS:  
GARY LONG

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1 MS. ROSS: Well, my name is  
2 Anne Ross. I'm general counsel with the  
3 Public Utilities Commission. The Commission  
4 has asked me just to preside today over the  
5 deposition. Just let me go over a few of  
6 our -- the scheduling and ground rule.

7 The schedule will be that  
8 we'll run this in four sessions. At this  
9 point, we have a 9:00 to 10:45 session, with  
10 a break for about 15 minutes; and then we'll  
11 have an 11:00 to 12:45 session, with an hour  
12 for lunch. Then we'll come back at 1:45 and  
13 run to 3:30, and then we'll have a 15-minute  
14 break, and we'll run from 3:45 to 5:30. And  
15 if we're running ahead of schedule, I'll --  
16 we may vary that schedule slightly.

17 The deposition today is open  
18 to parties and their counsel. So the next  
19 thing that I'd like to do is go around the  
20 room and have you introduce yourselves.  
21 Speak clearly for our court reporter and  
22 indicate what party you're representing or  
23 affiliated with. And we can begin at the  
24 head of the table and then run this way.

1 MS. GOLDWASSER: My name is  
2 Rachel Goldwasser. I'm from the law firm of  
3 Orr & Reno, and I'm here on behalf of  
4 TransCanada.

5 MR. PATCH: Doug Patch, Orr &  
6 Reno, on behalf of TransCanada.

7 MR. HACHEY: Mike Hachey, and  
8 I work for TransCanada Power.

9 MS. O'DEA: Erin O'Dea,  
10 counsel for TransCanada.

11 MR. KAPALA: Good morning.  
12 I'm Cleve Kapala from TransCanada.

13 MS. FRIGNOCA: Ivy Frignoca,  
14 Conservation Law Foundation.

15 MR. PERESS: Jonathan Peress,  
16 Conservation Law Foundation.

17 MR. CHUNG: Eric Chung, with  
18 PSNH.

19 MS. TILLOTSON: Lynn  
20 Tillotson, PSNH.

21 MS. TEBBETTS: Heather  
22 Tebbetts of PSNH.

23 MR. FABISH: Zack Fabish,  
24 Sierra Club.

1 MR. ALLMENDINGER: Jim  
2 Allmendinger, Sierra Club.

3 MS. CORKERY: Catherine  
4 Corkery, New Hampshire Sierra Club.

5 MS. CHAMBERLIN: Susan  
6 Chamberlin, Office of the Consumer Advocate.

7 MR. SHEEHAN: Mike Sheehan,  
8 New Hampshire PUC.

9 MS. AMIDON: Suzanne Amidon,  
10 New Hampshire PUC.

11 MR. MULLEN: Steve Mullen, New  
12 Hampshire PUC.

13 MR. BERSAK: I'm Robert  
14 Bersak, Associate General Counsel for Public  
15 Service Company of New Hampshire.

16 MR. NEEDLEMAN: And I'm Barry  
17 Needleman, McLane, Graf, Raulerson &  
18 Middleton, representing PSNH.

19 MS. ROSS: All right. As we  
20 discussed, we have a few basic ground rules.  
21 Confidentiality is the first issue I wanted  
22 to touch on. Are there any parties in this  
23 room who have not signed a non-disclosure  
24 agreement with PSNH?

1 MR. FABISH: We're working on  
2 it right now. There are a lot of blanks to  
3 be filled out.

4 MS. ROSS: Okay. Before we  
5 hit any confidential materials, that would  
6 need to be finalized, or else you would not  
7 be able to sit through the discussion. So...

8 MR. BERSAK: Do you want  
9 the --

10 (Court Reporter interjects.)

11 MR. PATCH: Well, counsel for  
12 TransCanada signed a non-disclosure  
13 agreement.

14 MS. ROSS: Okay.

15 MS. GOLDWASSER: And I believe  
16 the non-disclosure agreement indicates  
17 that -- and we could check -- subject to  
18 check, that it is for the party, not just for  
19 the individual counsel.

20 MS. ROSS: Okay. And Mr.  
21 Bersak, is --

22 MR. BERSAK: I'm trying to  
23 remember procedure. I haven't been the one  
24 monitoring, but --

1 (Court Reporter interjects.)

2 MR. BERSAK: I'm sorry. I  
3 think we've been having anybody who has  
4 access to confidential materials sign one of  
5 the non-disclosure agreements. That's been  
6 the practice that we've had up to now. So  
7 we've got them available if people want to  
8 sign.

9 MS. ROSS: You want to give  
10 out a few copies now and we'll get started,  
11 and hopefully we won't --

12 MR. BERSAK: I'll have Heather  
13 do that.

14 MS. ROSS: Okay. Thank you.

15 MS. TEBBETTS: Who needs them?

16 MS. ROSS: Anyone who hasn't  
17 signed one probably should.

18 MS. TEBBETTS: Is there  
19 anybody here who hasn't signed one, other  
20 than Zack?

21 MR. PATCH: Well, counsel for  
22 TransCanada signed it, so --

23 MS. ROSS: Is that adequate,  
24 Mr. Bersak, or do you need additional

1           signatures from TransCanada?

2                           MR. BERSAK: That's fine.

3                           MS. ROSS: Okay.

4                           MR. FABISH: So if I have  
5 signed on behalf of Sierra Club, is that  
6 okay?

7                           MR. BERSAK: As long as  
8 everybody's aware of the requirements and the  
9 terms of the NDA, that'll be fine.

10                          MS. ROSS: And obviously, we  
11 haven't invited press to this. This is not a  
12 public hearing. The Commission is not  
13 conducting this at the Commission offices for  
14 that reason. It's a private deposition. So  
15 I would appreciate people not running out  
16 later and having chats with the press about  
17 the contents. I'd appreciate it.

18                          All right. Let's get started.  
19 The first segment will begin with swearing in  
20 the witness, and the first questioner is  
21 Attorney Doug Patch, on behalf of  
22 TransCanada.

23

24

1                   GARY LONG, being first duly sworn by  
2                   the Court Reporter, deposes and states as  
3                   follows:

4   EXAMINATION

5 BY MR. PATCH:

6 Q.     Good morning.

7 A.     Good morning.

8 Q.     I'm going to ask you some questions.  If you  
9           don't understand the question, please ask me  
10          to repeat it or rephrase it, and I'd be happy  
11          to do so.  Does that sound fair?

12 A.     Yes.

13 Q.     Please state your name for the record.

14 A.     Gary Long.

15 Q.     And your current position?

16 A.     President, New Hampshire Renewable Energy  
17          Policy Development.

18 Q.     And your educational background?

19 A.     Undergraduate degree, bachelor of science in  
20          electrical engineering from New Mexico State  
21          University, master of science in electrical  
22          engineering from Northeastern University.

23   (Discussion off the record.)

24 BY MR. PATCH:

1 Q. And how long have you been employed by PSNH?

2 A. Over 37 years.

3 Q. And what positions did you hold?

4 A. Several. The entry-level position was  
5 assistant engineer, and the last position  
6 held with Public Service Company was  
7 president and chief operating officer.

8 Q. And for how long did you hold that position?

9 A. Around 13 years.

10 Q. From when to when, roughly?

11 A. Roughly, July 1st, 2000, to August 1st of  
12 this year.

13 Q. And could you describe your responsibilities  
14 as president of PSNH.

15 A. General management responsibilities,  
16 functions directly under my supervision,  
17 changed several times over the course of that  
18 13 years.

19 Q. Did those responsibilities include being  
20 conversant in what was happening in financial  
21 markets and spot price markets?

22 A. We have a chief financial officer at  
23 Northeast Utilities that provided services to  
24 PSNH and other NU affiliates. So I would say

1           their focus was to provide services to us in  
2           that area.

3    Q.    So I guess the answer is no, your  
4           responsibilities did not include that?

5    A.    Well, you asked about financial, and then you  
6           said spot markets. I'm not sure which spot  
7           markets you're talking about. Lots of spot  
8           markets out there.

9    Q.    Okay. Electricity? Price of electricity.

10   A.    I had some familiarity. I don't track it day  
11          to day.

12   Q.    How frequently would you track --

13   A.    As needed.

14   Q.    So in the time frame, say summer of '08 to  
15          spring of '09, how frequently would you have  
16          tracked it?

17   A.    There was no schedule. It was not a daily  
18          occurrence. I did not manage the daily  
19          bidding, for instance, of power generation,  
20          nor did I participate in daily markets. So  
21          it's -- it was as needed.

22   Q.    Did your responsibilities as president of  
23          PSNH include promoting, opposing or  
24          influencing legislation?

1 A. Yes.

2 Q. Who within PSNH reported to you as president?

3 Basically all employees of PSNH?

4 A. No.

5 Q. No?

6 A. No, not all employees.

7 Q. Okay. Could you describe who?

8 A. Well, as I said, it changes from time to

9 time.

10 Q. Let's talk about '08-'09, in that time frame.

11 A. Again, it may have changed during that time

12 frame. Generally speaking, generation

13 reported to me; what we call customer

14 operations, which is the operation of

15 electrical system, reported to me; something

16 we call energy delivery, which is

17 predominantly engineering, reported to me;

18 other functions -- many other functions

19 reported up through our service company,

20 called Northeast Utilities Service Company.

21 Q. So what portions of PSNH did not report to

22 you?

23 A. The regulatory might be one example. I don't

24 remember which employees might have been

1 called PSNH and which may have been called  
2 Northeast Utilities Service Company  
3 employees. But there were -- PSNH employees  
4 could have been customer service employees,  
5 but they didn't report to me. Meter readers  
6 at various times did not report to me; they  
7 would have been PSNH employees.

8 Q. So, for example, Bill Smagula, did he report  
9 to you?

10 A. Yes.

11 Q. And Lynn Tillotson, did she report to you?

12 A. Not directly. Neither did Bill report to me  
13 directly during that time period.

14 Q. So they reported to somebody else who  
15 reported to you?

16 A. Yes.

17 Q. John MacDonald?

18 A. Yes.

19 Q. How about NU employees? For example: I've  
20 seen the name Cameron Bready listed on the  
21 presentation you made in the summer of '08 to  
22 the Board of Trustees. Did he report to you?

23 A. No.

24 Q. What was the relationship, in terms of the

1 corporate structure, between you and him?

2 A. We were both officers of Northeast Utilities.  
3 I was an officer of Public Service Company, a  
4 wholly-owned subsidiary of Northeast  
5 Utilities. He was an officer of Northeast  
6 Utilities Service Company, reporting up to  
7 the CFO.

8 Q. So you didn't report to him, and he didn't  
9 report to you.

10 A. Correct.

11 Q. How about Jim Vancho?

12 A. Yeah, he didn't report to me, either.

13 Q. And you didn't report to him.

14 A. No.

15 Q. How would you describe your management style?  
16 Do you consider yourself to be a hands-on  
17 administrator, or one who likes to delegate  
18 to others?

19 A. It depends on the circumstances. Generally,  
20 I depend on the team. I prefer to delegate  
21 and operate as a team.

22 Q. And can you explain to me what the Risk and  
23 Capital Committee of NU is?

24 A. It's a part of the Northeast Utilities

1 financial governance process. It's a -- I  
2 guess its simple purpose, in my words, is to  
3 approve capital projects and to oversee  
4 progress of major projects.

5 Q. What about the board of trustees of NU?

6 A. Typical of board of directors' role for any  
7 corporation.

8 Q. And so did that involve also approving  
9 capital projects?

10 A. Only those who were -- which were in excess  
11 of 50 million.

12 Q. So the Risk and Capital Committee was  
13 anything, but the board of trustees was only  
14 those that are over 50 million?

15 A. Not quite. Not every project had to go  
16 before the Risk and Capital Committee. Just  
17 some. But any of those that were over  
18 50 million, in addition to needing the CEO  
19 approval, the CEO needed to go through the  
20 board of trustees of the project.

21 Q. And so what was your relationship with each  
22 of those, with the Risk and Capital Committee  
23 and the board of trustees?

24 A. I'm not a member of either.

1 Q. But they had authority over decisions that  
2 you had to make or that you would make with  
3 regard to capital projects.

4 A. As I stated, their role was to approve  
5 capital spending above a certain limit and to  
6 oversee progress of major projects.

7 Q. What obligations did you consider that you  
8 had to them?

9 A. Obligations? We needed to comply with our  
10 internal governance process.

11 Q. And so are there protocols in your internal  
12 governance process that would spell out, when  
13 you were looking to get approval of a capital  
14 project, exactly what you had to present to  
15 them or what the standards were they would  
16 use to review that?

17 A. The exact material to present was  
18 project-dependent. The process usually  
19 started with a conceptual phase and would  
20 proceed to a final stage, and then once  
21 approved, it would consist of providing  
22 update reports to the Risk and Capital  
23 Committee.

24 Q. So, for example, when the Risk and Capital

1 Committee approved the scrubber project at  
2 the end of June of 2008, you were required to  
3 do update reports to them subsequent to that?

4 A. I wouldn't say that they approved the  
5 scrubber project. The scrubber project was  
6 mandated by the State of New Hampshire.  
7 Their role was to approve our capital  
8 spending to comply with that mandate.

9 Q. Okay. But the update reports subsequent to  
10 that approval, how frequently did you do  
11 those?

12 A. Again, approval of the spending?

13 Q. Yes.

14 A. I don't know the exact schedule. At least  
15 once a year. More often if necessary.

16 Q. And were those done in writing?

17 A. Yes. Usually a presentation. Usually an  
18 oral presentation, perhaps accompanied by  
19 PowerPoint material.

20 Q. And minutes were typically kept of those  
21 meetings?

22 A. Minutes of the action of the RaCC were kept,  
23 yes.

24 MR. PATCH: I'd like to make a

1 request, to the extent PSNH has not already  
2 provided any of those updates or minutes of  
3 those minutes, that they be provided.

4 MR. BERSAK: I'd ask the  
5 hearings examiner what we're going to be  
6 asked --

7 (Court Reporter interjects.)

8 MR. BERSAK: My question to  
9 the hearings examiner is whether this  
10 deposition is going to go beyond the  
11 questioning of Gary Long or be a continuation  
12 of discovery for other documents.

13 MS. ROSS: I think what I  
14 would suggest we do is we note these requests  
15 on the record. As part of my report, I'll  
16 either recommend that the Company produce the  
17 information or not, and then the Commission  
18 can decide whether it wants to have this be  
19 additional discovery. Is that fair for the  
20 parties?

21 MR. PATCH: That's fair.

22 MS. ROSS: Okay. So we'll  
23 note the request. It will be in your  
24 transcript. So we'll see the actual request

1 in the transcript.

2 BY MR. LONG:

3 Q. Mr. Long, could you describe what you  
4 consider to be your obligations to  
5 shareholders?

6 A. My obligation? As an officer of the company,  
7 I have fiduciary responsibilities to, I would  
8 say, provide for investment security and fair  
9 return.

10 Q. And what about to ratepayers?

11 A. Similar. You know, I've always felt my job  
12 was to make -- to satisfy both needs and the  
13 needs of customers, to provide reliable  
14 electricity at a reasonable cost.

15 Q. And how would you balance those obligations?  
16 In your mind, do they ever come into  
17 conflict?

18 A. Did they ever in my 37 years come into  
19 conflict?

20 Q. Mostly when you were president of PSNH.

21 A. Well, I think --

22 Q. I just want some understanding of how you  
23 balance those two obligations.

24 A. My philosophy was always you have to satisfy

1 both, and you -- if either was not satisfied,  
2 you couldn't really go forward.

3 Q. With regard to the scrubber project, what  
4 would you describe as the critical points in  
5 PSNH's decision to proceed with the scrubber  
6 project?

7 A. Well, decided to proceed... I think as soon  
8 as the mandate was established and the law  
9 was enacted, that was obviously critical,  
10 because at that point we were thrown into a  
11 compliance mode. And we obviously had to  
12 comply with that law. So I would say that  
13 was a critical -- obviously, the most  
14 critical event was the state deciding and  
15 ordering us and mandating to us that we  
16 install the scrubber. So that put us in a  
17 compliance mode.

18 Q. Would you consider a critical point to be  
19 your decision as to whether or not to support  
20 legislation?

21 MR. NEEDLEMAN: Objection. I  
22 think that's beyond the scope of the  
23 deposition.

24 MS. ROSS: I'll sustain that

1 objection.

2 BY MR. PATCH:

3 Q. Well, okay. So you're saying the only  
4 critical point with regard to PSNH's -- well,  
5 let me go back then to --

6 MR. PATCH: Could we get the  
7 letter, the September 2nd letter from  
8 Mr. Long to the PUC in 08-103.

9 BY MR. PATCH:

10 Q. And I think there's a place in that letter  
11 where you said that PSNH crafted the  
12 legislation. So I guess I would like to know  
13 whether, in fact, that was the case. Seems  
14 to me that it's relevant from a discovery  
15 perspective, which is supposed to be a  
16 liberal standard, as to whether or not that  
17 was a critical point in PSNH's decision to  
18 proceed with the scrubber.

19 MR. NEEDLEMAN: I'm going to  
20 object --

21 MR. PATCH: In the  
22 September 2nd letter to the Commission in the  
23 08-103 docket, Mr. Long took credit for  
24 crafting and then also spearheading the

1           legislation. And so what I'm trying to get  
2           at is what the thought process was of PSNH at  
3           critical points in the decision-making  
4           process. Seems to me that's one of the  
5           critical points. They had to decide whether  
6           or not they were going to -- whether or not  
7           they were going to support the legislation  
8           that they, in fact, had drafted.

9                       MR. NEEDLEMAN: I'll object  
10           again. Regardless of anything that may be  
11           contained in that letter, the Commission was  
12           explicit in its order with respect to this  
13           deposition, that things like that were beyond  
14           the scope and not relevant.

15                      MR. PATCH: Well, I'd just  
16           like to state, I don't think the Commission  
17           was explicit in that way at all. In fact, if  
18           you look back over the Commission's orders  
19           with regard to motions to compel in this  
20           docket, they've allowed a number of inquiries  
21           with regard to things that were said to the  
22           legislature and various aspects of  
23           presentations to the legislature. So I don't  
24           think that's correct at all.

1 MS. ROSS: I think what I  
2 would allow in framing the question this way,  
3 is what was the Company's understanding of  
4 the process of the installation of that  
5 particular environmental compliance element,  
6 which is the scrubber. I think it's fair to  
7 ask the Company what it knew and what it  
8 thought at that point in time, not -- I don't  
9 believe it's appropriate to ask the Company  
10 why it may or may not -- whether it attempted  
11 to support or oppose the legislation, that  
12 clearly the Commission has said is off  
13 limits. But if you can phrase your question  
14 to get to the Company's knowledge about the  
15 installation at that time, I'll allow that  
16 inquiry.

17 BY MR. PATCH:

18 Q. Okay. Then my question, Mr. Long, is with  
19 regard to the pre-2006 legislative session  
20 and the Company's decision to proceed with  
21 supporting the legislation that was the  
22 subject that -- with the scrubber project.  
23 I'm not trying to find out what you did in  
24 the legislative session. I'm trying to find

1 out something about the Company's thinking  
2 with regard to the project back then.

3 A. Yeah. At that time frame that you're  
4 referring to, there was an existing law -- we  
5 sometimes refer to it as the "Four Pollutant  
6 Law" --

7 (Court Reporter interjects.)

8 A. Sometimes referred to as the "Clean Power  
9 Act." And there was an obligation by, I  
10 would say the state and PSNH, to resolve the  
11 matter of how to reduce mercury emissions  
12 from our power plants. So it was an  
13 unresolved -- because nobody knew how to do  
14 it at the time. So we had an obligation to  
15 work out with other parties, in we felt a  
16 collaborative and cooperative way, how to  
17 comply with that part of the existing law.  
18 And that led to cooperation and discussions,  
19 lengthy discussions, and tests and a whole  
20 history of trying to figure out how to reduce  
21 mercury. And that ultimately manifested  
22 itself in the 2006 law.

23 Q. So what were the factors that you considered  
24 in deciding with regard to the scrubber? I

1 mean, economic factors? You know, ability to  
2 comply? I mean, what were the factors that  
3 you considered when you were trying to decide  
4 how to proceed with -- you know, with the  
5 consideration of that project?

6 A. Clearly, trying to meet the requirements of  
7 the state, to try to meet the intent of the  
8 law, which was to reduce mercury. The  
9 methods and means were not known. So, to  
10 determine what would be the proper methods,  
11 what methods could work to achieve the goal  
12 that the state wanted to achieve. So,  
13 technical feasibility was a part of that.

14 Q. Economics?

15 A. Yes. Economics are, I would say, part of  
16 everything we do.

17 Q. Impacts on customers?

18 A. Yes.

19 Q. Return to shareholders?

20 A. Well, not -- it wouldn't be on the list. If  
21 you could achieve the reductions through  
22 operations which wouldn't involve any  
23 investment by investors. So, no, that wasn't  
24 a criteria.

1 Q. So you figured you couldn't achieve without  
2 any capital additions?

3 A. We didn't know. That was part of the  
4 process. We tried carbon injection and  
5 other, you know, techniques that required  
6 much smaller amounts of investment than a  
7 scrubber. So we obviously were interested in  
8 whatever worked best.

9 Q. At some point it became clear that a capital  
10 addition was required, though; correct?

11 A. Well, there were small capital additions that  
12 may have been required for carbon injection.  
13 But it wasn't until, you know, the scrubber  
14 idea came about that it was -- obviously, the  
15 scrubber requires capital investment.

16 Q. And so I guess what I'm trying to get at is,  
17 when the decision was made with regard to the  
18 scrubber, what were the factors that you  
19 considered?

20 A. Same.

21 Q. Same. So, return to shareholders was not a  
22 factor then --

23 A. No, no --

24 Q. -- even though it was a capital project?

1 A. What would be of concern would be cost  
2 recovery and a fair return to investors. But  
3 we -- it wasn't a project that investors had  
4 asked for; it was a project that the state  
5 had mandated. So it wasn't viewed as --  
6 obviously, it was a large investment. But  
7 that wasn't our objective. Our objective was  
8 to reduce mercury.

9 Q. And so mandated in 2006 or mandated prior to  
10 2006?

11 A. Well, 2006 is when the law was passed that  
12 mandated the installation.

13 Q. So there was no mandate before that. That's  
14 the mandate you're talking about.

15 A. Yes. Well, there was a goal, I would say,  
16 probably the best way of saying it. There  
17 was a goal and a desire for the parties to  
18 work out how to reduce mercury. And as I  
19 said, that manifested itself in that mandate  
20 getting passed in 2006.

21 Q. It was a mandate you supported; correct?

22 A. Yes, as did many others. It was a  
23 collaborative effort. It wasn't unilateral.

24 Q. And I asked about critical points in the

1 decision to proceed with the scrubber, and we  
2 talked about 2006. How about after that law  
3 passed? And I think the effective date of  
4 that was June, June 8th of 2008 [sic], you  
5 know, subject to check. Or I'd be happy to  
6 show you, I think, a copy of the statute that  
7 shows that.

8 MR. BERSAK: I believe you  
9 said 2008. I think it was effective in 2006.

10 MR. PATCH: I'm sorry. You're  
11 correct. June 8th of 2006.

12 BY MR. PATCH:

13 Q. So, assume for a minute that that was the  
14 effective date. Were there any critical  
15 points after that in PSNH's decision to  
16 proceed with the scrubber project?

17 A. Well, once the law was passed, the decision  
18 was made by the state, at that point our role  
19 was to comply with the mandate. And part of  
20 that mandate was to reduce mercury emissions  
21 as soon as possible. And that was very clear  
22 to us by the way law was written that, and  
23 the discussions, that we were in a compliance  
24 mode. And so our whole focus was to do

1 exactly what the law said: Install the  
2 scrubber as soon as possible. So that's --  
3 that was our focus.

4 Q. I'd like to try to understand whether you did  
5 any economic studies back in that time frame,  
6 sort of pre-2006 legislation, to determine  
7 whether or not it made sense for you to  
8 support that. Do you recall doing any  
9 economic studies?

10 A. I personally didn't do any economic studies.

11 Q. There is -- I guess I'd like to show you a  
12 response to TC-2-3 -- TC standing for  
13 TransCanada.

14 (Long Deposition Exhibits 1 and 2  
15 marked for identification.)

16 BY MR. PATCH:

17 Q. This is a response to a data request. At the  
18 upper right-hand corner it says June 18,  
19 2012, TC-2, and then it says Q-TC-003. And  
20 on Page 37, there was a request to provide  
21 any and all documents that PSNH or any of its  
22 employees, et cetera, had provided to any  
23 legislator or state officials. And on  
24 Page 37 of that, there is a -- Page 37 being

1           in the upper right-hand corner, the  
2           numbering -- there is a letter that you wrote  
3           back then, and there is a reference in that  
4           letter about the 2005 legislation, where you  
5           had argued that it could add hundreds of  
6           millions of dollars to PSNH's energy  
7           production costs.

8                     And I guess what I would like to know  
9           is, what changed between 2005 and 2006 that  
10          led you to take a different view of the  
11          legislation?

12   A.    You're referring to two different  
13          legislation, if I can -- it looks like.

14   Q.    That's right. I am.

15   A.    Yeah. So this is a different bill than the  
16          one that passed.

17   Q.    That's right.

18   A.    And there were concerns with the bill as  
19          drafted, and it never did pass. So this  
20          letter, as you call it, talked about the  
21          concerns with that proposed legislation which  
22          never passed.

23   Q.    All right.

24   A.    So I --

1 Q. So I guess what I'm trying to find out --

2 A. I mean, I thought we weren't supposed to talk  
3 about legislative things, especially things  
4 that didn't pass.

5 Q. Well, no. I think it's important to  
6 understand the committee -- the Company's  
7 thinking with regard to the cost of the  
8 scrubber project. And in order to get at  
9 that, I'm asking you what changed between  
10 2005 and 2006. Why did you support --

11 A. This particular bill wasn't feasible, wasn't  
12 technically possible to do.

13 Q. Okay. Well, that's what I'm trying to  
14 understand, is what the difference was.

15 A. I don't remember, you know, all the details  
16 of it, other than it had time lines that  
17 could not be met.

18 Q. Okay. And cost to ratepayers? Obviously,  
19 that was a consideration that you put in this  
20 letter that we just cited.

21 A. Well, that goes with not being able to do it  
22 in the time frame that was being proposed.  
23 So if you look at the time frame, there's  
24 significant costs. And it's not cost of the

1 scrubber. It's all forms of costs, including  
2 not being able to generate power. I mean,  
3 it's not -- it's a different situation  
4 altogether.

5 Q. And in terms of impacts to ratepayers,  
6 different --

7 A. Oh, yes. Much, much more substantial and  
8 far-reaching. It's really -- it's a scenario  
9 where you can't comply with the law, as  
10 opposed to a law that was passed that we  
11 could comply. This one, it's just like night  
12 and day.

13 Q. When you first became aware that the cost of  
14 the project would exceed \$250 million, when  
15 was that when you first became of that?

16 A. I believe it was somewhere in 2008.

17 Q. What did you understand to be the reasons  
18 that the cost of the project had increased  
19 from the original estimate of a not-to-exceed  
20 number of \$250 million to \$457 million?

