

STATE OF NEW HAMPSHIRE  
PUBLIC UTILITIES COMMISSION

October 15, 2014 - 2:01 p.m.  
Concord, New Hampshire

DAY 2  
Afternoon Session only

RE: DE 11-250  
PUBLIC SERVICE COMPANY OF NEW HAMPSHIRE:  
Investigation of Scrubber Costs and  
Cost Recovery.

NHPUC OCT31'14 PM 3:36

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

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Sandy Deno, Clerk

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**I N D E X****PAGE NO.**

**WITNESS PANEL:            FRANK DiPALMA**  
**C. LARRY DALTON**

Direct examination by Ms. Amidon	5
Cross-examination by Mr. Bersak	13, 99
Cross-examination by Ms. Chamberlin	22
Cross-examination by Mr. Patch	35, 102
Cross-examination by Mr. Fabish	67
Cross-examination by Mr. Irwin	81
Interrogatories by Sp. Cmsr. Iacopino	87
Interrogatories by Cmsr. Honigberg	93
Redirect examination by Ms. Amidon	95

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
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14  
15  
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# E X H I B I T S

EXHIBIT NO.	D E S C R I P T I O N	PAGE NO.
56	Redacted Comments of Public Service Company of New Hampshire on EPA's Revised Draft National Pollutant Discharge Elimination System for Merrimack Station (08-18-14)	11
57	PSNH Response to OCA Tech Session TS-02 Q-TECH-36	23
58	PSNH response to Data Request TC-05 Q-TC-010	41
59	OCA response to PSNH Data Request No. PSNH 1-23	42
60	Public Service of New Hampshire Clean Air Project Early Termination Analysis and Financial Consequences (09-30-13)	65
61	EPA Region 1 Fact Sheet re: Draft National Pollutant Discharge Elimination System (NPDES) Permit to Discharge to Waters of the United States Pursuant to the Clean Water Act (CWA) NPDES Permit No. NH0001465	81
62	<b>RESERVED</b> (Data Request and response to JCI-042)	93

**P R O C E E D I N G**

MS. AMIDON: Mr. Chairman, I'd like to call Frank DiPalma and Larry Dalton to the stand please, if you're ready?

CMSR. HONIGBERG: I think we're ready.

(Whereupon **Frank T. DiPalma** and

**C. Larry Dalton** were duly sworn by the Court Reporter.)

**FRANK T. DiPALMA, SWORN**

**C. LARRY DALTON, SWORN**

**DIRECT EXAMINATION**

BY MS. AMIDON:

Q. Good afternoon. I'll start with you, Mr. DiPalma.

Would you please state your name and your employment for the record please.

A. (DiPalma) My name is Frank DiPalma. I work for Jacobs Consultancy. Our home office is in Houston.

CMSR. HONIGBERG: Can you make sure that the red light is on on the microphone in front of you?

WITNESS DiPALMA: It's on now.

BY MS. AMIDON:

Q. And, you sponsored or helped prepare testimony in this docket, is that correct?

A. (DiPalma) Yes, I have.

[WITNESS PANEL: DiPalma~Dalton]

1 Q. And, that was filed on December 23rd, 2013?

2 A. (DiPalma) Correct.

3 Q. And, in addition, I note that Exhibit 16-1 is your  
4 summary of your qualifications. Could you tell us,  
5 have you testified before this Commission previously?

6 A. (DiPalma) I have not testified before the New Hampshire  
7 Commission. I have testified before other commissions,  
8 primarily in merger acquisition cases.

9 Q. Thank you. And, if you look at your testimony that was  
10 filed on December 23rd, and if I asked you the same  
11 questions today, would you have the same answers?

12 A. (DiPalma) Yes.

13 Q. Do you have any clarifications or corrections?

14 A. (DiPalma) No.

15 Q. Thank you. And, this was testimony that you filed with  
16 Mr. Dalton, is that right?

17 A. (DiPalma) That's correct.

18 Q. All right. And, Mr. Dalton is sitting to your left.  
19 Mr. Dalton, could you please state your name and your  
20 employment for the record please.

21 A. (Dalton) My name is Larry Dalton, and I work with  
22 Jacobs Engineering, in Greenville, South Carolina.

23 Q. And, similarly, you have your qualifications marked as  
24 "Exhibit 16-2" to your testimony of December 23rd,

{DE 11-250} [Day 2/Afternoon Session ONLY] {10-15-14}

1 2012, is that right? 2013.

2 A. (Dalton) Yes.

3 Q. Now, you prepared this testimony with Mr. DiPalma?

4 A. (Dalton) Yes, I did.

5 Q. And, do you -- have you testified before any  
6 commissions prior to this engagement?

7 A. (Dalton) No, I have not.

8 Q. Okay. So, your qualifications are in the Attachment  
9 16-2. Could you please just briefly describe some of  
10 the engagements that you have had in connection with  
11 your work for Jacobs.

