

STATE OF NEW HAMPSHIRE
PUBLIC UTILITIES COMMISSION

October 14, 2014 - 9:54 a.m.
Concord, New Hampshire

DAY 1
Morning Session only

RE: DE 11-250

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PUBLIC SERVICE COMPANY OF NEW HAMPSHIRE:
Investigation of Scrubber Costs and
Cost Recovery.

PRESENT: Commissioner Martin P. Honigberg, Presiding
Special Commissioner Michael J. Iacopino

F. Anne Ross, Esq., General Counsel

Sandy Deno, Clerk

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Wilbur A. Glahn, III, Esq. (McLane, Graf...)

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Leszek Stachow, Asst. Dir./Electric Division

I N D E X**PAGE NO.****WITNESS: WILLIAM H. SMAGULA**

Direct examination by Mr. Bersak	9
Cross-examination by Ms. Amidon	20
Cross-examination by Ms. Chamberlin	33
Cross-examination by Ms. Goldwasser	59

E X H I B I T S

EXHIBIT NO.	D E S C R I P T I O N	PAGE NO.
11	Direct Testimony of William H. Smagula, with 3 attachments	Premarked
12	Rebuttal Testimony of William J. Smagula, with 25 attachments	Premarked
13	Testimony of Robert A. Baumann, with 6 attachments	Premarked
14	Rebuttal Testimony of Eric H. Chung, with 2 attachments	Premarked
15	Direct Testimony of Steven E. Mullen, with 14 attachments	Premarked
16	Direct Testimony of Frank T. DiPalma and C. Larry Dalton, with 5 attachments	Premarked
17	Direct Testimony of Matthew I. Kahal, with 7 attachments	Premarked
18	Direct Prefiled Testimony of Stephen R. Eckberg, with 12 attachments	Premarked
19	Expert Testimony of Dr. Ranajit (Ron) Sahu, with 3 attachments	Premarked
20	Prefiled Testimony of Michael E. Hachey, with 30 attachments	Premarked
21	Prefiled Testimony of Elizabeth A. Stanton, Ph.D, with 7 attachments	Premarked
22	Rebuttal Testimony of John J. Reed, with 1 attachment	Premarked

E X H I B I T S (continued)

EXHIBIT NO.	D E S C R I P T I O N	PAGE NO.
23	Rebuttal Testimony of Terrance Large & James Vancho, with 15 attachments	Premarked
24	Rebuttal Testimony of David Harrison, Jr., and Noah Kaufman, with 17 attachments	Premarked
25	Rebuttal Testimony of Lisa Shapiro, with 4 attachments	Premarked
26	Jacobs Report (5 attachments)	Premarked
27	Gary Long Deposition, with 18 attachments	Premarked
28	PSNH Response to TC 06-37	Premarked
29	<i>***Exhibit number not used***</i>	--
30	NU website snapshot	60
31	PSNH Excel spreadsheet re: termination costs	70
32	Response to Data Request TC 1-9	79
33	Response to Data Request TC 6-038	84
34	Response to TC 01-002 SP01	93
35	Response to TC 06-039	93
36	Quarterly Natural Gas Liquids Report by Energy Ventures Analysis	102
37	NU DPUC Gas Forecast	104

P R O C E E D I N G

CMSR. HONIGBERG: Everybody knows why we're here. We're in DE 11-250, hearing on the merits on the Scrubber docket. I don't know what business we have to transact before the substance gets started, but let's take appearances first, and that may take a while. Mr. Bersak.

MR. BERSAK: Good morning, Commissioners. I'm Robert Bersak, from Public Service Company of New Hampshire. And, with me as counsel today I have Barry Needleman and Bill Glahn, from the law firm of the McLane law firm.

CMSR. HONIGBERG: Who's next?

MS. FRIGNOCA: Good morning. Ivy Frignoca, from the Conservation Law Foundation. And, with me is Tom Irwin.

MR. FABISH: Good morning. I'm Zack Fabish, on behalf of the Sierra Club.

CMSR. HONIGBERG: There should be microphones on everybody's table, right?

MR. FABISH: Yes.

CMSR. HONIGBERG: It will be best for the reporter and everyone if you speak so that the microphone will pick you up.

1 MR. FABISH: Should I repeat myself or
2 are we okay?

3 CMSR. HONIGBERG: I think he got it.
4 Thank you.

5 MR. PATCH: Good morning. Doug Patch
6 and Rachel Goldwasser, from Orr & Reno, on behalf of the
7 TransCanada affiliates that are parties to the docket.
8 And, with us this morning are Michael Hachey and Shawn
9 Keniston.

10 MS. CHAMBERLIN: Good morning. Susan
11 Chamberlin, Consumer Advocate for the residential
12 ratepayers. With me today is James Brennan.

13 MS. AMIDON: Good morning. Suzanne
14 Amidon, for Commission Staff, with my co-counsel Michael
15 Sheehan. Also at counsel table is Tom Frantz, the
16 Director of the Electric Division, and Les Stachow, who is
17 the Assistant Director of the Electric Division. Thank
18 you.

19 CMSR. HONIGBERG: Thank you. That's it.
20 Do we have any business to transact before we start
21 hearing from witnesses? I see shaking of the heads, and
22 Mr. Bersak has a concerned face. Yes, Mr. Bersak.

23 MR. BERSAK: There may be one thing.
24 This morning, prior to the initiation of this hearing, we

[WITNESS: Smagula]

1 had a technical session. And, we were discussing what to
2 do about a piece of potential evidence that came to light
3 at the last minute. And, as a part of that discussion,
4 what we thought would be the best way of dealing with it,
5 so we can get these hearings going, would be to just let
6 proceed with the hearings. And, if it turns out that that
7 piece of newly discovered evidence is something that is
8 relevant and needs to be discussed as part of these
9 hearings, then PSNH would have the opportunity, at the end
10 of the hearings, next week, to recall the appropriate
11 witness to address that piece of evidence, because we have
12 not had the time to look at it or to dissect it or purport
13 to understand it prior to Mr. Smagula's appearance on the
14 stand this morning.

15 CMSR. HONIGBERG: Is that consistent
16 with everyone else's understanding?

17 MS. AMIDON: Yes.

18 CMSR. HONIGBERG: Sounds like it is.
19 Thank you, Ms. Amidon.

20 MR. BERSAK: Thank you.

21 CMSR. HONIGBERG: All right. So, are we
22 ready to start calling witnesses?

23 MR. BERSAK: Yes, we are.

24 CMSR. HONIGBERG: All right.

[WITNESS: Smagula]

1 MR. BERSAK: Call Mr. Smagula.

2 (Whereupon **William H. Smagula** was duly
3 sworn by the Court Reporter.)

4 MR. BERSAK: Ready?

5 **WILLIAM H. SMAGULA, SWORN**

6 **DIRECT EXAMINATION**

7 BY MR. BERSAK:

8 Q. Good morning, Mr. Smagula. Can you confirm that you
9 are the same William H. Smagula who previously
10 testified two and a half years ago, on March 12, 2012,
11 during the temporary rate portion of this proceeding?

12 A. Yes, I am.

13 Q. And, you are a Professional Engineer?

14 A. Yes.

15 Q. And, in which states are you registered as a PE?

16 A. Registered in the State of New Hampshire, Connecticut,
17 and Massachusetts.

18 Q. When you previously testified in this proceeding, you
19 were employed by Public Service Company of New
20 Hampshire as Director of Generation. Is that your
21 present position with the Company?

22 A. No. Since that filing, my position has changed to Vice
23 President of Generation for Public Service of New
24 Hampshire.

[WITNESS: Smagula]

1 Q. In your previous and present positions with PSNH, were
2 you involved with the Company's efforts to comply with
3 the Scrubber Law, the statutory scheme enacted by the
4 Legislature in 2006, that required the owner of
5 Merrimack Station, in Bow, New Hampshire, to install
6 and have operational scrubber technology to control
7 mercury emissions at Merrimack Units 1 and 2 no later
8 than July 1, 2013?

9 A. Yes.

10 Q. You initially submitted joint testimony with Mr. Robert
11 Baumann of Northeast Utilities Service Company
12 regarding the Scrubber Project on November 18, 2011.
13 And, that testimony was marked and admitted into the
14 record of this proceeding as "Exhibit 1", is that
15 correct?

16 A. Yes.

17 Q. And, that testimony, from November 18th, 2011, included
18 certain attachments that were included as Exhibit 1?

19 A. Yes.

20 Q. On June 15, 2012, did you submit in this proceeding
21 additional written prefiled direct testimony regarding
22 permanent rates for recovery by PSNH of all prudent
23 costs of complying with the requirements of the
24 Scrubber Law?

[WITNESS: Smagula]

1 A. Yes.

2 Q. Mr. Smagula, are you familiar with what's been marked
3 for identification as "Exhibit 11" in this proceeding,
4 that's a document entitled "Prepared Testimony of
5 William H. Smagula", which is 25 pages in length?

6 A. Yes, I am.

7 Q. And, is that Exhibit 11 your written prefiled direct
8 testimony of June 15, 2012?

9 A. Yes.

10 Q. Did you prepare or oversee the preparation of the
11 testimony contained in Exhibit 11?

12 A. Yes, I did.

13 Q. Do you have any corrections to any portion of that
14 prefiled testimony?

15 A. No, I do not.

16 Q. Do you adopt that testimony as your direct testimony
17 for purposes of this hearing?

18 A. Yes, I do.

19 Q. And, in that Exhibit 11, were there three attachments
20 included?

21 A. Yes.

22 Q. And, those attachments have been marked by the Clerk as
23 "Exhibits 11-1", "11-2", and "11-3", respectively. Two
24 years later, on July 11, 2014, did you submit written

{DE 11-250} [Day 1/Morning Session ONLY] {10-14-14}

[WITNESS: Smagula]

1 prefiled rebuttal testimony in this proceeding?

2 A. Yes. That's correct.

3 Q. What's been marked for identification as "Exhibit 12"
4 in this proceeding is a document entitled "Rebuttal
5 Testimony of William H. Smagula", it's 65 pages in
6 length. Is Exhibit 12 your written prefiled rebuttal
7 testimony of July 11, 2014?

8 A. Yes, it is.

9 Q. And, did you also prepare or oversee the preparation of
10 the testimony contained in Exhibit 12?

11 A. Yes, I did.

12 Q. Do you have any corrections to any portion of that
13 prefiled rebuttal testimony?

14 A. No, I do not.

15 MR. BERSAK: I should note for the
16 Commission that certain portions of what's been marked as
17 "Exhibit 12" have been stricken by previous orders of the
18 Commission. And, what's been filed with the Clerk and the
19 Court Reporter accurately strikes out the pieces of
20 testimony that are no longer part of the record here.

21 CMSR. HONIGBERG: Thank you, Mr. Bersak.

22 BY MR. BERSAK:

23 Q. Do you adopt what's been marked as "Exhibit 12" as your
24 testimony -- as your rebuttal testimony for purposes of

[WITNESS: Smagula]

1 this hearing?

2 A. I do.

3 Q. Exhibit 12, your rebuttal testimony, included 25
4 attachments, is that correct?

5 A. Yes.

6 Q. And, as you recall, the Commission previously ruled
7 that Attachments 3 and 4 to that rebuttal testimony be
8 stricken. So, those attachments have been removed.
9 The remaining 23 attachments have been marked "12-1
10 through 12-25, respectively. Do you have any
11 corrections to those attachments?

12 A. I do not.

13 Q. During the prehearing conference held in this
14 proceeding on September 30th, the parties were informed
15 that witnesses would be allowed to provide a very brief
16 five minutes or less overview of their testimony. Mr.
17 Smagula, could you please provide such a short
18 overview.

19 A. Yes, I will. Thank you. In 2006, the New Hampshire
20 Legislature enacted House Bill 1673, an act relative to
21 the reduction of mercury emissions into law. That law,
22 the Scrubber Law, found that installation of a wet flue
23 gas desulphurization system, or scrubber technology,
24 was in the public interest of the citizens of New

[WITNESS: Smagula]

1 Hampshire and the customers of PSNH. That law
2 specifically mandated the installation of specific
3 technology, the Scrubber, at a specific location,
4 Merrimack Station, by a specific date, no later than
5 July 1, 2013. That would achieve specific emissions
6 reductions results. Mercury emission reductions of at
7 least 80 percent of the affected sources at Merrimack
8 and Schiller Stations. The intent of that law was
9 clear, express, and unambiguous.

10 One of the parties at the table -- one
11 of the parties at the table that collaborated on the
12 passage of that bill was the Director of the Department
13 of Environmental Services' Air Resource Division,
14 Mr. Bob Scott, who we all know now as Commissioner here
15 at the PUC. During the legislative hearings on House
16 Bill 1673, Mr. Scott testified that the Scrubber Law
17 was intentionally drafted to be prescriptive.
18 Mr. Scott said that he personally advocated for that
19 himself. He testified "What we wanted to avoid is
20 extra time being given, another year, two years of a
21 selection process of what's the best technology, the
22 owners having to go to the PUC to convince them what
23 this" -- "what is this best technology."

24 He continued by saying, "What we are

[WITNESS: Smagula]

1 concerned about is we don't want to have this as a
2 method where we're constantly delaying the
3 installation. By calling out scrubber technology in
4 the bill, we're signaling PSNH, from the word "go", to
5 start to engineer, design, and build scrubber
6 technology right away."

7 We took Mr. Scott at his word. And,
8 PSNH, from the word "go", went forward to engineer,
9 design, and build the Scrubber. But it wasn't only
10 Mr. Scott that viewed the Scrubber Law as prescriptive
11 and mandating, the installation -- and mandating the
12 installation of the Scrubber. Every party in this room
13 had the same understanding. The Supreme Court had that
14 understanding, the Site Evaluation Committee had that
15 understanding, the Air Resource Council had that
16 understanding, the Attorney General had that
17 understanding.

18 I was very involved with the Scrubber
19 Project from its inception, and to its exceptionally
20 successful entry into commercial service. Every time
21 there was a review, a question, a comment, a decision
22 regarding the Project, I paid close attention. Whether
23 from the Legislature, this Commission, the DES, the
24 Site Evaluation Committee, the Air Resource Council,

[WITNESS: Smagula]

1 the State's Supreme Court, or other parties to this
2 proceeding, in each case, when the Project was first
3 moving forward, the message was clear: Move forward
4 and strive for maximum amount of emissions reductions
5 in the shortest amount of time. There was no
6 confusion. There was no ambiguity.

7 Knowing that every party, every agency,
8 and every judicial and quasi-judicial forum had
9 indicated the Law required PSNH to install the
10 Scrubber. We felt confident that, if we did a
11 world-class job of engineering, designing, and building
12 the Scrubber, at the best possible cost, if we ensured
13 our construction site was safe, and if the Scrubber
14 ultimately met and exceeded the emissions requirements
15 of the Scrubber Law, what we would be entitled to would
16 be full recovery of our prudent costs.

17 In 2009, the Legislature had an
18 opportunity to reconsider the Scrubber Law in light of
19 the firm 457 million estimated cost of the Project.
20 The Legislature heard the pros and cons of continuing
21 with the Project from a myriad of parties, including
22 most all the parties to this proceeding. After
23 considering the input it received, the Legislature
24 decided not to change the mandate of the Scrubber Law.