21 A. Well, we have -- I know it's in the data  
22 requests you've already asked for. We have  
23 several documents that list -- that answer  
24 that question. And I don't know if I can

1 remember them all by heart here, but those  
2 documents do exist. But it has to do with  
3 site-specific design, has to do with  
4 escalating prices during that time in history  
5 when there was a lot of installation of  
6 scrubbers going on in the country, price  
7 escalations, but -- and finishing -- getting  
8 into more detailed engineering design where  
9 you could make more precise and accurate  
10 estimates of the costs.

11 Q. And with the cost increasing -- or the cost  
12 estimate increasing from \$250 to \$457  
13 million, would PSNH still get its money back  
14 at \$457 million?

15 A. Yes, so long as we managed the project  
16 construction prudently.

17 Q. How much more would the project -- or was the  
18 project going to make with the estimate of  
19 \$457 million, for PSNH or Northeast  
20 Utilities, versus \$250 million?

21 A. I don't have that number in my mind.

22 Q. But clearly it was going to make  
23 significantly more money in terms of a return  
24 on rate base.

1 A. Well, make more money because more money  
2 would have to be raised and gotten from  
3 investors and invested. So, yes, in the  
4 normal utility ratemaking, you expect to get  
5 a reasonable return on money that you had to  
6 raise and invest for the public.

7 Q. But it's not like PSNH was going to have to  
8 spend any more because of that increase;  
9 correct -- any more that would not be  
10 recovered from ratepayers.

11 A. Well, that's what the law says. We get  
12 recovery from customers. And, yes, we  
13 believe the law.

14 Q. PSNH told public officials and legislators  
15 that the amortization and the investment in  
16 the scrubber and the operational costs would  
17 be offset by reductions in SO2 allowance  
18 purchases that were required by the New  
19 Hampshire Clean Power Act. Do you recall  
20 that?

21 A. Yeah, partially offset.

22 Q. Well, how about if we take a look at TC-2-3,  
23 Page 9. Is that -- that's the one we already  
24 handed out.

1 MS. GOLDWASSER: Yeah.

2 BY MR. PATCH:

3 Q. Could you read into the record the second  
4 bullet. And maybe we ought to establish,  
5 first. On Page 2, it indicates that this is  
6 New Hampshire Senate Bill 128 Proposed  
7 Amendment. 128 was the 2005 legislation;  
8 correct?

9 A. I don't know.

10 Q. You don't know? Okay. Well, let's assume  
11 for a minute that that's the case. It says  
12 proposed amendment, framework, key talking  
13 points, October of '05, draft for discussion  
14 purposes only. And then on Page 9, the  
15 second bullet, could you read what that says.

16 (Witness reviews document.)

17 A. Page 9?

18 Q. Nine in the upper right-hand corner. In the  
19 lower right it's eight.

20 A. Well, I can't read it. What do you want me  
21 to read, the data request number?

22 Q. No, the second bullet on that page.

23 A. Oh, starts with "Amortization"?

24 Q. Yes.

1     A.     "Amortization of the investment and  
2           operational costs will be offset by  
3           reductions in CO2 [sic] allowance purchases  
4           required by the New Hampshire Clean Power  
5           Act." And the response to this whole request  
6           says, "PSNH has never claimed that the cost  
7           of the scrubber will be fully mitigated by  
8           the savings avoided in the purchase of SO2  
9           emissions allowances." So as I stated  
10          earlier, it's a partial offset.

11    Q.     Okay. Well, the record will speak for itself  
12          on that.

13                 But when did you first become aware that  
14                 the SO2 allowance purchases would not offset  
15                 operational costs?

16    A.     From the very beginning, as I said, it's --  
17           oh, you said operational costs. Excuse me.  
18           I was thinking of total costs.

19                         (Court Reporter interjects.)

20    A.     You said operational costs. Clarification.  
21           It says, "operational costs." I guess my  
22           point is it wouldn't have offset all of the  
23           costs of the scrubber.

24    Q.     So I guess, if I understand you correctly,

1           you're saying what you suggested with regard  
2           to the offset from the beginning turned out  
3           to be true; it never changed.

4    A.    No.   SO2 allowance prices change from time to  
5           time and have changed over time.

6    Q.    So the degree to which the amortization of  
7           the investment in the scrubber and the  
8           operational costs would be offset.  You would  
9           admit that the degree to which it would be  
10          offset changed over time and was not as  
11          significant as PSNH had originally told  
12          public officials it would be.  Would you  
13          agree with that?

14   A.    I would agree that the price of SO2  
15          allowances have changed.  It's declined  
16          recently.  But it was sort of an extra side  
17          benefit of -- well, a very significant -- I  
18          shouldn't say a side benefit -- a very  
19          significant benefit of the scrubber, which  
20          was designed to reduce mercury, that it was  
21          looked at very favorably that it would also  
22          reduce CO2.  So, in the process of reducing  
23          mercury, reduce CO2 [sic] in the process of  
24          reducing -- I should say not CO2, SO2 -- that

1           it would remove PSNH's obligation to buy SO2  
2           allowances. And that was estimated, and it  
3           changed over time.

4   Q.    Changed to whose benefit or to whose  
5           detriment?

6   A.    Well, either way, customers don't have to pay  
7           it anymore. I mean, the cost -- I mean, by  
8           not having to buy allowances, customers no  
9           longer are, you know, exposed to the cost of  
10          buying allowances. So it's to customers'  
11          benefit.

12   Q.    I'd like to direct your attention to the  
13          response to TransCanada 4-9.

14                           (Long Deposition Exhibit 3 marked  
15                           for identification.)

16   Q.    The second page of the response indicates  
17          that this is Merrimack Station Clean Air  
18          Project Strategic Sourcing Plan, dated  
19          June 15 of '07. Do you recall this document?

20   A.    I recall the subject. This is not a document  
21          I prepared.

22   Q.    Okay. Do you know who prepared it?

23   A.    No, not for sure. It would probably have  
24          been directed under -- prepared under the

1 direction of the vice-president, who reported  
2 to me, and his team, along with our  
3 purchasing department, legal, and perhaps  
4 others.

5 Q. Okay. And who was the vice-president?

6 A. John MacDonald.

7 Q. Okay. And do you recall whether it was  
8 presented to you at a meeting or given to you  
9 in writing, or do you recall how it was  
10 presented?

11 A. No.

12 Q. But you recall seeing it, at least?

13 A. No. What I recall is sourcing of equipment  
14 and services was a very critical part of the  
15 early part of the project to move forward  
16 with meeting the mandate.

17 Q. I'd like to direct your attention to the  
18 response to TransCanada 4-10.

19 (Long Deposition Exhibit 4 marked  
20 for identification.)

21 Q. And this is the May 2008 project cost  
22 estimate. Now, when I asked you the question  
23 before about did you recall when you first  
24 became aware that the estimate for the cost

1 of the project had increased from \$250- to  
2 \$457 million, does this help to recall when  
3 you first became aware of that?

4 A. Well, I don't remember the day. I just  
5 remember, you know, it was in 2008. This  
6 document, at least the spreadsheet, is dated  
7 5/6/08.

8 Q. So, according to your recollection, is this  
9 around the time frame when you became aware  
10 of that?

11 A. Yes.

12 Q. Was there any time prior to this that you  
13 became aware that the cost had increased,  
14 that you can recall?

15 A. I don't know. You know, if so, it would be  
16 probably days or -- where, you know, a direct  
17 report could have said the price is --

18 (Court Reporter interjects.)

19 A. Yeah, I mean, it could be that I was orally  
20 informed that they were having some  
21 preliminary results. But it would have been  
22 in the same general time frame.

23 Q. Okay. With regard to the Risk and Capital  
24 Committee, when you prepared to make the

1 presentation to the Committee -- and I guess  
2 I think we need to look at Staff 2-2, you  
3 know, which is a copy of the PowerPoint that  
4 was used for that presentation. So why don't  
5 we mark that first.

6 (Long Deposition Exhibit 5 marked  
7 for identification.)

8 Q. And in the upper right-hand corner, Page 5 of  
9 50, the cover page to that presentation,  
10 indicates it was made on June 25th of '08;  
11 indicates it was made by you, John MacDonald  
12 and Jim Vancho. Does that square with your  
13 recollection?

14 A. Yes.

15 Q. What were the factors that you took into  
16 account when you prepared this presentation?

17 A. I don't know how to answer that. The factors  
18 in preparing this was to inform the RaCC of  
19 the new estimates and the status of the  
20 project, and show them the reasons and the  
21 rationale and the impact that the mandate  
22 would have on customers.

23 Q. Okay. And you were seeking their approval at  
24 this time; correct?

1 A. This was -- yes. We had previously sought  
2 approval and gotten it to do some project  
3 spending, to hire an engineering construction  
4 manager, and do some work that had previously  
5 been approved. And then as a result of that  
6 work, we now had our, what we call our final  
7 estimate, and it was part of the process to  
8 present the final estimate.

9 Q. And did the Risk and Capital Committee have  
10 the authority to say no to the project?

11 A. No. No, it was a mandate by the state. It  
12 wasn't a company decision to make. We -- our  
13 role was to comply. And in doing that, we  
14 needed to raise capital, and doing that we  
15 needed to have procurement. We needed to  
16 understand the impact. But we were in  
17 compliance mode, not decision mode. The  
18 decisions that we made were regarding  
19 construction and compliance with the mandate,  
20 and we tried to do it as soon as possible in  
21 accordance with the law.

22 Q. So, then, explain to me again what the role  
23 of the RaCC, as you called it, was. It  
24 wasn't whether to say yes or no to the

1 project?

2 A. Well, right. This is a compliance process  
3 for us internally. This was not a project  
4 decisional process. It was -- you know, as I  
5 said earlier, one of the roles of the RaCC is  
6 to monitor the process of large projects to  
7 ensure their success. And they obviously  
8 want a lot of information to do that. But  
9 this was very unusual and very unique. It's  
10 the only project I've ever seen in my career  
11 where you've been mandated to do that by the  
12 state. It's not the normal way that we  
13 proceed. And, of course, the RaCC was really  
14 defined for normal projects, where management  
15 has discretion. But management had no  
16 discretion on this one. It was already  
17 mandated.

18 Q. So, regardless of what the cost on the  
19 project had escalated to -- let's assume for  
20 a minute it had escalated to a billion  
21 dollars -- then it was a mandate, and you had  
22 no choice.

23 A. Well --

24 MR. NEEDLEMAN: Objection. I

1 don't think Mr. Long should be required to  
2 answer hypotheticals.

3 MR. PATCH: I think it's very  
4 relevant to discovery.

5 MS. ROSS: I'll instruct the  
6 witness to answer.

7 A. Well, that wasn't considered. That number  
8 was not considered. We were operating in a  
9 compliance mode with the information that we  
10 had. And as soon as we had finished doing --  
11 making progress on our engineering, detailed  
12 engineering and procurement processes, then  
13 we were in a position to show that internally  
14 and to show it externally. And that's what  
15 we did. We informed the legislature, the  
16 Public utilities Commission and others what  
17 this new estimate was. But since it wasn't  
18 our decision to go forward, and the  
19 legislature had full knowledge of the new  
20 estimate, and the law didn't change, so our  
21 compliance requirement did not change.

22 BY MR. PATCH:

23 Q. When did you give the legislature knowledge  
24 of that new estimate?

1 A. It was in 2008. We had the PUC -- it was  
2 general public knowledge once we provided it.  
3 It was also disclosed in our filings with the  
4 Securities and Exchange Commission.

5 Q. But you didn't tell the legislature in June  
6 of '08, when you met with the Oversight  
7 Committee -- not you personally, but when  
8 PSNH officials did -- did you?

9 A. I don't -- I wasn't there. I don't know what  
10 you're referring to.

11 Q. There's a response to discovery requests that  
12 has a one-page sheet that has -- that was  
13 presented to the Oversight Committee, that  
14 has nothing on it about the increase in the  
15 cost estimates. So --

16 A. That doesn't mean there wasn't awareness on  
17 that.

18 Q. Oh, so you're saying you didn't put it on the  
19 sheet, but somebody whispered in the  
20 legislators' ears? Or what are you saying?

21 A. I'm saying that's not the only communications  
22 that happens in business is the one that  
23 you're looking at. It's not the only  
24 communications that happened.

1 Q. But that was a statutory requirement, that  
2 you keep the Oversight Committee informed;  
3 was it not?

4 A. But I -- not to -- talk to me about what  
5 documents. Show me the documents. Show me  
6 the people who presented. I don't recall  
7 doing that.

8 Q. Okay. Well, we'll come back to that later, I  
9 guess.

10 And what about the role of the board of  
11 trustees? Did they have the authority to say  
12 no?

13 A. Well, do they have the authority? I suppose  
14 they could direct management not to work on  
15 the project, but then we'd be out of  
16 compliance. And there were severe penalties  
17 with doing that. So, I personally don't  
18 imagine our board of trustees going against a  
19 mandate of the State of New Hampshire. So I  
20 wouldn't view that as a realistic option.

21 Q. So the only authority that the board of  
22 trustees had was to approve the expenditure.

23 A. Well, no. It's to ensure that management is  
24 managing the project well.

1 Q. And so, when we look at Staff 2-2, Page 29 of  
2 50, it indicates that you and Cameron Bready  
3 made the presentation to the board of  
4 trustees on July 15th of '08. Does that  
5 square with your recollection of that?

6 A. Yeah, we were sponsors -- or we were  
7 presenters at that meeting.

8 Q. Why were the presenters different at that  
9 meeting than at the RaCC meeting? What role  
10 did Cameron Bready have versus Jim Vancho,  
11 for example?

12 A. Jim Vancho reported to Cameron Bready.  
13 Cameron Bready was, you know, a finance  
14 officer of the company. It was that job --  
15 or the role of the finance group to  
16 financially analyze all projects that went  
17 before the RaCC.

18 Q. And so this was a higher level of approval  
19 needed, the board of trustees. So, somebody  
20 of a higher authority made the presentation.  
21 Mr. Bready was higher than Mr. Vancho;  
22 correct?

23 A. Yes.

24 Q. I don't see in either of these two

1 presentations any indication that the project  
2 was a mandate. Can you explain to me why  
3 that's the case?

4 A. Well, there might be other documents if it's  
5 not contained in there. There's very clear  
6 communication and very clear understanding  
7 within Northeast Utilities and PSNH that it  
8 was a mandate, yes.

9 Q. I don't see anything in the minutes of either  
10 meeting indicating that, either. Could you  
11 explain that?

12 A. I would have to review those minutes. But  
13 regardless, I'm telling you that it was very  
14 well understood that we were complying with  
15 the state law.

16 Q. It was understood, but it isn't clear that  
17 you told either one of those groups.

18 A. I can tell you they understood.

19 Q. And what if either one of them had not  
20 approved the request? What would you have  
21 done?

22 A. Never faced that situation.

23 Q. Pardon?

24 A. I never faced that situation.

1 Q. Well, I'm asking you hypothetically. What if  
2 either the risk committee or the board of  
3 trustees had not approved the request? What  
4 were the options available to you at that  
5 time? What would you have done?

6 A. You sort of asked a similar question earlier.  
7 You know, my role was to comply. I have to  
8 comply with state law. I have to look out  
9 for the interest of customers, and I have to  
10 do what my superiors say. So I have to  
11 comply, you know. So I can't tell you,  
12 hypothetically, if they would have said no,  
13 what I would have done. I, you know, could  
14 have screamed and yelled. I could have quit.  
15 But if I'm going to work there, I have to  
16 comply. I have to comply with the law.

17 You know, in our executive summary, what  
18 you were just saying, we never said it was  
19 mandated. On Page 30 of 50, it says, "New  
20 Hampshire legislation mandates compliance to  
21 mercury emissions standards set forth in the  
22 New Hampshire Mercury Reduction Act." So we  
23 had communicated numerous times with my  
24 superiors at Northeast Utilities of this, and

1 I can tell you they were well aware of the  
2 law, the law that was passed, and what it  
3 mandated.

4 Q. So if the risk committee or the board of  
5 trustees did not approve, was an option to go  
6 back to the legislature and ask for relief  
7 from the law?

8 A. Again, never got to that situation, never had  
9 to do that. As we were in compliance mode,  
10 you know, we were updating most everyone on  
11 the status of the project, the costs. And,  
12 you know, it's up to the legislature to  
13 decide if they wanted to change course. Of  
14 course, they were well aware of the \$455  
15 million estimate, and they did not --

16 (Court Reporter interjects.)

17 A. -- the \$457 million estimate and did not  
18 change course. And so we had to continue to  
19 comply with the law as it was.

20 Q. But you would admit, would you not, that you  
21 were, as Senator Bradley said, "complicit" in  
22 that?

23 A. No, I would not agree with that.

24 Q. You don't believe that -- you didn't

1           participate in the lobbying and the  
2           legislative session of 2009? Is that what  
3           you're saying?

4                       MR. NEEDLEMAN: I'm going to  
5           object again. We're wandering again into  
6           areas that have to do with interactions with  
7           the legislature, which I understood to be  
8           beyond the scope here.

9                       MR. PATCH: Well, I would just  
10          like to say that PSNH keeps saying it was a  
11          mandate, it was a mandate. And clearly, they  
12          had significant involvement in legislative  
13          processes. So I don't think they can just  
14          continue to fall back on that argument  
15          without explaining themselves.

16                      MR. NEEDLEMAN: It's not --

17                      MR. PATCH: I think it's  
18          important for discovery to be able to ask  
19          that question.

20                      MR. NEEDLEMAN: It's not  
21          falling back on an argument. The Commission  
22          ruled explicitly on this issue and said that  
23          this wasn't going to be the subject of this  
24          deposition, and that was premised explicitly

1 on the papers that you submitted asking for  
2 the deposition.

3 MR. PATCH: Not true. Not  
4 true. I don't think that's true at all. I  
5 think that's mischaracterizing what the  
6 Commission said.

7 MS. ROSS: I think, Mr. Patch,  
8 what I would -- a question that I would allow  
9 would be to get to the Company's knowledge of  
10 the project in that time frame as opposed to  
11 whether or not they took a specific action to  
12 influence the legislature.

13 MR. PATCH: Well, I guess the  
14 question I'm trying to have answered is, if  
15 the committee or the board had said no, was  
16 an option that was available to PSNH to go  
17 back to the legislature and basically say,  
18 you know, We don't have authority from our  
19 board; it's become too expensive; you know,  
20 please relieve us of this responsibility or,  
21 at a minimum, study it before we proceed.  
22 And I think that's very relevant to what the  
23 options are and very relevant to the  
24 consideration of what a prudent utility under

1           those circumstances would have done, which is  
2           the central theme of this case.

3                         MR. NEEDLEMAN: Well, and I'll  
4           object. Not only is it a hypothetical, but  
5           it's a hypothetical that goes to influencing  
6           legislature, which is exactly what we're not  
7           supposed to be discussing here.

8                         MR. PATCH: I think it's  
9           critical. I think it's critical to what a  
10          prudent utility would have done under the  
11          circumstances.

12                        MS. ROSS: I'll sustain the  
13          objection. You may probe the witness as to  
14          his knowledge of the project in that time  
15          frame and as to any communications that the  
16          Company had which divulged its understanding  
17          of the project or the cost of the project.

18 BY MR. PATCH:

19 Q. Let's look at the June 25th, '08 presentation  
20          that you made to the Risk and Capital  
21          Committee. And let's look at Page 18 of 50  
22          in the upper right-hand corner. And I want  
23          to look at the last entry on that page. And  
24          I'll read it to you. It says, "Loss of

1 PSNH's Merrimack Station would call into  
2 question the viability of operating the  
3 remaining generating assets as a fleet." And  
4 I guess I would like you to explain what that  
5 sentence meant.

6 A. Well, again, this is a Risk and Capital  
7 Committee. So, you know, they'd like to know  
8 what the risks are. And this is just talking  
9 about the risk of not complying with the law  
10 means that Merrimack Station would not be  
11 able to operate. And if Merrimack Station  
12 was not able to operate, it would draw into  
13 question the remaining fleet operation.

14 Q. Why? I don't understand why it would call  
15 into question --

16 A. Because we operate as a fleet.

17 Q. What does that mean?

18 A. One management structure, one -- they're all  
19 used interactively to serve the energy needs  
20 of our customers.

21 Q. And so if you didn't have Merrimack Station,  
22 you couldn't operate the other generating  
23 facility?

24 A. It's a -- you could get to a question of

1 scale, where it's just too small a scale to  
2 have -- to continue to have a structure to  
3 manage it.

4 Q. So you would have had to cut the number of  
5 people involved in that portion of the  
6 business?

7 A. Again, this is just a concept here. That  
8 level of detail was never developed.

9 Q. This presentation refers to a Brattle Group  
10 analysis of future energy markets, and it's  
11 actually referred to in a number of  
12 presentations that were made to the staff, I  
13 think to the board of trustees, and what PSNH  
14 has provided in response to data requests.  
15 And I'll refer now to Technical Session 1-8,  
16 Page 2 of 37. We'll stop and mark that.

17 (Long Deposition Exhibit 6 marked  
18 for identification.)

19 MS. FRIGNOCA: Would you  
20 please repeat the page you're referring to?

21 MR. PATCH: Yeah. I'm  
22 referring to Page 18 of 50, first of all, in  
23 the response to Staff 2-2, where it says,  
24 three up from the bottom, and it's two up

1 from the last phrase that I pointed out. It  
2 says, "Brattle Group analysis of future  
3 energy markets indicates that all coal  
4 generation, including Merrimack, will  
5 continue to operate economically."

6 BY MR. PATCH:

7 Q. And so now on to TS-1-8. The Brattle Group  
8 analysis that PSNH has provided in response  
9 to data requests is dated August 1st of '08,  
10 if you look at Page 2 of 37. And I've asked  
11 a couple of times in data requests -- well,  
12 at least in TransCanada 4-24, and then in  
13 Technical Session 2-12 -- for the Brattle  
14 Group analysis that is referred to in the  
15 June and the July presentations.

16 So I'm trying to understand, is there  
17 another Brattle Group analysis that predates  
18 August 1st, that predates your presentations?

19 A. Well, this Brattle Group study you're  
20 referring to that has a date of August 1st,  
21 2008, was done for Connecticut Light & Power,  
22 not Public Service Company. So, just for  
23 clarification. And as far as the date  
24 reconciliation, you know, again, I wasn't

1 involved with that study. So I don't know  
2 if -- you've already asked it in data  
3 requests. I don't know if I can add any more  
4 intelligence. Insofar as is this a publish  
5 date or a date when it was internally  
6 available, I just can't really comment on  
7 that because I wasn't involved with this  
8 particular work by Connecticut Light & Power.

9 Q. Okay. I guess I would ask your counsel,  
10 though, if they could go back and check  
11 again, because we've asked a couple times,  
12 and this is what we keep getting references  
13 to.

14 MR. PATCH: I'd like to see a  
15 copy of the Brattle Group analysis that was  
16 referred to in the June and July  
17 presentations to the RaCC and to the board of  
18 trustees, and then also the presentation that  
19 was made to staff. And the references I keep  
20 getting is this one, but obviously the date  
21 doesn't jive. So I guess I would ask if  
22 you'd double-check that, and if there is a  
23 different analysis, if you would provide  
24 that.

1 BY MR. PATCH:

2 Q. In your July 15th, 2008, presentation to the  
3 board of trustees -- and this is in Staff  
4 2-2 -- you said that expected future price  
5 for natural gas and the spread between  
6 natural gas prices and coal prices are  
7 critical to the assessment of customer  
8 impacts. And I'm looking at Page 37 of 50 --  
9 I'm sorry, 34 -- 34 of 50. And then I'm  
10 looking at 38 of 50, which is Key Financial  
11 Takeaways; Customer value of scrubber  
12 installation extremely sensitive to future  
13 expected natural gas/coal price spread." Do  
14 you see that?

15 A. Yes.

16 Q. Is it fair to say that you recognized then --  
17 meaning in June of '08 and July of '08 -- how  
18 important the relationship between the future  
19 expected price of natural gas and of coal was  
20 to the impact on customers?

21 A. Yes, we understood that. I understood that  
22 it had an impact.

23 Q. In this presentation, Page 35 and 37, there  
24 are a couple of references to a customer

1 break-even level of \$5.29 cents an MMBtu. Do  
2 you see that on Page 35, in that chart? In  
3 the right-hand side column it says, "Net  
4 Customer Impact Break-even Rates," and then  
5 it says \$5.29.

6 A. Yeah, I see that.

7 Q. And then on Page 37 it says at the top,  
8 "Gas/coal spread have averaged \$3.18 an MMBtu  
9 over the last 15 years as compared to the  
10 required customer break-even level of \$5.29  
11 an MMBtu, based on current price levels."

12 What was your understanding of what that  
13 meant?

14 A. It was just -- it's one of the factors that  
15 was looked at in the economic analysis.  
16 There were other factors. It was a  
17 significant factor. So, just trying to  
18 understand how that single factor in itself,  
19 you know, how to put meaning to it. But it's  
20 just one of many factors.

21 Q. So it didn't have any more importance than  
22 anything else, in your mind.

23 A. Well, the state law found the product to be  
24 in the public interest. And economics are

1 important in all things, but it's not the  
2 only thing that's considered. And within the  
3 financial analysis that was prepared to help  
4 people understand what the impact of this  
5 compliance was, this was one of the factors  
6 that affect the overall economics to  
7 customers.

8 Q. After the -- you made the presentation to the  
9 board, did you have an ongoing obligation to  
10 update the board about changes in natural gas  
11 and coal price projections?

12 A. No, not me particularly. We had an  
13 obligation to update the RaCC on the status  
14 of the construction and our progress in  
15 complying with the mandate.

16 Q. Do you know why -- and I guess I'll refer you  
17 to Staff 2-2, Page 50, which is the signature  
18 of Charles W. Shivery -- did I say his last  
19 name correctly?

20 A. Close enough.

21 Q. Close enough. Okay -- dated September 24th  
22 of '08, more than two months after the board  
23 of trustees's meeting. Do you know why it  
24 took him more than two months to sign off on

1 the project? It says "approval of capital  
2 funding."

3 A. He's a businessman. We were proceeding. I  
4 don't know what other things he was doing  
5 during that time frame, but I know he was a  
6 busy man.

7 Q. Did you have any conversations with him  
8 between the approval from the board of  
9 trustees on September 24th about the project  
10 that you recall?

11 A. Not that I recall, but I may have. I just  
12 don't recall.

13 Q. Would there be any documentation exchanged  
14 between the two of you during that period of  
15 time with regard to the project?

16 A. Personal documentation other than what --

17 Q. No. E-mails or memos or anything related to  
18 the project.

19 A. I doubt it. I don't recall any. I don't  
20 directly -- I didn't then, and I don't  
21 directly report to him. So it wouldn't have  
22 been my practice to contact him directly.

23 Q. Who would you have contacted if you were  
24 going to provide information about the

1 project in that time frame?

2 A. Well, my immediate supervisor is Lee Olivier.

3 Q. Leo?

4 A. Lee, L-E (sic).

5 Q. L-E? Lee Olivier?

6 A. O-L-I-V-I-E-R.

7 Q. Do you recall whether you had any  
8 conversations with him or any exchange of  
9 e-mails or memoranda with regard to this  
10 project in that time frame?