12 A. (Dalton) I've been in power plant design my whole  
13 career. For about 20 years, I was full-time engaged  
14 with Progress Energy, which is now part of Duke Energy,  
15 in all sorts of engineering projects in their plants,  
16 including adding flue gas desulphurization systems.

17 Q. Thank you. And, on behalf of both you and Mr. DiPalma,  
18 would you explain your engagement by Staff in this  
19 proceeding?

20 A. (Dalton) Yes. We were engaged by the Staff to evaluate  
21 the flue gas desulphurization project as a whole, how  
22 it was organized and being carried out.

23 Q. And, in connection with that, Jacobs Consultancy filed  
24 several reports. I believe there was one due diligence

[WITNESS PANEL: DiPalma~Dalton]

1 report, three quarterly reports, and one final report,  
2 which are identified as Exhibit 26-1 through I believe  
3 it is 5. Did both of you assist in the preparation of  
4 those reports?

5 A. (DiPalma) We did.

6 A. (Dalton) Yes, we did.

7 Q. And, is there anything in those reports that you would  
8 change or modify?

9 A. (DiPalma) I don't believe so.

10 A. (Dalton) Neither do I.

11 Q. My understanding from reading your testimony is you  
12 believe that PSNH responsibly managed the project of  
13 installing the wet flue gas desulphurization unit at  
14 Merrimack Station. Is that fair to say?

15 A. (DiPalma) Yes.

16 A. (Dalton) Yes.

17 Q. And, in connection with that, in your testimony you  
18 made certain observations with respect to the  
19 installation of the secondary wastewater treatment  
20 plant, is that correct?

21 A. (DiPalma) Yes.

22 Q. And, perhaps Mr. Dalton might answer these questions,  
23 and Mr. DiPalma please feel free to chime in if you  
24 have any other observations. Is it fair to say, and

{DE 11-250} [Day 2/Afternoon Session ONLY] {10-15-14}



[WITNESS PANEL: DiPalma~Dalton]

1 please correct me if I'm wrong, that you reviewed the  
2 installation of the secondary wastewater treatment  
3 plant more on a theoretical level, rather than on an  
4 operational level?

5 A. (Dalton) Yes.

6 Q. And, you understood that one of the reasons PSNH had  
7 chosen this route was to avoid what they determined to  
8 be a lengthy and litigious process at the United States  
9 Environmental Protection Agency in an attempt to get a  
10 modified NPDES permit, is that right?

11 A. (Dalton) Yes, that's correct.

12 Q. And, based on that analysis, you reach a conclusion.  
13 Could you just briefly summarize that conclusion.

14 A. (Dalton) The technology they chose was a proven  
15 technology. We were given the design criteria and the  
16 drawings. It was a technology that I'm very familiar  
17 with from some of our other industries we work, and  
18 appeared that it would be the system to do what they  
19 were striving to achieve.

20 Q. Earlier today, or I think it was yesterday, I don't  
21 know if you were here yet, Mr. Dalton, I asked Jacobs  
22 Consultancy to review a document. And, I believe you  
23 have that document in front of you. It is comments of  
24 Public Service Company of New Hampshire on EPA's

[WITNESS PANEL: DiPalma~Dalton]

1 Revised Draft National Pollutant Discharge Elimination  
2 System, Permit Number New Hampshire 0001465 for  
3 Merrimack Station. It's a redacted version. And, that  
4 was submitted August 18th, 2014?

5 A. (Dalton) Yes, we have that. I saw it briefly this  
6 morning.

7 Q. Right. And, I know, and just to be clear, Mr. Dalton,  
8 Mr. DiPalma, neither of you have reviewed this in its  
9 entirety. We just focused on a question that Staff had  
10 asked you to look at, is that right?

11 A. (Dalton) That's correct.

12 Q. And, based on your review, what does it appear to be  
13 from this document that PSNH is asking of the EPA?

14 A. (Dalton) It appears that they have asked the EPA to  
15 change what they have preliminarily set as BAT, "best  
16 available technology", to not include the secondary  
17 wastewater treatment system. They would like to have  
18 the BAT designation on their primary wastewater  
19 treatment system only.

20 SP. CMSR. IACOPINO: What exhibit is  
21 that you're referring to?

22 MS. AMIDON: I'm sorry.

23 MR. SHEEHAN: I'm sorry. I gave them to  
24 everyone but you.

[WITNESS PANEL: DiPalma~Dalton]

1 MS. AMIDON: This is a new exhibit. I  
2 have --

3 SP. CMSR. IACOPINO: Thank you.

4 MS. AMIDON: I'm sorry. I apologize for  
5 that. I have lost the number of the exhibits as well.  
6 But I would request it be marked.

7 CMSR. HONIGBERG: This is "56".

8 MS. AMIDON: Okay, "56".

9 (The document, as described, was  
10 herewith marked as **Exhibit 56** for  
11 identification.)