{DE 11-250} [Day 1/Morning Session ONLY] {10-14-14}

[WITNESS: Smagula]

1 The Majority Committee report to the House Science,
2 Technology & Energy Committee, on House Bill 496,
3 stated "The majority decided that, since the
4 Legislature mandated in 2006 for PSNH to install the
5 Scrubber without placing a limit on costs, to choose to
6 place a limit on the cost nearly three years later
7 would pose significant problems." The Science,
8 Technology & Energy Committee continued by stating "The
9 majority believed that placing a cap on cost recovery
10 for a legislatively mandated project was not only
11 arbitrary, but it would constitute a taking and be
12 unconstitutional. The majority was also concerned that
13 the passage of this bill would lead to a pause or
14 cancellation in the Project. This would not only have
15 significant environmental ramifications, but also would
16 lead to the loss of several hundred short-term and
17 long-term jobs related to the construction and
18 operation of the Scrubber.

19 The mandate in the Scrubber Law, the
20 mandate that everyone from the Legislature to the
21 Supreme Court on down recognized, is what my testimony
22 discusses. And, that is why we are here. PSNH, its
23 employees, contractors, suppliers, and consultants did
24 an exceptional job in complying with the mandate

{DE 11-250} [Day 1/Morning Session ONLY] {10-14-14}

[WITNESS: Smagula]

1 contained in the Scrubber Law. This is the best-run
2 project I've ever been associated with. If you don't
3 believe me, read the reports prepared by Jacobs
4 Consultancy, the Commission's own experts.

5 The Scrubber is reducing emissions of
6 mercury well beyond what the law required. We met and
7 exceeded the statutory public interest of achieving
8 significant reductions in mercury emissions at the
9 coal-burning electric power plants in the state as soon
10 as possible. The continued operation of Merrimack
11 Station and other affected sources are providing a
12 necessary commodity, electricity, on an economic basis
13 to PSNH's customers.

14 On behalf of PSNH, I'm here today to ask
15 the Commission to find that the investments PSNH has
16 made to comply with the mandate to the Scrubber Law
17 were prudent, and that PSNH is entitled to recovery of
18 those costs as specified in the Scrubber Law itself.

19 Q. Does that complete your statement, Mr. Smagula?

20 A. Yes, it does. Thank you.

21 MR. BERSAK: Thank you very much.

22 Mr. Smagula is available for cross-examination by the
23 parties.

24 CMSR. HONIGBERG: Okay.

[WITNESS: Smagula]

1 MS. CHAMBERLIN: Your Honor, we had
2 arranged for an order, and the OCA is going to go first.

3 CMSR. HONIGBERG: Oh, okay.

4 MS. CHAMBERLIN: If that's acceptable?

5 CMSR. HONIGBERG: Thank you. I was just
6 about to ask who was going to go first.

7 MS. CHAMBERLIN: Right? Or was it
8 Staff, correct, and then the OCA, is that right?

9 MS. AMIDON: That's what I thought.

10 MS. CHAMBERLIN: Sorry. Sorry. You're
11 right.

12 MS. AMIDON: Is there any disagreement?

13 MS. CHAMBERLIN: It was just among the
14 four of us.

15 CMSR. HONIGBERG: So, all right. Let's
16 get it clear. Staff is going to question next, then the
17 OCA, and then the other intervenors as you've apparently
18 already agreed?

19 MS. CHAMBERLIN: Correct.

20 CMSR. HONIGBERG: Okay. Good enough.

21 Ms. Amidon.

22 MS. AMIDON: Okay. Thank you. Good
23 morning.

24 WITNESS SMAGULA: Good morning.

CROSS-EXAMINATION

BY MS. AMIDON:

Q. Just for the record, one of the requirements of the statute was to reduce mercury emissions by a certain percentage over the baseline. Do you recall that?

A. Yes, I do.

Q. What I'm just trying to establish for the hearing record is when was that baseline established? And, I assume it was established by NHDES, the Department of Environmental Services?

A. Yes. The Company worked closely with New Hampshire Department of Environmental Services to establish both the input mercury baseline, which is the reference point from which the reduction is to be measured from, and that number has been established. We have provided reports to the Commission -- to the Department of Environmental Services, rather, to provide actual stack emission data for them to determine what the outlet level is. And, I think we are awaiting a final assessment from them on confirmation of that level. But the data is all available to the -- at Department of Environmental Services.

Q. And, so, the baseline has been established?

A. Yes.

[WITNESS: Smagula]

1 Q. As of -- do you know as of when? As of what date
2 approximately?

3 A. Last year, I believe.

4 Q. Okay. And, as I recall, those reports you're talking
5 about, you did have a third party come in to verify the
6 emissions?

7 A. Yes. That was done -- the actual emissions work was
8 done using a third party, using a protocol that was
9 approved by the DES, and with their representatives
10 onsite during all testing.

11 Q. And, also, if I recall, the contract you had with, I
12 don't know if it was the manufacturer of the equipment
13 or the installer, had a guarantee as to the reduction
14 of mercury, is that correct?

15 A. That's correct. Yes.

16 Q. Okay. I wanted to talk a little bit about the
17 secondary wastewater treatment facility. At what point
18 did the Company decide to install the secondary
19 wastewater treatment facility?

20 A. November 8th, 2011.

21 Q. And, from reading in the Jacobs report --

22 A. Oh, it's 2009, excuse me. It was '10, excuse me. Let
23 me see if I can find another date.

24 (Laughter.)

[WITNESS: Smagula]

1 BY MS. AMIDON:

2 Q. Well, --

3 A. It was November 8th, 2010.

4 Q. All right. So, now we have that. And, I'm looking at,
5 of course, now I have to find the exhibit number, I'm
6 looking at your testimony of June 5th, which is --

7 CMSR. HONIGBERG: June 15th?

8 MS. AMIDON: Fifteenth. Thank you very
9 much.

10 BY MS. AMIDON:

11 Q. Exhibit 11.

12 A. June 15th, the rebuttal testimony?

13 Q. June 15th, 2012. And, I don't know if I spoke that
14 correctly. It's the -- it was sort of the update, I
15 think that the Company was asked to provide an update.
16 So, you and Mr. Baumann filed testimony on June 15th,
17 2012.

18 CMSR. HONIGBERG: Wait, Ms. Amidon. I
19 don't think there's an Exhibit 11 that goes with the
20 June 15th testimony. I thought there were just three
21 exhibits with that. Do I have that wrong?

22 MR. BERSAK: The June 15th testimony of
23 Mr. Smagula was marked as "Exhibit 11". And, there were
24 three attachments to it, 11-1, 11-2, and 11-3. That's his

[WITNESS: Smagula]

1 direct testimony that was filed in the permanent rates
2 portion of this proceeding.

3 CMSR. HONIGBERG: And, is it a document
4 that was filed with that testimony that we're looking for
5 now?

6 MS. AMIDON: We're looking for the
7 testimony itself.

8 CMSR. HONIGBERG: Oh. Okay.

9 MS. AMIDON: I'm sorry if I didn't make
10 that clear.

11 MR. BERSAK: That's Exhibit 11.

12 CMSR. HONIGBERG: Okay.

13 MS. AMIDON: I apologize.

14 BY MS. AMIDON:

15 Q. Do you have that document, Mr. Smagula?

16 A. I do, yes.

17 Q. Okay. So, if you turn to Page 9 of 25 of your
18 testimony, at Line 14, and let me know when you're
19 there.

20 A. Yes. I'm there.

21 Q. You begin a discussion about the U.S. EPA's position
22 regarding the need to modify the National Pollution
23 Discharge Elimination System, or NPDES permit, to
24 accommodate the Clean Air Project. And, could you just

[WITNESS: Smagula]

1 summarize why the decision was made to install the
2 secondary wastewater treatment project and how that
3 related to the NPDES permit?

4 A. Yes. The station had been operating for many years
5 under an extension of a previously issued NPDES permit.
6 And, the EPA was working on establishing an updated
7 version of that permit. As part of the Scrubber
8 Project, a small liquid effluent would be an additional
9 waste stream that would have to be accommodated with
10 this water discharge permit for the station overall.
11 The Company had been working with the New Hampshire
12 Department of Environmental Services for over a year to
13 discuss the characteristics and details associated with
14 this additional waste stream from the Scrubber Project,
15 and had come to, after much technical discussion, had
16 an agreement to add some additional filtration
17 equipment. The Company had come to an agreement with
18 the State to what standards would be required and what
19 emission level limits would be required, in order to
20 allow the State to sustain the proper water quality
21 standards that it was required to be in charge of.

22 The Company did come to an agreement,
23 did make some modifications to the equipment that was
24 existing with the Scrubber Project. And, the typical

[WITNESS: Smagula]

1 rigor that the New Hampshire DES uses, and the very
2 detailed assessment that they make, has traditionally
3 been a reasonable outcome, after review by the EPA, and
4 that we would achieve their concurrence.

5 However, upon proceeding on the normal
6 path of review of such liquid effluent changes or
7 modifications, the EPA was reluctant and, in fact, did
8 not concur with the New Hampshire DES. They, as in a
9 different method of approach to this question,
10 determined that they did not want to accommodate this
11 incremental increase at this time, but that they would
12 await a issuance of the draft NPDES permit that they
13 were preparing for the overall station. And,
14 typically, if you have an incremental effluent, they
15 would use -- allow you to make a modification to your
16 permit, and then you would proceed, if your approach
17 and your proposal was acceptable. And, we thought it
18 was very acceptable, and the State was supportive of
19 it. However, they did not in this case, which is very
20 unique, and chose to allow it to become part of an
21 overall draft permit, which they said they would be
22 issuing in a few months.

23 This draft permit is very detailed and
24 very complicated. And, we were aware that, when these

[WITNESS: Smagula]

1 permits are issued, they, I won't say "often", but they
2 always would receive some type of appeal or questions
3 from various parties. That appeal process can take a
4 very long time. In fact, they did issue their draft
5 permit in September of 2011, and that draft permit is
6 still being discussed and edited, and I suspect will
7 not be issued for a long period to come.

8 So, our suspicion of extended time
9 before the issuance of a new permit came to reality.
10 Knowing that, and attending this November 8th, 2010
11 meeting at EPA, with attendees, by the Assistant
12 Commissioner of DES was with us, the Water Bureau head
13 was with us, other engineers from the DES were
14 accompanying PSNH, as we both went down together to try
15 to have EPA assist us with a permit modification. They
16 indicated that they weren't going to do that. The
17 statement that rings in my mind was that they
18 indicated, when entities come with a problem that they
19 would like us to assist with, if we do not come to a
20 mutual conclusion, that somehow the parties find a way
21 to deal with their problem.

22 So, that's why, in your earlier
23 question, when you asked "when did we make that
24 decision?", I think we made that decision to install

[WITNESS: Smagula]

1 additional treatment equipment on the ride home from
2 Boston on the eighth of November in 2010. We did some
3 additional research. And, while we had hoped we would
4 come to a mutual agreement between the State and the
5 EPA and the Company, that did not occur. In
6 anticipation of that, we had considered what options we
7 may wish to pursue. And, the options we pursued was to
8 install additional treatment technology. And, we
9 began, we hired an engineering company within weeks, a
10 company that had specialty experience in the technology
11 we were interested in. And, we started procuring
12 equipment in January of 2012.

13 Q. Well, can I just go back --

14 A. I guess I'd like to continue just for a few more
15 sentences please. If we did not do that, the Project
16 would not have been able to come on line. The plants
17 would not have been able to operate. And, AFUDC was
18 accumulating at \$2 million per month.

19 CMSR. HONIGBERG: Okay. So, are you --

20 **CONTINUED BY THE WITNESS:**

21 A. So, there was a technological solution, but it was also
22 a solution that was very focused on customer cost.

23 CMSR. HONIGBERG: Mr. Smagula, I don't
24 even remember what the question was that you were asked.

[WITNESS: Smagula]

1 So, it was a long time ago when the question was asked.

2 WITNESS SMAGULA: Yes.

3 CMSR. HONIGBERG: So, perhaps if we
4 could get a little bit more focused on the questions and
5 answers, we can go without people feeling the need to
6 interrupt. So, Ms. Amidon, I think you have another
7 question, right?

8 MS. AMIDON: Thank you.

9 BY MS. AMIDON:

10 Q. Is it fair to say that, if you were going to discharge
11 any additional effluent into the Merrimack River, you
12 would need a modified permit from the EPA?

13 A. Yes.

14 Q. And, so, essentially, the Company elected to install
15 the secondary wastewater treatment plant to get around
16 the need to have a permit?

17 A. A permit modification, yes.

18 Q. Yes. And, you would agree that this was the
19 information that was also conveyed to Jacobs?

20 A. Yes.

21 Q. And, would you agree that Jacobs was informed that the
22 secondary wastewater treatment plant was designed to
23 work with the primary plant -- water treatment plant to
24 produce zero liquid discharge?

[WITNESS: Smagula]

1 A. I think the plant was designed to have technology to
2 try to reduce the effluent to zero. However, in our
3 research and in our operations, we have concluded that
4 these systems achieve close to zero, but do not achieve
5 zero at all times.

6 Q. But, if you look at your testimony on Page 10,
7 beginning at Line 17, the statement there says "The
8 secondary wastewater treatment will take the treated
9 effluent from the primary wastewater treatment system
10 and produce a clean water stream, which is recycled
11 into the station for reuse, with any remaining dry
12 solids collected for disposal at a permitted landfill."
13 And, you did not change that testimony or correct it,
14 is that correct?

15 A. No, I did not.

16 Q. And, you did not modify it or update it, it wasn't sort
17 of changed, information about changed circumstances, is
18 that correct?

19 A. No, I did not specifically modify that. Our operations
20 has resulted in some additional knowledge learned, and
21 that was the statement I made at that time. And,
22 that's the statement we're still striving to achieve.
23 But, at this time, I am not sure that will be fully
24 achieved at all times.

[WITNESS: Smagula]

1 Q. So, can you tell me how much the secondary wastewater
2 treatment facility cost?

3 A. Approximately \$35 million.

4 Q. And, I know, initially, when you just had the primary
5 wastewater treatment plant installed, the Company was
6 hauling wastewater to publicly owned water treatment
7 facilities, is that correct?

8 A. Yes.

9 Q. And, you had permits from NHDES to do those, to do
10 those transfers of wastewater?

11 A. Yes.

12 Q. And, has the transfer of wastewater to these publicly
13 owned water treatment facilities continued after the
14 installation of the secondary wastewater treatment
15 plant?

16 A. Yes. When the facility is running, there are
17 occasional transport of effluents, yes.

18 Q. And, who pays -- what are the costs for -- strike that.
19 The costs for these transfers are passed onto
20 customers, is that correct?

21 A. Not at this time. The costs associated with operations
22 of the Scrubber Project are being accumulated, and they
23 are not charged to customers at this time.

24 Q. But is it the intent of the Company to recover those

[WITNESS: Smagula]

1 costs through this permanent rate case?