11 A. Let's see. We started talking about Chuck  
12 Shivery's approval. Are we still talking  
13 about --

14 (Court Reporter interjects.)

15 A. We started out talking about Chuck Shivery's  
16 approval. Are we still talking about that?

17 Q. Well, we're talking about July 15th of '08 to  
18 September 24th of '08.

19 A. You know, I typically see him once a week.  
20 So I can't recall things we would have talked  
21 about. But it's a variety of things, you  
22 know, that I was responsive for in addition  
23 to generation.

24 MR. PATCH: I would like to

1 ask if there is any documentation that PSNH  
2 might have of conversations between Mr.  
3 Olivier and Mr. Long in that period of time  
4 that related to Merrimack Station in any way.

5 A. I can tell you I don't have any, so I doubt  
6 that there was any. But I don't recall any.

7 BY MR. PATCH:

8 Q. I thought you said you don't recall, and  
9 that's why I'm asking for it. Are you saying  
10 now, definitively, there isn't any or --

11 A. What I was describing to you is a process  
12 where we see each other personally and as  
13 part of group meetings, and they're not  
14 recorded. I don't record them. So they're  
15 just interaction, oral discussion. So I  
16 can't recall, nor has it been recorded, you  
17 know, what do we talk about. We talk about a  
18 variety of things, operational things and  
19 update of progress on meeting goals. So I  
20 may have reported on the progress of meeting  
21 the compliance, but I -- there's not anything  
22 significant or that I recall being recorded  
23 in any way, nor do I expect there is any  
24 recording of oral conversations.

1 Q. I want to direct your attention to the  
2 response to TransCanada 4-17.

3 MR. PATCH: If we could mark  
4 this.

5 (Long Deposition Exhibit 7 marked  
6 for identification.)

7 Q. The first page after the response -- so it  
8 would be Page 2 of 11 -- indicates that it's  
9 a Merrimack Station Clean Air Project Cost  
10 Estimate Analysis, dated June 17th of '08,  
11 done by PowerAdvocate. Who was  
12 PowerAdvocate?

13 A. They were a consultant hired by our  
14 generation group.

15 Q. And do you recall seeing this cost estimate  
16 analysis?

17 A. Not specifically.

18 Q. I want to call your attention to a reference  
19 on Page 3 of 11. And the first numbered  
20 paragraph says, "Explain why Merrimack  
21 Station's CAPS's cost estimate is on the high  
22 end of the cost per kilowatt range for a  
23 complete FGG -- FGD retrofit relative to  
24 similar FGD retrofit projects." Do you see

1 that?

2 A. Yes.

3 Q. And then I want to call your attention to  
4 Page 8, 8 of 11. Not 8 in the lower  
5 right-hand, but 8 in the upper right-hand  
6 corner. And the first paragraph says,  
7 "Capital construction costs for new  
8 generation and transmission projects remain  
9 at historic levels, with no clear  
10 understanding of whether or not we have  
11 reached the peak due to the recent volatility  
12 of costs associated with the supply market.  
13 This fact, coupled with the increased  
14 uncertainty around projected carbon  
15 regulations and the effects of a tight labor  
16 market, the utility industry finds itself in  
17 a period of time when there seems to be no  
18 good indicator for investment decisions." Do  
19 you see that?

20 A. Yes.

21 Q. Did you incorporate these cautions in your  
22 reports to the risk committee and the board  
23 of trustees?

24 A. This is a draft report. It has the word

1 "draft" on it. But this was part of the  
2 input to the management team, you know, to  
3 help understand why the costs have changed  
4 over time.

5 Q. So you didn't think it was important enough  
6 to include it in those presentations?

7 A. I'm not sure that's a fair characterization.

8 Q. Okay. Well, you can characterize it however  
9 you want.

10 A. Well, we obviously thought it was important  
11 to enlist PowerAdvocates to look at these  
12 questions. So, obviously, it's important.

13 Q. Okay. But not important enough to mention it  
14 to the RaCC or the board of trustees, or  
15 ultimately the PUC in September.

16 A. Now, what point are you thinking that is  
17 excluded? Because we've listed a number of  
18 facts and risks to the RaCC Committee and  
19 summaries of what the price -- the cost  
20 change were. So I would say this report was  
21 used.

22 Q. Okay. Well, I didn't see anything in those  
23 presentations, so I'm just asking why it  
24 wasn't there.

1 A. I can't answer that question any better than  
2 I just answered it.

3 Q. Okay. In that time frame, in the summer of  
4 '08 and the fall of '08, and actually early  
5 into '09, what was the way in which you  
6 personally, and PSNH more generally, checked  
7 and evaluated natural gas and coal prices and  
8 price projections? What did you have in  
9 place? Who was the one that did that? How  
10 did that relate to your responsibilities?  
11 I'd like a little bit of background on that.

12 A. On commodity prices?

13 Q. Natural gas and coal prices and price  
14 projections.

15 A. Well, those projections were changing. We  
16 don't typically project gas prices ourselves.  
17 We look at what others are forecasting. I  
18 mean, your own client, during that time  
19 frame, was questioning decisions based on  
20 short-term prices and had been altering its  
21 forecast when it considered its McKenzie  
22 Project, its Keystone Project and then the  
23 Mainline Project. So I think the changes --  
24 there were many changes happening in the gas

1 industry that even had natural gas companies  
2 not certain, but in the case of TransCanada,  
3 certainly projecting five-year price  
4 increases in natural gas in that '09, '10,  
5 '11 time frame. So we would look at the  
6 reports of companies like theirs and others.  
7 But I think our main conclusion would be it's  
8 very volatile.

9 Q. Who had the responsibility within the company  
10 for developing -- for reviewing those  
11 forecasts, first of all, I guess I'd say?

12 A. Well, there is no single responsibility. As  
13 I said, we typically don't perform those  
14 forecasts. We look at what others have done.  
15 We obviously, in the day-to-day bidding  
16 process, need to look at short-term prices,  
17 what's posted out there. But long-term  
18 prices were changing quite a bit, and still  
19 are.

20 Q. Who's the "we" in that response? That's what  
21 I'm trying to understand.

22 A. We have what's called a wholesale marketing  
23 group and generation personnel who bid  
24 generation in the market on a daily basis,

1           who plan for how we'll meet our customers'  
2           needs in the next week, the next month, the  
3           next six months.

4    Q.    And so they're the ones who would be  
5           responsible for reviewing those forecasts and  
6           then presumably reporting to others in the  
7           company, including yourself?

8    A.    The forecasts that you're thinking here are  
9           posted prices for the purpose of determining  
10          how to manage our power portfolio.  It's not  
11          long-term forecasts or five-year forecasts  
12          like TransCanada puts together.

13   Q.    Okay.  Well, I'm not interested in those, in  
14          terms of managing the portfolio that you  
15          referenced.  I'm interested more in the  
16          natural gas and coal prices and price  
17          projections as they relate to Merrimack  
18          Station, because clearly that was done in the  
19          summer of '08, and that was filed with the  
20          Commission in September of '08; correct?

21   A.    I don't know what forecasts -- I'm not  
22          familiar with their forecasts.  It's -- you  
23          know, what I've said repeatedly is that  
24          long-term forecasts are typically not

1 reliable, and particularly in that time frame  
2 where they were changing. Like I say, even  
3 TransCanada was changing its forecast every  
4 year, and they're in the business. So we're  
5 not in the -- I'm not in the practice of  
6 directing my subordinates to do a long-term  
7 forecast and then depending on it. It's more  
8 of managing what we have and complying with  
9 the law.

10 Q. I'd like you to take a look at the response  
11 to TransCanada 1-2.

12 A. Has been that previously been marked?

13 Q. Not yet. I don't think we've marked this.

14 (Long Deposition Exhibit 8 marked  
15 for identification.)

16 Q. And the question was: "Please provide all  
17 fuel price forecasts available to PSNH at the  
18 time of its initial decision to construct the  
19 flue gas scrubber at Merrimack Station."

20 You objected. Commission ordered a  
21 response, and then you responded. You, PSNH,  
22 responded. And it says, "The fuel price  
23 forecasts available to PSNH at that time are  
24 provided in the attached, which includes

1 NYMEX and broker forward fuel price  
2 quotations from June '08," and then it goes  
3 on from there.

4 So, attached to this are what we were  
5 provided in response to that data request.  
6 And I guess I would like to ask, first of  
7 all, are these the kind of fuel price  
8 forecasts that you would have personally  
9 reviewed?

10 A. No.

11 Q. But this was part of the attachment to what  
12 you submitted to the Commission in September  
13 of '08. So you just didn't review them?

14 MR. BERSAK: I would just like  
15 to note that the witnesses for this response  
16 that has been identified as and marked as  
17 No. 8 were Frederick Wright, Jody J. TenBrock  
18 and Terrence J. Large, and did not include  
19 Mr. Long.

20 MR. PATCH: I don't think Mr.  
21 Long's name is on any of the responses to  
22 data requests, is it?

23 MR. BERSAK: I don't know.

24 MR. PATCH: I can tell you

1           that it isn't.

2   BY MR. PATCH:

3   Q.   So you don't know what these are, then, I  
4       guess, is what you're telling me.

5   A.   I haven't -- I didn't prepare that response.  
6       I didn't prepare the forecasts.

7   Q.   Would you take a look at them just for a  
8       minute and tell me whether -- well, first of  
9       all, have you ever looked at fuel price  
10      forecasts in your career as president of  
11      PSNH?

12   A.   Yes.  I've never done a fuel price forecast,  
13      but I have seen results of fuel price  
14      forecasts.

15   Q.   Is this what they would typically look like?  
16      Would there be a narrative accompanying them?  
17      Would they have a company identifier?  Would  
18      they be marked "proprietary"?

19                   MS. ROSS:  Could you ask one  
20      question at time, please.

21   BY MR. PATCH:

22   Q.   Okay.  Is this what they would typically look  
23      like?

24   A.   Again, I don't prepare them.  But, you know,

1           seeing a table like on Page 2 of 68, that  
2           might be a typical summary of a forecast.  
3           Could be in graphical form. As I said, I've  
4           looked at TransCanada ones which were in  
5           graphical form. Those are summaries of  
6           studies. As I said, I haven't done a fuel  
7           forecast myself.

8   Q.   When you've looked at them, do they typically  
9        have a narrative accompanying them?

10  A.   Like I said, Page 2 doesn't.

11  Q.   Well, I know. But I'm asking you, when you  
12        typically looked at them, not necessarily  
13        these.

14  A.   Sometimes there are tables, sometimes there's  
15        words. Could be either.

16  Q.   Do they typically have company identifiers on  
17        them indicating which company actually made  
18        the projection?

19  A.   Not always.

20  Q.   Are they marked "proprietary," typically?

21  A.   If they are. You know, if they're public  
22        information, they wouldn't be.

23  Q.   So when you submitted the letter on  
24        September 2nd of '08 to the Commission,

1 attached to that letter was a report. And I  
2 guess I'd like to have that marked next.

3 (Long Deposition Exhibit 9 marked  
4 for identification.)

5 Q. Are you familiar with this report?

6 A. Generally.

7 Q. When was the last time that you or anyone  
8 else at PSNH checked the price of natural gas  
9 and projections for those prices prior to  
10 this submission on September 2nd?

11 A. Prior to the submission of this report?

12 Q. Yes.

13 A. I don't know.

14 Q. Do you have a rough idea? Was it three  
15 months? Was it six months? One month?

16 A. As I told you, I don't do that work. So I  
17 don't know.

18 Q. Did you discuss the forecast contained in  
19 this report with anyone prior to the  
20 September 2nd submission?

21 A. I don't recall.

22 Q. Do you have any idea how the projection of  
23 natural gas prices was done?

24 A. Again, you're referring to forecasts. I

1 don't know which forecast you're referring  
2 to.

3 Q. Okay. Well, let's look at --

4 A. And they're not forecasts that I personally  
5 did, so...

6 Q. Okay. Let's look at Page 15 of this. And  
7 there's a Part E on Page 15 in the lower  
8 right-hand corner of Page 15. There's a lot  
9 of different page numbers on here. Yeah, and  
10 Part E, or Paragraph E at the bottom of the  
11 page, it says, "In the market purchase and  
12 combined cycle natural gas scenarios, a year  
13 2012 price of \$11 per MMBtu was used as the  
14 first-year price of natural gas." This value  
15 was escalated at a rate of 2.5 percent per  
16 year for future years of the analysis." Did  
17 I read that correctly?

18 A. Yes.

19 Q. Do you know who did this forecast?

20 A. No.

21 Q. You have no idea who prepared this?

22 A. I don't have a recollection of who prepared  
23 it. I think it's a statement of an  
24 assumption. So, you know, you could use

1 different assumptions different places.

2 Q. That's right. But this --

3 A. This is a statement of an assumption. I  
4 think you called it a forecast. It says a  
5 price was used. It doesn't say it was  
6 forecasted. It just explains what was used  
7 in the analysis.

8 Q. It's a pretty critical assumption, isn't it?

9 A. One of many.

10 Q. One of many. So, pretty critical to the  
11 impact on customers, would you say?

12 A. Yes. As we stated earlier, fuel prices are  
13 important.

14 Q. But you don't know who did this.

15 A. Not sitting here today, no.

16 Q. Is there any documentation you could check so  
17 that you could find out who was responsible  
18 for doing this?

19 A. I wouldn't be able to.

20 MR. PATCH: I'd like to make a  
21 data request of the Company, that they answer  
22 the question of who prepared the \$11 per  
23 MMBtu price that was used as an "assumption,"  
24 as Mr. Long says, in this particular report,

1 referenced on Page 15, Paragraph E.

2 MR. BERSAK: We've been  
3 through discovery for several years. This  
4 report has been out there for over five  
5 years. If you're going to depose Mr. Long  
6 about what he knows about this project, I  
7 think we've completed discovery, and I would  
8 object to further discovery.

9 MR. PATCH: And then I would  
10 also like to ask for any of the underlying  
11 materials --

12 MR. BERSAK: May we have a  
13 ruling on this one, please?

14 MR. PATCH: Well, I thought  
15 what had been indicated was that those  
16 rulings were going to be reserved until --

17 MS. ROSS: I wasn't planning  
18 on ruling, but I would recommend production  
19 of this because it is a critical piece of  
20 information in this docket.

21 (Court Reporter interjects.)

22 MR. BERSAK: I'm just asking,  
23 when does discovery stop?

24 MS. ROSS: Whenever the

1 Commission determines that it's time to stop  
2 it. And I don't believe that that decision  
3 has been made today.

4 MR. PATCH: In addition to who  
5 prepared this, I'd like to have copies of all  
6 the underlying materials on which that person  
7 relied.

8 BY MR. PATCH:

9 Q. I'd like to refer you to the response to  
10 TransCanada 3-7 and 3-9.

11 MR. PATCH: So if we could  
12 have those marked.

13 (Long Deposition Exhibits 10 and 11  
14 marked for identification.)

15 Q. Now, this TC-7 -- first of all, TC-3-7, asked  
16 for the process used to examine the forward  
17 market for natural gas delivered to New  
18 England and copies of any and all  
19 documentation in PSNH's possession, and  
20 explain why and when the examination was  
21 done.

22 And the answer is, "This analysis was  
23 performed in the summer of 2008 using NYMEX  
24 data from June 11, 2008." Do you see that?

1 A. Yes. And again, this was not my work and not  
2 my response. There's another individual  
3 identified there --

4 (Court Reporter interjects.)

5 A. There's another individual identified in the  
6 response to these data requests.

7 Q. Do you have any reason to think this is  
8 incorrect?

9 A. No.

10 Q. And what about the response to TC-3-9, which  
11 refers to that \$11 an MMBtu and also refers,  
12 again, to that was obtained by reviewing  
13 NYMEX futures prices available in the summer  
14 of '08? Do you see that?

15 A. Yes.

16 Q. Do you have a similar response to that?

17 A. Again, it's not my work, not my response.  
18 You asked if I have any reason to believe  
19 it's not correct. I have no reason to  
20 believe it's not correct.

21 Q. I mean, so it looks like NYMEX was an  
22 important gas projection or prediction that  
23 was relied on by the Company. Would you  
24 arrive at the same conclusion, based on those

1 responses?

2 A. Yeah, it's an important indicator. It's a  
3 common location to look at, as far as gas  
4 prices go.

5 Q. I mean, are you pretty familiar with NYMEX,  
6 then, and the way that they provide pricing  
7 predictions or pricing projections?

8 A. No, I'm not very familiar with it.

9 Q. So, would you say that it's considered --  
10 NYMEX predictions are generally considered  
11 most robust in the near term?

12 A. No, I don't know that to be true or not true.

13 Q. Were there other gas forecasts available to  
14 PSNH, to your knowledge?

15 A. To my knowledge, I assume so. I don't know  
16 firsthand.

17 Q. Are you familiar with the U.S. Energy  
18 Information Administration?

19 A. I'm familiar that it exists. I've seen some  
20 of their reports.

21 Q. Do you know whether they were used in this  
22 analysis?

23 A. I don't know. I mean, it may have been.  
24 Again, I haven't reviewed that material.

1 Q. Are you familiar with a company called Energy  
2 Ventures Analysis, Inc.?

3 A. No.

4 Q. So you wouldn't know whether they -- whether  
5 their forecasts were used in this analysis.

6 A. They may or may not have been used. I mean,  
7 you must know. All I know is I haven't  
8 worked with them.

9 Q. Would you have any explanation as to why \$11  
10 an MMBtu would be a sensible take-off point,  
11 given the gas price volatility at that point?

12 A. I rely on the work of others. I don't  
13 have -- I can't make a judgment on that, the  
14 way you asked it.

15 Q. And who were the others, again, that you  
16 relied on?

17 A. The person listed on these data responses is  
18 Terry Large. It's one of them.

19 Q. So that's the person you would have relied  
20 upon for this?

21 A. I would have relied on him and our generation  
22 group and our service providers in  
23 Connecticut and -- in all aspects of this.

24 Q. So in the summer and fall of '08, was there

1 any report circulated within PSNH that  
2 provided spot and future fuel prices prepared  
3 for management review?

4 A. I don't know.

5 Q. You don't know if there were any -- you don't  
6 know if it would be a typical thing to do.  
7 You have no knowledge of that?

8 A. Well, it certainly may have occurred, but  
9 within our service providers. Fuel  
10 forecasting was not an area under my  
11 responsibility.

12 Q. Okay. So you didn't feel it was one of your  
13 responsibilities to be aware of spot and  
14 future fuel prices. Not part of your  
15 responsibility as president of PSNH.

16 A. I didn't manage that function. Would I be  
17 generally aware? Would they inform me of  
18 changes? Yes. But I didn't manage that,  
19 forecast that process. I did not manage the  
20 day-to-day market interactions of the company  
21 within the ISO-New England market.

22 Q. How frequently would they have informed you  
23 of you that?

24 A. Of what?

1 Q. You just said, you know, you were informed by  
2 people within the company of this. So I'm  
3 trying to understand the frequency. Was  
4 there some protocol? Was there some regular  
5 occurrence? Did they inform you weekly? Did  
6 they inform you daily? Did they inform you  
7 monthly? I'm trying to understand how that  
8 was done.

9 A. Well, they'd certainly inform me upon inquiry  
10 or as we're considering analysis like this.  
11 There was no protocol for immediate weekly  
12 reports or daily reports. As I said, I did  
13 not manage that function.

14 Q. So, on request they would inform you, you  
15 said? So, in other words, if you asked for  
16 it, they'd give it to you.

17 A. Oh, yes.

18 Q. Did you ever ask for this?

19 A. I may have. I don't recall.

20 Q. Do you remember anyone, at any point in that  
21 time frame, in the summer of '08 and the fall  
22 of '08, anyone at PSNH or NU voicing concern  
23 about the gas price drop and the effect it  
24 would have on the scrubber go-forward

1 decision?

2 A. Well, that's a topic that I'm sure we talked  
3 about. I can't recall when or how or where.  
4 I had conversations multiple times every day.  
5 So, you know, you asked me specifically about  
6 a specific conversation. Well, I don't  
7 recall. But certainly that topic was  
8 discussed.

9 Q. With who?

10 A. Well, that's what I'm saying. It could have  
11 been with any -- it could have been with an  
12 analyst. It could have been with anybody on  
13 the generation team. It could have been with  
14 anybody who's involved with company  
15 operations.

16 Q. Was there any documentation provided of any  
17 of those discussions?

18 A. Not that I recall, but -- I don't recall.

19 Q. Okay.

20 A. As I said earlier, we typically don't --  
21 these are oral discussions. You know, you  
22 asked me early on my style of management. It  
23 is to communicate with people often, but we  
24 don't record those conversations. We don't

1           have a need to.

2    Q.    But if somebody thought that it was  
3           significant enough that the gas price was  
4           dropping and the projections were going down  
5           and the effect that would have on the  
6           scrubber, presumably they would have done  
7           more than just communicate with you orally.

8    A.    It's well known -- it was well known by us  
9           that gas prices were very volatile. I'll  
10          give you your own client's example. The CEO  
11          of TransCanada, in talking to his investors,  
12          said you don't make an investment decision  
13          based on a one-month or short-term gas  
14          prices, that you have to look at the long  
15          term. And TransCanada projected steadily  
16          increasing prices when they looked at their  
17          own projects. And that's what the CEO  
18          communicated to investment communities. So,  
19          we were no different. Although we weren't in  
20          the gas business, we understood that you  
21          don't look at a short-term forecast and  
22          assume that's the way it's going to be  
23          forever.

24                   And so, yes, I did not track the

1 hour-to-hour, day-to-day gas prices because  
2 that's not relevant to my role in the  
3 company. And future prices and forecasts are  
4 very volatile, as we see. They're constantly  
5 changing. And one has to be very cautious in  
6 taking what I call a "point forecast" over  
7 multiple years in the future and then, you  
8 know, not -- and assuming that's the way it  
9 will be.

10 MR. PATCH: I guess I would  
11 like to make a request for any copies of any  
12 e-mails, any documentation of any sort in  
13 this time frame, post the July 15th, '08  
14 board of trustees meeting between Mr. Long  
15 and anybody else at PSNH or NU with regard to  
16 the prices of natural gas, the price of coal  
17 between July 15th and let's say October 15th  
18 of '08. I'd like to make a request for any  
19 and all documentation related to that  
20 subject.

21 MS. ROSS: I will recommend  
22 that request to the Commission.

23 BY MR. PATCH:

24 Q. So, let's say from September of '08 until

1 March of '09, did you or anyone else check  
2 prices and projections during that period of  
3 time that you recall?

4 A. That's a pretty general question. Or anyone  
5 else?

6 Q. At PSNH or NU.

7 A. I can't speak for other people. Did I check  
8 it? I may have. I don't recall.

9 Q. And you don't recall if anybody spoke with  
10 you during that period of time about checks  
11 that they made on those prices?

12 A. I do not record my daily conversations. Lots  
13 goes on. I can't really say what went on  
14 each and every day and hour and... you know,  
15 these are topics we discussed. I can't tell  
16 you when, where and how. There's no  
17 recordings to give you. It's just normal  
18 business.

19 Q. In your September 2nd letter to the  
20 Commission, September 2nd of '08, in  
21 DE 08-103, you referenced a section in the  
22 Scrubber Law, 125-O:11, XIII -- and this is  
23 the law that was passed in 2006 -- based on  
24 testimony, was a not-to-exceed number of



1           they had before them when they passed that  
2           law was \$250 million; correct?

3       A.    That was sort of a preliminary generic  
4           estimate that, obviously, until you get into  
5           the project engineering and steps as we  
6           talked about earlier and get a more refined  
7           one, the number changed, for sure.  You know,  
8           we would have liked to have stayed the same  
9           or gone down, but that's not the way the  
10          situation was.

11       Q.   Well, if necessary, I can put in front of you  
12          the documents, the fiscal note on the bill  
13          from 2006, which says "a not-to-exceed number  
14          of \$250 million," based on information from  
15          PSNH."  And I can put in front of you the  
16          letters that Mike Nolan, the DES  
17          commissioner, wrote to the legislature that  
18          year saying, "Based on information from PSNH,  
19          a not-to-exceed number of \$250 million..."

20                 So, are you saying now that that  
21          estimate provided to the legislature was not  
22          an accurate one?

23       A.    It was the best available at the time.  And  
24          when it changed to \$457 million, the

1 legislature became very well aware of that.  
2 So I would say the legislature was very well  
3 informed during the whole journey, from the  
4 enactment of the law to the operation,  
5 completion of the project.

6 Q. How did the legislature become well aware of  
7 the \$457 million?

8 A. It was --

9 Q. Explain to me what role PSNH played in that.

10 A. It was communicated to --

11 Q. By whom?

12 A. By our whole team at Public Service Company.

13 Q. Including yourself?

14 A. Yes.

15 Q. So you talked with the legislators about  
16 that?

17 A. I'm sure I did. But, again, I can't tell you  
18 when and where. You know, as the information  
19 became available to us, as the estimates  
20 became known, as the procurement process was  
21 proceeded, the estimate of 457 was then, you  
22 know, disclosed. It was disclosed in our  
23 Security Exchange Commission filings; it was  
24 disclosed to our RaCC; it disclosed to the

1 PUC, and ultimately disclosed to the  
2 legislature. And it was very well known when  
3 others tried to change the Scrubber Law. It  
4 was a very well known number, and the  
5 legislature chose not to change the law.

6 MS. ROSS: I'd just like to  
7 point out that we're getting toward the end  
8 of your session, Mr. Patch.

9 MR. PATCH: Oh, okay.

10 MS. ROSS: So if we could try  
11 to --

12 MR. PATCH: I'll ask two more  
13 questions and we'll stop. Okay?

14 MS. ROSS: Okay.

15 BY MR. PATCH:

16 Q. In your September 2nd, '08 letter, you told  
17 the Commission that any delay in issuing --  
18 and this is on Page 3, the second full  
19 paragraph, the third sentence. You told the  
20 PUC that any delay in issuing contracts would  
21 result in additional costs to customers. I  
22 mean, as you have you said, that was a time  
23 of extreme volatility. Can you explain why  
24 you were so sure that a delay in issuing the

1 contracts would result in additional costs to  
2 customers?

3 A. Yes. Yes. We were about three years into a  
4 six-year contract. It was a multi-year  
5 project. Obviously, a significant  
6 investment. And it is extremely disruptive  
7 to stop a major project in the middle of its  
8 course. And if you stop a project after  
9 you've let contract -- after you've done your  
10 engineering, after you've lined up a work  
11 force, have to lay off a work force, have to  
12 litigate contracts, et cetera, it's extremely  
13 disruptive. And worst of all, it puts us in  
14 a situation where we're not able to comply  
15 with the mandate. So, you know, stopping a  
16 project that you have to work very hard to  
17 meet the time lines established by the law is  
18 very a costly, uncertain, disruptive  
19 situation.

20 Q. On Page 3 of that letter, the first sentence  
21 of the last paragraph, you said, "It should  
22 surprise no one that the costs of this  
23 project have increased significantly over...  
24 preliminary estimates." What did you mean by

1           that?