12 MS. AMIDON: Thank you very much.  
13 Again, my apologies for overlooking that.

14 BY MS. AMIDON:

15 Q. So, this means, back to you, Mr. Dalton, this means you  
16 would, from your understanding of what they're asking,  
17 they would be discharging treated wastewater from the  
18 primary wastewater treatment plant directly into the  
19 Merrimack River and bypass the secondary wastewater  
20 treatment plant? Is that --

21 A. (Dalton) That's what it appears to be, yes.

22 Q. And, if that was the case, what would be the use of the  
23 secondary wastewater treatment plant?

24 A. (Dalton) I can think of none. That it's specific

[WITNESS PANEL: DiPalma~Dalton]

1 function is treating that amount of wastewater. And, I  
2 can think of no use it would be to the plant.

3 MS. AMIDON: Okay. Thank you. They're  
4 available for cross.

5 CMSR. HONIGBERG: Who's going to be  
6 asking -- I'm sorry, Ms. Amidon?

7 MS. AMIDON: I just realized, I should  
8 have -- and I apologize, I should have asked Mr. Dalton to  
9 point out where in this document he -- where he examined  
10 this document where it indicates to him that the Company  
11 is asking for modification of the permit to allow  
12 discharge directly from the primary wastewater treatment  
13 plant for the record.

14 CMSR. HONIGBERG: Do you understand the  
15 question that she meant to ask?

16 WITNESS DALTON: Yes. And, it's in the  
17 Executive Summary, including the cover page, it would be  
18 on the fourth page. There's some bullets at the bottom of  
19 the page. And, the last bullet on that Page ii says they  
20 would like to specifically say that "PSNH's primary  
21 wastewater treatment system is BAT."

22 MS. AMIDON: Okay. Thank you.

23 CMSR. HONIGBERG: Now are we ready?  
24 Who's going to be asking questions? Is it going to be

1 PSNH first?

2 MR. BERSAK: Well, I suppose so.

3 CMSR. HONIGBERG: I thought there was an  
4 agreement on how to proceed?

5 MR. BERSAK: Oh, there was. But, you  
6 know, this issue of friendly cross is daunting, since we  
7 have the burden of proof. But we will strive to go  
8 forward.

9 CMSR. HONIGBERG: Do your best, that's  
10 all we can ask.

11 MR. BERSAK: That's it. Thank you very  
12 much. Good afternoon, Mr. DiPalma and Mr. Dalton.

13 WITNESS DiPALMA: Good afternoon.

14 WITNESS DALTON: Good afternoon.

15 MR. BERSAK: My name is Bob Bersak. I'm  
16 an attorney with Public Service Company of New Hampshire.  
17 And, we would like to welcome you to fall foliage season  
18 in New Hampshire, not that you get to see very much of it  
19 sitting up where you are.

20 **CROSS-EXAMINATION**

21 BY MR. BERSAK:

22 Q. I'm going to start off with a question regarding  
23 whether Jacobs ever prepared a report regarding the  
24 potential cost consequences of a termination of the

1 Scrubber Project?

2 A. (DiPalma) We prepared a brief document related to the  
3 termination costs, yes.

4 Q. And, as I understand that report, and you can tell me  
5 if I'm wrong, is it was based upon a review of purchase  
6 orders and amount that has been spent to date on the  
7 Project?

8 A. (DiPalma) It was based on purchase orders, and  
9 basically a specific point in time, not knowing what  
10 work was in progress when we were asked to make our  
11 cutoff date, as far as a review was concerned.

12 Q. Was the scope of that report based upon a specific  
13 request from the Staff of this Commission?

14 A. (DiPalma) Yes, it was.

15 Q. Would you deem that report you put together to be a  
16 robust report, that included all aspects of costs that  
17 would be incurred if, in fact, the Scrubber Project had  
18 been abandoned at any point in time?

19 A. (DiPalma) No. It was strictly focused on the contracts  
20 that were let at the time.

21 Q. So, for example, did your analyses include the  
22 accounting for the cost of money that were invested in  
23 the Project, the so-called AFUDC?

24 A. (DiPalma) That was not included.

[WITNESS PANEL: DiPalma~Dalton]

1 Q. Did it include the cost of Northeast Utilities or  
2 Public Service Company of New Hampshire's labor that  
3 were involved in the Project?

4 A. (DiPalma) They were not included either.

5 Q. And, were there other things that were not included in  
6 the report?

7 A. (DiPalma) Yes.

8 Q. You did not refer to that report in your direct  
9 testimony, did you?

10 A. (DiPalma) We did not.

11 Q. And, if I recall the date, that report was prepared  
12 several months prior to the submission of your  
13 testimony in this proceeding, is that correct?

14 A. (DiPalma) The date on the report is "September 30th,  
15 2013".

16 Q. Is the reason for you not referencing that report in  
17 your testimony because you didn't -- did not deem it to  
18 be relevant to the positions and testimony that you are  
19 coming to this Commission to present?