2 A. Yes.

3 Q. And, Mr. Smagula, I know you've read the statute. Are
4 you aware that RSA 125-O:13 requires the owner to get
5 all applicable permits?

6 A. Yes.

7 Q. And, are you familiar with RSA 125-O:17, I think
8 it's -- particularly I, that the owner can also
9 promote -- propose a different schedule for final
10 compliance and ask for a waiver with Department of DES
11 to give them such a variance in the schedule?

12 A. I'm not aware of that language applying to wastewater
13 effluent, but rather the Project in general.

14 Q. Well, isn't the wastewater effluent part of the Project
15 in general?

16 A. Yes.

17 Q. Okay.

18 A. But it is not affecting our schedule.

19 Q. Is there any reason why the Company waited until 2010
20 to address the effluent from the Scrubber when the
21 statute passed in 2006?

22 A. I believe, in my initial response, I did indicate the
23 reason for that was with regard to the inability to
24 have federal regulatory agencies, EPA, support our

[WITNESS: Smagula]

1 efforts, along with the DES.

2 Q. And, you talked about the draft permit with the EPA.

3 Is it true that the Company is seeking permission from
4 the EPA to discharge wastewater from the secondary
5 wastewater treatment plant or associated with the
6 Scrubber into the Merrimack River?

7 A. We are seeking the ability to discharge from the
8 primary wastewater treatment facility to the river,
9 which was our original position, supported by the DES,
10 and still is a technically and environmentally and
11 economically appropriate solution, consistent with the
12 industry in the United States.

13 Q. Does that mean that the secondary wastewater treatment
14 plant is not serving its function?

15 A. No. It means that it's serving its function right now,
16 because we need to operate it, with the inability to
17 have a liquid effluent discharge to the river.

18 Q. So, what becomes, if the EPA granted this permit to
19 allow you to discharge from the primary wastewater
20 treatment plant, what's the status of the secondary
21 wastewater treatment plant?

22 A. I think we will have to assess any future decision by
23 EPA, which we would expect in, well, I don't know what
24 period of time, to determine the use of the secondary

[WITNESS: Smagula]

1 system. It could be used to supplement what we do work
2 in the primary system in various ways.

3 MS. AMIDON: One moment please.

4 (Atty. Amidon conferring with Atty.
5 Sheehan.)

6 MS. AMIDON: Thank you. We have no
7 further questions.

8 CMSR. HONIGBERG: Ms. Chamberlin.

9 MS. CHAMBERLIN: Thank you. Good
10 morning, Mr. Smagula.

11 WITNESS SMAGULA: Good morning.

12 BY MS. CHAMBERLIN:

13 Q. The Scrubber Project is a multiyear construction
14 project, correct?

15 A. Yes, it is.

16 Q. And, PSNH had to make many important decisions
17 throughout the construction period?

18 A. Yes.

19 Q. And, to make a decision, PSNH would gather all the
20 facts. You agree?

21 A. Yes.

22 Q. PSNH would get expert opinions, if needed?

23 A. If needed, yes.

24 Q. PSNH would consider the alternatives?

{DE 11-250} [Day 1/Morning Session ONLY] {10-14-14}

[WITNESS: Smagula]

1 A. Yes.

2 Q. And, because the more information PSNH had, the better
3 the decision PSNH could make?

4 A. Yes.

5 Q. Agreed?

6 A. Generally --

7 (Court reporter interruption.)

8 **BY THE WITNESS:**

9 A. I said "That's generally true."

10 BY MS. CHAMBERLIN:

11 Q. In 2006-2009, you were the Director of PSNH Generation
12 in New Hampshire?

13 A. Yes, I was.

14 Q. You reported to John MacDonald?

15 A. Yes.

16 Q. And, at that time, Mr. MacDonald was a vice president?

17 A. He was, yes.

18 Q. And, Mr. MacDonald would report to then President Gary
19 Long?

20 A. That's correct. Yes.

21 Q. Your role was to gather information, and do you agree
22 with that?

23 A. My role was to oversee the Project, in order to make
24 sure reasonable decisions are being made and actions

{DE 11-250} [Day 1/Morning Session ONLY] {10-14-14}

[WITNESS: Smagula]

1 were carried out to execute our Project plan, while we
2 monitored the budgets and other things. So, I did a
3 number of things. I'm not sure "monitoring data" is
4 a -- I did do that, but it was not the only thing I
5 did.

6 Q. And, you would give information to Mr. MacDonald as
7 your immediate superior, correct?

8 A. Yes.

9 Q. Would you also -- you would also report to Mr. Long on
10 occasion?

11 A. On occasion there would be discussions with Mr. Long,
12 yes.

13 Q. So, early in the Project, PSNH decided to seek expert
14 help, correct?

15 A. We did on a number of issues, yes.

16 Q. PSNH hired R. W. Beck to conduct a contracting strategy
17 study, correct?

18 A. Yes. That was one task that we did use an outside
19 consultant for.

20 Q. PSNH also hired URS as a Construction Project Manager,
21 correct?

22 A. Yes.

23 Q. In May 2008, URS made a new Scrubber cost estimate,
24 correct?

[WITNESS: Smagula]

1 A. They provided the Company with a new Project cost, yes.

2 Q. That new estimate, in May 2008, was approximately
3 \$350 million?

4 A. It was \$457 million, I believe, was the new Project
5 cost.

6 Q. It ultimately went up to \$457 million, correct?

7 A. No. It went from 250 to 457.

8 Q. All right. The USR -- I mean, the URS report was dated
9 May 6, '08. This is Exhibit 27.

10 A. If I might see that, it would be helpful.

11 Q. Sure. 27-4, I believe.

12 CMSR. HONIGBERG: Were we talking about
13 an exhibit that's been marked?

14 MS. CHAMBERLIN: The exhibit has been
15 marked as "27", Exhibit 4. So, it's 27-4.

16 CMSR. HONIGBERG: We don't have any of
17 the exhibits up here. So, I'm not sure what arrangements
18 have been made on that one, but --

19 SP. CMSR. IACOPINO: Is it attached to
20 somebody's testimony?

21 MS. GOLDWASSER: Yes. It's attached to
22 Mr. Long's deposition. Do you not have that on your
23 Bench? Mr. Long's deposition is Exhibit 27. I can give
24 you copies, if you don't have them.

[WITNESS: Smagula]

1 CMSR. HONIGBERG: No, I have the
2 deposition transcript. Is it in the transcript or is it
3 an exhibit to the transcript? I may have those as well,
4 I'm just --

5 MS. CHAMBERLIN: It's an attachment to
6 the transcript.

7 CMSR. HONIGBERG: All right. I have --
8 okay, what exhibit number to the transcript?

9 MS. CHAMBERLIN: It's number 4. Long
10 deposition, Exhibit 4.

11 CMSR. HONIGBERG: I don't think we have
12 that. What we have is the transcript. And, I have
13 something that's labeled "Long Exhibit Number 12", I think
14 is the only exhibit number that I have, that we have up
15 here.

16 SP. CMSR. IACOPINO: Does it have a
17 Bates stamp on the bottom right corner?

18 MS. CHAMBERLIN: My copy does not. I
19 believe there is a Clerk's copy.

20 CMSR. HONIGBERG: Ms. Goldwasser is
21 offering --

22 MS. GOLDWASSER: I'm handing you two
23 copies.

24 CMSR. HONIGBERG: And exhibit book?

[WITNESS: Smagula]

1 MS. GOLDWASSER: Gary Long's deposition,
2 the deposition and all of the exhibits.

3 CMSR. HONIGBERG: Okay.

4 MS. GOLDWASSER: Thank you.

5 SP. CMSR. IACOPINO: Thank you very
6 much.

7 CMSR. HONIGBERG: Ms. Goldwasser, do we
8 need to make a copy of this for you? Is this your only
9 set?

10 MS. GOLDWASSER: We'll figure it out.

11 CMSR. HONIGBERG: Okay. Thank you. So,
12 I'm sorry, Ms. Chamberlin, what are we -- refresh my
13 memory, what exhibit number from this deposition?

14 MS. CHAMBERLIN: We are at Exhibit 4.
15 So, it's -- Exhibit 27 is the Long deposition. And, then,
16 there's Exhibit 4 is an attachment to that deposition.

17 CMSR. HONIGBERG: Okay.

18 BY MS. CHAMBERLIN:

19 Q. And, the one I'm looking at is just an answer to a Data
20 Request TC-04, Witness: William Smagula, Question
21 TC-010, dated 8/31/2012.

22 CMSR. HONIGBERG: All right. Now that
23 we have it, does Mr. Smagula have it?

24 WITNESS SMAGULA: No.

[WITNESS: Smagula]

1 CMSR. HONIGBERG: All right.

2 MS. GOLDWASSER: I believe there is a
3 binder with the Long deposition and the exhibits on the
4 witness bench already.

5 MR. BERSAK: There's a book with the
6 deposition transcript, but not with the exhibits attached.
7 Please take mine.

8 (Atty. Bersak handing binder to the
9 Witness.)

10 CMSR. HONIGBERG: We'll all be together
11 for a while, we'll get all this stuff worked out. Are we
12 all there?

13 WITNESS SMAGULA: I have the attachment,
14 yes.

15 MS. CHAMBERLIN: Thank you.

16 BY MS. CHAMBERLIN:

17 Q. And, if you look at the right-hand corner of your
18 answer, the date is May 6, '08, correct?

19 A. Yes, it is.

20 Q. And, the center of that page says "URS Washington
21 Division Merrimack FGD Project", correct?

22 A. Yes.

23 Q. And, if you look down to the right corner, in the bold
24 line, the "Total Washington Scope", do you see where I

[WITNESS: Smagula]

1 am?

2 A. Yes.

3 Q. And, that number is about \$350 million, correct?

4 A. Correct. That's not the cost of the Project.

5 Q. That was their estimate on May 8th, '08?

6 A. No. No, I think, if I may explain? If you look to the
7 left of the title of that line, which identifies the
8 \$353 million, it says the "Total Washington Scope".
9 URS, which was the subsequent name of Washington Group
10 International, so, they're one in the same company, was
11 authorized to execute a large portion of the Project,
12 but they did not execute the entire Project. For
13 example, PSNH expanded its transmission substation to
14 accommodate a power supply for the Project. PSNH built
15 a substation to provide power to the Project. PSNH
16 issued a number of purchase orders and managed a large
17 portion of the Project on its own. This cost does not
18 include AFUDC, it does not include Company overheads or
19 other costs. So, upon developing this data, it is a
20 large piece of the cost, but it is not the full piece
21 of -- it's not the full revised estimate of the
22 Project. So, knowing this information provided us with
23 the opportunity to then develop what the new revised
24 cost would be.

{DE 11-250} [Day 1/Morning Session ONLY] {10-14-14}

[WITNESS: Smagula]

1 Q. And, the new revised cost was the 457?

2 A. 457 million.

3 Q. All right. PSNH wanted to gather all the facts about
4 this new estimate, correct?

5 A. Yes.

6 Q. PSNH hired an expert to review the facts?

7 A. We hired Washington Group, which eventually was URS, to
8 assist us with developing what the direct costs would
9 be for a large -- the majority segment of the Project.
10 And, then, based on the schedule that had been
11 developed for the Project, and the ultimate cash flow
12 for that Project, and the additional work scope that
13 was beyond, was not part of their scope, we developed a
14 full Project cost over time, which could then be
15 analyzed for carrying costs, AFUDC, for Company
16 overheads, and other costs. So, yes. This was a
17 critical and very important element on some of the
18 larger variables. But there were additional elements
19 to the Project costs, which were also updated and put
20 into our new May Project cost estimate.

21 Q. PSNH hired PowerAdvocate to do a draft analysis of this
22 estimate, correct?

23 A. As the Project was -- no, I'm not sure that's
24 completely correct, and I'll try to clarify.

{DE 11-250} [Day 1/Morning Session ONLY] {10-14-14}

[WITNESS: Smagula]

1 Project -- PowerAdvocate was hired early in the Project
2 to assist us with contracting strategies. They had
3 experience and a resumé as a company of assisting large
4 projects with specification, text, and bidder list
5 development, in order to take advantage of certain
6 approaches to buying equipment, and other vendors that
7 may not have been familiar on the East Coast, and
8 broadening our ability to seek lowest costs. They
9 contributed to a contracting and specification
10 development strategy, which contributed to lowering
11 some costs for us. So, they were a consultant to PSNH
12 and URS, and that was the role that they provided to us
13 in the Project.

14 Q. Could you turn to Exhibit 27, Attachment 7.

15 A. To the Gary Long deposition?

16 Q. Yes.

17 A. Twenty-seven.

18 Q. This is a Data Request TC-04 --

19 A. I only have 18 exhibits here. Oh, number 7. I thought
20 you said "27", I'm sorry.

21 CMSR. HONIGBERG: Mr. Smagula, I'm
22 learning this, too. But Exhibit 27 is the Deposition of
23 Mr. Long. There are a bunch of exhibits to that
24 deposition transcript.

[WITNESS: Smagula]

1 WITNESS SMAGULA: Yes. Thank you. I --

2 CMSR. HONIGBERG: Just hold off,
3 Mr. Smagula. Just hold off one second. Let's go off the
4 record for a second.

5 (Brief off-the-record discussion
6 ensued.)

7 CMSR. HONIGBERG: Now go ahead.

8 BY MS. CHAMBERLIN:

9 Q. Is everybody at Long Exhibit 27, Attachment 7?

10 A. Yes, I am.

11 Q. And, it is a data request from TransCanada 04, and the
12 witness is William Smagula, correct?

13 A. Correct.

14 Q. And, the question states: "Please provide a copy of
15 the July 2008 PowerAdvocate report for PSNH referenced
16 on Page 2 of Attachment WHS-3." And, that is your
17 exhibit to your June 15th, 2012 testimony, correct?

18 A. Yes.

19 Q. All right. Now, looking at the exhibit, it's dated
20 June 17th, 2008, correct?

21 A. That's correct.

22 Q. And, looking at the next page, the purpose of the
23 analysis, it lists two purposes there, correct?

24 A. It does.

{DE 11-250} [Day 1/Morning Session ONLY] {10-14-14}

[WITNESS: Smagula]

1 Q. And, could you read those into the record please.

2 A. Sure. I'd just like to refresh myself on the context.

3 It says "The objective of this analysis is two-fold:

4 Explain why Merrimack Station's Clean Air Project cost

5 estimate is on the high end of the cost per kilowatt

6 range for a complete FGD retrofit relative to similar

7 FGD retrofit projects." And, "2. Discuss market

8 forces behind the capital construction project cost

9 increases in the utility industry, including retrofit

10 scrubber [costs] to better understand why Merrimack

11 Station's Clean Air Project cost estimate has increased

12 from an estimated 250 in 2006, to in excess of 350

13 today."