2       A.    The paragraph goes on to say independent  
3           organizations, like the Wall Street Journal,  
4           had been disclosing to the public and talking  
5           about the escalation in prices of commodities  
6           that have happened during this time period.  
7           So, the factors that led to the increase in  
8           prices were not unique to PSNH. They were  
9           worldwide. They were national. And others,  
10          obviously, were aware of that international  
11          world situation with costs. And the Wall  
12          Street Journal is just one example.

13                               MR. PATCH:   Okay.   Good time  
14                               for a break.

15                               MS. ROSS:   Thank you all.  
16                               We'll break for 15 minutes and be back a  
17                               little after 11.

18                               (Brief recess taken.)

19       BY MR. PATCH:

20       Q.    So, Mr. Long, I'm particularly interested in  
21           the time frame of the summer of '08, the fall  
22           of '08. Were there any regular, routine  
23           reports on generation and fuels that you  
24           received from people within PSNH or NU?

1 A. Are there any reports? Perhaps. I don't  
2 know.

3 Q. Okay. Well, I guess I'd like to make a  
4 request, then, for copies of any reports in  
5 that time frame that you would have  
6 received --

7 A. On?

8 Q. -- on generation and fuels.

9 A. You mean our operations of our generation  
10 during that time? I'm trying to understand  
11 what that has to do with this.

12 Q. Okay. I mean, we don't need sort of regular  
13 reports about generation. But fuel markets,  
14 I guess, is primarily what we're interested  
15 in. Obviously, there's a relationship  
16 between that and generation.

17 A. Yeah, because that was -- that's the  
18 clarification I was seeking because I get  
19 weekly generation operations reports. But  
20 you're talking about fuel forecasts, I think.

21 Q. That's right. And they could be related to  
22 generation. So, clearly -- but we don't need  
23 all of your generation reports that aren't  
24 related to that.

1           In response to questions earlier this  
2 morning, when you had indicated -- or you  
3 referred to projections that TransCanada  
4 relied upon -- and I guess I'm trying to  
5 understand -- are those projections that you  
6 looked at back in '08 or '09? Are they ones  
7 you've looked at recently? What are those  
8 that you're referring to?

9   A.   Well, it's really part of us trying to  
10 understand why TransCanada is even in this  
11 case and why another utility would oppose --  
12 impose cost recovery from another utility.  
13 And so it's really trying to understand why  
14 TransCanada's doing what it's doing.

15           I have recently looked at some of their  
16 own statements by their CEO and some of their  
17 own forecasts to see if they were, you know,  
18 in the same volatile, dynamic situation that  
19 we were, and they were, in considering their  
20 own major investments, like the Keystone  
21 Project and the Mainline Project, the  
22 McKenzie Projects, projects of that type they  
23 were considering during the same time frame.

24   Q.   I guess I'd like to ask for copies of those

1 reports and any other reports that you might  
2 have used in preparation for today's  
3 deposition.

4 In that September 2nd letter that we  
5 referred to, you had indicated on the top of  
6 Page 3, the first full paragraph, that you'd  
7 signed an agreement with labor leaders, and  
8 you had already completed a number of  
9 critical milestones. What were those  
10 critical milestones that you had completed as  
11 of that point in time?

12 A. Yeah, again, they're not in my memory today.  
13 They're in one of the documents. I'm sure  
14 they're in a data response somewhere, where  
15 we've listed in a report to the Commission,  
16 you know, the milestones.

17 Q. Well, I don't think they are in a data  
18 response. That's why I'm asking you, to the  
19 best of your recollection, what they were.

20 A. Well, I don't have them in front of me. But  
21 there was a report given to the PUC where we  
22 reported on status.

23 Q. So you're saying those milestones would be in  
24 the report that was filed with the

1           September 2nd letter?

2   A.    Again, if you want me to review documents...  
3           but no, I recall seeing reports that talk --  
4           they were progress reports.  And I believe  
5           they were in data responses, but...

6   Q.    Progress reports made internally at the  
7           company you're saying.

8   A.    And included in data responses.

9   Q.    And you said in that letter that you'd  
10          proceeded to negotiate fixed-price contracts.

11   A.    Not me personally, but the Company, of  
12          course.

13   Q.    And that's before Mr. Shivery had signed off  
14          on September 24th; correct?

15   A.    Yes.  Well, I don't know about the dates.  
16          But it's -- it could have been negotiated but  
17          not finalized.

18   Q.    You actually signed a number of contracts in  
19          October of '08.  Do you remember that?

20   A.    No.

21   Q.    You don't remember when --

22   A.    Again, I didn't manage that project.  That  
23          project was managed by others.  So I can't  
24          speak as to what I did because I didn't

1 sign -- you know, I didn't manage those  
2 contracts.

3 Q. I'd like to direct your attention to a  
4 response, Technical Session 2-2.

5 MR. PATCH: So if we could  
6 mark that.

7 (Long Deposition Exhibit 12 marked  
8 for identification.)

9 Q. This is the August of this year, August of  
10 2013 responses. And there's a response to --  
11 it's TS-02 Q-Tech-002, unredacted -- no. I'm  
12 sorry. Updated copy of Attachment 3,  
13 detailed cost -- project cost breakdown  
14 previously provided confidential in PSNH's  
15 filing dated September 2nd.

16 And now it looks to me from reading  
17 this, this is what was filed with the  
18 Commission on September 2nd. And it looks to  
19 me as though, as of that point in time, you  
20 had spent in direct costs about \$7 million.  
21 And in order to get to that, I'm adding up  
22 the first three columns at the bottom, the  
23 total direct costs, about three lines up.  
24 And it says, prior to '07, total '07, January

1 to April '08. I mean, these are actual. I  
2 think to the right of that, it's a little  
3 hard to tell from the copy, but it looks like  
4 they're estimated. So, does that sound  
5 approximately correct?

6 A. Well, I have to take it for what it is. I  
7 didn't prepare this document, nor am I the  
8 identified witness.

9 Q. But it was part of what you submitted -- PSNH  
10 submitted with your cover letter of  
11 September 2nd of '08.

12 A. Not my cover letter. The cover letter's  
13 signed by Stephen Hall.

14 Q. Well, I thought the September 2nd, 2008,  
15 letter that you sent to the Commission in  
16 08-103 refers to the report that this was  
17 part of.

18 A. But I'm trying to understand, though. What  
19 part of my knowledge are you looking for?  
20 Because I didn't prepare this --

21 Q. Okay.

22 A. -- these tables.

23 Q. Well, do you have any knowledge of how much  
24 you had spent as of September 2nd of '08 on

1 the project?

2 A. Well, at the time I may have. There is a  
3 difference between commitments and spending.  
4 It could be quite a large difference between  
5 commitments and spending. And our approach  
6 was to obtain fixed-price contracts. But the  
7 spending would have lagged those commitments.  
8 So I think you used the word, these are  
9 "actual spending." I'll take your word for  
10 it. I haven't reviewed this document for  
11 this deposition.

12 Q. Okay. Well, let's look at --

13 A. Nor did I prepare it.

14 Q. Okay. Let's look at the response to  
15 TransCanada 3-14.

16 A. Is that in the same package?

17 Q. No, it's in a different one. We'll get  
18 copies.

19 (Long Deposition Exhibit 13 marked  
20 for identification.)

21 MR. BERSAK: This is 13? I'd  
22 just like to note that the witness on No. 13  
23 is in fact Gary Long.

24 MR. PATCH: Okay. I stand

1 corrected.

2 BY MR. PATCH:

3 Q. I'd ask you to look at Page 8 of 31. And  
4 this is a presentation that you made to the  
5 Senate, or at least with regard to Senate  
6 Bill 152. And it was provided, obviously, in  
7 response to a data request. And you  
8 testified before the legislature in March of  
9 '09 that \$230 million had been spent or  
10 contractually committed as of that point in  
11 time; correct?

12 A. Yes.

13 Q. Now, the numbers in there are pretty  
14 different than the ones in the chart that I  
15 showed you about sort of estimates for 2009.  
16 If you look back at the bottom of that, it  
17 looks like summary cost estimate total 2009,  
18 \$101 million at the bottom of that, you know,  
19 that column. So can you explain why what you  
20 told the Commission or what PSNH told the  
21 Commission in September of '08 is  
22 significantly less than what you told the  
23 legislature in March of '09?

24 A. Again, I didn't prepare that, nor have I

1 analyzed the difference. I mean, if we said  
2 it was \$230 million was our commitments,  
3 then -- spent or committed -- then that's  
4 what I believe was the case. I mean --

5 Q. So let's look at --

6 A. -- you may not have all the information on  
7 that table than what -- that we had at the  
8 time this presentation was put together.

9 Q. Let's look at Page 19 of 31.

10 A. Of?

11 Q. Of the TC-03-14.

12 A. Is that Exhibit 12 or --

13 Q. Thirteen, I think.

14 A. Thirteen?

15 Q. Page 19 of 31.

16 A. Okay.

17 Q. And you said at that time, in March of '09,  
18 that PSNH has legally binding, firm price  
19 contracts in place for major components of  
20 the project. Do you see that?

21 A. Yes.

22 Q. What did you mean by "legally binding"?

23 A. Commitments we made to vendors for equipment,  
24 equipment manufacturing, services, that sort

1 of thing.

2 Q. Do you know if the contracts gave PSNH the  
3 ability to terminate?

4 A. I'm not familiar with all the details. But  
5 if they did, it most likely would have been  
6 with penalties.

7 Q. So you're saying, as of that point in time,  
8 what you would owe -- and I think you make  
9 reference to it elsewhere in here, and I'll  
10 find that reference -- but what you would owe  
11 as of that point in time was \$230 million.

12 A. That we had made commitments, either spent or  
13 committed, of \$230 million.

14 Q. On Page 18 of that response you say, "At  
15 every step of the way we have affirmed  
16 pricing to ensure it is in line with  
17 marketplace." What do you mean by that?

18 A. Well, in the prudent -- what would I say? --  
19 compliance with the law, you know, we wanted  
20 to have competitive pricing. So we went out  
21 for bid in a competitive pricing. We wanted  
22 to make sure that we could demonstrate that  
23 we were diligent and prudent in our execution  
24 of that compliance and construction. And it

1 was market-based pricing. It was  
2 competitively bid, market-based pricing.

3 Q. So "every step of the way" means how  
4 frequently?

5 A. It means every step of the way. It means in  
6 the -- that document you referred to earlier,  
7 called "Strategic Sourcing," in the strategic  
8 sourcing process, we're looking for the best  
9 marketing pricing we could get, combined with  
10 the quality and capability standards that we  
11 needed with the vendors.

12 Q. Would you agree that September of '08 was a  
13 period of significant economic volatility?

14 A. That month?

15 Q. September of '08. I've got some headlines  
16 from that month I can show you. But wasn't  
17 that the month when Lehman Brothers went  
18 bankrupt and there were significant economic  
19 issues in the country, talk about bail-out,  
20 there was the AIG problem. Do you recall  
21 that period of time?

22 A. I do. But it just -- obviously, it lasted  
23 for more than a month. So that was my only  
24 query.

1 Q. But it began in September of '08. Well, it  
2 probably began before that. But most of the  
3 headlines were September.

4 A. I would say there were companies in distress  
5 before that date.

6 Q. And I think you've answered this before, but  
7 you tell me if you've got anything different  
8 to say.

9 Now, when that happened, did you do  
10 anything different about how you checked  
11 NYMEX projections or any other projections of  
12 gas prices, coal prices, any other prices  
13 that were relevant to this project? Did that  
14 cause you to approach it any differently?

15 A. This one month is -- one month in a  
16 three-year management of a project is -- you  
17 know, it's just that one month. And, you  
18 know, if we saw aberrations in the bids or a  
19 change in the bids, we would have examined  
20 that and try to find out more and adjust. So  
21 it's a -- you know, the bidding process was  
22 not a one-month process.

23 Q. Well, given this uncertainty in September,  
24 what made you so sure that the prices were

1 going up, given everything else going on in  
2 the economy, which is what you told the  
3 Commission in that September 2nd letter? You  
4 basically said, Don't delay, Commission,  
5 because the prices are going to go up, and it  
6 will result in additional costs to customers.  
7 And this is the second paragraph on Page 3.

8 A. Yes. Well, obviously, it's because we're in  
9 discussion with all the major vendors. We're  
10 exploring with them what the cost of their  
11 services will be, what their schedule will  
12 be, what their capabilities will be. So, you  
13 know, that's based on what we were finding  
14 available in the marketplace for the services  
15 that we needed.

16 Q. Economic volatility cuts both ways, though,  
17 doesn't it? People are losing jobs, and the  
18 economy's changing; then prices can actually  
19 go down, and you can get a more competitive  
20 bid sometimes, can't you?

21 A. We did get competitive bids, and we did have  
22 incentives and performance incentives in the  
23 contracts. And when the project was all  
24 over, we were about 10 percent under budget.

1           So we felt that, you know, despite, you know,  
2           having some difficult requirements placed on  
3           us, I think it was a huge success to come in  
4           under budget. Came in around \$420 million,  
5           not \$457 million. So we did take advantage  
6           of lower labor costs and changes in the  
7           economy. We did do that, and we ended up  
8           performing below the estimate.

9    Q.    Significantly above the original estimate,  
10        though; correct?

11   A.    Different estimates. One was preliminary,  
12        one was more generic. The other one, as we  
13        talked about, much more specific, different  
14        time frame, more specific engineering, more  
15        site specific.

16   Q.    Did you tell the legislature that estimate in  
17        2006 was preliminary?

18   A.    I don't know what words were used. But it  
19        was done by a consulting firm to give us a  
20        general indication. So I know we said "not  
21        to exceed." That was the thoughts at the  
22        time. But I know that we indicated that  
23        additional engineering had to be done.

24   Q.    I think you even said in 2008 that the

1 project could be completed by 2012.

2 Obviously, that was part of the Company's  
3 goal was to get this done sooner; correct?

4 A. I would say it was part of the state's  
5 directive to us. It's very clear in the law  
6 that they wanted reductions. The state  
7 wanted reductions sooner rather than later,  
8 and very specifically provide incentives, not  
9 for investors but for customers, if we were  
10 to get it done sooner. And so our desire was  
11 to finish it, you know, as directed. And we  
12 did. We did. We finished almost a year and  
13 a half before the deadline. So we think that  
14 was another success of a prudently managed  
15 project.

16 Q. And the deadline was July 1st of 2013;  
17 correct?

18 A. Yes.

19 Q. So, a six-month delay in 2008, 2009,  
20 presumably wouldn't have caused PSNH to not  
21 meet the deadline of July 1, 2013, assuming  
22 that you studied it for six months and  
23 concluded it still made sense to go ahead.  
24 Is that fair to say?

1 A. No.

2 Q. No?

3 A. No.

4 Q. Why not?

5 A. As I described earlier, when you're in the  
6 middle of a major project, a stoppage has a  
7 lot of unintended consequences, and it may be  
8 very difficult to start it up. And it would  
9 raise in the question of whether we could  
10 finish it within the statutory deadline. You  
11 know, you couldn't say at that point that we  
12 would finish it in 2012. It was an ambition.  
13 You know, given what we knew at that point,  
14 we could have needed the entire time, all the  
15 way up to mid-year 2013. So, I mean, in  
16 hindsight, yes, we did it much faster. But  
17 if a project would have been stopped and we  
18 would have lost vendors and perhaps the work  
19 force and -- there was no assurance that we  
20 could meet the deadline.

21 Q. Could you have asked for an extension of the  
22 deadline?

23 A. Could we have asked?

24 Q. Could you have filed --

1 A. That would have been inconsistent, in our  
2 minds, with the directives. So, no, we took  
3 very serious the intent of the state.  
4 Remember, this started with the Clean Power  
5 Act that wanted mercury reductions. So  
6 this -- even though the project was a  
7 three-year project, the whole intent was more  
8 years than that when the original intent was  
9 established. And so we didn't view it as our  
10 role to go slower about it. We viewed --  
11 given the legislative direction, our role was  
12 to do this as fast as possible. So, no, we  
13 weren't looking for delays.

14 Q. Do you know what happened to the price of  
15 commodities after September of '08?

16 A. If you're talking about natural gas, they've  
17 gone down.

18 Q. What about --

19 A. And now they're going up again.

20 Q. What about other commodities that would be of  
21 interest for this particular project?

22 A. I wouldn't be surprised if some went down,  
23 given the great recession. But that's after,  
24 after, obviously, we were well into

1 construction.

2 Q. Was the last economic analysis that PSNH did  
3 the one that was submitted to the Commission  
4 in September of '08, or were there any others  
5 that were done after that?

6 A. I'm trying to remember what was submitted in  
7 2008. But if it's not in the data responses,  
8 that would have been the last of that type.  
9 But they're constantly managing the project  
10 and obviously looking at what's going on in  
11 the energy world around us. And lots of  
12 things are going on in the energy world  
13 around us. You mentioned natural gas prices.  
14 But there were a lot of other risk factors  
15 that were emerging during that same time, and  
16 in fact continue to grow in New England.

17 Q. I want to read you a quote from a letter that  
18 Mr. Bersak put in October of 2009 in DE  
19 08-103 to the Commission.

20 MR. PATCH: So if we could  
21 have that marked.

22 (Long Deposition Exhibit 14 marked  
23 for identification.)

24 Q. I'm looking at Page 2, the second paragraph,

1 and I'm looking at the last two sentences.  
2 I'm going to read it. "It would be a waste  
3 of resources and money to require the Company  
4 to continually update projections of future  
5 costs based upon forecasts made during this  
6 period of significant volatility. Moreover,  
7 regardless of the result of such analyses,  
8 the legal mandate to install scrubber  
9 technology at Merrimack Station will remain  
10 intact."

11 Do you ascribe to that? Was that the  
12 Company's position?

13 A. Yes.

14 Q. Now, were you aware of any other potential  
15 environmental regulations that might drive up  
16 costs for Merrimack Station?

17 A. Well, yes. We mentioned one of those in  
18 particular in our risk analysis to the  
19 risk -- to the RaCC Committee.

20 Q. Do you remember what that was?

21 A. Water discharge and cooling.

22 Q. Would you be surprised if in fact that is not  
23 in that presentation?

24 A. Yes, because I specifically remember reading

1           it in a footnote.

2   Q.    Okay.  Maybe it's in a footnote.  But let's  
3           look at 15 of 20 [sic].  It's Staff 2-2.  I  
4           don't remember what it's marked as a number.

5                           MS. GOLDWASSER:  Should be  
6           No. 5.

7   BY MR. PATCH:

8   Q.    Page 15 of 20.  I see a reference there to  
9           "Impact of RGGI/federal carbon legislation is  
10           not expected to render scrubber investment  
11           uneconomic to customers at current projected  
12           costs."

13   A.    That's not the page I'm thinking about.

14   Q.    Okay.  Well, I mean, I asked you a general  
15           question about other potential environment  
16           regulations that might drive up costs.  And  
17           so that clearly was part of the  
18           consideration, wasn't it?

19   A.    Well, as we analyzed the impact of the  
20           mandate, those economic analyses that you're  
21           referring to was to try to get an  
22           understanding of the financial impact of the  
23           mandate.  And so, yes, it was in the Risk and  
24           Capital Committee.  There was notation made

1 of there could be other environmental  
2 compliance costs in the distant -- in the far  
3 distance.

4 Q. If you remember a reference in there to  
5 "water cooling," could you point that out to  
6 us? You can take a minute to try and find  
7 it.

8 A. I don't know if it's in any of these things  
9 that you gave us.

10 Q. Okay. But this is what was provided to us as  
11 being all the materials that were presented  
12 to the RaCC and to the board of trustees.  
13 And I'm just curious about the reference to  
14 "water cooling" in there because I may have  
15 missed it.

16 A. Okay. This is your Exhibit 5, as an example.  
17 It may occur elsewhere. If you look at  
18 Page 13 of 50, for instance --

19 (Court Reporter interjects.)

20 A. -- it talks about cooling tower addition, \$30  
21 million, in the footnote there, a couple  
22 footnotes there.

23 Q. Okay. So that's the figure that you had  
24 available at that time? That was the

- 1 Company's estimate of what it was going to  
2 cost to address the water cooling situation?
- 3 A. I wouldn't call it an estimate. I don't know  
4 how you want to think of it. Because there  
5 was no requirement. We felt it was years  
6 away. But just to put in -- it was an  
7 assumption -- or not assumption. It's a --  
8 you know, again, it's assumption using  
9 analysis just to test the sensitivity, just  
10 to test the sensitivity of the impact of  
11 complying with the mandate.
- 12 Q. Did you have a standard policy or protocol  
13 that you followed for when to anticipate or  
14 factor in potential environmental  
15 regulations? In other words, did they have  
16 to be adopted as rules, or were they -- or  
17 was there a preliminary rule that looked like  
18 it stood a pretty good chance of passing  
19 something you would take into consideration?  
20 What was your --
- 21 A. Well --
- 22 Q. What was your general approach?
- 23 A. In that talking chart that we're about, those  
24 are included in the "unlikely" cases.

1           It's -- you know, I don't know if we had a  
2           specific requirement. It depends on many,  
3           many factors. But that particular one was  
4           viewed as more remote, was more remote at  
5           that time.

6    Q.    The water cooling one?

7    A.    Yes.

8    Q.    Thirty million was viewed as remote?

9    A.    Yes.

10   Q.    And so at any point in the rest of '08 or  
11         early '09, did it become any less remote?

12   A.    I don't -- I can't answer that question. It  
13         was \$30 million out of 457, you know, a  
14         sensitivity analysis against a \$457 million  
15         project. So it was not the most significant  
16         variable.

17   Q.    It wasn't included in the \$457 million,  
18         though.

19   A.    It was included in the sensitivity analysis  
20         against that.

21   Q.    So this was a worst-case scenario for what it  
22         would cost to address the water cooling  
23         situation?

24   A.    We don't -- we didn't label it "worst case."

1 Q. So what would you label it?

2 A. "Unlikely" and "highly unlikely," as the  
3 scenario says.

4 Q. So, anything more than \$30 million would have  
5 been even less likely.

6 A. Now, this is looking at higher costs. And it  
7 was included in the scenario for possibly  
8 low, low value and unlikely low.

9 Q. Were you aware of what customer  
10 representatives from PSNH were sending the  
11 customers in 2009 regarding legislation?

12 A. You might have to refresh my memory of what  
13 you're talking about.

14 Q. Okay. We'll show you a copy of "PSNH AE  
15 Newsletter," dated February 12th of '09.

16 (Long Deposition Exhibit 15 marked  
17 for identification.)

18 Q. I'm looking under Background. I'm looking  
19 down three paragraphs, I guess I'll call  
20 them. It says, "The Clean Air Project will  
21 make Merrimack Station one of the cleanest  
22 coal plants in the nation, while impacting  
23 PSNH's energy service rate by an average of  
24 .33 cents per kilowatt hour, or about 3

1           percent." Do you see that?

2           A. Yes, now I do.

3           Q. Now, is this newsletter something you would  
4           have reviewed and approved before it went  
5           out?

6           A. Not necessarily.

7           Q. Do you recall whether you did or didn't?

8           A. No.

9           Q. That's basically the same thing you told the  
10          legislature that year; correct? I can give  
11          you a copy of the transcript from your  
12          testimony before the Senate Committee. I  
13          don't know if you would agree, subject to  
14          check. And this was an attachment to one of  
15          the objections that we filed to your latest  
16          motion for rehearing. But in that testimony,  
17          I believe you said basically the same thing:  
18          That was going to be cost to customers.

19          A. Yeah, I'll take your word, subject to check.  
20          But now we're back in the legislature again?

21          Q. What was this particular price for customers  
22          based on? Were there certain assumptions  
23          about the price of natural gas and the price  
24          of coal built into this price? What was this

1 based on?

2 A. An analysis of all those things, as I recall.  
3 It was a average over the presumed accounting  
4 life of the project.

5 Q. I'd like to ask, then, for copies of any  
6 analyses that the Company did in connection  
7 with your testimony and this newsletter to  
8 come up with that particular figure.

9 A. You mean my legislative testimony?

10 Q. Yes.

11 A. So we're back to legislature again.

12 Q. That's right. But we're talking about costs  
13 of the project as anticipated at that point  
14 in time by PSNH and the impact on customers.

15 Do you have any idea what the price  
16 projections were for natural gas in February  
17 and March of '09?

18 A. Other than what you've shown me already in  
19 responses. And I believe this number, .33,  
20 has already been provided in data responses.  
21 So, whatever's in there.

22 Q. Do you know what the return on rate base is  
23 that it is now estimated that PSNH will get  
24 annually on the scrubber?

1 A. It's our most recently allowed return on  
2 equity, which I think it's 9.84. I'm not  
3 sure.

4 Q. And that translates into an annual return on  
5 rate base of approximately \$38 million? Does  
6 that sound correct?

7 A. No. Thirty-eight million? I don't know. Do  
8 you have a document there that's --

9 Q. I do.

10 A. Are you talking about equity only?

11 Q. Well --

12 A. When you say "return on rate base," return on  
13 rate base would have been whatever it takes  
14 to service debt and equity.

15 (Court Reporter interjects.)

16 Q. Well, I'll show you the document. And it's  
17 already been marked as 12. This is a  
18 response to technical session data requests.  
19 And the technical session was in July, and  
20 the response is in August. And it's the  
21 response to the first data request. So it's  
22 Page 4 of 4. And it says "Public Service  
23 Company of New Hampshire 2013 Energy Service  
24 Rate Calculation, Merrimack Scrubber, Return

1 on Rate Base, Dollars in Thousands." And way  
2 down on the right it says \$38,839. See that?

3 A. Yes.

4 Q. Does that sound correct?

5 A. Well, I assume it's correct. It's a return  
6 on rate base, again, including debt and  
7 equity.

8 Q. And has that --

9 A. So that number I gave you just said equity  
10 return, and this one might -- I don't know.  
11 I don't know how taxes is factored in this.

12 Q. And do you know if that estimate changed over  
13 the years from, say, 2008 until 2013? Or was  
14 that -- does that sound like in the ballpark  
15 of what the Company had estimated?

16 A. I'm trying to... for the same year, for the  
17 projected same year, would the estimate have  
18 changed from 2008 to 2013? Well, we're  
19 making capital investments every year. So I  
20 would assume it would change based on actual  
21 capital expenditures and actual scrubber  
22 costs, amongst other things.

23 Q. And it about doubles the return on rate base  
24 that PSNH gets from its other generation; is

1           that fair to say?

2    A.    Yeah, I think that's a ballpark. I mean,  
3           we've had roughly, perhaps, around 400 less,  
4           400 investment in our other plants. And this  
5           would have been close to a doubling of  
6           investment in generation assets.

7    Q.    I mean, you've referred to them earlier this  
8           morning. But also in your letter of  
9           September 2nd, you referred to the incentives  
10          to complete the project early; correct?

11   A.    Yes.

12   Q.    And I think they're in R.S.A. 125-O:16.

13   A.    That 2006 law you're referring to, yes.

14   Q.    And would you just sort of describe generally  
15          what your understanding is of what those  
16          incentives were?