20 A. (DiPalma) I believe the request was almost a  
21 back-of-the-envelope, "just give us a quick snapshot as  
22 to what termination costs might look like", and it was  
23 not appropriate for our testimony.

24 Q. So, even taking that report into consideration, would

[WITNESS PANEL: DiPalma~Dalton]

1           you have any changes to the overall findings or  
2           recommendations that you've made in this proceeding?

3   A.   (DiPalma) It would not change our testimony at all.

4   Q.   Thank you.  You've just been asked some questions by  
5       Attorney Amidon on Staff regarding the secondary  
6       wastewater treatment facility that was included as part  
7       of the Scrubber Project.  Do you recall those  
8       questions?

9   A.   (DiPalma) Yes.

10   Q.   And, a new exhibit, Exhibit 56, was put into evidence,  
11       which appear to be the comments made by Public Service  
12       Company of New Hampshire to the EPA regarding a second  
13       draft of a new NPDES permit for Merrimack Station, is  
14       that correct?

15   A.   (DiPalma) Yes.

16   Q.   And, as I understand the question made of you, the  
17       question was premised by you were just given this  
18       document to look at as quickly as you can, and to try  
19       to make some observations regarding the -- you know,  
20       that you could during the brief period of time that you  
21       had that document, is that correct?

22   A.   (DiPalma) Yes.

23   Q.   That document is 170 pages long, correct?

24   A.   (DiPalma) Exactly.



1 Q. And, you were given that when?

2 A. (DiPalma) This morning.

3 Q. This morning. And, I don't have eyes in the back of my  
4 head, but it was my understanding you were sitting in  
5 this hearing room watching what was going on during the  
6 course of the morning, is that correct?

7 A. (DiPalma) That is correct.

8 Q. So, your ability to actually digest and comprehend and  
9 determine what's inside there has been very limited?

10 A. (DiPalma) Fully agree.

11 Q. According to what you saw inside there, though, is it  
12 your understanding that the most recent draft permit  
13 issued by the EPA would require PSNH to have installed  
14 technology such as that encompassed by this secondary  
15 wastewater treatment facility in order to continue to  
16 operate Merrimack Station into the future?

17 A. (Dalton) Yes. That's in the draft NPDES permit that we  
18 were given a copy of at the same time this morning.

19 Q. And, do you have much experience dealing with the EPA  
20 or NPDES permits in the course of your work?

21 A. (Dalton) I've worked with the EPA a lot, not NPDES  
22 necessarily. I'm an air person.

23 Q. Now, once the EPA puts some kind of a requirement into  
24 a draft permit, what's the likelihood that it's going

[WITNESS PANEL: DiPalma~Dalton]

1 to change, in your opinion?

2 A. (Dalton) Likely. It's probably a 50/50 chance.

3 Q. So, you're saying that, in your opinion, it's 50/50  
4 that we may need that technology, and maybe we don't  
5 need that technology?

6 A. (Dalton) Yes, sir.

7 Q. But we won't know for what period of time? How long do  
8 these proceedings take?

9 A. (Dalton) I'm working on industrial boiler MACT projects  
10 that have been issued three times already, and revised  
11 over three years, so -- and, it's still not concrete.  
12 So, the EPA works in a different world.

13 Q. And, without the secondary wastewater treatment  
14 facility that was installed by PSNH, is it your opinion  
15 that Merrimack Station would not be able to operate  
16 today?

17 A. (Dalton) I think they would be in violation to the  
18 NPDES permit they have been operating under, yes.

19 Q. Could you please turn to your Final Report of  
20 September 10, 2012. That's the document that's been  
21 marked as "Exhibit 26-5. And, go to Page 57.

22 SP. CMSR. IACOPINO: I'm sorry, which  
23 exhibit?

24 MR. BERSAK: 26-5. That would be their

[WITNESS PANEL: DiPalma~Dalton]

1 Final Report. It should have a date on it of  
2 "September 10, 2012". I'll just wait, to make sure  
3 everybody has it.

4 SP. CMSR. IACOPINO: Page?

5 MR. BERSAK: Page 57.

6 BY MR. BERSAK:

7 Q. And, I will turn your attention to a paragraph there  
8 that's captioned "Jacobs' Opinion". So, let me know  
9 when you found that and had a chance to take a look at  
10 it.

11 A. (Dalton) On Page 57 or 67?

12 Q. Five seven.

13 A. (Dalton) Five seven.

14 Q. Do you see the paragraph "Jacobs' Opinion"?

15 MS. AMIDON: Are you talking about  
16 Page 58?

17 MR. BERSAK: Fifty-eight? I'm sorry,  
18 58. Try 58.

19 WITNESS DALTON: Okay.

20 MR. BERSAK: Is there something there  
21 that says "Jacobs' Opinion"? We'll take any opinion.  
22 That's fine.

23 WITNESS DiPALMA: What is the title of  
24 the page is it?

[WITNESS PANEL: DiPalma~Dalton]

1 MR. PATCH: Can I just clarify? Is this  
2 the redacted version? Maybe that accounts for the page  
3 difference.

4 MR. BERSAK: Yes, it could be. It's the  
5 redacted version.

6 WITNESS DALTON: Yes.

7 BY MR. BERSAK:

8 Q. Okay. Page 58, just above the 7.4.4, a paragraph with  
9 the caption "Jacobs' Opinion". Mr. DiPalma, Mr. Dalton,  
10 do you have that?