14 Q. Thank you. Now, on June 18th, the next day, PSNH made
15 a report to the Legislature on the Scrubber Project.

16 Do you recall that?

17 A. What was the question again?

18 Q. On June 18th, 2008, PSNH made a report to the
19 Legislature on the Scrubber Project?

20 A. That's correct.

21 Q. And, I'm looking at Exhibit 27, Attachment 17, on the
22 very last page. Is everybody there?

23 A. On which? I'm sorry, I'm not following where you are.

24 Q. This is -- we're still on Exhibit 27, which is the Gary

{DE 11-250} [Day 1/Morning Session ONLY] {10-14-14}

[WITNESS: Smagula]

1 Long --

2 A. Yes. On which -- which attachment?

3 Q. -- deposition. And, it's Attachment 17.

4 A. Seventeen. Yes.

5 Q. And, it's the very last page. So, it's right before
6 the little "18" tab.

7 A. Yes.

8 Q. And, this single page is the legislative update from
9 PSNH, correct?

10 A. It is.

11 Q. And, this page does not make reference to the
12 PowerAdvocate report, correct?

13 A. It does not.

14 Q. And, this report does not include the May 6th URS
15 Project cost estimate of 350 million, correct?

16 A. That's correct. The URS estimate, as I said, was a
17 segment of the larger Project. And, as we looked at
18 that information and tried to analyze what the final
19 costs might be, we got information from --

20 MS. CHAMBERLIN: Your Honor, if I may,
21 he's answered my question, and now he's going off on a
22 different direction.

23 CMSR. HONIGBERG: That is correct. You
24 have answered the question. I think the answer was "No,

[WITNESS: Smagula]

1 it did not." Your counsel may want to ask you further
2 questions for clarification, or someone else may.

3 WITNESS SMAGULA: Okay.

4 CMSR. HONIGBERG: But, at this point,
5 you've answered the question Ms. Chamberlin asked.

6 BY MS. CHAMBERLIN:

7 Q. Turning to Exhibit 7, which is the June 17th, 2008
8 report, --

9 CMSR. HONIGBERG: You're talking about
10 Exhibit 7 to the Long deposition?

11 MS. CHAMBERLIN: Yes. 27-7,
12 PowerAdvocate report.

13 BY MS. CHAMBERLIN:

14 Q. Now, on Page 5 of that report, it's not the Bates stamp
15 page, but just the page up at the -- at the bottom,
16 there's a chart showing other scrubber retrofit
17 projects, correct?

18 A. Yes.

19 Q. And, the projects are listed in order of price per
20 kilowatt, correct?

21 A. Yes.

22 Q. And, it starts with Project Number 1 at the top,
23 correct?

24 A. Yes.

[WITNESS: Smagula]

1 Q. And, goes to Project 18, and then Project 19 appears to
2 be Merrimack Station at the bottom, correct?

3 A. Yes.

4 Q. And, Merrimack has the highest price per kilowatt on
5 this chart, correct?

6 A. For sorting, yes. Sorting in that method, yes.

7 Q. Yes. Now, turning to the next page, there is a chart
8 labeled "Comparable Cost per Kilowatt". And, it shows
9 Merrimack Station as a square, correct?

10 A. It shows Merrimack Station in two ways, as a square and
11 as a triangle.

12 Q. Correct. So, the Merrimack Station as a square is at
13 the highest cost of the projects represented in this
14 chart, correct?

15 A. As a square, yes.

16 Q. And, then, it shows Merrimack as a triangle, correct?

17 A. Correct.

18 Q. And, the triangle represents the levelized cost of
19 Merrimack, correct?

20 A. Yes. It's levelized or station-specific costs, yes.

21 Q. And, this chart, the triangle is above that linear
22 representation of the other WFGDs, correct?

23 A. It's above the line, but below a number of other
24 projects, yes.

{DE 11-250} [Day 1/Morning Session ONLY] {10-14-14}

[WITNESS: Smagula]

1 Q. Yes. Now, turning on the next page, it discusses a
2 "Capital Construction Market" -- I mean, "Project
3 Market Trends". Is everybody there?

4 A. Uh-huh.

5 Q. And, Mr. Smagula, there's a Footnote Number 1 up at the
6 title, correct?

7 A. There is.

8 Q. And, that identifies where the data came from for this
9 section of the report?

10 A. Yes. It came from PowerAdvocate data.

11 Q. And, could you read the footnote into the record
12 please.

13 A. It says "PowerAdvocate PADatasource Market Report,
14 Construction Cost Indices for the U.S. Power Market,
15 Spring 2008."

16 Q. Thank you. And, the first paragraph on II, on Line 5,
17 contains the following phrase, and I will read it and
18 you can make sure I read it correctly: "the utility
19 industry finds itself in a period of time where there
20 seems to be no good indicator for investment
21 decisions." And, that phrase is contained in that
22 report, correct?

23 A. Yes. It's part of their overall discussion.

24 Q. Now, on Page 8, we have the adjusted Project Costs of

{DE 11-250} [Day 1/Morning Session ONLY] {10-14-14}

[WITNESS: Smagula]

1 the Scrubber Project, correct?

2 A. That's the label of the table, yes.

3 Q. Yes. And, there's another footnote at the bottom,
4 Footnote 1, correct?

5 A. There is a footnote, yes.

6 Q. And, it shows the assumptions used in creating this
7 chart. Is that a fair characterization?

8 A. I believe it shows some of the assumptions.

9 Q. And, could you just read Footnote 1 into the record.

10 A. Sure. "Project cost in 2012 dollars (Merrimack Station
11 in-service year) assuming 6.2 percent escalation in
12 prices per year."

13 Q. Now, on the following page, there is the "Adjusted
14 Comparable Cost per Kilowatt", and that chart is
15 similar to the one we discussed previously on Page 6,
16 in appearance, correct?

17 A. It's similar, yes.

18 Q. And, again, we have the square representing the
19 "Merrimack costs without adjustments", correct?

20 A. Yes.

21 Q. And, then, we have the triangle representing "Merrimack
22 costs as adjusted"?

23 A. Well, it's a levelized cost, which normalizes all the
24 other analyses, so that site-specific aspects can be

{DE 11-250} [Day 1/Morning Session ONLY] {10-14-14}

[WITNESS: Smagula]

1 treated fairly, so you get a curve that's of similar
2 data for all the projects that are represented. Yes.

3 Q. The chart on Page 9 is putting in chart form the data
4 that we looked at on Page 8, correct?

5 A. It looks like it is, yes.

6 Q. And, the footnote tells you what the assumption was
7 used by PowerAdvocate in putting together these charts,
8 as we discussed earlier?

9 A. There's no footnote on this chart -- oh.

10 Q. The footnote on Page 8.

11 A. Oh, on Page 8. What was your question again?

12 Q. The assumptions used in creating the chart is included
13 in Footnote 1, on Page 8?

14 A. I don't think it includes all of the assumptions used.
15 But it does explain some of the -- some of the
16 assumptions that were used. Not all of them, I don't
17 believe.

18 Q. Okay. And, the assumption identified here is the
19 escalation in construction prices?

20 A. Yes.

21 Q. Okay. Now, the report is marked "draft", correct?

22 A. Yes.

23 Q. And, this was not shared with the Legislature on the
24 June 18th update, correct?

[WITNESS: Smagula]

1 A. Correct.

2 Q. And, this was not shared with the PUC on June 8th
3 either, correct?

4 A. Not formally, no.

5 Q. There was also a final PowerAdvocate report, and I'm
6 looking at Exhibit 11-3. This is the attachment to Mr.
7 Smagula's testimony filed June 15th, 2012. Do you have
8 a copy of that?

9 A. I do.

10 CMSR. HONIGBERG: Shockingly, we do,
11 too.

12 (Laughter.)

13 BY MS. CHAMBERLIN:

14 Q. And, this report is dated March 2009, correct?

15 A. It is, yes.

16 Q. And, that is nine months after the draft report of
17 June 2008, correct?

18 A. Yes.

19 Q. Now, turning to Page 10 of the final report, there is a
20 chart labeled "Comparable Cost per Kilowatt". Is that
21 correct?

22 A. That's correct.

23 Q. And, there is a triangle representing the levelized
24 cost of Merrimack, correct?

[WITNESS: Smagula]

1 A. That's correct.

2 Q. And, there is no square representing the unadjusted
3 cost of Merrimack, correct?

4 A. Yes.

5 Q. And, on Page 14, there is a second chart also labeled
6 "Comparable Cost per Kilowatt", and there's a -- that's
7 correct? Mr. Smagula, can you just --

8 A. I'm getting to that. I'm fumbling. I'm sorry, I'm
9 fumbling.

10 Q. That's okay. Take your time.

11 A. All my thumbs. Yes, that's correct.

12 Q. And, this chart further adjusts costs for the size of
13 the unit, is that correct?

14 A. That's the way it's labeled, correct.

15 Q. Right. If you just read the Figure 3 label that's at
16 the bottom of the chart?

17 A. "Adjusted dollars per kilowatt for projects of
18 comparable size."

19 Q. And, there is a triangle representing the "adjusted
20 cost of Merrimack", correct?

21 A. That's correct.

22 Q. And, there's no square representing the unadjusted
23 cost, correct?

24 A. Correct.

{DE 11-250} [Day 1/Morning Session ONLY] {10-14-14}

[WITNESS: Smagula]

1 Q. Now, on July 30th, 2008, PSNH provided an update to PUC
2 Staff and OCA. This is the new Exhibit 17-6. And,
3 it's Kahal's testimony, Attachment 4.

4 CMSR. HONIGBERG: I'm sorry,
5 Ms. Chamberlin. What are we looking at now?

6 MS. CHAMBERLIN: We are looking at OCA
7 testimony of Mr. Kahal. And, it's identified on the chart
8 as "17-6". And, it's Bates -- the attachment is the OCA
9 has Bates stamped its attachments, and it's Bates stamp
10 145.

11 CMSR. HONIGBERG: Mr. Smagula, do you
12 have it?

13 WITNESS SMAGULA: I have it, yes.

14 MS. CHAMBERLIN: All right. Are we all
15 there?

16 WITNESS SMAGULA: Yes. I think so.

17 BY MS. CHAMBERLIN:

18 Q. And, the date of the update is July 30th, 2008, is that
19 correct?

20 A. That's correct.

21 Q. And, this, if we flip the page, the Executive Summary
22 states that, and that's the fourth arrow down, could
23 you just read the first two lines there please?

24 A. On the fourth arrow?

[WITNESS: Smagula]

1 Q. Yes.

2 A. "Despite the capital cost increases, Merrimack Station
3 remains economic for customers under expected
4 conditions."

5 Q. PSNH does not provide the June 2008 PowerAdvocate
6 report to Staff as part of the July 30th, 2008 update,
7 correct?

8 A. I don't believe that data is included, correct.

9 Q. And, the recommendation at that time was to move ahead
10 as quickly as possible. Is that a fair
11 characterization?

12 A. To continue to proceed with the Project.

13 Q. And, if you turn to Bates Page -- strike that. On
14 September 2nd, 2008, PSNH makes a written report to the
15 PUC, correct?

16 A. What was the date again?

17 Q. That's September 2nd, 2008?

18 A. Yes. Yes.

19 Q. And, I have that marked in the new exhibits as the --
20 the cover letter is Page -- is Exhibit 27-1 to the
21 Long's deposition. So, it was Exhibit Number 1 to
22 Long's deposition, which has been labeled "27-1" for
23 this hearing. And, that is dated September 2nd, 2008,
24 correct?

{DE 11-250} [Day 1/Morning Session ONLY] {10-14-14}

[WITNESS: Smagula]

1 A. I'm trying to put my finger on it. I think you'll have
2 to point me to where that is.

3 CMSR. HONIGBERG: Off the record.
4 (Brief off-the-record discussion
5 ensued.)

6 WITNESS SMAGULA: And, which tab or
7 which item?

8 MS. CHAMBERLIN: It's Number 1.

9 WITNESS SMAGULA: Number 1. Thank you.
10 Oh, yes.

11 BY MS. CHAMBERLIN:

12 Q. And, that's the cover letter, essentially, correct?

13 A. It is a letter, yes.

14 Q. And, then, the entire report follows, and that has been
15 identified as "20-6". And, this might take a minute
16 for everybody to get to it. 20-6, and, in this
17 version, Staff has identified it through a hyperlink.
18 I have --

19 MS. GOLDWASSER: Attorney Chamberlin?

20 MS. CHAMBERLIN: What?

21 MS. GOLDWASSER: Exhibit 9 to the Long
22 deposition I believe is the document that you're looking
23 for. So, everyone may have it already.

24 MS. CHAMBERLIN: Ah, very good. All

[WITNESS: Smagula]

1 right. So, it's also produced on Exhibit 9, 27-9.

2 BY CMSR. HONIGBERG:

3 Q. Have you found it, Mr. Smagula?

4 A. I have it, yes.

5 Q. Okay. On the very first page, I, the report is
6 characterized as "a comprehensive status report on
7 installation plans", is that correct?

8 A. Yes. I'd characterize it that way.

9 Q. And, turning to Page 8, the bottom paragraph is
10 numbered number "5", PSNH references legislative
11 updates, correct?

12 A. Correct.

13 Q. And, it -- on the next page, it provides a summary of
14 its legislative update for 2007. And, then, on Page 9,
15 it discusses the legislative update of 2008, in
16 Paragraph Number 2, is that correct?

17 A. That's correct.

18 Q. And, then, the next page provides a summary of the
19 update, correct? Page 10 we're on now. Is that
20 correct?

21 A. Yes.

22 Q. All right. Now, looking at the attachments to the PUC
23 Comprehensive Report, Attachment 1 is a Wall Street
24 Journal article, correct?

[WITNESS: Smagula]

1 A. Yes.

2 Q. And, then, Attachment 2 is the FERC, Federal Energy
3 Regulatory Commission, Office of Enforcement Report
4 presented on June 19, 2008, correct?

5 A. Yes.

6 Q. And, then, Attachment 3 is on Page 36. These are
7 Project -- detailed Project cost breakdown, correct?

8 A. Correct.

9 Q. And, then, Attachment 4, which is Page 37, is a
10 "Microscopic Net Present Value Calculation", correct?

11 A. It's a net present value of revenue requirements.

12 Q. Right. And, Attachment 5 and 6 are industry news
13 articles about power plants?

14 A. Yes.

15 Q. And, then, PSNH provides a memo of law?

16 A. Correct.

17 Q. And, PSNH does not provide the PowerAdvocate report to
18 the Commission, is that correct?

19 A. It's not -- it doesn't appear to be attached, correct.

20 Q. Now, going to the report itself, --

21 A. Which report?

22 Q. The September 2nd, 2008 report. Turning to Page 14 of
23 that report, Paragraph D, PSNH states that "Sensitivity
24 analyses were conducted", correct?

[WITNESS: Smagula]

1 A. That's correct.

2 Q. And, then, it identified key assumptions, one of which
3 is "capital cost", correct?

4 A. Yes.

5 Q. Another is "coal cost"?

6 A. Yes.

7 Q. And, another is "CO2 allowance cost", correct?

8 A. Those are the three identified there, yes.

9 Q. And, PSNH does not identify the price of natural gas as
10 a key assumption, correct?

11 A. It was not identified here. Correct.

12 MS. CHAMBERLIN: And, that's all I have.

13 Thank you.

14 CMSR. HONIGBERG: Who's going to go
15 next? Are you okay?

16 MS. GOLDWASSER: I'll be up.

17 CMSR. HONIGBERG: All right. I think
18 the Court Reporter needs five minutes to get his fingers
19 limbered up. So, we're going to take really five minutes.
20 So, that clock says 13 minutes after, 14 minutes after.
21 We're going to be back here before 20 after. All right?