17   A.    It's generally additional SO2 allowances that  
18          would have been awarded to PSNH and passed on  
19          to our customers as the financial incentive  
20          that was created in the law. There's no  
21          incentive for PSNH investors. Our prudent  
22          management incentive is to keep the costs as  
23          low as possible. So, completing a project  
24          sooner rather than later results in less

1 AFUDC being accumulated, which benefits  
2 customers directly. AFUDC is Allowance for  
3 Funds Used During Construction. So we wanted  
4 to do everything we could to manage the  
5 costs. Obviously, as I said, it turned out  
6 that way because we came in under budget.  
7 And part of the reason for that is a faster  
8 installation and less investment.

9 Q. You said "no incentives to investors." You  
10 mean just in that statute. Is that what you  
11 mean, or do you mean something else?

12 A. I mean there is no incentive for investors in  
13 that statute. And I said the Company's  
14 prudent management of this was focused on  
15 reducing the amount of investment as best we  
16 could.

17 Q. Were there any incentives internal to the  
18 Company to complete this scrubber project, or  
19 to do it in a certain time frame?

20 A. I had goals placed on me to -- and as did  
21 John MacDonald -- you know, to, you know,  
22 manage, really manage the construction  
23 project certainly by the deadline. The fact  
24 that we were able to do it sooner was -- at

1 least gave us bragging rights for being able  
2 to meet our goals sooner, sooner than what  
3 was required by the law.

4 Q. Were those goals reflected in your  
5 compensation package or Mr. MacDonald's?

6 A. They would have been a consideration. No  
7 specific math behind it.

8 Q. So what were the goals, again? Or is  
9 there -- let me ask you this: Is there  
10 anything in writing that spells out what  
11 those goals were?

12 A. Yes. I would have had a specific goal to  
13 complete the Clean Air Project in accordance  
14 with the state mandate, something along those  
15 lines.

16 Q. I guess I'd ask for copies of anything in  
17 writing that spells out what the goals were  
18 that related to your compensation package or  
19 Mr. MacDonald's.

20 And so, did you ultimately obtain  
21 additional compensation as a result of  
22 meeting those goals?

23 A. I don't know. I don't know because, you  
24 know, I had many, many goals. That was one

1 of them. Goals for liability; goals for, you  
2 know, meeting your O & M budget -- O & M,  
3 Operation and Maintenance -- expense budgets.  
4 Like I said, reliability, customer  
5 satisfaction. And there were several goals  
6 there, and it's not disclosed to me as to how  
7 the CEO or the board of trustees may have  
8 weighed any of those.

9 Q. PSNH has argued in this docket that the  
10 legislation made it clear that time was of  
11 the essence for this project; correct?

12 A. Yes.

13 Q. And we established before that the effective  
14 date was June 8th of 2006; correct?

15 A. Subject to check, I'm with you.

16 Q. Okay. Did you make any efforts to lock in  
17 prices for this project in the summer of '06,  
18 or any other time in '06 or '07?

19 A. Before the law was -- the mandate was  
20 established?

21 Q. No, after the effective date of the law, June  
22 of 2006.

23 A. Oh, between '06 and '08?

24 Q. Yes.

1 A. Obviously, once the law was passed, we went  
2 through the steps required for management of  
3 the project, and that included lining up, as  
4 I said earlier, a engineering/procurement/  
5 construction manager. So we had a lot of  
6 work to do. And you can't sign contracts,  
7 other than for a vendor, to help you manage  
8 the project until you have done what that  
9 vendor is hired to do, which is engineering  
10 and other studies. So we were well into the  
11 process. But I think the preliminary monies  
12 that were approved in the RaCC were to  
13 basically start up with a EPC contractor, and  
14 that's what we did. And that's what led to  
15 getting enough information to do the new  
16 estimate of cost, the detailed estimate.

17 Q. When was the first time you locked in any  
18 prices with regard to contracts for this  
19 project?

20 A. Again, I didn't manage that. But as I  
21 recall, the first contract that we would view  
22 of significance was with the EPC contractor,  
23 EPC vendor.

24 Q. I mean, it sounded to me from responses to

1 data requests I've seen that you didn't  
2 really lock in prices until October of '08.  
3 And you told the Commission in that letter of  
4 September 2nd that the Commission should  
5 hurry up and decide this because the prices  
6 were going to go up, and you needed to lock  
7 in those prices. So, is that a fair  
8 characterization or no?

9 A. Well, I think it's generally okay. It's --  
10 what happened from when the law was enacted  
11 to getting the EPC, to eventually lending --  
12 letting contracts, there was a tremendous  
13 amount of engineering work that was done by  
14 the EPC contractor, a lot of design work, a  
15 lot of procurement, legal contracting work  
16 that went on. And it takes a fair amount of  
17 time to do all that. That's that time frame  
18 that you're talking about between '06 and  
19 '08. And so, by the time '08 came along, we  
20 knew a lot about what was available in the  
21 marketplace, what vendors were available,  
22 what prices they were charging, what was  
23 happening to commodities. And that's sort of  
24 the underlying foundation for that statement.

1 Q. Obviously, the increase from \$250 million to  
2 \$457 million did not dissuade PSNH from  
3 proceeding with the project. Was there an  
4 amount that would have dissuaded PSNH?

5 A. Unknown. The only thing we focused on is  
6 complying with the mandate and disclosing --  
7 as I said, the legislature was well aware of  
8 that number and well aware of the progress on  
9 the project. So it was -- it wasn't our  
10 decision. It wasn't our authority to do  
11 anything but comply with the law.

12 Q. And so I guess you're telling me there was no  
13 number that would have dissuaded you. If it  
14 had been a billion or a billion and a half or  
15 two billion, that wouldn't have dissuaded  
16 you. You had an obligation to meet the law,  
17 and regardless of the impact on your  
18 customers, you would have had to do that. Is  
19 that what you're saying?

20 A. Not quite. The public interest finding was a  
21 finding made by the legislature, you know,  
22 not the PUC, not the Company management. And  
23 the mandate was the legislature, not the PUC  
24 and not the Company. It wasn't the Company's

1 decision, nor was it the Commission's  
2 decision. So it is very unique. I've never  
3 seen anything quite like it. But the higher  
4 authority -- you know, the higher authority  
5 than the PUC, the higher authority than the  
6 Company management made all those decisions,  
7 you know. So, I mean, you could ask that  
8 question to the legislature: Was there a  
9 point, Legislature, that you would have  
10 changed the law? Certainly, you know, the  
11 legislature could decide to do that. They  
12 didn't. And so I don't know what the  
13 legislature would have done if it was a  
14 billion dollars. I don't know what they  
15 would have done if it was some other number.  
16 I mean, it was their decision to start with.  
17 So I think it was their decision to change.

18 Q. So if it had risen to those levels, you  
19 wouldn't have gone back to the legislature  
20 and asked them to change their decision?

21 A. Well, I think it would have had quite a lot  
22 of discussion, obviously, but -- as the 457  
23 had quite a lot of discussion. Certainly if  
24 there was number of a billion it would have

1 had quite a lot of discussion. But I can't  
2 predict what the legislature would do. You  
3 know, management did not face that situation.  
4 So I didn't have to figure out at that time  
5 what to do if it was a billion. It wasn't.  
6 It was wasn't a billion.

7 Q. And the "quite a lot of discussion," you're  
8 talking internally or you're talking  
9 externally? Internally to the Company?

10 A. Well, I mean, we discuss our business all the  
11 time. So I was really referring to  
12 externally.

13 Q. To your knowledge, was there any upper limit  
14 that the board of trustees or the RaCC had or  
15 would have considered, given the overall age,  
16 condition and performance of Merrimack  
17 Station?

18 A. You know, it's the same answer. We were in  
19 compliance mode. You know, that might have  
20 been a good question if management had  
21 decided to do this or the board of trustees  
22 had. But we didn't make that decision. So,  
23 again, this was an unusual situation where  
24 the legislature told us to construct

1 something. And that's just a very unique  
2 situation. It was related to the state's  
3 great desire to reduce emissions, and it was  
4 related to a previous law that called for  
5 coming up with some method to reduce mercury.  
6 So it's -- we didn't feel we had the  
7 discretion to overturn. We couldn't have  
8 overturned the legislature, the law.

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

17 MR. NEEDLEMAN: I'm going to  
18 object to that question. We're now again  
19 back into hypotheticals about what the  
20 Company may have done with respect to  
21 legislative action, and that's beyond the  
22 scope.

23 MR. PATCH: He's opened the  
24 door by the testimony that he just gave. I

1 think it's clearly within the scope. It  
2 relates to prudence of the Company's action.

3 MR. NEEDLEMAN: There's no  
4 opening to --

5 (Court Reporter interjects.)

6 MR. PATCH: To suggest that  
7 PSNH, under no circumstances, would go back  
8 to the legislature is beyond belief, given  
9 their activities in the legislature.

10 MS. ROSS: I'll sustain the  
11 objection. I think the question's been  
12 answered.

13 BY MR. PATCH:

14 Q. Was there anything that prevented PSNH from  
15 closing Merrimack Station?

16 A. Yes. Again, not a unilateral decision we  
17 could make.

18 Q. Why? Explain to me where it says that in the  
19 law or how you arrive at that conclusion.

20 A. I don't think we can close any plant without  
21 PUC allowing it. And there's laws that go  
22 to, I think, filing with the PUC and  
23 processes at the PUC we'd have to go through.  
24 I don't think the Company has a unilateral --

1           being a regulated company, has a unilateral  
2           ability to close a plant without, you know,  
3           in some cases, the legislature and the PUC  
4           being involved.

5    Q.    So if -- is there anything that would have  
6           stopped PSNH from filing something with the  
7           Commission asking to close the plant? And by  
8           "the plant," I mean Merrimack Station.

9                       MR. NEEDLEMAN: I'm going to  
10           object to that question. It's calling for a  
11           legal opinion. I don't think that's in the  
12           scope of why Mr. Long is here today.

13                      MR. PATCH: No, it's not a  
14           legal opinion. It's a management decision  
15           that's critical to the issue of prudence.  
16           And the Commission, in its last order, made  
17           it clear that it believed that the Company  
18           had that discretion. So I'm asking the  
19           Company whether it considered that and  
20           whether it felt it was prevented in any way  
21           from doing that.

22                      MS. ROSS: I'll instruct the  
23           witness to answer.

24    A.    As I was describing, we had to comply with

1 the law of installing the scrubber. And  
2 there are severe penalties if one doesn't do  
3 that. I also have said that we don't have  
4 the unilateral ability to close a plant  
5 without going through a very lengthy process.  
6 I previously stated that we were in the  
7 middle of a construction period, and it would  
8 be very disruptive and create a lot of  
9 uncertainty.

10 As you talked earlier about one of those  
11 earlier bills, you know, we also had lots  
12 of -- there were lots of other factors that  
13 the legislature would consider in a public  
14 interest finding. So we were certainly not  
15 in a position to go down that path or to try  
16 to convince the decision makers to change  
17 their decision during a time when our own  
18 analysis was showing it was beneficial to  
19 customers, on economics alone, not to mention  
20 fuel diversity, uncertainty in the  
21 marketplace. There are other  
22 considerations -- reliability -- that we  
23 would have to consider in that rather  
24 complicated question that you've posed. And



1 interest standing, I think we'd be highly  
2 challenged to go against those findings.

3 Q. Did you ever consider or discuss with anyone  
4 asking the Department of Environmental  
5 Services for a variance from the requirements  
6 of the law?

7 A. Well, as you know, our view of the law is  
8 that variance was only allowable after the  
9 scrubber was installed, if there was some  
10 reason we could not meet the reduction  
11 standards that were in the law.

12 Q. So I guess the answer to my question is, no,  
13 you never considered or discussed with anyone  
14 --

15 A. Well, again, it wasn't the Department of  
16 Environmental Services that made the  
17 decision; it was the legislature. So...

18 Q. Well, that's an interpretation of the law;  
19 correct?

20 A. Well, it's -- the law is the law. I don't  
21 think -- I don't think DES can go against the  
22 law any more than we can, the difference  
23 being that we were subject to, you know,  
24 penalties under law that they might not be

1           subjected to.

2   Q.    So I think the answer to my question is, no,  
3           you never considered or discussed with anyone  
4           asking DES for a variance; is that fair to  
5           say?

6   A.    I'm trying to clarify what you mean by  
7           "variance."

8   Q.    Do you want to take a look at the statute?

9   A.    Well, I told you what we said the statute  
10          says. It is a variance it can find after  
11          construction. So I don't know if you're --  
12          after construction and operation, we met all  
13          the requirements, so there was no need to ask  
14          the DES for a variance. So, no, we did not  
15          ask them for a variance because we don't need  
16          one.

17   Q.    No, but I'm asking, did you ever consider or  
18          discuss with anyone -- and I'm not saying  
19          after it was built. I'm saying at any time,  
20          did you ever consider or discuss with anyone  
21          asking DES for a variance? That's what I'm  
22          asking.

23                           MR. BERSAK: That was asked as  
24          a data request, and he did respond to it.

1 You have the answer.

2 MR. PATCH: And the answer is?

3 MR. BERSAK: We can go look  
4 through all the documents, if you want to  
5 wait while I look through them. But I don't  
6 know off the top of my head. But I do know  
7 that we did -- we were asked, and we did  
8 respond to it.

9 MR. PATCH: So it sounds like  
10 you're coaching the witness. I guess I'd  
11 like an answer from the witness about what  
12 the answer to the question is.

13 MR. BERSAK: He doesn't know  
14 every data request response that was given.

15 MR. PATCH: No, but I'm asking  
16 his understanding.

17 A. And you're using "variance" a different way  
18 than I'm using "variance." And I said  
19 variance is not even a question to ask DES  
20 until after construction. You created the  
21 scenario where it's before construction. So  
22 I can't answer your question.

23 BY MR. PATCH:

24 Q. Well, I think you could answer the question,

1 but --

2 MS. ROSS: I think the witness  
3 can answer the question, which is: Was a  
4 variance discussed during the course of  
5 construction?

6 A. And my answer is --

7 MS. FRIGNOCA: Mr. Long, would  
8 you please speak a little more slowly?

9 A. My answer is, we didn't know if we needed a  
10 variance until after the scrubber was in  
11 operation. So there was nothing to discuss.

12 BY MR. PATCH:

13 Q. So I think the answer is no.

14 Would any or some of the environmental  
15 and regulatory concerns behind the Clean Air  
16 Act -- you know, reduction of mercury,  
17 impacts on air quality, those kinds of  
18 things -- would any of those concerns have  
19 been addressed or satisfied if PSNH had  
20 exercised the sale option or the retirement  
21 option?

22 A. Neither the sale or retirement option was  
23 anything that we pursued.

24 Q. I don't think you -- you want me to repeat

1 the question? Because it doesn't seem like  
2 you answered it.

3 A. Sure.

4 Q. Would any or some of the environmental and  
5 regulatory concerns behind the Clean Air  
6 Act -- such as, for example, bioaccumulation  
7 of mercury in adjacent ecosystems, or impacts  
8 on air and water quality -- would those have  
9 been addressed or satisfied if PSNH had sold  
10 or retired the plant?

11 A. And the plant continued to operate? When you  
12 said sold or retired --

13 Q. Sold or retired.

14 A. If we were --

15 Q. Maybe they're different. Maybe the answer to  
16 the question is different. I don't know.  
17 I'm asking what your understanding is.

18 A. Well, if you closed down a power plant, which  
19 I think is part of your question, and if we  
20 were allowed to have done that, you know,  
21 then it doesn't exist. So it's --

22 (Court Reporter interjects.)

23 A. The power, the energy doesn't exist. So the  
24 environmental compliance would be more

1 site-related. So, yes. Could there have  
2 been, you know, other things happening on  
3 site-related environmental compliance for a  
4 closed plant? Yes, there could be. In a  
5 case of a transfer of ownership, presumably  
6 environmental requirements would apply.  
7 Still a regulated emissions source.

8 Q. Assume that the project had been terminated,  
9 for whatever reason -- a decision by PSNH, a  
10 legislative decision -- some decision to  
11 terminate the project before its completion,  
12 in your opinion, would PSNH have been able to  
13 recover on rates what it had spent up until  
14 that time?

15 A. Well, I don't know. I mean, I think that  
16 would have been quite a legal discussion.

17 Q. Okay. Well, I'm going to direct your  
18 attention to TC-3-14, which I think has  
19 already been handed out.

20 MS. GOLDWASSER: No. 13.

21 BY MR. PATCH:

22 Q. No. 13. And I'm going to direct your  
23 attention to Page 8 of 31. And this is what  
24 you told the legislature in March of '09.

1 A. Okay. I have it.

2 Q. Okay. I'm looking at the fourth bullet.

3 A. Yeah.

4 Q. And it says, "\$230 million (over half of the  
5 cost to engineer and build the scrubber) has  
6 been spent or contractually committed. The  
7 cost will have to be recovered from PSNH  
8 customers whether or not the scrubber  
9 installation is completed."

10 A. Yes.

11 Q. Was that your understanding of whether or not  
12 PSNH would be able to recover in the event  
13 that the project had been terminated early?

14 A. Yes. I mean, we believe we acted prudently,  
15 and have and continue to act prudently.  
16 So, yes, the cost will have to be recovered.  
17 You know, would others oppose it? What would  
18 happen? I don't know. That's a legal  
19 question. But the cost would have to be  
20 recovered. We still have -- the cost still  
21 exists. And we acted prudently. Assuming  
22 under your scenario, we acted prudently.

23 Q. And so clearly, you would have approached the  
24 PUC, at whatever that point in time would



1 "Please provide copies of all reports to the  
2 Legislative Oversight Committee on Electric  
3 Restructuring and other persons pursuant to  
4 the requirements of 125-O:13, IX." And this  
5 response provides a one-page legislative  
6 update, June 18th of 2008. And the only  
7 reference I see in here to project cost is at  
8 the very bottom, in the right-hand box. It  
9 says, "Project costs will be updated with  
10 review of major equipment bids." So I see  
11 nothing in there about the increase to \$457  
12 million.

13 Do we have all the documents that were  
14 provided to that Committee? Because that's  
15 what we asked for. Is there something else  
16 you know of?

17 A. Again, my name's not on that data response.  
18 But there's nothing more that I know of.

19 (Long Deposition Exhibit 16 marked  
20 for identification.)

21 Q. The Scrubber Law as passed provides that you  
22 can only collect the cost of the scrubber  
23 from default service customers. Obviously,  
24 you're aware of that; correct?

1 A. Yes.

2 Q. And that's part of the mandate; is it not?

3 A. Yes.

4 Q. Could you please describe any and all efforts  
5 that PSNH has undertaken to try to collect  
6 those costs from all of their customers.

7 A. Talking about before the legislature?

8 Q. I'm talking about before the legislature, the  
9 PUC, anybody else, any and all times PSNH has  
10 made any efforts to try to change the effect  
11 of that provision. Again, it's part of the  
12 mandate that says you can only recover from  
13 default service customers.

14 Have you made any efforts to try to  
15 change that? You suggested that to the  
16 legislature. Have you suggested it to the  
17 PUC?

18 MR. NEEDLEMAN: To the extent  
19 that that calls for testimony that's beyond  
20 the scope as the PUC ruled, I object to that  
21 question.

22 MR. PATCH: I think it's very  
23 relevant to the argument they continue to  
24 make about it being a mandate, when say they

1           were mandated, they were mandated, they were  
2           mandated, and they didn't have any ability to  
3           change the law or try to seek a change. And  
4           yet, the answer to this question I think is  
5           relevant because it goes to the fact that,  
6           even though there was a mandate in the law,  
7           there may very well have been efforts -- I'm  
8           looking for the answer to the question --  
9           there may very well have been efforts to  
10          change that. So I think it's very relevant,  
11          and I'd like an answer.

12                         MR. NEEDLEMAN: Well, now that  
13           you've clarified, I do object, because based  
14           on the order on the bottom of Page 5, it's  
15           clearly beyond the scope.

16                         MR. PATCH: I disagree. I  
17           think it's very much within the scope.

18                         MS. ROSS: I will sustain the  
19           objection.

20                                 (Discussion off the record among  
21           counsel for TransCanada.)

22                         MR. PATCH: Okay. I think  
23           that's all the questions we have. Thank you.

24                                 Thank you, Mr. Long.

1 MS. ROSS: So that's the end  
2 of our first segment. And I would suggest  
3 that we break early for lunch, because I  
4 understand that one of the next sessions  
5 requires a little additional preparation.  
6 I've been asked if we could take a longer  
7 lunch break. So that would mean we'd still  
8 be back here at 1:45 for two,  
9 hour-and-forty-five-minute sessions. We'll  
10 see you at 1:45.

11 (Lunch recess taken at 12:10 p.m.)

12 MS. ROSS: So, just to address  
13 the scheduling questions, we did break early  
14 for lunch. And PSNH's attorneys pointed out  
15 that, because the Commission ordered two  
16 sessions in the morning and two in the  
17 afternoon, that it was their position that we  
18 should only have two questioners this  
19 afternoon. And I do acknowledge that that's  
20 how the order was structured. And having  
21 broken early for lunch, I could have simply  
22 ended the session this morning and started  
23 the next one for the morning, but I didn't.  
24 And so I checked with the two commissioners

1           who signed the order to see if I could get an  
2           oral modification of the order in order to  
3           accommodate the schedule this afternoon,  
4           because we have three questioners who want to  
5           question -- that is, OCA, Sierra Club and  
6           CLF. And so I have gotten permission from  
7           the Commissioners to do three sessions this  
8           afternoon, but we will still end at 5:30. So  
9           we'll just break up our time accordingly.

10                       MR. BERSAK: PSNH is somewhat  
11           dismayed by, again, another change in the  
12           Commission's decisions. When we came here,  
13           per the order of the Commission to produce  
14           Gary Long, the Commission was very plain:  
15           Two sessions in the morning, two in the  
16           afternoon. The Commission was also plain, in  
17           that it directs Sierra Club and CLF to  
18           combine their discovery and  
19           cross-examination. So now we're having  
20           variations from both the order that was  
21           issued ordering this deposition, as well as  
22           the Commission's earlier orders regarding the  
23           participation of the two environmental groups  
24           in this. I suppose we have no recourse but

1 to accept it. But we are unhappy with it.

2 MS. ROSS: And just so you  
3 understand my thinking, this is not a  
4 cross-examination. It is a deposition. And  
5 I did check with the two groups, and they did  
6 feel that it would be more effective for them  
7 each to use their own questioner. And that's  
8 why I asked the Commission if it would modify  
9 the order to accommodate that.

10 Okay. With that, let's get  
11 started with the OCA's questions.

12 MS. CHAMBERLIN: Thank you  
13 very much.

14 EXAMINATION

15 BY MS. CHAMBERLIN:

16 Q. Good afternoon, Mr. Long.

17 A. Good afternoon.

18 Q. I'm going to go into a little more detail on  
19 some of the areas raised by Mr. Patch.

20 Back in 2007, PSNH hired a project  
21 manager for the scrubber project. Is that a  
22 standard practice for PSNH?

23 A. I believe you're referring to the  
24 engineering/procurement/construction manager.

1           And it's the same practice we used in  
2           constructing the Schiller wood plant.

3    Q.    Is there a threshold financial commitment  
4           that says, We're not going to do this  
5           in-house; we're going to hire a manager?

6    A.    You could have an internal person doing that.  
7           But given the size and complexity of the  
8           project, because our internal staff had not  
9           built a structure -- a scrubber before, we  
10          clearly needed to get expertise in that area.

11   Q.    And just to be sure that we're talking about  
12          the same group, that was Washington Group  
13          that turned into URS. They just changed  
14          their name at some point.

15   A.    It was the Washington Group that we hired,  
16          yes.

17   Q.    And how was that decision made, that you were  
18          going to -- that PSNH, as a company, was  
19          going to hire an outside expert?

20   A.    It went through the strategic sourcing  
21          process that we talked about a little bit  
22          this morning. The reason was what I had  
23          briefly just stated with you: A major  
24          project looking for somebody who had

1           experience with engineering and construction  
2           of scrubber projects.

3    Q.    When you talk about the "strategic sourcing  
4           process," was this a decision that you as the  
5           president made, Look, we really need to get  
6           an outside expert for this, or is this some  
7           sort of committee that made the decision?

8    A.    The actual management of the construction was  
9           a delegated responsibility to the  
10          vice-president of generation, who reported to  
11          me.  And he established a project structure,  
12          a project team, which I concurred with, I  
13          supported.

14   Q.    And is that --

15   A.    He was the officer in charge, so to speak.

16   Q.    And is that person William Smagula?

17   A.    No, that's John MacDonald.

18   Q.    John MacDonald.  Okay.

19                   And once the project manager was hired,  
20                   how did they communicate to you?  How did you  
21                   get information from them about what they  
22                   were doing, and how did you communicate to  
23                   them?

24   A.    There wasn't a direct communication.  Again,

1           it was delegated. It was to be managed by  
2           the project team, the generation team that  
3           John MacDonald had set up. And John would,  
4           you know, report to me as necessary to keep  
5           me informed. But my involvement was not a  
6           day-to-day, was not a project management  
7           involvement.

8    Q.    And was it his decision as to how often he  
9           would report to you, or did you have a  
10          regular schedule?

11   A.    It was as needed. He would inform me. I  
12          would -- I see him frequently. So it was,  
13          you know, frequent contact as a direct  
14          report.

15   Q.    So you may ask him questions when you saw  
16          him, and he would respond --

17   A.    Yes.

18   Q.    -- on a continual basis, but maybe not  
19          formally every day.

20   A.    Not formally every day. Orally, typically.  
21          You know, the documents that were prepared  
22          for, like the RaCC we talked about this  
23          morning, he would obviously show those to me  
24          and we'd talk about them.

1 Q. And when it went out -- when URS was putting  
2 construction projects out to bid, did they  
3 create the RFP themselves, or was there an NU  
4 or PSNH RFP that was given to them?

5 A. It was a team effort involving our EPC  
6 contractor, the project team. We had a  
7 project team that was over and above that EPC  
8 contractor. It was our management that was  
9 done in association with our service  
10 providers, our procurement department, our  
11 legal department who did our contracts  
12 routinely for Northeast Utilities. So it was  
13 a team effort.

14 Q. And what does EPC stand for?

15 A. Engineering, procurement and construction.

16 Q. And that was a team of people? That was the  
17 team that you just referenced that John --

18 A. EPC was the Washington Group. But you asked  
19 about actual letting contracts, did EPC do it  
20 by themselves. The answer is no. These PSNH  
21 contracts were reviewed internally by legal,  
22 our purchasing or procurement departments, as  
23 well as the generation team. It was a team  
24 effort in evaluation of the requirements, the

1 specifications, the bidders.

2 Q. Did you formally approve the contract when  
3 it -- when the team work was done?

4 A. John would brief me on the results of their  
5 analysis, who the bidders were, how they  
6 assessed the bidders. And then in some cases  
7 I would -- I may have signed a contract, in  
8 other cases he may have, depending upon the  
9 level of commitment. If it was beyond our  
10 authorization, then it would have been signed  
11 by somebody else.

12 Q. And if you had a specific concern, something  
13 specific you wanted to put in the RFP, how  
14 would you communicate that?

15 A. I would talk to John about it. But I didn't.  
16 It was -- they were the ones who managed the  
17 project.

18 Q. All right. So you don't recall a time when  
19 you had a specific concern that you asked  
20 them, "When you do this RFP, make sure they  
21 have this experience," or anything like that?