11 A. (DiPalma) We do.

12 Q. Good. In this paragraph, would it be a fair  
13 characterization to say that, after thoroughly  
14 reviewing the Scrubber Project, that it is Jacobs'  
15 opinion that PSNH's decision to install the secondary  
16 wastewater treatment facility was prudent, that the  
17 costs were in line with similar systems, and that the  
18 installation of that facility avoided the potential  
19 that Merrimack Station would not be able to operate?

20 A. (DiPalma) Based on this theoretical operation, I would  
21 agree with that.

22 Q. In your report, is it correct that you note the  
23 \$457 million price estimate for the Project did not  
24 include the cost of this secondary wastewater treatment

1 facility?

2 A. (DiPalma) Could you repeat that question.

3 Q. The \$457 million estimate for the Project, did that  
4 estimate include plans to build the secondary  
5 wastewater treatment facility?

6 A. (DiPalma) Not originally. It was subsequently added.

7 Q. So, even with this late addition to the Project, the  
8 final price of the Project, at \$422 million, was much  
9 less than what the Project cost estimate was expected  
10 to be?

11 A. (DiPalma) Yes.

12 Q. Did Jacobs, in addition to reviewing the secondary  
13 wastewater treatment facility, did it also review the  
14 Company's decision to build a truck wash, that would  
15 enable the Company to have dual use of trucks for the  
16 transport of coal one way, and backhauling gypsum on  
17 its return trip?

18 A. (Dalton) Yes.

19 A. (DiPalma) Yes. We reviewed a number of changes in  
20 scope.

21 Q. Do you recall what your findings and recommendations  
22 were with respect to the truck wash facility?

23 A. (Dalton) It was necessary, to be able to use the same  
24 truck that hauls coal in, it has to be cleaned out so

[WITNESS PANEL: DiPalma~Dalton]

1       you do not contaminate the gypsum. So, a truck wash  
2       was necessary to make dual use of the trucks.

3   Q.   Do you still have in front of you your Final Report  
4       from September 10? And, hopefully, I'll give you the  
5       right page this time. Try looking on Page 10,  
6       Paragraph 1.4, "Overall Opinion". And, just let me  
7       know when you have that.

8   A.   (DiPalma) Paragraph 1.4?

9   Q.   Yes. "Overall Opinion". Let me know when you've had a  
10       chance to find it and review that.

11   A.   (DiPalma) Yes. We're there.

12   Q.   You're there. Okay. Just one question for you and  
13       I'll be done. Does this paragraph or this section  
14       continue to accurately reflect Jacobs' overall opinion  
15       regarding PSNH's conduct to comply with the  
16       requirements of the Scrubber Law?

17   A.   (DiPalma) Yes.

18               MR. BERSAK: Thank you. I have nothing  
19       else for these witnesses, Commissioner Honigberg.

20               CMSR. HONIGBERG: Who's next?

21       Ms. Chamberlin?

22               MS. CHAMBERLIN: Yes. Thank you.

23   BY MS. CHAMBERLIN:

24   Q.   Following up on some of those questions. Good

[WITNESS PANEL: DiPalma~Dalton]

1           afternoon also. There was no cost/benefit analysis  
2           done by PSNH of the second wastewater treatment --  
3           second level wastewater treatment facility. Is that a  
4           fair characterization?

5   A.   (Dalton) We did not see one.

6   Q.   Let me show you --

7                   MS. CHAMBERLIN: I'm going to have this  
8           marked as the next exhibit. I think we're at 57?

9                   CMSR. HONIGBERG: We are.

10                  THE COURT: This is a data response  
11           related to the truck wash.

12                   (Atty. Chamberlin distributing  
13           documents.)

14                   (The document, as described, was  
15           herewith marked as **Exhibit 57** for  
16           identification.)

17   BY MS. CHAMBERLIN:

18   Q.   And, if you could read just all the way down to the  
19           bottom is the update. So, the need for the truck wash  
20           was premised on the concept of hauling both coal and  
21           gypsum in the same trucks, correct?

22   A.   (Dalton) Correct.

23   Q.   So, if there's no coal being hauled in the truck,  
24           there's no need for a truck wash, correct?

[WITNESS PANEL: DiPalma~Dalton]

1 A. (Dalton) That would be correct.

2 Q. All right. Thank you. Jacobs was hired by the New  
3 Hampshire Public Utilities Commission on January 26,  
4 2010, correct?