22 (Whereupon a recess was taken at 11:14
23 a.m. and the hearing resumed at 11:22
24 a.m.)

[WITNESS: Smagula]

1 CMSR. HONIGBERG: Mr. Patch.

2 MS. GOLDWASSER: Good morning. Good
3 morning, --

4 CMSR. HONIGBERG: Or, Ms. Goldwasser.
5 Sorry.

6 MS. GOLDWASSER: Good morning, Mr.
7 Smagula.

8 WITNESS SMAGULA: Good morning.

9 BY MS. GOLDWASSER:

10 Q. You've worked at PSNH since 1978, is that right?

11 A. Yes. That's correct.

12 Q. And, PSNH is owned by Northeast Utilities or NU, is
13 that right?

14 A. It is now, yes.

15 Q. And, according to NU's website, it's an "energy company
16 based in Connecticut and Massachusetts, [which]
17 operates New England's largest energy delivery system."
18 Is that correct?

19 A. I believe it is, yes.

20 Q. And, it has about 3.6 million electricity and natural
21 gas customers?

22 A. I'll accept that.

23 Q. So, you don't have to, I have here a copy of NU's
24 website so that we can be on the same page.

{DE 11-250} [Day 1/Morning Session ONLY] {10-14-14}

[WITNESS: Smagula]

1 A. Okay.

2 MS. GOLDWASSER: Mr. Chairman, I can
3 offer this as an exhibit, but I think that I'll be asking
4 Mr. Smagula the information that's necessary from the
5 website. It's up to you how you'd like me to proceed.

6 CMSR. HONIGBERG: I'm inclined to mark
7 it. If you're going to be using it and showing it around,
8 I think it should be marked.

9 MS. GOLDWASSER: Okay.

10 (Atty. Patch distributing documents.)

11 MS. GOLDWASSER: Is that "Exhibit 30"
12 then?

13 MS. DENO: Yes.

14 CMSR. HONIGBERG: "Exhibit 30", yes.

15 (The document, as described, was
16 herewith marked as **Exhibit 30** for
17 identification.)

18 BY MS. GOLDWASSER:

19 Q. So, that website indicates that NU has several electric
20 subsidiaries, and those include the Connecticut Light &
21 Power Company, NSTAR Electric, PSNH, and Western
22 Massachusetts Electric Company, is that right?

23 A. Yes.

24 Q. And, it also has several gas subsidiaries, including

[WITNESS: Smagula]

1 Hopkinton LNG Corp., NSTAR Gas, and Yankee Gas Services
2 Company, is that right?

3 A. Yes.

4 Q. And, these companies have centralized administrative
5 support, is that right?

6 A. Yes.

7 Q. So, people like Jim Vancho, who is going to testify
8 later on in this docket, works out of NU headquarters?

9 A. That's correct.

10 Q. I'm going to ask you to turn back to the PowerAdvocate
11 document that Attorney Chamberlin was asking you about.
12 It's Exhibit 27-7 in the Long deposition. And, she was
13 asking you about Pages 5 and 6. And, I just want to
14 clarify for the record, the bottom line on Page 5,
15 where it says "Merrimack Station 458", and then it says
16 "354,931,538", that's about \$354 million, is that
17 right?

18 A. In the second column?

19 Q. In the third column, under "Project Cost"?

20 A. 354 million, correct.

21 Q. So, that doesn't include the full \$457 million that the
22 Company was estimating the Project would cost during
23 this time frame, does it?

24 A. I'd like to just refresh myself on the earlier pages

{DE 11-250} [Day 1/Morning Session ONLY] {10-14-14}

[WITNESS: Smagula]

1 please.

2 (Short pause)

3 **CONTINUED BY THE WITNESS:**

4 A. I believe that's correct.

5 BY MS. GOLDWASSER:

6 Q. And, does the chart on Page 6 that Attorney Chamberlin
7 asked you about reflect the \$354 million cost and not
8 the \$457 million cost?

9 A. Correct.

10 Q. Mr. Smagula, on Page 21, Lines 1 through 4, of your
11 rebuttal testimony, which I believe is Exhibit 12, you
12 reference the "Clean Air Project Cancellation Report".

13 CMSR. HONIGBERG: What page was that,
14 Ms. Goldwasser?

15 MS. GOLDWASSER: Page 21.

16 WITNESS SMAGULA: On Page 21, what line?

17 BY MS. GOLDWASSER:

18 Q. 1 through 4. I'm just indicating that you referenced
19 your "Cancellation Report"?

20 A. Oh, yes. I did. Yes.

21 Q. And, you provided that report in discovery?

22 A. I did.

23 Q. Do you have a copy of that report with you on the
24 Bench?

[WITNESS: Smagula]

1 A. I do.

2 Q. I believe this is "Exhibit 28" on the exhibit list.

3 And, Attorney Patch will provide the Bench with copies
4 of it.

5 (Atty. Patch distributing documents.)

6 BY MS. GOLDWASSER:

7 Q. Mr. Smagula, I'll direct you to the first page of that
8 report.

9 A. All right.

10 Q. At the bottom of that page, it indicates "An analysis
11 was performed" --

12 A. On what page?

13 Q. On the bottom of the cover page.

14 A. The cover page, okay.

15 Q. Are you with me?

16 A. I am, yes.

17 Q. "An analysis was performed to identify the total cost
18 exposure in the event that the Clean Air Project was
19 canceled at any given month from Project inception to
20 in-service." Is that what that says?

21 A. It is.

22 Q. And, the report is dated March 28th, 2014, is that
23 correct?

24 A. Correct.

[WITNESS: Smagula]

1 Q. PSNH didn't do an analysis of the cost exposure, if the
2 Clean Air Project was canceled at any time during the
3 construction of the Scrubber, did it?

4 A. No, it did not.

5 Q. And, the NERA witnesses, who will testify later in this
6 proceeding, they used this report when making
7 assumptions about the cost of canceling the Project, is
8 that correct?

9 A. I don't know what others will assume.

10 Q. The NERA witnesses are PSNH's rebuttal witnesses, the
11 economists.

12 A. Oh. I assume they used this as part of their reviews,
13 yes.

14 Q. Okay. I'm going to ask you to turn to Page 6 in the
15 report. In the middle of that page, there's a heading
16 that indicates "Chimney Contract"?

17 A. Yes.

18 Q. And, the first line in that section of that report
19 indicates "The Hamon-Custodis initial engineering
20 release for the chimney contract was made on July 16th,
21 2008, followed by contract award on December 9th,
22 2008." Did I read that correctly?

23 A. Yes.

24 Q. "Initial engineering release" means that you agreed

[WITNESS: Smagula]

1 with the contractor that they should start the work for
2 the Project, even though they hadn't been awarded the
3 contract yet, is that true?

4 A. They had been awarded the contract, but the contract
5 was not finalized in final form. So, they knew they
6 were going to get the work. And, as a result, in order
7 to sustain the schedule, and in the chimney, in
8 particular, to get that foundation and get that started
9 before the winter came, it was in the best interest of
10 the Project schedule to release them for their
11 engineering and design work, while we were finalizing
12 terms of the eventual document that became the
13 contract.

14 Q. Mr. Smagula, my question was merely that it means you
15 had agreed with the contractor that they should start
16 the work for the Project, even though the contract
17 hadn't been awarded, right?

18 CMSR. HONIGBERG: I think he disagreed
19 with it. He said "no, that's not right", and he explained
20 why it wasn't right.

21 BY MS. GOLDWASSER:

22 Q. During the time between July 2008 and December 2008,
23 was PSNH negotiating the final terms of the contract?

24 A. Yes.

[WITNESS: Smagula]

1 Q. How much was the initial release with respect to the
2 Hamon-Custodis contract?

3 A. I don't recall it at the moment.

4 Q. Do you know if the initial release limits how much the
5 contractor can be paid, if the Project is canceled
6 before the final contract is signed?

7 A. The initial release identified the specific scope of
8 work and a specific price.

9 Q. Moving onto the Siemens FGD contract that is addressed
10 on Page 7. The first line of that section indicates
11 "The Siemens Environmental Systems and Services (SESS)
12 initial engineering release was issued on July 10th,
13 2008 followed by a contract award on October 20th,
14 2008."

15 A. That's correct.

16 Q. And, again, you just indicated to me that the contract
17 award was not -- was not the later term, is that not
18 the correct term of art to use there?

19 A. The what?

20 Q. What a "contract award" is?

21 A. The "contract award" is the finalization of the
22 contract terms with all parties in final signature.
23 The initial release is determined, on projects of this
24 nature, it is very common for those. Long lead items

[WITNESS: Smagula]

1 to be initially released in order for the Project
2 schedule to be maintained. And, it's generally a
3 specific scope of work for a specific dollar amount.

4 Q. Do you know how much the total amount of the Siemens
5 FGD contract release was? The engineering release?

6 A. I'm afraid I don't have that piece of -- that number
7 handy at the moment.

8 Q. Do you recall how much the total amount of the
9 Hamon-Custodis contract was, the contract -- the full
10 contract that was awarded in December 2008?

11 A. I don't recall specifically. I think it was in -- it
12 was below \$10 million.

13 Q. Okay. I'm going to ask you --

14 A. For the -- well, just a minute. It looks like it was
15 between 12 and \$13 million.

16 Q. And, what was the full amount of the Siemens FGD
17 contract that was awarded in October 2008?

18 A. I don't recall specifically, but it was approximately
19 \$100 million.

20 SP. CMSR. IACOPINO: Can I just clarify?
21 We're talking about the full contract now, not the release
22 amount?

23 WITNESS SMAGULA: Correct.

24 SP. CMSR. IACOPINO: Okay. Thank you.

[WITNESS: Smagula]

1 BY MS. GOLDWASSER:

2 Q. I'm going to ask you to turn to Page 12 of your
3 Cancellation Report. And, this is a narrative
4 describing the termination costs associated with
5 canceling the Scrubber, is that correct?

6 A. That's correct.

7 Q. And, you include items such as demobilization, final
8 invoicing, proposal costs, profits, *etcetera*?

9 A. That's correct, yes.

10 Q. Your report doesn't include any mitigation of costs
11 should the Project be canceled, right?

12 A. I'm not sure I understand what "mitigation of cost"
13 means.

14 Q. So, for example, if a contractor or subcontractor
15 purchased materials, your report doesn't consider
16 whether those materials might be sold to another entity
17 or salvaged in some way?

18 A. I think, based on our experience, we did consider that
19 when we developed the overall cancellation costs for
20 this. And, that would be applicable if it were pipe or
21 other commodities that were common. But, in general,
22 most equipment, for a large project of this nature, is
23 customized. So, there would be a minimum amount of
24 that type of material that would be able to be

[WITNESS: Smagula]

1 salvaged, if you would.

2 Q. I'm going to ask you to turn back to Page 7 of your
3 report. There's a paragraph that indicates, it starts
4 with "For each", two-thirds of the way down the page?

5 A. Okay. Yes.

6 Q. The second sentence reads --

7 A. Uh-huh.

8 Q. -- "Material costs were assigned to the month that
9 purchase orders were released with fabrication costs
10 appropriately distributed over the fabrication period
11 leading up to delivery." Did I read that correctly?

12 A. You did.

13 Q. So, are you telling me that you looked at those
14 material costs and you discounted them in the case of a
15 cancellation?

16 A. There were times when, if there were material that was
17 a commodity, that that would be a consideration in that
18 judgment. But, as I said, the majority of the
19 equipment in this Project was designed for the Project,
20 and there would be a minimal amount of it. So, this
21 statement is generally correct. And, it's repeated, if
22 you look at it, it's repeated in all the different
23 contract discussions.

24 Q. I'm going to hand you a spreadsheet that you produced

[WITNESS: Smagula]

1 together with this report in response to discovery.

2 MS. GOLDWASSER: And, I'll indicate for
3 the record that this spreadsheet is identical to the one
4 that was produced, except that we lightened some shading,
5 so that it would print out in black and white. And, then,
6 we highlighted certain boxes, so that it would be easy to
7 figure out what we were talking about today.

8 CMSR. HONIGBERG: So, this is the same
9 as what, other than what you just said?

10 MS. GOLDWASSER: As a document that PSNH
11 produced in discovery.

12 CMSR. HONIGBERG: Is it marked as an
13 exhibit anywhere else?

14 MS. GOLDWASSER: No.

15 CMSR. HONIGBERG: Do people feel it
16 should be marked? We're going to be talking about?

17 MS. GOLDWASSER: Yes. Yes. It should
18 be marked as "Exhibit 3", is that correct?

19 MS. DENO: Yes.

20 SP. CMSR. IACOPINO: And, you want all
21 three pages marked as one exhibit, correct?

22 MS. GOLDWASSER: Yes, sir.

23 (The document, as described, was

24 herewith marked as **Exhibit 31** for

[WITNESS: Smagula]

1 identification.)

2 BY MS. GOLDWASSER:

3 Q. Mr. Smagula, this spreadsheet was developed by the PSNH
4 team and used to draft your report, is that correct?

5 A. Yes.

6 Q. And, it identifies how much PSNH claims would be due if
7 the Scrubber Project was canceled at any particular
8 point in time?

9 A. It is a summary of a number of factors that ultimately
10 leads to the charts and so on, yes.

11 Q. And, the charts that you referenced, you're referring
12 to the charts that were in your CAP Cancellation
13 Report, is that right?

14 A. Yes.

15 Q. And, that's Exhibit 28. So, looking at the first page,
16 the rows on the left-hand side represent various
17 contracts and categories of expenditures, is that
18 correct?

19 A. That's correct.

20 Q. And, the columns at the top represent snapshots in
21 time, is that right?

22 A. Yes.

23 Q. So, if we look on the left-hand side of the page, at
24 the bottom of the page, you can see "Bar Adj Actuals"

{DE 11-250} [Day 1/Morning Session ONLY] {10-14-14}

[WITNESS: Smagula]

1 highlighted in blue?

2 (Court reporter interruption.)

3 BY MS. GOLDWASSER:

4 Q. You can see "Bar", B-a-r, "Adj", A-d-g, "Actuals".

5 CMSR. HONIGBERG: A-d-j.

6 BY MS. GOLDWASSER:

7 Q. A-d-j, excuse me. Highlighted in blue.

8 A. Correct.

9 Q. And, that's the actual money that was spent, paid,
10 invoiced, and processed, and summed up from the actuals
11 accumulated from the rows above, is that correct?

12 A. That's the -- that's the monies spent, correct.

13 Q. Okay.

14 A. That's the first element in the -- one of the graphs.

15 Q. And, the next row, "Bar Adj Reimburse", in yellow,
16 that's the cost that PSNH estimated to have been
17 incurred, but not yet billed, including materials that
18 were purchased, is that right?