22 A. No. The project team was far more  
23 experienced in construction management than I  
24 was. So it was a delegated responsibility.

1 Q. Okay. Now, at some point the prices came in  
2 higher. The responses to the construction  
3 RFPs and the contracts came in higher than  
4 you had originally anticipated. Do you  
5 recall how you found out about that?

6 A. I found out about it from John MacDonald.

7 Q. And do you recall, was it a single contract,  
8 or did he wait until several contracts came  
9 in and there was a group of them? Do you  
10 recall the specifics of what he told you?

11 A. I don't recall the specifics. But it was,  
12 you know, after, as was indicated this  
13 morning, the engineering was done, the  
14 specification was done, the research with the  
15 potential vendors, the discussions that  
16 occurred, you know, when they had pretty good  
17 indication.

18 Q. And was it a surprise to you?

19 A. It was higher than I expected.

20 Q. And was it a -- something that you  
21 immediately said, "Well, now what are we  
22 going to do?" Did you have any sort of gut  
23 reaction to these numbers?

24 A. "Tell me why it went up. Give me some

1 background on this. We need to share this  
2 information with others."

3 Q. All right. Was there any negotiation that  
4 you are aware of between URS and the bidders?  
5 I mean, did the contract go out, "Here's what  
6 we want you to do. It's a price contract"?  
7 Or did it go out, "Here's approximately what  
8 we're thinking. We want you to submit and  
9 meet these general terms"?

10 A. Very specific as to what the equipment had to  
11 do. Performance standards were included in  
12 the contract. So it wasn't general at all.  
13 It was very, very specific. And the  
14 discussions would be with URS or Washington  
15 Group, but it also could be with our  
16 purchasing department. It could be also with  
17 our own project team. I mean, it was -- each  
18 of them had to be satisfied that they had the  
19 information they needed before they could  
20 complete the evaluation.

21 Q. So, do you believe you were comparing apples  
22 to apples when they got the information back?

23 A. Oh, absolutely. I mean, we had taken great  
24 steps, knowing that this was a large project,

1 to be very prudent in every step of the way.

2 Q. Did you -- when you found out the prices were  
3 high, do you remember approximately what  
4 time? Was this in 2008, 2007?

5 A. You know, I mean, looking at the documents, I  
6 think it was in 2008 is when we went to the  
7 RaCC Committee with the 457. So it would  
8 have been sometime a little bit before that  
9 would be one of the first indications I would  
10 have had.

11 Q. So the first reporting you did was to the  
12 RaCC Committee?

13 A. I'm sure I informed my boss before I went to  
14 the committee. But, you know, we would have  
15 reported, you know, what our estimates were  
16 and as we prepared for the more formal  
17 presentations to the committee.

18 Q. All right. In response to that data, you  
19 said you had a response that you were going  
20 to do something about it, find out where the  
21 debt -- where the numbers came from.  
22 Anything else once you had found out where  
23 the numbers came from?

24 A. Well, as I said, it was disclosure. It was

1 to understand why, to understand the  
2 legitimacy of the new estimate, the reasons.  
3 You know, and they're all good reasons as to  
4 why it changed. You know, we've already  
5 talked about how the market was changing  
6 around us. So that was all information that  
7 was shared with me as to what were the  
8 drivers. And, you know, that -- as I said,  
9 understanding that was part of it, and then  
10 disclosing it so that others who were, you  
11 know, probably -- the last number they'd seen  
12 was 250 -- was to make sure everybody saw the  
13 new numbers.

14 Q. And once you had those new numbers, did you  
15 change your process at all going forward with  
16 the project?

17 A. Not the construction process. I mean, the  
18 construction process and the construction  
19 management process is what gave us the  
20 information that we needed in order to make  
21 what we call a final estimate. So, at that  
22 point, we were pretty confident of the  
23 estimate. And so now it was just a matter of  
24 managing within that, below that if we could.

1           As I stated earlier, we were able to  
2           manage -- to beat that budget estimate.

3       Q.    Were you -- at one point you talked about  
4           having a certain amount of dollar amount  
5           under contract.  What does that mean to you,  
6           "under contract"?

7       A.    When the project was broken up into its major  
8           components, that would involve different  
9           vendors, different specifications and  
10          requirements.  We called them "islands of  
11          work."  And so the idea -- and they had  
12          different time frames for which they had to  
13          be started.  And so it would be doing the  
14          detailed specifications, going out for a bid,  
15          having those discussions with the bidders,  
16          trying to negotiate the price down, trying to  
17          negotiate terms for performance.  That's  
18          really the process.

19       Q.    And as money went out to these various  
20           subcontractors or contractors, was there a  
21           record kept of dollars spent?

22       A.    Absolutely.

23       Q.    And is that record kept on a daily basis, a  
24           weekly basis?

1 A. Again, you know, this project, you know, was  
2 one that we took great efforts to make sure  
3 we documented every decision every step of  
4 the way, the procurement decisions. So  
5 there's an extensive amount of project  
6 documentation. The PUC's consultant, Jacobs,  
7 has reviewed those. Very, very thorough set  
8 of documents.

9 Q. Some of the contracts I reviewed referred to  
10 software called "Primavera" software. Are  
11 you familiar with that?

12 A. No.

13 Q. Are you familiar with the fact that there is  
14 software that keeps a record of the  
15 contractor costs?

16 A. Well, I certainly would anticipate that there  
17 are a lot of tools, project management tools  
18 used. I personally don't use those tools, so  
19 I'm not familiar with them.

20 Q. All right. Now, Attorney Patch mentioned the  
21 PowerAdvocates' report, which was in 2008, I  
22 believe. What triggered that report? Why  
23 was there one done?

24 A. What was that --

1 Q. It's Long No. 7.

2 (Witness reviews document.)

3 A. You know, this is our advocate's -- the  
4 summary. They were asked to look at --

5 (Court Reporter interjects.)

6 A. -- to look at the project cost estimate for  
7 Merrimack Station. And their report  
8 addresses some site-specific factors and  
9 other things that's happened in the industry  
10 and other projects of similar type.

11 Q. Was this -- I didn't mean to interrupt you  
12 Were you finished?

13 A. Yes.

14 Q. Was this something that URS asked to be done,  
15 or is this something that you asked to be  
16 done, or some other entity?

17 A. I don't know specifically. Again, these  
18 responses -- this response is Bill Smagula.

19 But most everything in the project was  
20 collaborative. And, yeah, I don't know. I  
21 can't tell you which specific individual.  
22 But, you know, looking for expertise to help  
23 us understand the impact of the project. So  
24 part of our prudent management of the project

1 is to understand things as we go, and this is  
2 just part of that understanding.

3 Q. So you had these costs, and you went forward  
4 and looked at what caused the costs, and  
5 that's what initiated this report? Is that a  
6 fair summary?

7 A. Yeah, that's fair enough. As I indicated  
8 earlier, we were in a compliance mode.  
9 Again, you know, we were implementing a  
10 decision made by the state. And, you know,  
11 so in implementing that decision, we just,  
12 you know, wanted to understand matters as we  
13 proceeded, and we wanted to manage the  
14 construction as best we could.

15 Q. And the next step, or the next approximate  
16 step, was reporting to the risk management  
17 committee. Is that correct?

18 A. Are you saying once the estimate was known?

19 Q. Once you had the estimate, right, and you had  
20 said you had to make -- you had to notify  
21 different parties, different entities, and  
22 one of those was risk management committee.  
23 Was it an internal step at that point?

24 A. That was, I think, one of the steps. As I

1 indicated this morning, part of the NU  
2 governance process is to give periodic  
3 reports to the Risk and Capital Committee,  
4 you know, certainly when there's a  
5 significant change. So that was one step, if  
6 you want to call it "steps." They're not  
7 necessarily sequential. Of course,  
8 ultimately another one was to disclose this  
9 to the financial committee -- community  
10 through the Securities Exchange Committee  
11 reports. Another step, of course, is letting  
12 the Public Utilities Commission have  
13 information on this, and then ultimately, of  
14 course, the legislature knowing what the new  
15 estimate was.

16 Q. Now, you raised the cost estimate with the  
17 risk management committee. Was there  
18 anything else that you raised in front of  
19 them at this time?

20 A. I'm trying to get at -- use your terminology.  
21 But the risk committee is -- construction  
22 risks would have been a part of the  
23 reporting. They're interested in what can  
24 affect construction, what can affect the

1 construction schedule, quality. You know, so  
2 there are other -- you know, and reporting to  
3 the RaCC. I don't remember the exact dates.  
4 But we would have looked at other risk  
5 factors associated with a successful major  
6 project.

7 Q. And these folks are all internal NU people?  
8 This is not some outside group; is that  
9 correct?

10 A. Correct.

11 Q. And do they have separate access to  
12 information? For example: If they had a  
13 concern that you had not brought up, would  
14 they then ask you about it?

15 A. Yes, that would be part of their role, if  
16 they felt that we weren't -- if we had missed  
17 something. They could always direct us to go  
18 back and report back to them. They could  
19 always ask for their own analysis, I suppose.  
20 But it was part of the governance of NU. And  
21 they could have taken whatever other steps  
22 they wanted or directed us to get more  
23 information.

24 Now, we did -- you know, in cases we'd

1 go before them, they asked us a couple  
2 follow-up questions, we would provide  
3 follow-up information.

4 Q. And did you do a cost-benefit analysis at  
5 this point?

6 A. I don't know about cost benefit because  
7 that's something you would do if you were  
8 determining public interest, which was  
9 already determined by the state. So there  
10 are many benefits that were not included in  
11 the report to the RaCC. The RaCC was  
12 primarily focused on financial requirements  
13 for the project and progress on the project.  
14 So, typically, you know, RaCC doesn't look at  
15 other benefits to the state, whether it be  
16 jobs or property taxes or security of energy  
17 supply or fuel diversity. We might have  
18 pointed out some of those things to them, but  
19 that wasn't their primary focus. Their  
20 primary focus was what were the capital  
21 requirements for the project, and is it being  
22 well managed and making progress on meeting  
23 its goals.

24 Q. So they did not get a -- they did not ask for

1 and you did not present a cost-benefit  
2 analysis?

3 A. There were economic analyses that had  
4 obviously been provided. But, you know, it  
5 depends on how you want to define "cost  
6 benefits." We did not do a public interest  
7 determination. That had already been done by  
8 the legislature. We did do -- in this time  
9 frame, we did ask for economic analysis of  
10 what the impact would be of Merrimack Station  
11 on the community. So we did economic  
12 analyses. Those were shared publicly. But  
13 as far as, you know, trying to pull it all  
14 together in some kind of public interest  
15 conclusion, we didn't do that. That was  
16 already done. I mean, that was already --  
17 that decision was already made by the  
18 legislature.

19 Q. I'm not sure I understand what you mean by  
20 "public interest." When you were -- would  
21 you say a cost benefit and public interest is  
22 the exact same thing?

23 A. No, not necessarily. What I'm trying to  
24 indicate to you is there are other than

1 financial considerations when one decides  
2 public interest. This is not a situation  
3 where we needed to make a filing with the PUC  
4 listing all the benefits and cost of a  
5 project and ask for their permission or their  
6 approval to proceed. That's what we did for  
7 the Schiller wood plant. We made a filing  
8 with the PUC. We talked about the energy  
9 benefits, the jobs benefits, the tax  
10 benefits. You talk about all the benefits  
11 when you ask the Commission to make a public  
12 interest finding. As I indicated this  
13 morning, this is unique. I've never seen it  
14 before. That public interest finding was  
15 already made. It was already made by the  
16 legislature. And that's not often -- that's  
17 the first time I've seen it happen. So it  
18 wasn't the PUC who we could go to and ask for  
19 a public interest finding, nor was it our own  
20 management who we could go to and say make a  
21 cost benefit, because basically that decision  
22 was already made by the legislature, and they  
23 already found the installation of a scrubber  
24 to be a reasonable cost. So it was not in

1 the normal decision-making process that other  
2 projects at PSNH would have been subjected  
3 to.

4 Q. So, no, you didn't do a cost-benefit analysis  
5 for the risk management committee for the  
6 reasons you've just described.

7 A. Well, you know, again, we provided economic  
8 analysis. We listed the benefits. But did  
9 we do a formal study where we pulled it all  
10 together and weighted it or analyzed it? No,  
11 we didn't do that. It wasn't the RaCC's role  
12 or authority to decide cost benefit. It  
13 might be on other projects, but not on this  
14 project, because the legislature had already  
15 made that decision. It wasn't within the  
16 RaCC's authority to make that decision.

17 Q. Now, Attorney Patch went over PSNH and  
18 whether or not you monitored fuel markets.

19 Did fuel market information -- just a  
20 couple questions -- get communicated to you  
21 directly in a particular chain of command? I  
22 know it wasn't your area. So if there was  
23 somebody monitoring fuel markets, how would  
24 that information get communicated to you?

1 A. Word-of-mouth indication of what the energy  
2 prices in New England were on a daily basis,  
3 indication of what it would cost us to buy  
4 power in the next six months or four months  
5 or one week. I mean, those are all  
6 indicators of natural gas prices, which are  
7 the major driver of energy prices in New  
8 England. So, yes, I would have a general  
9 understanding of whether they went up or  
10 down, or whether, you know, they were low or  
11 high. And, you know, you can look at the ISO  
12 Web site to see that from time to time, where  
13 some of the bid prices ended up -- clearing  
14 prices, I should say. But as I said earlier,  
15 I didn't do the forecast. But, yes, I -- the  
16 very volatile situation changed often, and I  
17 was generally aware when it changed.

18 Q. Generally aware. Was it part of your routine  
19 to check the morning report at the ISO and  
20 see what the prices were?

21 A. No.

22 Q. Okay. In 2008, there was a Brattle Group  
23 report. What triggered that report?

24 A. Again, I think that's the one we talked about

1           this morning.

2   Q.    Yes.  That's Long No. 6.

3   A.    Thank you.  We didn't -- the Brattle Group,  
4           as indicated this morning, was a group  
5           enlisted by Connecticut Light & Power for  
6           doing studies as part of their regulatory  
7           compliance in Connecticut.

8   Q.    And would you have become aware of this  
9           report, you know, here in New Hampshire?  Is  
10          there somebody who might have brought it to  
11          your attention?

12  A.    Yes.

13  Q.    And did they bring it to your attention?

14  A.    I was generally aware that Connecticut was  
15          doing these studies.  I would periodically,  
16          as part of a group staff meeting, hear of the  
17          work that was being done in Connecticut.  So  
18          I was aware that the study exists.  I did not  
19          manage it nor oversee it in any way.

20  Q.    So there was nothing in this study that you  
21          thought might change your approach to what  
22          you were doing in New Hampshire.  You didn't  
23          read this and go, "Wow, we've got to do  
24          something different now."

1 A. Well, no, because it didn't change the  
2 compliance plan that we had, you know,  
3 complying with the law. No, it did not  
4 change that. It gave us information about  
5 what was happening in New England. It gave  
6 us one indication as a view of one consultant  
7 as to where things were going. But it wasn't  
8 enlisted as a PSNH study or a study of the  
9 scrubber. It was much broader than that.

10 Q. And from time to time, you made reports to  
11 the legislature and the PUC. The first one,  
12 I believe, was the September 2nd, 2008,  
13 report. You were responding to a Commission  
14 directive to file that report; is that  
15 correct?

16 A. Yeah. Yes, I believe there was a request, a  
17 direction from the Commission to provide them  
18 with a report, and we did do that.

19 Q. And is it fair to say that your reports to  
20 the Commission are more detailed than a  
21 report to the legislature?

22 A. Typically.

23 Q. And why would that be?

24 A. The Commission -- different roles. The

1 legislature has more of a policy role. The  
2 Commission is more of oversight regulatory  
3 review. So the Commission has expertise on  
4 its staff. And, you know, their role is to  
5 look into things in more detail generally, I  
6 would say.

7 Q. And how do you decide -- well, looking at  
8 Long 13, which is the 2009 legislative  
9 presentation, how do you decide what goes  
10 into a report to the legislature?

11 A. Whatever we might think is the issues that  
12 the legislature is considering, whatever is  
13 their interest that directly relates to us.  
14 It's not prescriptive. I mean, the  
15 Commission can be very prescriptive in what  
16 it wants from us. Sometimes the legislature  
17 will be, and oftentimes it's not.

18 Q. So you would try to anticipate what you think  
19 would be useful for them to know and give it  
20 to them.

21 A. And also to express our position on issues.

22 Q. Okay. And -- all right. We went through  
23 that.

24 In this report, was there -- I'm

1 referring to this report because it's here in  
2 front of us. But if there was another report  
3 or opportunity, let me know. But did you  
4 include any information on customer  
5 migration?

6 A. Not highly discussed or occurring at that  
7 time.

8 (Court Reporter interjects.)

9 Q. And is there information on SO2 allowance  
10 markets?

11 (Witness reviews document.)

12 A. Not sure if there's a question pending or --

13 Q. Oh, yeah. I was waiting. Did you put any  
14 information in here -- did you give any  
15 information to the legislature on SO2  
16 allowance markets in the 2009 legislative  
17 presentation that is Long Exhibit No. 13?

18 A. I don't see it in this exhibit. But I  
19 couldn't say that we hadn't provided it in  
20 some other means or in some other discussion.  
21 I don't see it in this particular one which  
22 is talking about the reductions, the project,  
23 the project status, the cost, what were some  
24 of the drivers of the increased costs.

1 Q. Now, as the project was going on and costs  
2 were incurred and under contract, could you  
3 at any given day say how much you had spent  
4 and how much you were committed to spend?

5 A. We had -- the thing that I'm struggling with  
6 is you said "any day," because there's always  
7 invoices in play, there's always work being  
8 done. So it was a very dynamic situation.  
9 But, you know, certainly at any month or any  
10 week we had a report and accounting of our  
11 expenditures to date. But it was an ongoing  
12 process. In other words, as soon as your  
13 report is done, you're obviously continuing  
14 your expenditures. Yeah, but we had a very  
15 good tracking of our costs as we went.

16 Q. Because it is many-faceted and lots of things  
17 changing all the time, and it's hard to keep  
18 track of. But you would say you did keep  
19 track of --

20 A. Oh, yes. Had the project team whose  
21 assignment was to do that.

22 Q. All right. So when I asked about the  
23 Primavera software, you're saying that's  
24 not -- you don't know about that level of

1 detail?

2 A. No. You know, I personally have never used  
3 that tool. So I've heard the name before,  
4 but I never used it. I can't tell you what  
5 it really does.

6 Q. And when you found out that there were  
7 changes in the costs, did you put anything  
8 new in the contracts with your vendors to try  
9 to respond to that?

10 A. Well, the cost estimates were a product of  
11 talking with vendors and working out  
12 contracts. So, yes, it was all a very  
13 dynamic process. And that's as a result of  
14 that process, in large degree, and the  
15 detailed specification is what gave us that  
16 cost benefit. So it wasn't like you did a  
17 cost benefit and then the contracts. The  
18 contracts is what -- a vehicle to help us  
19 understand what the costs were, because we  
20 were managing fixed-price contracts. So we  
21 wanted to get as much definition as we could  
22 before we actually spent the money.

23 Q. So that was in response to the cost  
24 escalating; you made fixed-price contracts.

1 A. That was our intent all along. But to do  
2 that, you have to get into detailed  
3 specifications and extensive conversations  
4 and negotiations with vendors. So, yes, we  
5 had extensive discussions with vendors. The  
6 result of that process is what allowed us to  
7 make the final project cost estimate.

8 Q. So, some contracts were fixed-price contracts  
9 and some were not? Is that fair to say?

10 A. Yes.

11 Q. So the earlier ones were not. But then the  
12 later ones, when the prices were escalated,  
13 were.

14 A. The ones that involved major equipment,  
15 manufactured design, would tend to be a  
16 fixed-price contract, you know, where we  
17 wanted assurance. Where we would tend to not  
18 have fixed-price contracts and be willing to  
19 leave it to be determined along the way were  
20 things that were much more controllable and  
21 predictable. It could be, you know, work  
22 that you know you could get workers locally  
23 to do as opposed to very specialized work in  
24 which you didn't have control over it. So it

1           was depending on the nature of the work and  
2           the availability to do it in a  
3           non-specialized way that determined whether  
4           you went with fixed price or you could manage  
5           it as you go.

6    Q.   All right.  So the fixed-price contracts were  
7           not in response to the price escalations?  
8           That was just in response to you had a little  
9           more information?

10   A.   Well, no.  It's regardless of price.  A  
11           fixed-price contract is a technique used in  
12           project management for large projects so that  
13           you don't get surprised along the way and so  
14           you can manage costs, as opposed to  
15           open-ended contracts that will keep  
16           escalating, as a highway project.  You've  
17           heard about many public projects where the  
18           costs have increased.  So fixed price is a  
19           way that, as you go into it, you have a  
20           pretty high degree of confidence that your  
21           estimate is correct.  So when a 457 estimate  
22           was completed, we had a very high level of  
23           confidence in it, as opposed to the \$250  
24           million estimate which we had very little

1 confidence in it because it was not based on  
2 detailed specifications, design discussions  
3 with vendors, et cetera. So the critical  
4 parts, like the actual manufacture of the  
5 scrubber vessel, for instance, would be under  
6 a fixed-price contract because it's a  
7 one-of-a-kind for our unit, and you want to  
8 make sure it was very well defined as to the  
9 cost and its performance requirements, as an  
10 example.

11 Q. Okay. Did you communicate to URS that you  
12 had a \$250 million estimate at any time?

13 A. Well, they came in the picture later than --  
14 there was -- it was Lundy who did the 250  
15 estimate. So I can't imagine Washington  
16 Group not being aware of it.

17 Q. And were they given an instruction that they  
18 were trying to meet this \$250 million [sic]  
19 cost figure?

20 A. I would say our desire all along was to get  
21 the lowest cost we could in the time frame  
22 that we were, you know, ordered to do. So,  
23 yes, I mean, Washington Group were there to  
24 help manage costs. They were there to help

1 get the lowest cost. They were there to help  
2 us negotiate and work with vendors to get the  
3 lowest cost. That was part of their charge.

4 Q. Was the \$250 million, was it a target, or was  
5 it simply an estimate?

6 A. It was, you know, early in the process. It  
7 was the best number available at the time.  
8 It was -- as I said, it was sort of generic,  
9 based on different time frames. And we  
10 talked about all the things that changed  
11 since then. But, you know, as a  
12 site-specific requirement, it was not a  
13 sulfur-reduction scrubber; it was a mercury-  
14 reduction scrubber. So it required a lot of  
15 site-specific definitions, specifications,  
16 and then, you know, finding vendors who could  
17 meet those specifications. And all of that  
18 was not available when the \$250 million  
19 number was estimated.

20 Q. Did you talk to the legislature about  
21 hydraulic fracturing at all?

22 A. I don't recall there being any discussions on  
23 hydraulic fracturing.

24 Q. Do you recall being aware of the technology

1 at any particular time?

2 A. It was, I think, relatively new information  
3 for me personally because I'm not in the  
4 natural gas business.

5 Q. Do you remember when you found out about it?

6 A. Oh, no. But it was -- I mean, I've been with  
7 the company for 37 years. So I'd say it  
8 would be recent within that schedule of time.

9 Q. But it wasn't -- it's not -- it wasn't  
10 forefront in your mind while you were working  
11 on this project.

12 A. No.

13 Q. Okay. Let me just check.

14 (Pause in proceedings)

15 MS. CHAMBERLIN: That's all I  
16 have.

17 MS. ROSS: Thank you. Who is  
18 next, please?

19 MS. CHAMBERLIN: Thank you  
20 very much.

21 THE WITNESS: Thank you.

22 (Pause in proceedings)

23

24

1 EXAMINATION

2 BY MS. FRIGNOCA:

3 Q. Good afternoon, Mr. Long.

4 A. Good afternoon.

5 Q. My name is Ivy Frignoca, and I'm an attorney  
6 for the Conservation Law Foundation. I know  
7 you've been answering questions all day. I  
8 will try to make this as quick as possible.  
9 If you don't understand my question, will you  
10 let me know, and I'll rephrase it?

11 A. Yes.

12 Q. Okay. I've been listening to a lot of the  
13 answers that you've given, and you have used  
14 the words "very prudent," "prudence" and  
15 "prudent management." And I was wondering if  
16 you would tell me what you mean by "prudent  
17 management." And I'm speaking in your role  
18 with PSNH.

19 A. Well, it's never in hindsight, first of all.  
20 It's actions taken by management at the time,  
21 given the information the management had  
22 available. Oftentimes associated with the  
23 term "good utility practice."

24 Q. Okay. And when you gave me that definition,

1 are you talking specifically in terms of  
2 prudent management with respect to an  
3 improvement, like the scrubber?

4 A. In the context of the subject at hand, I'm  
5 talking about compliance with the mandated,  
6 and within that is the installation and  
7 management, construction management of a  
8 scrubber.

9 Q. Okay. Let me backtrack then.

10 Prior to being involved with the  
11 scrubber project, had you been involved with  
12 other big projects like the scrubber at PSNH?

13 A. The answer is yes. It's not how my career  
14 path went at PSNH. But a project that we had  
15 completed in 2006 was our Schiller wood  
16 project. And that was a \$75 million project  
17 that was, you know, quite, you know, in our  
18 mind, challenging and unique. And I was  
19 familiar with how our team had managed that  
20 construction.

21 Q. And in the context of the Schiller project,  
22 how would you define "prudent management"?

23 A. Same way that I just defined it.

24 Q. Okay. So what were some of the aspects that

1           you looked at to prudently manage the  
2           Schiller project?

3       A.    We talked a lot with the OCA about contract  
4           management.  So that would be an aspect of  
5           it.

6       Q.    Did you review costs?

7       A.    It was something that was pre-approved by the  
8           Commission, as opposed to the scrubber.  So  
9           we went to the Commission and had a cost  
10          estimate of \$75 million and lined up  
11          contracts along that way.  And so we felt we  
12          could do it for \$75 million if we got timely  
13          approval.

14      Q.    And were you able to complete that project  
15          for \$75 million?

16      A.    Yes.

17      Q.    So in that case you had a budget of  
18          \$75 million, and you stayed with the budget?

19      A.    Yes.  Again, it included fixed-price  
20          contracts, as we talked about, with respect  
21          to our management of the scrubber project.

22      Q.    Okay.

23      A.    And we were found to be prudent, and those  
24          costs are being recovered.

1 (Court Reporter interjects.)

2 Q. You have mentioned that with respect to the  
3 scrubber project, that you had a project  
4 management team put together?

5 A. Yes.

6 Q. Who was on your project management team?

7 A. The officer/sponsor was John MacDonald. Bill  
8 Smagula was his next in line in charge. We  
9 had full-time people involved. But the lead  
10 on that was an engineer named Mike Hitchko,  
11 who has very extensive experience inside and  
12 outside the company of managing construction  
13 projects. He's also the manager who managed  
14 our Schiller project.

15 Q. Okay. And was anybody on that management  
16 team assigned to look at the economics?

17 A. It was the cost, certainly the cost of the  
18 project, and to track the costs and manage  
19 the costs. They weren't, you know, the ones  
20 who made the decision to do the project. So  
21 their charge was to manage the construction  
22 of the project.