5 A. (DiPalma) Yes. That's correct.

6 Q. From 2005 through 2009, Jacobs had no involvement with  
7 the PSNH Scrubber Project, correct?

8 A. (DiPalma) That is correct.

9 Q. So, you did not provide advice to Staff about the  
10 legislation, that RSA 125-O?

11 A. (DiPalma) We did not provide any advice to Staff.

12 Q. And, you did not consider alternatives to the Scrubber  
13 before Scrubber construction began, correct?

14 A. (DiPalma) That's correct.

15 Q. And, in 2010, you started to review the PSNH  
16 construction that was already completed?

17 A. (DiPalma) Correct.

18 Q. And, in June 2011, you completed your due diligence  
19 report?

20 A. (DiPalma) September 10th, 2012.

21 A. (Dalton) The due diligence report.

22 A. (DiPalma) There were three due diligence reports. Yes.

23 Q. And, the first was June 2011?

24 A. (DiPalma) I don't have those with me, but I can accept

{DE 11-250} [Day 2/Afternoon Session ONLY] {10-15-14}



[WITNESS PANEL: DiPalma~Dalton]

1           that, I guess.

2   Q.   All right. Subject to check, I have it in your  
3       testimony, but it's not -- well, let's just do it. All  
4       right. All right. If you turn to Page 9 of your  
5       testimony, Lines 189 and 190. And, does that refresh  
6       your reconciliation?

7   A.   (DiPalma) Yes.

8   Q.   So, June 2011 you completed your due diligence report,  
9       your first?

10  A.   (DiPalma) That's correct.

11  Q.   And, in September 2011, the Scrubber was substantially  
12       completed, correct?

13  A.   (Dalton) I don't know that at the top of my head I  
14       could answer that. I'm not sure if Frank could.

15  Q.   That's fine. I think there's plenty of testimony on  
16       that already.

17  A.   (Dalton) Yes.

18                   MR. BERSAK: If it would help, we can  
19       agree that the Scrubber went into commercial operation on  
20       September 28th, 2011.

21                   WITNESS DALTON: Yes.

22  BY MS. CHAMBERLIN:

23  Q.   Now, as part of your list of projects that you have  
24       done previously, your testimony lists consulting for

[WITNESS PANEL: DiPalma~Dalton]

1 the Connecticut Department of Public Utilities Control  
2 in 2008, is that correct?

3 A. (DiPalma) That sounds reasonable, yes.

4 Q. All right. And, Jacobs evaluated 11 proposals to build  
5 new peaking generation in Connecticut, is that --

6 A. (DiPalma) Combined cycle, yes. That's correct.

7 Q. And, the Jacobs evaluation was done to choose the best  
8 proposal before construction began, correct?

9 A. (DiPalma) Yes.

10 Q. So, that's not the case in New Hampshire, correct?

11 A. (DiPalma) We came in much later in the Project, that's  
12 correct.

13 Q. All right. Your testimony reviews the NU large project  
14 review process, correct?

15 A. (DiPalma) Correct.

16 Q. And, that process included numerous internal  
17 assessments?

18 A. (DiPalma) It did, yes.

19 Q. And, by internal assessments, you mean within the NU  
20 Corporation, correct?

21 A. (DiPalma) Yes. And, I have to say PSNH also contracted  
22 with outside consulting firms for additional  
23 information.

24 Q. Jacobs did not review what information PSNH gave to

1 anyone outside of the corporation as part of your  
2 review?

3 A. (DiPalma) Would you repeat that.

4 Q. Jacobs did not review, for example, Jacobs did not  
5 review what information PSNH gave to the Legislature as  
6 part of your review?

7 A. (Dalton) Not quite true.

8 A. (DiPalma) No.

9 A. (Dalton) Yes. We saw some of the documentation that  
10 had been submitted to the Staff. Yes, we did see some  
11 of that documentation.

12 Q. You didn't review it in terms of completeness and form  
13 an opinion on that, correct?

14 A. (Dalton) No.

15 A. (DiPalma) No, we did not.

16 A. (Dalton) It was just background that we were given to  
17 review.

18 Q. And, your conclusion does not incorporate an opinion on  
19 whether or not PSNH fulfilled its reporting obligations  
20 to the Legislature, is that a fair characterization?

21 A. (DiPalma) We focused strictly on the Project itself.

22 Q. Your testimony discusses the role of the NU Risk and  
23 Capital Committee, correct?

24 A. (DiPalma) Yes, it does.

[WITNESS PANEL: DiPalma~Dalton]

1 Q. And, the NU Risk and Capital Committee reviewed  
2 investments that expose Northeast Utility Corporation  
3 to risk. Is that a fair summary?

4 A. (DiPalma) That is one of their functions, yes.

5 Q. All right. The NU Risk and Capital Committee was not  
6 designed to protect consumer interests, is that true?

7 A. (DiPalma) Well, in the sense that a utility needs to be  
8 competitive in their pricing, that's part of what they  
9 should be looking at, yes. They should be looking at  
10 the customer and protecting the price for the  
11 customers, too.