19 A. Correct.

20 Q. And, then, --

21 A. We refer to it as the "Project costs and liabilities".

22 Q. So, that's the Project costs and liabilities, not
23 including amounts that have already been invoiced and
24 paid, is that right?

{DE 11-250} [Day 1/Morning Session ONLY] {10-14-14}

[WITNESS: Smagula]

1 A. Correct.

2 Q. And, the next row in green, that's "Bar Adj Term".

3 And, those are the termination costs that we discussed
4 a minute ago that are the narrative about which is in
5 your report, is that right?

6 A. Yes. Those are reasonable and customary termination
7 costs.

8 Q. And, the last -- the last row is "Bar Adj Site", and
9 that's the cost that PSNH estimates for site
10 remediation, is that correct?

11 A. Site remediation and mothballing of equipment and
12 facilities, correct.

13 Q. And, for that row, you estimate \$5 million in site
14 remediation, if the Project was canceled through
15 June 2008, is that right?

16 A. That's correct.

17 Q. And, then, you estimate \$10 million, if the Project is
18 canceled between June and September, is that right?

19 A. That's correct.

20 Q. And, 16 million if between September and the end of
21 2008, is that right?

22 A. That's correct.

23 Q. And, then, 22 million, if the Project is canceled in
24 the first quarter of 2009, is that right?

{DE 11-250} [Day 1/Morning Session ONLY] {10-14-14}

[WITNESS: Smagula]

1 A. No. If it's in any part of 2009, and then it changes
2 in 2010 and in 2011.

3 Q. If I want to know the total cancellation cost for the
4 Project, I look in the row that is circled in purple,
5 is that right? Where it says "Site Remed Accum"?

6 A. Which one is "Site Remed Accum"?

7 Q. Yes. It's the purple circle.

8 A. Yes. That's the total liability.

9 Q. Okay. So, in September 2008, according to your
10 analysis, the cancellation of the Project would have
11 cost approximately \$53 million?

12 A. In September?

13 Q. Yes.

14 A. Correct.

15 Q. And, in November 2008, it would have cost approximately
16 \$74 million?

17 A. Correct.

18 Q. And, in March 2009, it would have cost approximately
19 \$128 million?

20 A. Correct.

21 Q. And, of that \$128 million, 45 million were actually
22 invoiced and paid, 21 million were anticipated,
23 39 million was termination costs, and 22 million was
24 site rehabilitation, is that right?

{DE 11-250} [Day 1/Morning Session ONLY] {10-14-14}

[WITNESS: Smagula]

1 A. Yes.

2 Q. Turning to the top of the page, I've highlighted in
3 yellow "Chimney". Do you see that line?

4 A. Yes.

5 Q. And, is that the Hamon-Custodis contract that we
6 discussed a minute ago?

7 A. Yes, it is.

8 Q. And, it indicates that, in September 2008, if the
9 contract had been canceled -- if the Scrubber had been
10 canceled, PSNH would have owed \$1.6 million, is that
11 right?

12 A. In what month?

13 Q. September.

14 A. And, what was the number again?

15 Q. \$1.6 million.

16 A. Yes.

17 Q. And, in November, if the Project had been canceled,
18 Hamon-Custodis would have been owed \$2.16 million, is
19 that right?

20 A. Yes.

21 Q. And, the contract was awarded on December 9th, is that
22 right?

23 A. Contract was finalized on December 9th.

24 Q. So, before the contract was finalized, PSNH owed the

{DE 11-250} [Day 1/Morning Session ONLY] {10-14-14}

[WITNESS: Smagula]

1 contractor \$2.16 million. And, I think you testified
2 earlier that you thought the total contract was in the
3 range of around 12 million, is that right?

4 A. I believe that's correct, yes.

5 Q. I'm going to ask you to open Mr. Long's deposition,
6 Exhibit 27, to Exhibit 1. Please scratch that. Why
7 don't you turn directly to Exhibit 9 of the Long
8 deposition, which is the attachment to the cover
9 letter that I just sent you to. And, the Commission
10 has already heard testimony about that. Can you turn
11 to Page 6 of that attachment, that's the first page in
12 the exhibit. The last line of that page, are you
13 with me?

14 A. Yes.

15 Q. The last line indicates "To date, PSNH has spent
16 approximately \$10 million on the Clean Air Project."
17 Is that right?

18 A. Yes. That's what it says.

19 Q. And, then, on Page 9, PSNH indicated to the Commission,
20 in September 2008, in the middle of Paragraph 1, that
21 "negotiations are in final stages on both contracts.
22 And, the contracts were expected to be executed this
23 week; however, as a result of the initiation of this
24 inquiry, such contracts must await the Commission's

[WITNESS: Smagula]

1 action in this inquiry." Did I read that correctly?

2 A. I'm not sure where you're reading that.

3 Q. Okay. We're on Page 9.

4 A. Yes. I've got Page 9.

5 Q. You see where it says "C. Activities Performed during
6 2008 to date"?

7 A. Yes.

8 Q. In the middle of that paragraph, I'll start farther up.
9 It starts "As a result of these sequential construction
10 requirements, both the scrubber island and chimney
11 specifications were prioritized and sent out to bid
12 first," --

13 A. Uh-huh.

14 Q. -- "vendor bid proposals were received, bid proposals
15 were reviewed to identify the lowest evaluated bidder
16 and negotiations with lowest evaluated bidders were
17 undertaken." And, then, it continues. "The
18 negotiations are in final stages on both contracts.
19 And, the contracts were expected to be executed this
20 week; however, as a result of the initiation of this
21 inquiry, such contracts must await the Commission's
22 action in this inquiry." Is that correct?

23 A. Yes. That's what it says.

24 Q. And, those two contracts that are referenced, the

[WITNESS: Smagula]

1 "scrubber island" and "chimney specifications", are
2 those the Siemens and Hamon-Custodis contracts that
3 we've been discussing this morning?

4 A. Yes.

5 Q. And, by the time PSNH had filed the September 2nd, 2008
6 filing, PSNH had entered into these initial engineering
7 releases, is that right?

8 A. Yes.

9 Q. Turning back to your testimony, excuse me, at Page 13,
10 in your rebuttal testimony. At Line 10, you indicate
11 "PSNH performed economic analyses to assess the impacts
12 the Scrubber Law mandate would have on our customers."
13 Did I read that correctly?

14 A. Yes.

15 Q. When were those analyses performed?

16 A. They were performed in June of 2008.

17 Q. Are you referencing any other economic analyses in that
18 sentence?

19 A. No.

20 Q. I'm going to provide you with a copy of Data Request
21 TC-01-009.

22 CMSR. HONIGBERG: Is this already marked
23 as an exhibit?

24 MS. GOLDWASSER: No, it is not.

[WITNESS: Smagula]

1 (Atty. Patch distributing documents.)

2 CMSR. HONIGBERG: And, are we marking it
3 as "32"?

4 MS. GOLDWASSER: Yes, sir.

5 (The document, as described, was
6 herewith marked as **Exhibit 32** for
7 identification.)

8 BY MS. GOLDWASSER:

9 Q. This data request sought information that was "provided
10 to elected or appointed government official in New
11 Hampshire regarding PSNH's position on Senate Bill 152
12 and House Bill 496 in 2009", is that right?

13 A. Yes.

14 Q. And, Senate Bill 152 sought to study the Scrubber, is
15 that right?

16 A. I don't recall the specific words, but there was a
17 number of proposed bills, two, I believe, that were
18 interested in reviewing that Project.

19 Q. And, I'm going to ask you to turn to Page 6 of the data
20 response, which is Page 1 of a presentation. And, that
21 looks like a presentation that someone from PSNH must
22 have given, is that right?

23 A. Someone from PSNH prepared it. I don't recall who gave
24 it.

[WITNESS: Smagula]

1 Q. Okay. And, the next page, Page 7, indicates that the
2 agenda includes "The Clean Air Project", the "Cost",
3 "Project Benefits", "Senate Bill 152", and "The Bridge
4 to New Hampshire's Clean Energy Future", is that right?

5 A. Yes.

6 Q. Are you aware of when the public hearings were on
7 Senate Bill 152?

8 A. They were in the Spring of 2009.

9 Q. So, March 2009, around there?

10 A. Around there, yes.

11 Q. I'm going to ask you to turn to Page 19 of this
12 presentation. So, around March 2009, PSNH developed a
13 presentation regarding "Economic and Commodity
14 Validity" -- "Volatility", excuse me, and referenced
15 "Significant cost increases reflective of national and
16 the world economy", and "Increased financing costs", is
17 that right?

18 A. What page are you on?

19 Q. Page 19.

20 A. Of the presentation?

21 Q. Yes. It's Page 19, Bates Page 19?

22 MS. AMIDON: Page 14 of the
23 presentation.

24 MS. GOLDWASSER: Page 14 of the

[WITNESS: Smagula]

1 presentation, and Bates Page 19 of the data response.

2 WITNESS SMAGULA: I have it now, yes.

3 Thank you.

4 BY MS. GOLDWASSER:

5 Q. I can ask the question again. This presentation that
6 was given indicates "Economic and Commodity Volatility.
7 Significant cost increases reflective of national and
8 world economy", and "Increased financing costs", is
9 that correct?

10 A. Yes.

11 Q. And, on the next two pages, it looks like PSNH has
12 updated information regarding capital costs and
13 construction costs?

14 A. Correct.

15 Q. And, if you turn to Bates Page 24, or the presentation
16 Page 19, it indicates "At every step of the way, we
17 have affirmed pricing to ensure it is in line with
18 marketplace. Independent firms retained to provide
19 market analysis and price benchmarking in 2005, 2006,
20 2007, 2008, and 2009. And, confirmed project costs are
21 consistent with market prices for projects of similar
22 scope and size." Is that right?

23 A. Yes.

24 Q. But PSNH didn't update the economic analysis you

[WITNESS: Smagula]

1 reference at Page 13 of your rebuttal testimony, isn't
2 that right?

3 A. That's correct.

4 Q. It didn't take another look at coal and natural gas
5 prices, and it didn't take another look at migration
6 levels, did it?

7 A. No.

8 Q. On Page 29, Bates Page 29 of the same presentation,
9 that's Page 24 of the presentation, it says "PSNH
10 customers could be on the hook for \$300 million in
11 stranded costs, with nothing to show for it;
12 230 million for Scrubber costs already committed, and
13 63 million for undepreciated costs of Merrimack Station
14 in 2013", is that right?

15 A. That's what it says, yes.

16 Q. The spreadsheet that we were discussing a few minutes
17 ago, you can pull that back, that's Exhibit --

18 CMSR. HONIGBERG: Thirty-one.

19 BY MS. GOLDWASSER:

20 Q. Thirty-one. That indicated that, if the Project was
21 canceled in January 2009, it would have cost
22 \$106 million; if it had been canceled in February 2009,
23 it would have cost \$116 million; and, if it had been
24 canceled in March 2009, it would have been

[WITNESS: Smagula]

1 \$128 million, is that right?

2 A. Yes.

3 Q. So, PSNH indicated to the public in March 2009 that it
4 would cost \$230 million to cancel the Project?

5 A. I don't believe that's what it says. It says those
6 were the costs that were committed. I think that that
7 is the -- that is the answer to the question "how many
8 dollars were committed?" or "how many contract" --
9 "what is the total amount of the contractual commitment
10 that the Company has made?"

11 Q. I guess we may disagree with respect to what it means
12 to say --

13 A. Yes.

14 Q. -- "PSNH customers could be on the hook for
15 \$300 million in stranded costs"?

16 A. I think it's the summation of those two numbers, but
17 I'm trying to explain that the "costs committed" are
18 exactly that, costs committed. And, depending on when
19 a decision is made to progress or not progress with the
20 Project, the costs at that time would be whatever the
21 costs are. So, this was a generalized statement of
22 the -- some of the values that were being discussed at
23 that time.

24 Q. I'm going to refer you to Data Response TC 6-038, which

[WITNESS: Smagula]

1 Attorney Patch will hand you.

2 (Atty. Patch distributing documents.)

3 CMSR. HONIGBERG: This is "Exhibit 33"

4 then?

5 MS. GOLDWASSER: Yes.

6 (The document, as described, was

7 herewith marked as **Exhibit 33** for

8 identification.)

9 BY MS. GOLDWASSER:

10 Q. And, this question asked PSNH for "price forecasts for
11 natural gas, electric and coal produced by or available
12 to PSNH, its affiliates, or parent company from oh,
13 2005 to 2014", is that right?

14 CMSR. HONIGBERG: Just a moment.

15 Mr. Glahn.

16 MR. GLAHN: I hate to be the first
17 person to object, object in this proceeding, but if I may?

18 CMSR. HONIGBERG: Somebody was going to
19 be it, Mr. Glahn.

20 MR. GLAHN: There will be others, I'm
21 sure. We were advised last week that we should raise the
22 issue of adverse --

23 (Court reporter interruption.)

24 MR. GLAHN: -- adverse inference as soon

[WITNESS: Smagula]

1 as it arose.

2 MS. GOLDWASSER: I'm sorry, I can't hear
3 Mr. Glahn.

4 CMSR. HONIGBERG: Mr. Glahn, you can sit
5 and use the microphone.

6 MR. GLAHN: We were advised that we
7 should raise the issue of adverse inference as soon as it
8 arose, and I'm raising it now. What the Commission did in
9 this proceeding is to say that there are two sanctions
10 that should apply to TransCanada's refusal to provide
11 information. The first one was striking portions of
12 Mr. Hachey's testimony. The second was that an adverse
13 inference would be drawn.

14 With respect, I think what the
15 Commission was really referring to is a sanction, because
16 the Commission is the fact-finder here. The Commission
17 has determined that TransCanada intentionally withheld
18 information about gas price forecasts. So, no inference
19 needs to be drawn that the information that TransCanada
20 had in its possession would be adverse to TransCanada's
21 position.

22 I'd suggest that the appropriate
23 sanction, which is the term that the Commission used, is
24 to prohibit TransCanada from supporting or opposing any of

[WITNESS: Smagula]

1 its designated claims or defenses, any of its arguments
2 dealing with gas price forecasts or fracking, which is the
3 information it withheld. And, what Ms. Goldwasser is now
4 getting into is PSNH's projection of gas forecasts. That
5 has been stricken from Mr. Hachey's testimony.

6 And, in its order, the Commission
7 referenced the New Hampshire Rules of Civil Procedure,
8 referencing Rule 21:2-b, which is the "adverse inference"
9 section. But right below that is 21:2-c, which says "An
10 evidence sanction that prohibits the offending party from
11 introducing certain matters into evidence." Same is true,
12 by the way, with Federal Rules of Civil Procedure, which
13 specifically provide, as a sanction for refusal to obey a
14 discovery order, prohibiting that party from supporting or
15 opposing designated arguments.

16 So, it would be my position that,
17 throughout this proceeding, TransCanada is not entitled to
18 inquire of witnesses about issues of gas price forecasts
19 or fracking. And, the reason for that, of course, is, not
20 only a sanction from the Commission for their refusal to
21 obey your orders, but rather a due process argument.
22 Which is, how do we rehabilitate this witness or any other
23 witness contrary to what Ms. Goldwasser might ask, if we
24 don't have information from them, which they have, by your

[WITNESS: Smagula]

1 own terms, "intentionally withheld" on these two issues.