23 Q. You had mentioned during your testimony  
24 earlier in the morning that some of your

1           responsibilities -- or the biggest  
2           responsibility was to make sure that you were  
3           providing reliable energy to customers at a  
4           reasonable rate. Is that correct?

5    A.   That's correct. And, you know, what I often  
6           say and what I missed on that one, you know,  
7           there's also at a -- in a way that the public  
8           wants an environmental compliance. I say  
9           that because, more so than in the past, the  
10          public is interested in the source of power  
11          in addition to it being reliable.

12   Q.   Okay. With that caveat, it's still -- an  
13          important part of prudent management would be  
14          to provide reliable energy to consumers at a  
15          reasonable rate.

16   A.   Yes. Again, that's generically true. That's  
17          our main mission. In the case of the  
18          scrubber, our prudent management was a  
19          compliance setting, not a decisional setting.  
20          So in that setting, we were to prudently  
21          implement and comply with the mandate by the  
22          state. So it wasn't the same as --

23   Q.   Okay. Let me --

24   A.   -- what we'd expect for the Schiller project

1 or another project that did not have a  
2 mandate.

3 Q. Okay. So let me go back then. The question  
4 that I had asked was: Is part of prudent  
5 management to assure that you're providing  
6 reasonable energy or power to customers at  
7 a -- or reliable energy at a reasonable rate?  
8 And you said yes and then went on to explain  
9 the caveat for the scrubber.

10 A. Yes, because how do you define "reasonable"  
11 in this case? And in this case, the  
12 legislature had already said that the  
13 installation of a scrubber is at reasonable  
14 cost. So that public interest determination  
15 was already made, you know. It wasn't, you  
16 know, something that -- PSNH's role in the  
17 scrubber was to implement that finding and  
18 those decisions by the legislature. And  
19 that's a very unique situation that didn't  
20 exist -- that doesn't exist for any other  
21 project that I've seen in my 37 years.

22 Q. I just want to clarify. Is it your testimony  
23 to me that the legislature determined the  
24 cost was reasonable?

1 A. Yes.

2 Q. Do you recall testifying before the  
3 legislature and suggesting to them that  
4 whether the cost was reasonable was the role  
5 of the Public Utilities Commission?

6 A. No. You've read that wrong. What I said --

7 Q. Excuse me.

8 A. -- before the legislature was -- I was  
9 referring to what I've said several times  
10 today. The Commission has authority over our  
11 prudent management action and implementing  
12 and complying with the law, which includes  
13 construction. Does not include the decision  
14 to actually install the scrubber. That was  
15 not within our purview.

16 (Long Deposition Exhibit 17 marked  
17 for identification.)

18 Q. I'm showing you what has been marked as  
19 Deposition Exhibit 17.

20 MS. FRIGNOCA: And just for  
21 the record, this is Attachment B. It's dated  
22 March 13, 2009.

23 BY MS. FRIGNOCA:

24 Q. And this says, "The Senate Committee on

1 Energy, Environment and Economic Development  
2 held a hearing on the following, SB 152." Do  
3 you agree that that's what this exhibit is?

4 A. Yes.

5 Q. Okay.

6 MS. FRIGNOCA: Would you  
7 please read back the last answer? Thank you.

8 (Record read back as requested.)

9 BY MS. FRIGNOCA:

10 Q. So the decision to install the scrubber,  
11 you're talking about that legislative  
12 mandate. But my question to you was relating  
13 more to the cost of complying. And I would  
14 like to refer you to Page 33 of Exhibit 17.  
15 And my question to you was more in regard to  
16 that you understood that the PUC would be  
17 reviewing whether the costs associated with  
18 the scrubber were prudent, not just the  
19 installation. And your testimony at the  
20 bottom of the second paragraph -- and you can  
21 tell me if I'm reading this wrong -- is, "But  
22 that's not -- you know, what we're trying to  
23 do is to have the lowest-cost power that we  
24 can for the benefit of customers. But if

1 people think that we're out of line, they  
2 have recourse. They have recourse through  
3 prudence review, and they have recourse by,  
4 they can make a choice for a different power  
5 supplier." Did I read that accurately?

6 A. Yes.

7 Q. Was that your testimony at that time?

8 A. Yes. And what I was describing as a prudence  
9 review was the prudence of complying --

10 Q. Excuse me. Let me --

11 A. -- with the law.

12 Q. There's no question pending.

13 MR. NEEDLEMAN: Well,  
14 except -- I'm going to object for a minute.  
15 He should be entitled to complete his answer.

16 MS. FRIGNOCA: His answer was  
17 a "Yes" or "No." I asked him if that was his  
18 testimony at the time. And I'm about to ask  
19 another question.

20 MR. NEEDLEMAN: You can frame  
21 the questions however you want, but he's  
22 entitled to provide an answer to the question  
23 you asked.

24 MS. FRIGNOCA: I guess what

1 I'm looking for is a ruling on having the  
2 witness answer the question.

3 MS. ROSS: I think it would be  
4 helpful if Gary could answer the question  
5 without a lot of elaboration so that we can  
6 get through this fairly quickly.

7 MS. FRIGNOCA: Thank you.

8 BY MS. FRIGNOCA:

9 Q. So you agree that that's your testimony at  
10 that time?

11 A. As I said, the reference to "prudence" is --

12 Q. Is that a "Yes" or "No"?

13 A. That's what it says here. This isn't a --  
14 this is a statement. I don't know if I'd  
15 call it testimony.

16 Q. Okay. And is that -- would that be your  
17 testimony today? Do you still agree that  
18 customers have recourse if they feel the  
19 costs of the scrubber are too high and that  
20 they can challenge it through a prudency  
21 review or migrate to a different power  
22 supplier?

23 A. No, I don't agree with your statement.

24 Q. No, I'm not asking you to agree with my

1 statement. I'm asking you to agree with your  
2 statement.

3 A. Well, your statement isn't what this says.

4 Q. Okay. This says they have recourse through a  
5 prudency review. Do you agree that customers  
6 have recourse of your decision through a  
7 prudency review?

8 A. Okay. If you want me to explain, I can.

9 Q. Do you agree that they have recourse through  
10 a prudency review?

11 A. They're two different concepts in that  
12 sentence. One concept is under customer  
13 choice and state law, customers can choose a  
14 supplier. That's one concept. The other  
15 concept in that statement is a prudent  
16 construction compliance of the scrubber. And  
17 that's what the Commission has review on, and  
18 that is what our obligation is.

19 Q. Okay. So you agree, then, that the  
20 Commission has an obligation to review the  
21 prudency.

22 A. Of construction and compliance.

23 Q. Only of construction and compliance?

24 A. Yes.

1 Q. That's different than what this says here.

2 A. Not to me.

3 Q. And you agree that customers can make a  
4 choice to migrate to a different power  
5 supplier?

6 A. Yes.

7 Q. So when you were reviewing the scrubber  
8 project, did you take into account migration  
9 rates?

10 A. No.

11 Q. At any point in time did you take into  
12 account migration rates?

13 A. Well, this is 2009. So it's becoming a  
14 subject of discussion in 2009. And that's  
15 when it first emerged as a discussion point.

16 Q. Okay. So in 2008, you didn't take into  
17 account migration rates.

18 A. As I said, the decision was already made.  
19 Our role was to comply. We didn't -- it  
20 was --

21 Q. But the question is: In 2008, did you take  
22 into account migration rates?

23 A. At that point, the project was already  
24 started. The law had already been passed.

1 Q. The question is: Did you take into account  
2 migration rates in 2008 --

3 A. For what purpose?

4 Q. -- when you were analyzing whether or not  
5 to -- when you were analyzing the management  
6 of the scrubber?

7 A. Customer migration rates were not a factor in  
8 the law. And the law says install a  
9 scrubber. So it wasn't a factor. The  
10 decision's already been made. And it didn't  
11 affect the construction, installation of a  
12 scrubber.

13 Q. If I'm understanding your testimony  
14 correctly, your testimony is that you didn't  
15 take into account any variables because the  
16 law told you to build the scrubber, no matter  
17 what.

18 A. I don't know what you mean by that, "didn't  
19 take into account." As I said --

20 Q. Well, let me go back through --

21 A. -- we were mandated to install the scrubber.  
22 So that was our charge, and that's what we  
23 did.

24 Q. Okay. So --

1 (Court Reporter interjects.)

2 A. Now, there were other factors in the business  
3 that were occurring. But our mandate was to  
4 install a scrubber.

5 Q. Okay. So we're going to go back through some  
6 factors. And these are just "Yes" or "Nos."

7 Did you, when you were looking at  
8 installing the scrubber, consider migration  
9 rates?

10 A. That's been asked already.

11 Q. You haven't answered it yet. Yes or no?

12 A. No. I said in 2006, when the mandate was  
13 determined, there was no consideration of  
14 migration rates.

15 Q. In 2008, when the cost escalated, did you  
16 consider migration rates in your  
17 decision-making?

18 A. No, because the mandate was to install the  
19 scrubber, and we looked at what was the cost  
20 of doing that.

21 Q. Okay. In 2008, when the cost escalated, did  
22 you consider forward gas pricing?

23 A. It was -- there were assumptions used in the  
24 analyses that were presented to the RaCC, as

1 we discussed this morning. So when you say  
2 "consider," it wasn't -- again, consider in  
3 what context? Not in the construction, not  
4 in the decision to mandate it, but in  
5 analyzing and trying to understand the impact  
6 of that compliance, we did do a financial  
7 analysis.

8 Q. So how far forward did you look at gas  
9 pricing when you did your analysis?

10 A. I don't know. I didn't do those analyses.  
11 But there were analyses done for as long as  
12 15, 17 years, estimated.

13 Q. Okay. I thought earlier you said you didn't  
14 do long-term analysis.

15 A. Mr. Patch or -- pointed out to an exhibit  
16 that said we started at \$11 for gas and grew  
17 it at 2.5 percent. I don't know how many  
18 years of estimates or what that -- how many  
19 years of assumption that was used in the  
20 study, but...

21 Q. When you -- I'm sorry. Are you finished with  
22 your answer?

23 A. Yeah.

24 Q. When you were doing your analysis in 2008,

1 did you look at or consider that the  
2 Merrimack plant might be shifting from base  
3 load to an intermediate or peak facility?

4 A. No.

5 Q. Did you consider that in 2009?

6 A. I don't know what you mean, "consider." I  
7 mean, the construction was already well under  
8 way. So, again, under whatever operation you  
9 might want to assume for short term or long  
10 term, the requirement is the same: Put in a  
11 scrubber. So, did the role of Merrimack  
12 Station change over time? Yes, it did. Will  
13 it change again over time? Probably.

14 MS. ROSS: I'm going to ask  
15 the witness -- it's okay to explain your  
16 answer, but do try to give the answer before  
17 you start explaining it. I think what  
18 happens most of the time is you don't  
19 actually give the answer, and then you give  
20 the reason why. It appears you're implying  
21 that you didn't consider things, and you're  
22 giving the reasons why you didn't consider.  
23 But if you could just give the answer first,  
24 that, no, it wasn't a factor we considered

1           because..., then I think it will go better  
2           and we won't have so much repetition here.

3    A.    Yeah, I'm struggling with the word  
4           "consider," because obviously we're aware of  
5           what's happening in the markets and the  
6           energy world around us.  But in the context  
7           of the mandate, we didn't have the freedom to  
8           do anything other than install.  But in the  
9           bigger context, of course we knew what was  
10          going on.  That's what I'm trying to explain.

11  BY MS. FRIGNOCA:

12  Q.    Okay.  So it's your testimony that you didn't  
13          have the freedom to consider the cost or  
14          whether it made economic sense to continue  
15          with the scrubber project.

16  A.    That was the purview of the legislature.

17  Q.    So you're saying that it's the purview of the  
18          legislature to review the cost of the  
19          scrubber project.

20  A.    I think of it in this way --

21  Q.    No.  Answer the question, please.  Is it yes  
22          or no?  Is it the purview of the legislature  
23          to review the cost of the scrubber project?

24  A.    I can't answer that question.

1 Q. Okay.

2 A. You won't let me answer it.

3 Q. Well, first give me a "Yes" or "No."

4 A. I can't.

5 Q. Okay.

6 MS. FRIGNOCA: Then would you  
7 instruct him? It's a yes or no --

8 MS. ROSS: We're trying to  
9 figure out who is responsible for not just  
10 the prudence of the construction but the  
11 decision to go forward. And so I think this  
12 question goes to that issue. So you need to  
13 just answer whether it was the Commission --  
14 excuse me -- the legislature's purview to  
15 deal with the costs.

16 BY MS. FRIGNOCA:

17 Q. And I'll ask the question. Let me rephrase  
18 the question.

19 As president and chief operating officer  
20 of Public Service Company of New Hampshire,  
21 did you have an understanding that it was the  
22 legislature and not the PUC who was reviewing  
23 whether the costs that you incurred in  
24 relation to this project would be determined

1 to be prudent?

2 A. I've said it many times. If it relates to  
3 the decision to move forward, no. That was  
4 something the legislature would decide.  
5 Management didn't decide. Since management  
6 didn't decide it, there's no prudency review  
7 to occur. What management managed was  
8 compliance with the mandate, and that's what  
9 the Commission can review; how well did we  
10 comply with that mandate. It's a higher  
11 authority. The state is a higher authority  
12 than me, the president and CEO, or any of my  
13 bosses. So the higher authority has told us  
14 what to do. Our job was to do what they told  
15 us to do.

16 Q. Okay. If you'd refer again to Exhibit 17,  
17 Attachment B, Page 39, the bottom. Can you  
18 read your testimony beginning with, "It is  
19 the normal standard..."

20 A. "It is the normal standard for the Public  
21 Utilities Commission to review our actions  
22 and our decisions, and it's done in  
23 hindsight. So it certainly presents business  
24 risks, as you might have a difference of

1 opinion. We might think we made a good  
2 decision. Somebody else might think we made  
3 a bad decision. But I think the Commission  
4 has found over and over again that we're  
5 making good decisions. But yes, that's  
6 normal course. And that's okay. We're  
7 totally prepared for that, and we're totally  
8 used to that." It goes on to the next page?

9 Q. Yeah.

10 A. "What is difficult for us because, you know,  
11 we're really -- whatever we do affects  
12 customers. You know, we're a regulated  
13 company. We don't get market prices. We  
14 don't get the profits that a nuclear plant  
15 gets when the market prices go up, you know,  
16 or any other plant if it's not regulated. So  
17 we have to be very careful, first of all,  
18 because we have that scrutiny; second of all,  
19 you know, it affects customers. So we're  
20 basically very conservative. We think we're  
21 very innovative when it comes to things like  
22 wood burning or, like, cocoa bean shell  
23 burning or, you know, renewable power. But  
24 financially, we have to be very, very

1 conservative, and we have to be very sure of  
2 what we're doing, because if we're reckless  
3 or if we're making bad decisions, it will  
4 hurt and will come back on us."

5 Q. Okay. Thank you. I wanted to you ask you  
6 about another area that you testified about a  
7 number of times today, where you were  
8 indicating that by 2008 -- let me know if I  
9 got the time frame right -- that you were  
10 halfway through the project, the six-year  
11 project. Is that --

12 A. More or less, yes.

13 Q. Okay. And when you say that you were  
14 "halfway through the project," what do you  
15 mean by that?

16 A. As we talked about earlier, commitments for  
17 contracts having -- doing detailed design,  
18 specifications, line up the work force, that  
19 sort of thing.

20 Q. But in 2008, had any major construction begun  
21 on the project?

22 A. Not that I recall. But the contracts had  
23 been committed to.

24 Q. And as you sit here today, do you recall what

1 conditions needed to be met before major  
2 construction could start?

3 A. No.

4 Q. Are there any permits that you need to obtain  
5 before major construction can start?

6 A. Yes.

7 Q. And what permit would that be?

8 A. Local construction permits with the City of  
9 Bow and air permits from the Department of  
10 Environmental Services.

11 Q. And do you recall when that air permit from  
12 the Department of Environmental Services was  
13 issued?

14 A. No.

15 Q. Would it refresh your memory if I gave a date  
16 of March 2009?

17 A. Well, I would take your word for it. But  
18 that wasn't a process that I managed.

19 Q. Okay. But you would agree that major  
20 construction couldn't start until after the  
21 permit issued.

22 A. I'm not sure if all aspects of the project  
23 could not go forward. Maybe part -- some  
24 aspects may not have. I'm not sure. There

1 was site work going on at a early stage.

2 (Long Deposition Exhibit 18 marked  
3 for identification.)

4 Q. Showing you what's been marked as Deposition  
5 Exhibit 18.

6 MS. FRIGNOCA: And for the  
7 record, it says Data Request Staff-01 on the  
8 top, dated December 30, 2011. Q-Staff-012,  
9 Page 1 of 75. I did not copy all 75 pages.  
10 These are just excerpts from that request.

11 BY MS. FRIGNOCA:

12 Q. I'll give you a minute to look through it.  
13 Just have a couple questions.

14 If you go to Page 1, that says Page 1 on  
15 the bottom of that exhibit, Page 1 of 2, do  
16 you see across the top a time line?

17 (Witness reviews document.)

18 Q. On top of the page says "Public Service  
19 Company of New Hampshire, Merrimack Station,  
20 Clean Air Project, June 2011 Legislative  
21 Update."

22 A. Yes.

23 Q. And this is a document prepared by Public  
24 Service Company of New Hampshire; correct?

1 A. Yes, but not a data request that I responded  
2 to, nor was I the one presenting this  
3 information.

4 Q. Okay. And in that time line, do you see  
5 where it says March of 2009, "DES issues the  
6 scrubber construction permit"?

7 A. Yes.

8 Q. So does that refresh your memory of the time  
9 frame that that permit would have been  
10 answered?

11 A. Well, I accept that that's what it says.

12 Q. And if you go further into that document,  
13 would you please look at Pages 8 of 43 and 9  
14 of 43.

15 (Witness reviews document.)

16 A. I have it.

17 Q. Have you located them?

18 A. Yes.

19 Q. Going to flip back first to Page 1 of 43,  
20 just to indicate a date so we can put this in  
21 reference. This appears to be a slide show  
22 put together by PSNH on March 31st, 2010.  
23 Does that look correct?

24 A. Yes.

1 Q. And referring to Page 8 of 43, do you -- are  
2 you looking at 2008 at this point?

3 A. If you want me to.

4 Q. Okay. And you can see the costs there of  
5 24.8 million?

6 A. Yes.

7 Q. At that point in time, did you do a review  
8 that looked at the cost of going forward with  
9 the project? Did you look at -- well, did  
10 you do a specific review?

11 A. This is a budget. This is not a commitment.  
12 This does not does reflect the work that had  
13 been done up to 2008, 2009, '10, to line up  
14 the work. This is the estimated carbon  
15 expenditures. It may have included AFUDC  
16 during -- year by year.

17 Q. Okay. So this report was done in 2010. But  
18 the numbers that are showed under Cost By  
19 Year are not accurate?

20 A. No. I'm saying those are -- I'm just making  
21 a clarification. Those are expenditure  
22 dollars. Those are not commitment dollars.  
23 We had discussion earlier about commitments  
24 that had been made with other lawyers asking

1           questions.

2                               (Discussion off the record between  
3                               counsel for CLF.)

4 BY MS. FRIGNOCA:

5 Q.    So what is the basis for your statement on  
6        what is committed costs?

7 A.    Costs that you expect to incur, work that you  
8        committed to have performed, but the work has  
9        either not been performed yet or the bills  
10       have not been paid for that work.

11 Q.   So, looking at this chart of estimated costs,  
12       how do you know how much of that money was  
13       committed to the project?

14 A.   The project team knew that, had that  
15       information.

16 Q.   And did they report that back to you?

17 A.   I have seen it -- I had seen it, yes.

18 Q.   Is the committed cost the cumulative cost  
19       below?

20 A.   No. The cumulative cost is just simply  
21       accumulation of the numbers above that you  
22       referred to. The committed cost would follow  
23       a different pattern.

24 Q.   Okay. Can you tell me how long you're

1 financing the scrubber for?

2 A. The financing's complete. The scrubber's  
3 complete.

4 Q. So there's no --

5 (Court Reporter interjects.)

6 Q. There's no loans or anything outstanding on  
7 the scrubber?

8 A. Oh, loans. It's a -- there's not specific  
9 project financing. There's overall general  
10 corporate financing. So, we have a series of  
11 different bonds, financial instruments that  
12 change from time to time. They have  
13 different lengths and durations.

14 Q. And did you do any analysis of the energy  
15 prices over the life of those loans and  
16 bonds?

17 A. I'm having difficulty making the connections.  
18 Energy prices are independent of those bonds.

19 Q. Did you look at the viability of the plant  
20 running as a baseload plant over the life of  
21 the loans?

22 A. We haven't looked at the plant, per se. As  
23 again discussed earlier, we did some  
24 financial estimates of the different

1 scenarios, what the impact on customers would  
2 be. I think that's -- but that's a different  
3 analysis than the one I think you're talking  
4 about.

5 Q. Okay.

6 (Discussion off the record between  
7 counsel for CLF.)

8 BY MS. FRIGNOCA:

9 Q. At any point over the six-year course of the  
10 scrubber project, did you consider  
11 divestiture?

12 A. Outside of the scrubber project? Because the  
13 topic of divestiture comes up periodically --

14 Q. No, I'm talking about in relation to  
15 Merrimack. Did you consider divesting?

16 A. Maybe ask to seek clarification on the  
17 question. I'm trying to understand the  
18 question.

19 Not as part of the scrubber project, no.  
20 The topic of divestiture comes up once in a  
21 while, and certainly we had discussions with  
22 external parties about that.

23 Q. Okay. And when the topic came up of  
24 divesting over the course of the scrubber

1 project, was that in relation to Merrimack  
2 Station?

3 A. I think it extends to our whole fleet. There  
4 was reference earlier today to a bill that  
5 preceded the bill that ended up being enacted  
6 in law, and we thought that that would have  
7 or could have forced retirement or  
8 divestiture prematurely. But no, I think we  
9 view the project -- we view our fleet as  
10 being very much in customer's interests.

11 Q. Okay. I'm not sure I quite followed all of  
12 your answer. So I apologize.

13 When you had divestiture discussions, do  
14 you remember the years during which you had  
15 those discussions? And I'm putting it in  
16 relation to the years of the scrubber  
17 project. During, say 2006, did you have  
18 discussions about divestiture of Merrimack  
19 Station?

20 A. The answer in 2006 is no.

21 Q. 2007?

22 A. I don't think so.

23 Q. 2008?

24 A. That might have been the time when the

1 legislature and some of the opponents might  
2 have brought up the subject. So there could  
3 have been some external discussions around  
4 that.

5 Q. Was it something that you considered as a  
6 management option?

7 A. Every view that we've had of the plants, we  
8 viewed them to be valuable to customers. So,  
9 no, we never went down that path.

10 Q. Okay. So you never went down that path in  
11 '09. Just to save us time, did you at any  
12 point between -- I'm sorry. In '08. Did you  
13 at any point in '08 and completion of the  
14 scrubber consider divestiture of Merrimack  
15 Station?

16 A. We never had any indication that it should be  
17 considered. We continued to see value. Even  
18 today, we continue to see value in our fleet,  
19 in our units, and from a customer risk  
20 perspective.

21 Q. And based on what analysis do you rely to see  
22 -- to continue to see the value in Merrimack  
23 Station?

24 A. It's not an analysis. It's all of the risks

1           that New England faces today, faced back  
2           then. It's the economic analysis which  
3           showed it to be in customers' interest. It's  
4           our knowledge of a -- that there's a very  
5           volatile, risky market out there. It's, you  
6           know, any number of factors.

7    Q.    So I take it, then, if I ask you if you  
8           considered retiring the plant during that  
9           same time frame, your answer would be no?

10   A.    No, did not consider retiring. We have  
11          retired plants in the past. But there's no  
12          indication that that would be in customers'  
13          interest.

14   Q.    That it would be in customers' interest to  
15          retire Merrimack.

16   A.    Yes.

17   Q.    I am done. Thank you very much for your  
18          patience.

19   A.    Thank you.

20                           MS. ROSS: All right. It is  
21          ten after three. I would suggest we take a  
22          break now and then maybe come back at 3:30.  
23          And we have one last questioner, Zack Fabish.

24                           (Brief recess taken.)

1 MR. FABISH: Let's go on the  
2 record.

3 EXAMINATION

4 BY MR. FABISH:

5 MR. FABISH: Mr. Long, I'm  
6 Zack Fabish. I'm here from the Sierra Club.  
7 I have hopefully a small handful of questions  
8 that are follow-up from some things that  
9 people were talking about earlier and then a  
10 slightly larger handful of questions of my  
11 own. So, two handful-ish of questions that  
12 hopefully won't take too long. But I  
13 appreciate your time and -- yeah, so let's  
14 get into it.

15 I think earlier today, do you recall a  
16 question Mr. Patch asked, essentially asking  
17 you what hypothetically you would have done  
18 if the, I believe the acronym was the RaCC,  
19 had not approved the \$457 million? Does that  
20 sound --

21 A. Yeah, I remember something like that.

22 Q. Okay. Great. Did you -- sort of flipping  
23 the question a little bit, not asking you a  
24 hypothetical. Going into the presentation

1 for the RaCC, had you planned for a  
2 contingency in which the RaCC did not approve  
3 the -- what you were asking?

4 A. I'm not sure if I caught your question. What  
5 would I have done if the RaCC did not --

6 Q. No. No. Sort of like, you know, rewind the  
7 tape to before you gave the presentation.

8 At that point in time, were you  
9 thinking -- essentially, you know, did you  
10 have the thought process associated with the  
11 idea of what do I do if this doesn't get  
12 approved?

13 A. No, I really worked through that scenario.  
14 You know, as I stated repeatedly, the way --  
15 we take the law very seriously. And, you  
16 know, I call us a "compliance company." So  
17 we were -- management had the obligation to  
18 comply with the law, and I had -- I and my  
19 team had the obligation to follow the  
20 Northeast Utilities process for seeking  
21 funding. And as long as we did our job, I  
22 didn't consider a scenario where it wouldn't  
23 be approved.

24 Q. So you did not plan for --

1 (Court Reporter interjects.)

2 Q. Sorry. I had my hands...

3 So you did not consider that scenario.

4 A. No, and it didn't occur.

5 Q. Okay. Would it have been possible for the  
6 RaCC to reject the proposal?

7 A. No. I mean, I think the role was one of:  
8 Are we proceeding in compliance with the law?  
9 Are we doing it in a well-managed way? You  
10 know, whether it's the RaCC or -- had  
11 questions about the board of trustees or  
12 myself, all of us were subject to the same  
13 law. And it was the higher authority. So I  
14 believe that that whole process was well  
15 aware of what the state had directed.

16 Q. So in some ways it sounds like a pretty  
17 low-pressure presentation.

18 A. Well, I -- no, I don't know if I'd go that  
19 far, because we would be challenged to have  
20 considered all aspects of construction and  
21 compliance. We would have -- you had to  
22 present -- obviously, you have to present  
23 well to -- if we were not able to explain or  
24 inform that committee, I'm sure they would

1 have sent us back to do more work.