12 Q. And, if there's risk that falls to the customer, that's  
13 not the NU Risk and Capital Committee responsibility to  
14 mitigate that risk? Or, would you say it is?

15 A. (DiPalma) If you're defining "risk" as a price  
16 increase?

17 Q. Yes.

18 A. (DiPalma) I would say that would be a concern of that  
19 committee, yes.

20 Q. It's a concern, it is not their responsibility. You're  
21 not going to have residential consumers filing  
22 complaints with the NU Risk and Capital Committee, is  
23 that true?

24 A. (DiPalma) I would find that hard to envision, yes.

[WITNESS PANEL: DiPalma~Dalton]

1 Q. All right. In 2005, PSNH hired Sargent & Lundy?

2 A. (DiPalma) Yes.

3 Q. Yes? And, Sargent & Lundy is an engineering firm?

4 A. (DiPalma) Yes, they are.

5 Q. And, they specialize in power plant projects?

6 A. (Dalton) Yes. That's their forte.

7 Q. And, they are well-respected in the field?

8 A. (Dalton) Yes.

9 Q. And, they have been in the power plant engineering  
10 business for over 100 years?

11 A. (Dalton) I can't answer that.

12 Q. All right. That's on their webpage.

13 A. (Dalton) If it's on their webpage, fine.

14 Q. Subject to check.

15 A. (Dalton) They're almost as old as we are.

16 (Laughter.)

17 BY MS. CHAMBERLIN:

18 Q. PSNH hired Sargent & Lundy to satisfy legislative and  
19 stakeholder discussions about Project cost. Is that an  
20 accurate summary of your testimony?

21 A. (DiPalma) I don't believe so.

22 Q. Then, if you would turn to Page 25. And, it's Line  
23 549.

24 A. (DiPalma) The full sentence is regarding earlier --

1 (Court reporter interruption.)

2 **BY THE WITNESS:**

3 A. (DiPalma) I'm sorry. The full line I think you're  
4 referring to is --

5 BY MS. CHAMBERLIN:

6 Q. It starts with "No, Sargent & Lundy".

7 A. (DiPalma) Yes.

8 Q. That's Line 549.

9 A. (DiPalma) Yes. So, the question was "Was the original  
10 cost estimate by Sargent & Lundy a firm estimate?"  
11 And, our response was: "No, Sargent & Lundy was  
12 contracted to develop an early conceptual estimate to  
13 satisfy legislative and stakeholders' discussions.  
14 Since the estimate relied on past scrubber  
15 installations for flue gas desulphurization, limited  
16 Merrimack Station conditions and no mercury reduction  
17 guarantees, it only could serve as an early conceptual  
18 estimate."

19 Q. Now, the phrase "satisfy legislative and stakeholder  
20 discussions" means that the Legislature wanted to know  
21 how much the Scrubber Project was going to cost,  
22 correct?

23 A. (DiPalma) I wouldn't be able to answer that.

24 Q. Well, Merriam-Webster's online dictionary list

[WITNESS PANEL: DiPalma~Dalton]

1       cinnamons -- synonyms of "to satisfy" as "to convince,  
2       persuade, assure, reassure, put someone's mind to  
3       rest". Would you say that the purpose of the Sargent &  
4       Lundy estimate was to put the Legislature's mind at  
5       rest about the cost of the Project?

6                   MR. BERSAK: If I may interpose an  
7       objection, Commissioner Honigberg. I think that the  
8       witnesses have already testified regarding their  
9       understanding of their testimony on this. And, what  
10      Merriam-Webster has to say isn't particularly relevant to  
11      this.

12                   CMSR. HONIGBERG: You can answer the  
13      question.

14      **BY THE WITNESS:**

15      A.     (DiPalma) I think you used the word "rest", as opposed  
16              to "satisfy". And, I would take issue with "rest".

17      BY MS. CHAMBERLIN:

18      Q.     You'd take issue with "put someone's mind to rest"?

19      A.     (DiPalma) I don't relate that necessarily to "satisfy".

20      Q.     Would you say the Legislature is indifferent to  
21              Project cost?

22      A.     (DiPalma) I can only relate to what I've heard in  
23              discussion in the hearing room, that the law did not  
24              have a specific dollar amount associated with it. So,

[WITNESS PANEL: DiPalma~Dalton]

1 I don't know if you would call that "indifference" or  
2 not. But I have really no way of knowing what would  
3 satisfy the Legislature.

4 Q. Your testimony is that the Sargent & Lundy report was  
5 intended to satisfy the Legislature, that's why they  
6 were hired. Is that -- are you changing your  
7 testimony?

8 MR. BERSAK: I will object to that  
9 question.

10 CMSR. HONIGBERG: Yes. That's not what  
11 the sentence says. So, if you want him to explain what he  
12 means or elaborate on that sentence, that's okay. But  
13 don't -- you know, if you're going to read the sentence to  
14 him, read the whole sentence as it's written, okay?