2 So, I would ask that they not be
3 permitted to inquire about or advance their arguments on
4 gas price forecasts or fracking as a sanction for their
5 refusal to obey your orders.

6 CMSR. HONIGBERG: Ms. Goldwasser.

7 MS. GOLDWASSER: The Commission has
8 already answered this question, and that's in, excuse me,
9 in Order 25,718. The Commission ordered PSNH to provide
10 the information requested in Data Requests 6-038, 6-039,
11 6-208, and 6-209. I can rehash the responses that we
12 provided -- the motion to compel that we filed with
13 respect to this issue and address Attorney Glahn's
14 arguments. But I think this is really just another motion
15 for reconsideration here.

16 I further would reference -- would refer
17 the Commission to Order Number 24,489, which is an order
18 from 2005, indicating that parties that don't provide
19 testimony can't be required to respond to discovery. What
20 Mr. Glahn is saying is, not only should we not be able to
21 talk about the testimony that was stricken from
22 Mr. Hachey's testimony, but, further, we shouldn't be able
23 to address these questions with PSNH's own witnesses. The
24 very witnesses that are asking the ratepayers of New

[WITNESS: Smagula]

1 Hampshire to pay for a \$422 million expenditure. The
2 information that PSNH has with respect to these issues and
3 how they answered the data responses is far more probative
4 than anything TransCanada could have had or would have
5 had.

6 MR. GLAHN: If I may?

7 CMSR. HONIGBERG: Mr. Glahn, briefly.

8 MR. GLAHN: Yes. It hasn't been
9 answered at all. The fact that the Commission ordered
10 PSNH to provide information doesn't mean that this party
11 may use that information, when they refused to provide the
12 very same information. The Commission said in its order
13 that it would take this up during the hearings and decide
14 what the scope of the sanction was in the hearing.

15 CMSR. HONIGBERG: Does any other party
16 have a position that isn't "I agree with so and so"?
17 Mr. Sheehan.

18 MR. SHEEHAN: If I may. I believe the
19 sanction that Mr. Glahn is suggesting was certainly one
20 that the Commission could have ordered in the so-called
21 "adverse inference" thing, but chose not to, and I believe
22 the sanction is a bit narrower. That it's only when a gas
23 report, for example, from TransCanada would otherwise be
24 relevant to whatever the question is. And, since it's not

[WITNESS: Smagula]

1 here, then you would be able to draw the inference that,
2 if such a report was here, you could infer it would
3 unfavorable to TransCanada.

4 The sanction that I think Mr. Glahn is
5 suggesting goes a bit further than that. And, I don't
6 think that's what was in the adverse inference order.

7 CMSR. HONIGBERG: Does anyone have
8 anything else who hasn't already spoken? Mr. Glahn, do
9 you want to add anything, or Ms. Goldwasser, just --

10 MR. GLAHN: Yes. In response --

11 CMSR. HONIGBERG: Hang on. Hang on one
12 second, one second. Mr. Glahn, why don't you respond to
13 Mr. Sheehan, and, Ms. Goldwasser, then you'll get a
14 chance.

15 MR. GLAHN: Precisely -- Mr. Sheehan
16 made precisely my point. The Commission didn't rule on
17 that, because it reserved the issue for the hearing. And,
18 this is exactly the time, it was TransCanada is trying to
19 use information on the very topic that it refuses to
20 produce intentionally.

21 CMSR. HONIGBERG: Ms. Goldwasser.

22 MS. GOLDWASSER: I have two points. The
23 first is that I think the order is pretty clear on its
24 face, and it strikes certain elements of Mr. Hachey's

[WITNESS: Smagula]

1 testimony, it indicates that it will determine how to
2 apply the adverse inference that is annunciated in the
3 order during the proceedings. Not to forbid TransCanada
4 from asking information about -- or, asking questions
5 about information that this Commission has already ruled
6 relevant and has already compelled PSNH to provide. So,
7 we're talking about two totally distinguished things.

8 The other thing is that the Commission
9 doesn't know what information we're going to seek from
10 PSNH with respect to this line of questioning. And, so, I
11 respectfully ask that you permit us to go down this path,
12 and determine, after you've heard the evidence, what value
13 you're going to accord to it.

14 CMSR. HONIGBERG: Okay. Just a moment.
15 We're going to confer.

16 (Commissioners and Atty. Ross
17 conferring.)

18 CMSR. HONIGBERG: We're going to
19 overrule the objection, largely for the reasons I think
20 stated by Mr. Sheehan. But we understand this line of
21 questioning to be directed at PSNH's information, is that
22 right, Ms. Goldwasser?

23 MS. GOLDWASSER: Yes.

24 CMSR. HONIGBERG: So, with that

[WITNESS: Smagula]

1 understanding, the objection is overruled. Was there
2 actually a question finished? I'm not even sure.

3 MS. GOLDWASSER: I believe I had merely
4 referred us to Data Response 6-038. And, I would ask, I
5 have not an insignificant amount left. And, it's 12:10.
6 I just wanted to check. I can continue or we can break
7 now? I note that the court reporter has been going for a
8 while. So, I just wanted to check with you.

9 CMSR. HONIGBERG: Want to define "not
10 insignificant"?

11 MS. GOLDWASSER: That's always a fun
12 question to ask a lawyer, isn't it? Maybe half an hour.

13 CMSR. HONIGBERG: Okay. Let's try and
14 finish that then.

15 MS. GOLDWASSER: Okay.

16 BY MS. GOLDWASSER:

17 Q. Now that I recall, Mr. Smagula, let's just -- I'll
18 recall what question PSNH was asked in response to
19 6-038. And, that was "any and all price forecasts for
20 natural gas, electric and coal produced by or available
21 to PSNH, its affiliates, or parent company from 2005
22 through 2014." Do you see that?

23 A. I do.

24 Q. And, for the record, we all agreed that the request

[WITNESS: Smagula]

1 should be capped at 2011, is that right?

2 A. Is that a question to me?

3 Q. Yes. Yes. In other words, the range of time at issue
4 here is 2005 through 2011, is that right?

5 A. Yes.

6 Q. And, this response is provided for PSNH, NU, and all of
7 the affiliates we discussed earlier, is that right?

8 A. I think it was, yes. That was the question.

9 Q. Okay. And, your response responded to that question?

10 A. Correct.

11 Q. Now, the first part of your response references "TC
12 01-002 SP-01". And, the response indicates that PSNH
13 "provided the fuel price forecasts available to PSNH in
14 2008 including NYMEX (natural gas) and broker (coal)
15 forward price quotations from June 2008, and fuel price
16 forecasts (various) received from industry consultants
17 in February, March, July, and August 2008." Is that
18 right?

19 A. Yes.

20 MS. GOLDWASSER: Now, I've asked Mr.
21 Patch to provide -- provide you with a copy and to provide
22 the Commission with a copy of TC 01-002-SP01, and also,
23 with the next question I'm going to ask you about, which
24 is TC 6-039. And, I would ask that those two documents

[WITNESS: Smagula]

1 get marked as "Exhibits 34" and "35".

2 MR. BERSAK: Which one was "34" again
3 please?

4 MS. GOLDWASSER: The 01-02-SP01 is "34",
5 and 6-039 is "35".

6 MR. BERSAK: Thank you.

7 CMSR. HONIGBERG: And 6-039 is just
8 making its way around now?

9 MS. GOLDWASSER: Yes.

10 (Atty. Patch distributing documents.)

11 (The documents, as described, were
12 herewith marked as **Exhibit 34** and
13 **Exhibit 35**, respectively, for
14 identification.)

15 BY MS. GOLDWASSER:

16 Q. Mr. Smagula, you should have Mr. Hachey's testimony
17 available to you on the witness bench. Do you see it
18 there? And, can you turn to Bates Page 159? I believe
19 that that's actually a copy of 01-002-SP01, is that
20 right?

21 A. This document is not Bates paged. So, can you give me
22 another reference? Oh. What page?

23 Q. Let me help you.

24 (Atty. Goldwasser approaching witness.)

[WITNESS: Smagula]

1 MS. GOLDWASSER: My apologies. I don't
2 think I needed to mark that twice.

3 CMSR. HONIGBERG: That's probably right.
4 We were beginning to wonder how many different pieces of
5 paper you wanted us to look at at once?

6 MS. GOLDWASSER: My apologies. I don't
7 know if you want me to unmark it or just leave it, because
8 it would be easier to do that?

9 CMSR. HONIGBERG: Just leave it.

10 MS. GOLDWASSER: Okay.

11 CMSR. HONIGBERG: It's a nice single
12 piece of paper we can find easily right now.

13 MS. GOLDWASSER: I'm going to look on,
14 my apologies for standing right here.

15 (Court reporter interruption.)

16 CMSR. HONIGBERG: Mr. Smagula was on it.
17 He has the microphone right before her.

18 BY MS. GOLDWASSER:

19 Q. I'm going to look on with Mr. Smagula. We're looking
20 at Bates Page 139, which is the response that's
21 referenced in TC 6-038. And, Mr. Smagula, just to go
22 through those, that attachment very quickly, what was
23 provided by PSNH, the first page is on Page 160. Is
24 that NYMEX closing prices?

[WITNESS: Smagula]

1 A. That's what it's labeled as, yes.

2 Q. And, the next page is ICAP, an ICAP coal forecast, is
3 that right?

4 A. Correct.

5 Q. And, then, the next several pages are unlabeled price
6 forecasts, is that right? And, if you keep turning the
7 page, you'll see it goes from Page 162, all the way
8 through 172. Those don't have a title where they came
9 from, but they indicate "various price forecasts", is
10 that right?

11 A. Yes.

12 Q. And, the rest of that response, from Page 173 on, is
13 coal price forecasts, is that right?

14 A. That's correct.

15 Q. And, turning back to the response to TC 6-038, there's
16 a second paragraph. The first paragraph references TC
17 01-02, and there's a second paragraph. And, that
18 paragraph indicates -- are you with me?

19 A. Yes. Yes.

20 Q. "The Company has subscribed to industry consultants
21 over the period requested; however as part of a record
22 retention process does not have files prior to 2007."
23 Did I read that correctly?

24 A. You did.

[WITNESS: Smagula]

1 Q. What does NU's record retention process require?

2 A. I don't recall the last time I read that program, but
3 it does require the Company to keep certain files. But
4 there are many categories of information, in
5 particular, things that are publicly available and that
6 are available in -- to have access in other ways, to
7 try to remove copies of documents, either
8 electronically or hard copy from files, in order to
9 minimize the continued accumulation of paper.

10 Q. Do you know how many years that record retention
11 process applies to? In other words, --

12 A. I don't recall specifically.

13 Q. Okay. TC 6-038 continues: "J.D. Energy provided coal
14 price forecasts for the period 2005 to 2011. Attached
15 below is J.D. Energy information for years 2007 through
16 2011." So, PSNH provided some coal price forecasts, is
17 that right?

18 A. That's correct.

19 Q. And, then, the response continues: "ICAP provided
20 daily pricing which is not retained." What's "ICAP"?

21 A. I don't recall the specific words that make up that
22 acronym.

23 Q. Generally, it's a coal -- is it a coal price forecast
24 program or company or something like that?

{DE 11-250} [Day 1/Morning Session ONLY] {10-14-14}

[WITNESS: Smagula]

1 A. I believe so, but I'm not going to guess.

2 Q. Okay. And, you indicated in your response that "ICAP
3 provided daily pricing, but it wasn't retained." So,
4 no ICAP forecasts were retained anywhere within NU and
5 its affiliates, is that right?

6 A. That's correct.

7 Q. And, the response continues: "CERA had provided
8 natural gas and power pricing forecasts until 2007", is
9 that right?

10 A. Yes.

11 Q. But no CERA forecasts were provided with this response
12 either?

13 A. That's correct.

14 Q. And, then, it finally indicates "Oil and natural gas
15 price" -- "forecast pricing available to the Company
16 was NYMEX, publically available, which is updated
17 daily", is that right?

18 A. Yes.

19 Q. So, basically, the only forecasts PSNH provided with
20 respect to 6-038 were coal forecasts and the forecasts
21 from 2008 that were associated with Data Request 01 --
22 TC 01-02, is that right?

23 A. Yes. Our Fuels Procurement Department looked into
24 their files, and that's what they were able to provide

{DE 11-250} [Day 1/Morning Session ONLY] {10-14-14}

[WITNESS: Smagula]

1 in response.

2 Q. Okay. And, let's take a quick look at TC 6-038 -- I'm
3 sorry, 6-039. My apologies. And, that request sought
4 copies of documentation "regarding the forward market
5 for natural gas delivered to New England from 2008 to
6 2011", is that right?

7 A. Correct.

8 Q. And, the response says "See TC 06-038." Right?

9 A. Yes.

10 Q. So, PSNH's affiliates didn't have any additional
11 information regarding natural gas forecasts relevant to
12 these requests?

13 A. No. We don't -- we don't develop forecasts. We use
14 references. And, the response to TC 6-038 was our
15 response, and is appropriate for this question as well.

16 Q. I'm going to refer you back to Request Number 30.

17 A. Thirty.

18 Q. Excuse me, Exhibit Number 30.

19 A. Excuse me?

20 Q. It's the NU website.

21 A. Okay. I have it.

22 Q. So, for example, looking sort of in the bottom third of
23 the page, it says CL&P has 1.2 million customers, is
24 that right?

{DE 11-250} [Day 1/Morning Session ONLY] {10-14-14}

[WITNESS: Smagula]

1 A. For electric -- or, where are you? On which page?

2 Q. Page 1 of 2.

3 A. One of two. Yes, 1.2 million. Yes.

4 Q. And, who did you talk to at Connecticut Light & Power
5 about Question 6-038 and 6-039?

6 A. I talked to the Manager of our Company's Fuel
7 Procurement Department, who purchases oil, gas, coal,
8 and other fuel commodities for all of Northeast
9 Utilities.

10 Q. And, who was that?

11 A. His name is Jody Tenbrock.

12 Q. Did you talk to anyone else at NU, CL&P, or any of NU's
13 other affiliates regarding these questions?

14 A. No. Because, as I indicated, he is the manager in
15 charge of the department that buys the fuel for all of
16 the affiliates.

17 Q. Did you talk to any individuals or departments that are
18 responsible for planning?

19 A. He is responsible, Mr. Tenbrock is responsible for all
20 of the forward purchasing and planning for fuels for
21 all of Northeast Utilities.

22 Q. Let's take Yankee Gas as an example. As a regulated
23 utility, Yankee Gas has to seek approval from its
24 regulators to make infrastructure investments, doesn't

{DE 11-250} [Day 1/Morning Session ONLY] {10-14-14}

[WITNESS: Smagula]

1 it?