2 Q. Okay. So you testified earlier that the  
3 scrubber project -- I think this was in the  
4 context of testimony you gave concerning the  
5 difficulty of pricing it -- that it was not a  
6 sulfur-reduction scrubber, but it was a  
7 mercury-reduction scrubber. Is that an  
8 accurate summary of what you said?

9 A. Yeah, I think it's close. It was --  
10 obviously, it was intended to comply with the  
11 law regarding mercury reductions. I think  
12 the thing that excited our environmental  
13 regulators, often referred to as a "two-fer,"  
14 meaning that in the process of reducing  
15 mercury, you would also substantially reduce  
16 sulfur. And so that was definitely viewed as  
17 a positive amongst the parties who supported  
18 it, which obviously included CLF, Sierra Club  
19 and others -- although they wanted it done  
20 sooner, I should clarify.

21 Q. So a series of questions here that I think  
22 I'm going to start off kind of broad, but  
23 they will be getting to a focus. So I hope  
24 you'll just bear with me.

1                   MR. FABISH: You, too, as  
2                   well, Bob.

3 BY MR. FABISH:

4 Q.    So, just thinking about environmental  
5        compliance generally, does PSNH forecast  
6        environmental compliance costs?

7 A.    No requirements. I would say, obviously, as  
8        part of our budgeting process we develop what  
9        we call our operational plans. It's any  
10       known rules we have to comply with are  
11       certainly put within our budgets.

12 Q.   And so could you tell me what you mean by  
13        "known rule"?

14 A.    Rules that exist, that are in place, that are  
15        enforceable.

16 Q.    So a draft rule, would that fall into that  
17        category?

18 A.    Not necessarily. Oftentimes, draft rules  
19        have a long ways to go and oftentimes don't  
20        ever become rules. So that wouldn't be --  
21        you know, again, it's just a draft. It's  
22        just a thought. It would have a long way to  
23        go, so...

24 Q.    So in that case, draft rules are not

1 something that's considered as part of this  
2 environmental compliance cost forecast then.

3 A. It's certainly followed. It's certainly  
4 monitored. But it's a draft. So it would be  
5 speculative to -- it be speculative. So, you  
6 know, it would be included perhaps as a risk  
7 factor or something to learn more about. But  
8 when setting a budget, we go with what's  
9 known.

10 Q. So when you say "risk factor," does that go  
11 into the budget?

12 A. No.

13 Q. No? Okay.

14 So, things that you do regarding the  
15 known, existing rules, who at PSNH does that,  
16 that forecasting, or does that pricing of  
17 compliance?

18 A. Well, the area that's impacted. If it's a --  
19 if it happens to be a rule, for instance, on  
20 PCBs on transformers, if there's some sort of  
21 new rule that requires us to replace those,  
22 it would be what I referred to earlier as the  
23 energy delivery area. If it's in the  
24 generation area, then it would be something

1           that would be tracked and monitored by our  
2           generation management.

3    Q.    Okay.  And is this a formal process or an  
4           informal process?

5    A.    I should add, also, there's an environmental  
6           group within Northeast Utilities that  
7           monitors environmental regulations and  
8           compliance.  So they would also tend to  
9           monitor developing rules.

10                   And your question was?

11   Q.    Now I have to remember my question.  So let  
12           me go back to what you just said before I get  
13           back to my other question.

14                   So there's a group at Northeast  
15           Utilities that does this.  And is that  
16           information prepared on a regular time period  
17           and shared with subsidiaries like PSNH or --  
18           how does that information get from Northeast  
19           Utilities to PSNH?

20   A.    As colleagues, they may participate in  
21           meetings, discussions.  I think the  
22           environmental group issues their own reports  
23           that may or may not include aspects of PSNH.  
24           It's shared.  It's something that's shared

1 internally.

2 Q. Okay. So then, this gets to the question  
3 that I asked but we both forgot -- but I  
4 written down, so we're good -- is this a  
5 formal process or an informal process? And  
6 maybe before you answer that question, I'll  
7 unpack it just a little bit.

8 So, essentially what I'm asking is, you  
9 know, does this happen -- like is it once a  
10 quarter or once every six months? Does the  
11 environmental compliance group -- do they  
12 say, "Here's our report. This is what we  
13 think is coming. Here's what everyone should  
14 be thinking about in terms of forecasting  
15 compliance costs"? Or is it a much more -- a  
16 process where folks are participating in  
17 meetings, and it's more sort of ad hoc?

18 A. It's a combination of the both, I would say.  
19 I'll give you an example.

20 There are manufactured gas clean-up  
21 sites around Northeast Utilities. And that  
22 group will manage the clean-up of those  
23 sites, and they'll issue a report -- I  
24 believe it could be every quarter or so -- on

1           what's the status of that clean-up activity  
2           and progress. So that would be an example of  
3           a periodic report that the environmental  
4           group of Northeast Utilities would issue.  
5           But that's not the only communications.  
6           Obviously, they would work with the Companies  
7           that they're servicing. So they're part of a  
8           service company, Northeast Utilities Service  
9           Company. So they're servicing all of the  
10          companies, and PSNH being one of those. So  
11          they would actively work with that group. If  
12          it's a spill clean-up, they'll issue reports  
13          on the incident and the resolution of that  
14          spill and clean-up, for instance. So they do  
15          issue reports. We have daily  
16          notifications -- we call them "environmental  
17          issues" -- that are shared very widely.

18   Q.    Does PSNH ever request specific pieces of  
19          information from this group?

20   A.    We certainly can request services of  
21          contractors to help us with a clean-up.  
22          That's not a -- they have their own staff in  
23          New Hampshire, that's assigned to New  
24          Hampshire, to help the operational people

1 with environmental matters there. If they  
2 have expertise in that group, our generation  
3 group can ask them for services, for help.

4 Q. Sure. But looking more specifically than the  
5 general sort of services that are provided,  
6 does PSNH ever ask this group for information  
7 pertinent to environmental compliance cost  
8 forecasting?

9 A. Again, you know, I'm trying to answer the  
10 question in the context that it -- we have  
11 different parts of our company.

12 Q. Sure.

13 A. And, you know, of course, the subject today  
14 is our generation group. So our generation  
15 group has their own scientists and compliance  
16 personnel because PSNH's -- I'll say this  
17 with exception -- it's the only company --

18 (Court Reporter interjects.)

19 A. -- the only company within Northeast  
20 Utilities that has generation, and therefore,  
21 that's where a lot of the expertise lies.  
22 There's some solar generation in  
23 Massachusetts, but a different set of  
24 environmental regulations on that.

1 Q. Okay. And so earlier you said that when  
2 doing environmental compliance cost  
3 forecasting, draft rules aren't regarded.

4 A. No, I --

5 Q. Okay.

6 A. They're highly studied. They're monitored.  
7 But what I was trying to indicate earlier,  
8 they are a work-in-progress, so to say. So  
9 they're speculative as to how they may end up  
10 and when.

11 Q. And so, when looking and doing the highly  
12 regarded and the monitoring of draft rules  
13 and forthcoming rules, is that done by folks  
14 internal to PSNH and/or Northeast Utilities,  
15 or outside consultants?

16 MR. NEEDLEMAN: I want to  
17 object at this point. I don't see how any of  
18 this line of questioning is relevant. And  
19 it's certainly not information that's  
20 uniquely within Gary's purview. This is all  
21 stuff that could have been asked in another  
22 context.

23 MR. FABISH: So where I'm  
24 going with all of this is, I'm trying to get

1 a picture of what was being evaluated during  
2 the time frame when the scrubber project was  
3 under consideration in the early stages of  
4 putting it out to bid and securing contracts  
5 and permits, and what sort of environmental  
6 compliance cost issues were in front of the  
7 company and how they were being regarded and  
8 how they were being evaluated.

9 MS. ROSS: And I would  
10 encourage you to get to those questions.

11 MR. FABISH: Yeah, I'm just  
12 about there.

13 MS. ROSS: But I will allow  
14 that general questioning for background  
15 purposes.

16 BY MR. FABISH:

17 Q. Well, let's go right to it.

18 In 2007, what sort of potential  
19 environmental compliance costs, aside from  
20 the Scrubber Law, was PSNH considering for  
21 Merrimack?

22 A. Well, as I indicated earlier this morning, in  
23 some of the sensitivity analyses that were  
24 presented to the RaCC Committee, there was --

1           you know, there was a testing of the  
2           sensitivity of new environmental rules, I  
3           think in the area of water.

4    Q.    And that was, I think, what? Exhibit 5,  
5           page... that's right, 'cause there's, like,  
6           two different sets of numbers on these pages.  
7           Page 13 of 50 I think was the one that was  
8           identified earlier.

9    A.    Yes.

10   Q.    So, a couple of questions about this.

11                 First of all, how was this \$30 million  
12           figure arrived at?

13   A.    That's not my number. I didn't derive the  
14           number. I can't tell you.

15   Q.    Okay. So that's speculating. You have no  
16           idea.

17   A.    That's not my number. This is an analysis  
18           that was performed by others.

19   Q.    Sure. So why were water compliance -- well,  
20           let me back up.

21                 So, looking at this page under the  
22           Unlikely/Low case legend, it says cooling  
23           tower addition, dollar sign, 30M -- 30  
24           million. This was included in a presentation

1           concerning the Clean Air Project for what  
2           reason?

3       A.   Well, specifically, this analysis is about  
4           Merrimack Station, and just as another  
5           financial consideration in the scenarios that  
6           were considered, as a separate -- obviously a  
7           separate requirement from the state's mandate  
8           on the scrubber and, as you indicated  
9           earlier, you know, not yet a requirement.

10      Q.   So this presentation, just so I understand,  
11           under the financial scenarios, different  
12           costs posed to Merrimack were considered as  
13           part of this analysis?

14      A.   Yes.

15      Q.   Is there a reason -- I assume there is.

16                    Is there a reason why it was just  
17           Merrimack and not PSNH generally?

18      A.   Because that was where the scrubber was being  
19           installed.

20      Q.   Sure. But I think -- and maybe because I'm  
21           not a finance guy at all -- earlier you  
22           were -- in response to a question about, and  
23           I'm probably going to garble it, but in  
24           response to the financing of the scrubber

1 project, you were talking about bonds. And I  
2 think perhaps I misinterpreted this. But my  
3 understanding of what you were saying was  
4 that the bonds were company-wide. Is that  
5 correct? That essentially the financing for  
6 projects comes from --

7 A. General financing, yes. What I indicated was  
8 this was not specific project financing. It  
9 was just part of the overall capital  
10 structure of PSNH.

11 Q. Hmm-hmm. Okay. So the overall capital  
12 structure of PSNH is not something that goes  
13 into this particular analysis here in  
14 Exhibit 5, on Page 13 of 50.

15 A. This analysis, again, I didn't do it, but I  
16 would assume includes levels of investment  
17 and then a return on investment. And I would  
18 suspect that the return on investment is our  
19 average cost of -- and our debt structure,  
20 which is for the whole company.

21 Q. Okay. So, in regarding potential  
22 environmental compliance costs, does PSNH  
23 look at what's going on with the permitting  
24 in other similar industries?

1 A. If that industry is electric generation or,  
2 you know, boilers, industrial boilers, that  
3 would be a -- the answer would be yes. But,  
4 you know, it has -- it's much related -- I  
5 want to say, site-specific. So what happens  
6 in one area of the country or in one type of  
7 power plant may not be applicable to our  
8 circumstances.

9 Q. Sure.

10 A. I would say the permits are very specific to  
11 the plant, the plants that we operate.

12 Q. So, again, keying a little bit off of this  
13 exhibit here, Merrimack is a thing that burns  
14 coal, has a cooling water system; right?

15 A. Yes.

16 (Court Reporter interjects.)

17 Q. And are you aware of what type of cooling  
18 water system Merrimack has?

19 A. Yes.

20 Q. I guess I'll follow up. What would that be?

21 A. The cooling water is taken from the Merrimack  
22 River, condenses to steam, put into a pond  
23 that has spray modules, and then eventually  
24 back into the river.

1 Q. And that's the system that it's had -- at  
2 least had in the 2000s, right, and continues  
3 to have today?

4 A. Yes.

5 Q. Are you familiar with the facility called  
6 Brayton Point?

7 A. I wouldn't say I'm familiar with it. I know  
8 it exists. I know it's in Massachusetts.

9 Q. Okay. That's probably good enough.

10 If I said the word "NPDES," does that  
11 have meaning for you? N-P-D-E-S.

12 A. It's a -- I know it's a permit.

13 Q. So would you understand that to be an acronym  
14 for National Pollutant Discharge Elimination  
15 System?

16 A. Yes.

17 Q. Okay. Merrimack has a NPDES permit; correct?

18 A. Yes.

19 Q. Is it your understanding that NPDES permits,  
20 in part, govern cooling water --

21 A. Yes.

22 Q. -- for facilities such as Merrimack?

23 A. Yes.

24 Q. Are you familiar with the NPDES permit for

1           Brayton Point?

2    A.    No.

3    Q.    Any familiarity at all?

4    A.    No.

5    Q.    No?  Never heard of it before?

6    A.    Heard of it?

7    Q.    That's the low threshold I'm establishing.

8           We'll start from there and then build.

9    A.    I mean, environmental permitting is not my  
10           expertise.  Not something I do at PSNH.  It's  
11           something our generation team does.  So, no,  
12           I'm not familiar with Brayton Point's  
13           permits.  I am not.

14   Q.    Okay.  So if I told you that Brayton Point's  
15           NPDES permit required it to essentially  
16           convert from open-cycle to closed-cycle  
17           cooling, is that a piece of information that  
18           would be surprising to you?

19   A.    No.

20   Q.    No.  Okay.  Were you aware that this permit  
21           was issued -- are you aware of when this  
22           permit was issued?

23   A.    No.

24   Q.    If I said it was issued in the early part of

1 2000s, would that be a surprise to you?

2 A. I would take your word for it. It's not  
3 something I know directly myself.

4 Q. Sure. In thinking about the financing, the  
5 financial scenarios for the scrubber project,  
6 for the Clean Air Project, as part of the  
7 presentation to the RaCC, or as part of the  
8 general decision-making concerning the  
9 project, did the NPDES permit for Brayton  
10 Point enter into that analysis at all?

11 A. Not in this presentation to the RaCC.

12 Q. Okay. Was it something that was considered  
13 as part of the analysis, to your knowledge?

14 A. Again, as I stated earlier, these permits are  
15 very site-specific. And so I know I  
16 personally did not regard it as relevant to  
17 the permits at Merrimack Station. Whether  
18 others were aware of it and to what detail, I  
19 don't know.

20 Q. So you personally -- okay.

21 So the scrubber was designed to achieve  
22 compliance with the mercury reduction law.

23 (Court Reporter interjects.)

24 A. Yes.

1 Q. And that, therefore, was designed to achieve  
2 an 80 percent or better reduction in mercury  
3 over the course of -- on an annualized basis.

4 A. I'm going to kind of say a qualified yes,  
5 because the consideration was for our whole  
6 fleet --

7 (Court Reporter interjects.)

8 A. That included our entire fleet, which  
9 included Schiller station, coal plants. So  
10 80, 85. It's -- I don't -- you know, I'll  
11 take your word for it. But it's in that  
12 vicinity. And then also goals for reduction  
13 of sulfur dioxide.

14 Q. So was the scrubber designed to hit a certain  
15 SO2 emission rate?

16 A. I think we had an objective in mind to reduce  
17 it. I can't remember if it manifested itself  
18 in a permit or not.

19 Q. But did that -- you said you had a goal. Did  
20 this goal factor into the bidding process for  
21 the requirements for scrubber construction?

22 A. Yes. The specifications that I referred to  
23 earlier were specifications for vendors to  
24 meet the requirements of the law.

1 Q. And just to close the loop on this line of  
2 questioning, and then I'll move on, those  
3 requirements were mercury reduction with --

4 A. Yeah, I'm thinking about mercury reductions  
5 particularly.

6 Q. All right.

7 A. You know -- well, okay, I'll stop there.

8 Q. So if I understand some of the materials  
9 correctly, one of the things that was  
10 different about the scrubber project at  
11 Merrimack is that the two boilers are  
12 different sizes; is that correct?

13 A. Yes, and a single scrubber would be used for  
14 both units.

15 Q. Is there something called "bypass mode"?

16 A. I recall something along those lines.

17 Q. Could you explain, to your knowledge, what  
18 bypass mode is?

19 A. Be a layman's explanation.

20 Q. That's good enough for me.

21 A. That you have to bypass parts of equipment,  
22 perhaps the scrubber, at some time or  
23 another.

24 Q. Okay. And sometime or another, the level of

1 detail as to when that option would be used,  
2 would be the best that's consistent with your  
3 knowledge right now.

4 A. That's about as far as I can go with it. You  
5 would have to talk with the generation staff  
6 to give you more information on what the  
7 equipment can do and why.

8 Q. Okay. If I say the words "National Ambient  
9 Air Quality Standard," does that mean  
10 anything to you?

11 A. I'm sure I've heard of it before. It doesn't  
12 relate to the work that I do specifically.

13 Q. Sure. If I say the acronym, "NAAQS,"  
14 N-A-A-Q-S, does that trigger anything?

15 A. Not much.

16 Q. Not much. Are you aware there is a NAAQS for  
17 sulfur dioxide?

18 A. A NAAQS?

19 Q. A National Ambient Air Quality Standard?

20 A. I wouldn't be at all surprised.

21 Q. All right. So, aside from the bid in  
22 Exhibit 5, financial scenarios talking about  
23 the cooling tower addition, \$30 million  
24 during 2007 in connection with the scrubber

1 project, were potential cooling tower  
2 requirements for Merrimack considered as part  
3 of the analysis of the scrubber project?

4 A. I think this analysis where you see the  
5 financial aspects of it show up, our  
6 generation group is well versed in that  
7 subject matter, and I'm sure they would have  
8 been familiar with all aspects of the status  
9 of those requirements.

10 Q. But to your knowledge, though --

11 A. Well, to my knowledge, it was a closely  
12 monitored subject by our generation group.

13 Q. And was it considered as part of the analysis  
14 of the scrubber project?

15 A. Well, the analysis that you see, it was  
16 considered in some of the risk profiles, the  
17 scenarios that were analyzed.

18 Q. Okay. Was the sulfur dioxide national  
19 ambient air quality standard considered  
20 during the analysis of the scrubber project  
21 in the 2007 to 2009 time frame?

22 A. I would say those things are constantly  
23 monitored and analyzed by our generation  
24 group, certainly for ongoing compliance, and

1           then, should they change, what does that mean  
2           to us and our customers.

3                           MS. CORKERY: I'm sorry. I  
4           can't hear.

5                           (Record read back.)

6 BY MR. FABISH:

7 Q.    During the scrubber project -- during  
8       analysis of the scrubber project, say in the  
9       2007 to 2009 time frame, was a potential  
10      requirement for hourly emission limits of  
11      sulfur dioxide considered?

12 A.    Okay. Just for clarification. The  
13      announcement of the scrubber project -- I  
14      mean, it was a law, not necessarily an  
15      announcement. But, you know, again, same  
16      sort of answer. Did our generation group  
17      monitor such stuff? Yes, they did.

18 Q.    And was it considered as part of the analysis  
19      of the scrubber project?

20 A.    I think the analysis speaks for itself as to  
21      what's in there.

22 Q.    So if I said -- is it a fair summary of your  
23      testimony just now to say no, with  
24      qualifications?

1 A. Probably a better way to think of it is we  
2 believe we then -- part of the scrubber  
3 project would be in full compliance with all  
4 environmental regulations.

5 Q. But if I were to ask you if this specific  
6 thing was considered, whether or not the need  
7 to comply with hourly sulfur dioxide emission  
8 limits was considered as part of the scrubber  
9 project analysis --

10 A. I guess, again, you know, I'm not the expert  
11 in all the detail of environmental  
12 permitting. But obviously we felt very  
13 comfortable that were complying with all law,  
14 with our permits and with the requirements.  
15 If you're suggesting there might be different  
16 ones in the future, then that would be  
17 speculative and --

18 Q. I'm not.

19 A. -- not part of compliance. You know, we  
20 understood and believed that we, with the  
21 scrubber, would be in compliance with state  
22 law and all other regulations.

23 Q. So I guess, setting aside -- well, if I were  
24 to rephrase that question that I just asked,

1 I would ask it, to your knowledge, and then  
2 ask you to exclude the caveat that -- yeah, I  
3 know this is getting complicated. Let me  
4 just try this. Strike all that and let me  
5 try this again.

6 So the next question I'm going to ask is  
7 as to your knowledge. And so I understand  
8 that you've already answered that you have  
9 sort of a high-level picture and assumption  
10 about what considerations were made by other  
11 folks involved in this analysis. But to your  
12 knowledge specifically -- and, you know, it's  
13 fine if the answer is no -- to your knowledge  
14 specifically, was the need for hourly -- or  
15 for compliance with hourly sulfur dioxide  
16 emission limits analyzed as part of the  
17 scrubber?

18 A. Yeah, you know, I was aware that that was a  
19 topic of discussion in environmental  
20 regulatory, you know, places. But I was also  
21 of the full understanding that we were in  
22 compliance with all law and our permits.

23 Q. If Merrimack has to install a closed-cycle  
24 cooling system, such as cooling towers, what

1 would that do to the cost of generating  
2 electricity at Merrimack?

3 A. I don't know. And, you know, it's obviously  
4 not the circumstance today, and could be far  
5 enough in the distance future, if ever. Lots  
6 of things will change between now and then.  
7 So it's really not something, you know, I  
8 could lend an opinion on at this point.

9 Q. So, open universe of possibilities as to what  
10 could happen if Merrimack had to install  
11 cooling towers.

12 A. You know, the question -- the statement was  
13 "if." And, you know, it's a speculative  
14 thing. There are many variables in our  
15 business. That's one. You know, your own  
16 organization has a "Beyond Natural Gas"  
17 campaign going on that is challenging  
18 fracturing and challenging the increased use of  
19 natural gas. That could be far more  
20 significant to the energy prices in New  
21 England than a cooling tower, if they were  
22 ever even required.

23 So my point is, as we talked about  
24 earlier, fuel prices could be far more

1 significant than other things. It's a very  
2 significant factor. And your organization's  
3 actions, if you're successful, will certainly  
4 result in higher prices.

5 Q. How about if I ask you the same question, but  
6 I say "all else remaining equal"?

7 A. I can't accept an "all else remaining equal"  
8 because that's --

9 Q. Even as a thought experiment.

10 A. Well, because it doesn't exist today.  
11 There's no requirement today for cooling  
12 towers. So you're saying -- you know, it  
13 could be any number of things. If costs go  
14 up, you know, is that difficult? Yes, it is.  
15 If costs go down, that's more beneficial. So  
16 it's a pure hypothetical. You know, yes, if  
17 costs go up, it's not something we look  
18 forward to. If market prices go up, that  
19 changes the relative standing of the plant,  
20 for sure. If gas prices go up, which is what  
21 TransCanada is forecasting, what your  
22 organization seems to be wanting to achieve,  
23 that will make the economics of Merrimack  
24 Station increase rather radically.

1 Q. So a moment ago you said "beneficial," and I  
2 think you said "detrimental" with regard to  
3 what would happen if costs went up. Could  
4 you explain in a little bit more detail what  
5 you mean?

6 A. I think you were asking me a hypothetical,  
7 generic question. And, you know, if costs go  
8 up, it's not something, you know, I think as  
9 a business we like to see. But there are --  
10 at the same time, people want to be provided  
11 with electricity and reliability and clean  
12 air. And all those things do cost. So  
13 it's -- someone used the word "balance"  
14 earlier today. So it's balance of all of  
15 those considerations: Reliability,  
16 reasonable costs, environmental stewardship,  
17 compliance, diversity of fuel, you know,  
18 serving customers overall, economy, jobs. I  
19 mean, there's a whole lot of factors that go  
20 into our business.

21 Q. Sure. So I think a moment or two ago -- and  
22 I apologize. It's the end of the afternoon,  
23 so I'm not as sharp as I could be otherwise.  
24 Just want to throw that out there.

1           So you said that because there's so many  
2 other factors, it would be speculative to  
3 opine as to what might happen if a  
4 requirement for the construction of cooling  
5 towers at Merrimack Station were imposed. Is  
6 that a fair recollection of what you said?

7   A.   No. I think it's fair to say that if cooling  
8 towers were mandated, in some way required,  
9 that it would add to the cost. But if that  
10 were to occur, it seems to be far off in the  
11 distance. And what I'm trying to indicate is  
12 that a lot of things will change between now  
13 and then. Again, if I believe your work,  
14 your organization and TransCanada, we'll have  
15 much higher natural gas prices by the time we  
16 get there, and its economic feasibility will  
17 be looked at at that time.

18   Q.   Okay. So, aside from, you know, the  
19 Exhibit 5 thing that we've been talking about  
20 quite a bit, that cost associated with a  
21 requirement to construct cooling towers at  
22 Merrimack Station, that was not something  
23 that was considered as part of the analysis  
24 of the scrubber project in the 2007 to 2009

1 time frame.

2 A. Well, as I stated earlier, it was something  
3 that was analyzed in scenarios as part of  
4 trying to understand the impact of costs. I  
5 don't know what the legislature considered  
6 when they mandated it and how they might have  
7 considered other things, but...

8 Q. Sure. No, and just to clarify, when I'm  
9 asking a question, I'm not asking you and  
10 not -- to speculate about what the  
11 legislature and its various members might  
12 have been thinking, 'cause who knows what  
13 that was.

14 Let me just take another moment, but I  
15 think the payoff will be pretty good.

16 (Pause in proceedings)

17 Q. I'm finished.

18 A. Thank you.

19 MS. ROSS: Thank you. Thank  
20 you all.

21 (Deposition concluded at 4:21 p.m.)

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C E R T I F I C A T E

I, Susan J. Robidas, a Licensed  
Shorthand Court Reporter and Notary Public  
of the State of New Hampshire, do hereby  
certify that the foregoing is a true and  
accurate transcript of my stenographic  
notes of the deposition of GARY LONG, who  
was duly sworn, taken at the place and on  
the date hereinbefore set forth, to the  
best of my skill and ability under the  
conditions present at the time.

I further certify that I am neither  
attorney or counsel for, nor related to or  
employed by any of the parties to the  
action in which this deposition was taken;  
and further, that I am not a relative or  
employee of any attorney or counsel  
employed in this case, nor am I financially  
interested in this action.

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Susan J. Robidas, LCR/RPR  
N.H. LCR No. 44 (RSA 310-A:173)

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E R R A T A S H E E T

I, GARY LONG, do hereby certify that I have read the foregoing transcript of my testimony and further certify that said transcript (with/without) suggested corrections is a true and accurate record of said testimony (with the exception of the following corrections):

Page & Line No.	Correction

\_\_\_\_\_  
GARY LONG

Subscribed and sworn to before me this \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

\_\_\_\_\_  
Notary Public

My Commission Expires: \_\_\_\_\_

**DEPOSITION OF: GARY LONG - September 16, 2013**  
**DE 11-250 PUBLIC SERVICE COMPANY OF N.H. INVESTIGATION OF SCRUBBER COSTS AND COST**

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