2 A. I'm really not familiar with proceedings and activities
3 of Yankee Gas.

4 Q. So, you agree with me that it's a regulated natural gas
5 company?

6 A. It's a regulated natural gas distribution company.

7 Q. And, it provides natural gas -- distributes natural gas
8 to its retail customers?

9 A. Yes.

10 Q. Do you disagree with the statement that "it likely has
11 to get approval to do infrastructure investments"?

12 A. I'm not familiar with what their internal or external
13 procedures are for any projects.

14 Q. Mr. Smagula, there is a data request that was asked of
15 the NERA witnesses, Mr. Harrison and Mr. Kaufman, to
16 produce all documents that they reviewed or relied upon
17 in developing their testimony. And, one of the
18 documents they produced was an e-mail from you to them,
19 and a group of others, on December 23rd, 2013. And,
20 that e-mail references a compilation of documents that
21 you pulled together that you believe are relevant to
22 the issues in this case. Do you know what compilation
23 of documents I'm referencing?

24 A. No.

[WITNESS: Smagula]

1 (Atty. Goldwasser showing a document to
2 the witness.)

3 BY MS. GOLDWASSER:

4 Q. I'm showing you the Data Response 6-133, and an e-mail
5 dated December 23rd, 2013, sent to a number of people.
6 And, it references a "dropbox" with a compilation of
7 documents. Does that refresh your recollection about
8 what I'm talking about?

9 A. I think I have to read it.

10 SP. CMSR. IACOPINO: Ma'am, is that a
11 TransCanada data request?

12 MS. GOLDWASSER: Yes. It was provided
13 in response to TC 1-33 [TC 6-133?]. But the substance of
14 my question doesn't involve this e-mail, and I didn't see
15 the need to put it into the record. If the Commission
16 would like it, I can get copies of it.

17 CMSR. HONIGBERG: You're just trying to
18 refresh his memory?

19 MS. GOLDWASSER: That's correct.

20 (Atty. Goldwasser distributing
21 documents.)

22 WITNESS SMAGULA: I've re-familiarized
23 myself with the communication.

24 BY MS. GOLDWASSER:

[WITNESS: Smagula]

1 Q. Okay. And, you recognize that you compiled a number of
2 documents and produced them to a list of people?

3 A. I compiled a number of articles from newspapers,
4 magazines, trade journals, and other media sources.

5 CMSR. HONIGBERG: Mr. Smagula, do you
6 now remember that, having seen that document, or is
7 that -- or are you just testifying based on what you're
8 reading?

9 WITNESS SMAGULA: No. I recall the
10 effort that I had people perform for me.

11 CMSR. HONIGBERG: Thank you.

12 MS. GOLDWASSER: And, for the record,
13 Mr. Bersak provided us with a pile of those documents last
14 week. This document was in that, that compilation of
15 documents.

16 MR. BERSAK: Is this document marked?

17 MS. GOLDWASSER: It is -- it should be
18 marked as "Exhibit 36"?

19 CMSR. HONIGBERG: Is it what you just
20 handed around?

21 MS. GOLDWASSER: Yes. It's an Energy
22 Ventures Analysis forecast.

23 (The document, as described, was

24 herewith marked as **Exhibit 36** for

[WITNESS: Smagula]

1 identification.)

2 BY MS. GOLDWASSER:

3 Q. Do you recognize that document?

4 A. I don't recall it specifically. Is this the document
5 in its entirety?

6 Q. As far as I'm aware. It's what was provided to me.

7 A. I'll assume that to be the case.

8 Q. Do you know if PSNH receives documents like that on a
9 regular basis?

10 A. We do not. The documents that I accumulated were not
11 developed with any methodology, but rather, upon my
12 observation of a trade journal or a newspaper article
13 or some type of communication external to the Company,
14 I would keep a copy of it, and try to then compile
15 these into different groupings, as to whether it dealt
16 with oil or gas and so on. And, the nature of the
17 compilation was to illustrate, which the reason they
18 caught -- these documents caught my eye is because they
19 were to illustrate that gas prices were, in many cases,
20 expected to increase, and that various organizations
21 that made certain assumptions were incorrect in the
22 direction of certain fuel prices.

23 So, it was just a exercise that I did on
24 my own, which eventually turned out to be information

[WITNESS: Smagula]

1 we turned over to people we were working with.

2 Q. Do you know if any of PSNH's affiliates receive
3 documents like this on a regular basis?

4 A. As I said, I came across all of these things through my
5 own review of various documents. And, I don't know
6 what others in other parts of the Company do. But I
7 suspect my effort was a bit unique, as compared to our
8 standard practice, because I don't do this normally.

9 Q. And, do you know where this EVA document came from?

10 A. I don't recall. I suspect I could go into the database
11 and see where it came from. But I don't recall
12 specifically, no.

13 MS. GOLDWASSER: Attorney Patch is going
14 to hand out what will be marked as "Exhibit 37".

15 (Atty. Patch distributing documents.)

16 WITNESS SMAGULA: Thank you.

17 (The document, as described, was
18 herewith marked as **Exhibit 37** for
19 identification.)

20 BY MS. GOLDWASSER:

21 Q. Now, the first page there indicates the "Connecticut
22 Department of Energy & Environmental Protection Public
23 Utilities Regulatory Authority", is that right?

24 A. Yes.

[WITNESS: Smagula]

1 Q. And, I'll reference that as the "DPUC", the
2 "Connecticut DPUC". And, the document is dated
3 November 13th, 2008, is that right? It says "Date
4 Filed"?

5 A. Yes. Date filed.

6 Q. And, it's Docket Number 08-10-02, is that right?

7 A. Yes.

8 Q. And, it's a filing by Janet Palmer, from Northeast
9 Utilities?

10 A. Yes.

11 Q. On behalf of Yankee Gas Services, is that right?

12 A. Yes.

13 Q. You turn to Bates Page 3 of the packet that I handed
14 you. That's a letter from Ms. Palmer to the Acting
15 Executive Secretary of the DPUC, is that right?

16 A. Correct.

17 Q. And, that letter reads -- the first paragraph of that
18 letter reads "On October 1st, 2008, Yankee Gas Services
19 ("Yankee Gas" or the "Company") submitted its Biennial
20 Forecast of Natural Gas Demand and Supply required by
21 Section 16-32f of the General Statutes of the State of
22 Connecticut. At that time the Company indicated it
23 would provide a complete updated forecast with
24 supporting material by December 19th, 2008." Was that

[WITNESS: Smagula]

1 right?

2 A. Yes.

3 Q. And, then, the next paragraph reads "Due to the
4 significant economic and energy price market changes
5 and outlooks since that original filing, Yankee is in
6 the process of evaluating the impact of these market
7 drivers on its most recent sales forecast, with the
8 expectation of developing an additional forecast by the
9 end of 2008." Is that right?

10 A. That's what the text says, yes.

11 Q. And, the next paragraph --

12 CMSR. HONIGBERG: Wait, wait. Are you
13 going to read the whole letter? Seriously, are you going
14 to read the whole paragraph?

15 MS. GOLDWASSER: It's only one more
16 paragraph.

17 CMSR. HONIGBERG: I don't think you need
18 to.

19 MS. GOLDWASSER: Okay.

20 CMSR. HONIGBERG: I think we can all
21 read it ourselves.

22 BY MS. GOLDWASSER:

23 Q. The next paragraph indicates that Yankee is requesting
24 an extension from December 19th to March 1st, 2009 to

[WITNESS: Smagula]

1 file the forecast, is that right?

2 A. Yes.

3 Q. If you turn to Page 4, that indicates "Docketed
4 Correspondence" in the same docket, and filed on March
5 2nd, 2009, is that right?

6 A. Yes.

7 Q. And, the next page is a cover letter with the same date
8 and docket number?

9 A. Correct.

10 Q. And, it indicates that it's the filing that Yankee had
11 sought an extension for, is that right?

12 A. Yes.

13 Q. And, the next two pages are tables of contents. And,
14 Section III references "Demand", is that correct?

15 A. Correct.

16 Q. If you turn to Bates Page 8, that's the beginning of
17 Section III, is that correct?

18 A. Yes.

19 Q. The page numbers are "I-1", "I-2". If you turn to
20 Bates Page 23, that's "III-16", right?

21 A. Correct.

22 Q. And, it's in a section called "Major Forecast Inputs",
23 is that right?

24 A. Yes.

[WITNESS: Smagula]

1 Q. And, it indicates "Another major input to the forecast
2 models is energy prices. The Company uses a Energy
3 Ventures Analysis, Inc. (or "EVA") forecasts of retail
4 and wholesale energy prices in its forecasting process"
5 is that correct?

6 A. That's what it says, yes.

7 Q. If you turn to Bates Page 24, in the second full
8 paragraph, the third sentence in that paragraph starts
9 "Natural gas". You see where I'm referencing?

10 A. Yes.

11 Q. It indicates that "Natural gas prices, as measured by
12 Henry Hub, also saw a plunge in 2008 and are expected
13 to remain below recent history for the next several
14 years for reasons similar to those affecting oil."
15 And, the next sentence reads "But, also, and perhaps
16 more importantly, prices are likely to remain depressed
17 because of the newly discovered and exploitable supply
18 response available from the unconventional sources
19 (shale plays)." Did I read that correctly?

20 A. That's what Yankee Gas stated, yes.

21 Q. And, if you look at Pages 27 through 29, those are
22 forecasts of retail gas prices, is that right?

23 A. I don't know what they are.

24 Q. Why don't you take a minute and take a look.

[WITNESS: Smagula]

1 CMSR. HONIGBERG: While the witness does
2 that, Ms. Goldwasser, how are we doing in your outline
3 there?

4 MS. GOLDWASSER: We're very close.

5 CMSR. HONIGBERG: Thank you.

6 WITNESS SMAGULA: Would you repeat your
7 question?

8 MS. GOLDWASSER: Yes.

9 BY MS. GOLDWASSER:

10 Q. Pages 27 through 29 include forecasts for retail market
11 energy prices, including natural gas, is that right.

12 A. Yes, it seems to be the case.

13 Q. So, according to this filing that Yankee Gas made with
14 the Connecticut DPUC, Yankee Gas, in 2009, had EVA's
15 forecast of retail and wholesale energy prices, isn't
16 that right?

17 A. Yes. That's what it indicates.

18 MS. GOLDWASSER: I don't have any
19 further questions, but I do have a motion.

20 CMSR. HONIGBERG: Okay. What's your
21 motion?

22 MS. GOLDWASSER: As this Commission is
23 well aware, in Order Number 25,687, the Commission struck
24 testimony from Mr. Hachey's testimony, and ordered there

[WITNESS: Smagula]

1 be an adverse inference found against TransCanada due to
2 its inability to produce certain documents from parents
3 and affiliates. In that case, TransCanada was not the
4 regulated utility seeking tens of millions of dollars a
5 year in profits associated with a \$400 million
6 expenditure. Instead, TransCanada produced some of the
7 relevant material, and identified what it couldn't
8 produce, allowed the Commission to rule on those
9 circumstances.

10 Here, PSNH is the Company that's seeking
11 recovery at an almost 10 percent rate of return of a huge
12 investment, and it apparently has failed to provide
13 relevant information that was sought in the data request
14 that this Commission compelled.

15 CMSR. HONIGBERG: What exactly is the
16 motion, so I know where this introduction is going?

17 MS. GOLDWASSER: The motion is --

18 CMSR. HONIGBERG: What's the request
19 you're going to make?

20 MS. GOLDWASSER: The motion is to find a
21 similar adverse inference against PSNH, and to entertain a
22 request to strike testimony associated with PSNH's failure
23 to provide relevant material.

24 CMSR. HONIGBERG: Okay. Do you want to

[WITNESS: Smagula]

1 finish, then, your brief argument as to why that's an
2 appropriate -- why that motion should be granted?

3 MS. GOLDWASSER: I was almost there.

4 CMSR. HONIGBERG: Okay.

5 MS. GOLDWASSER: So, no.

6 CMSR. HONIGBERG: All right. Mr. Glahn
7 or whoever?

8 MR. GLAHN: My guess would be that
9 TransCanada has had this information for some time.
10 There's a very different issue here.

11 MS. GOLDWASSER: I'm sorry. Just let me
12 interrupt that just for a second and to clarify the
13 record. We just found that, this document yesterday.
14 So, --

15 MR. GLAHN: If TransCanada had wanted
16 to --

17 CMSR. HONIGBERG: Ms. Goldwasser, it's
18 Mr. Glahn's turn to talk.

19 MR. GLAHN: If at any time during this
20 proceeding it wanted to, TransCanada could have filed a
21 motion to compel for further documents. The issue is not
22 in this case whether they have document they believe that
23 PSNH didn't produce. The issue with respect to
24 TransCanada was very clear. They refused to produce any

[WITNESS: Smagula]

1 information. They made it very clear that they weren't
2 going to look for any information for their affiliates.
3 That they had no obligation to produce it, notwithstanding
4 the fact that this Commission had specifically ordered it.
5 And, that's where the adverse inference came from. Not
6 from some argument that they found some document that they
7 think we didn't produce from 2009 that, at least on the
8 face of it, doesn't refer to wholesale gas at all. It's a
9 completely different construct.

10 CMSR. HONIGBERG: Ms. Goldwasser,
11 briefly.

12 MS. GOLDWASSER: We asked PSNH if they
13 had provided everything in response to the Commission's
14 order compelling them to provide documents, and PSNH
15 indicated to us via e-mail that they had provided
16 everything. This document references wholesale energy
17 forecasts that weren't provided, and apparently weren't
18 sought. I think this is directly on point.

19 CMSR. HONIGBERG: You say "apparently
20 not sought". What's your basis for saying "apparently not
21 sought"?

22 MS. GOLDWASSER: It sounds like
23 Mr. Smagula spoke with one person at NU regarding all of
24 the companies that are affiliates of NU. This document is

[WITNESS: Smagula]

1 actually very pertinent to this proceeding, concerning not
2 only the fact that it includes forecasts, but also
3 concluding that -- regarding the substance of it. I don't
4 know if Mr. Smagula spoke to the right person or to the
5 right -- it appears as though he didn't speak to all of
6 the right people. They didn't do the due diligence
7 necessary to make sure that they produced all the
8 information that they had.

9 CMSR. HONIGBERG: That's a very
10 different statement than "apparently not sought". So, you
11 should be careful when you make an accusation like that.

12 Do any of the other parties want to
13 weigh in on this who haven't already spoken?

14 MS. AMIDON: No. Thank you.

15 CMSR. HONIGBERG: All right. I think
16 this would be an appropriate time to break, since you are
17 done with your questioning. Let's go off the record for a
18 second and talk scheduling.

19 (Brief off-the-record discussion
20 ensued.)

21 CMSR. HONIGBERG: So, we had a brief
22 scheduling discussion. We'll come back in an hour. It's
23 currently quarter to one. So, we'll come back at quarter
24 to two. We'll finish Mr. Smagula and start with whatever

[WITNESS: Smagula]

1 the next witness is, I guess Mr. Frantz. Sound good?

2 (No verbal response)

3 CMSR. HONIGBERG: All right. Thank you
4 all. We'll take your motion under advisement,
5 Ms. Goldwasser.

6 (Whereupon the Morning Session of Day 1
7 recessed at 12:46 p.m. The Afternoon
8 Session of Day 1 is contained under
9 separate cover so designated.)

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