15 MS. CHAMBERLIN: We've done that. So,  
16 we don't have to do that again.

17 CMSR. HONIGBERG: I agree. Do you want  
18 him to try to elaborate on what that sentence means?

19 MS. CHAMBERLIN: No.

20 CMSR. HONIGBERG: That's a far more  
21 reasonable question. Why don't you try and elaborate on  
22 what that sentence means?

23 WITNESS DiPALMA: All right. My belief  
24 is that, in order to enter into a major project, you have



1 to at least start with a conceptual estimate. And, if you  
2 don't have a conceptual estimate to present, then, in that  
3 regard, you really can't talk about the project. So, S&L  
4 was brought in, with their experience and background, 100  
5 years or whatever it may be, to develop a conceptual  
6 estimate of a project.

7 BY MS. CHAMBERLIN:

8 Q. Now, you don't know what PSNH communicated to the  
9 Legislature about whether Sargent & Lundy was  
10 conceptual or otherwise, is that correct?

11 A. (DiPalma) I don't know what they communicated in the  
12 way of an adjective, whether it was "preliminary" or  
13 "conceptual".

14 Q. Do you believe that such an adjective would have been  
15 an accurate description of the Sargent & Lundy report?

16 A. (DiPalma) Definitely conceptual.

17 Q. Your testimony includes a reference to safety as being  
18 initially a problem at the Scrubber site?

19 A. (DiPalma) Yes.

20 Q. And, the basis of the safety problems, was there a  
21 single driver of those problems?

22 A. (DiPalma) This was a large, complex project. And, it's  
23 easy for people to focus on the activities of the job  
24 and make safety a secondary concern. What we have

[WITNESS PANEL: DiPalma~Dalton]

1 found, and our company particularly prides themselves  
2 in our safety culture, that safety has to be foremost.  
3 And, eventually, the Company was successful in turning  
4 that around, both PSNH and URS.

5 Q. And, were the construction workers skipping steps  
6 designed to prevent accidents? Is that a driver of the  
7 safety concerns?

8 A. (Dalton) I think that's what we saw in the reports that  
9 we got. There were incidents, minor, but still  
10 reportable. And, that comes about with people being  
11 lax. If they do what they're trained to do, you don't  
12 have accidents. But this was a huge project, in the  
13 middle of an existing facility, an operating existing  
14 facility. And, there were probably some shortcuts  
15 being taken early on.

16 MS. CHAMBERLIN: Thank you. That's all  
17 I have.

18 CMSR. HONIGBERG: Who's going to be  
19 next? Mr. Patch.

20 MR. PATCH: Good afternoon, gentlemen.  
21 My name is Doug Patch. I'm with the law firm of Orr &  
22 Reno, here in Concord. And, I represent the two  
23 TransCanada affiliates that are intervenors in the docket.  
24 BY MR. PATCH:

1 Q. First of all, would you agree that you were hired to,  
2 as you say at the bottom of Page 8 of your testimony,  
3 which is Exhibit 16, "to monitor the progress of the  
4 PSNH Clean Air Project"? Is that an accurate  
5 description?

6 A. (DiPalma) That was one of the reasons we were hired,  
7 yes.

8 Q. Was that the only reason?

9 A. (DiPalma) Well, as we indicate in the testimony, there  
10 was actually three reasons.

11 Q. Okay.

12 A. (DiPalma) One was to look at the Project as it stood  
13 when we were hired, because it did have a history. The  
14 second one was to look at the due diligence of the  
15 Project as it progressed. The third was actually to  
16 write a report that kind of summarized the previous  
17 learnings and our overall assessment of the Project.

18 Q. And, when you say "overall assessment", you weren't  
19 asked to do a complete review of the decision whether  
20 or not to proceed with the Scrubber Project, were you?

21 A. (DiPalma) No. That would have been out of our scope.

22 Q. And, whether it made sense for ratepayers, that wasn't  
23 part of your review?

24 A. (DiPalma) That was out of our scope also.

1 Q. And, you weren't asked to make a determination of the  
2 prudence of PSNH's actions?

3 A. (DiPalma) That would be out of scope also.

4 Q. Mr. Mullen, actually, Mr. Frantz has adopted his  
5 testimony, but I think you know who Mr. Mullen, is,  
6 right?

7 A. (DiPalma) We do.

8 Q. He prefiled testimony. It's been marked as "Exhibit  
9 15. And, on Pages 11 and 12 of the testimony, it said  
10 "As discussed in the testimony of Jacobs Consultancy,  
11 the \$250 million estimate was preliminary and did not  
12 include things such as the cost of emissions removal  
13 guarantees, site-specific considerations or PSNH's  
14 internal costs." Is that accurate?

15 A. (DiPalma) Yes. That's accurate.

16 Q. And, then, he went on to say "While the \$250 million  
17 makes for a talking point, given that we now know the  
18 actual costs of the Scrubber Project, and it has long  
19 been known that the total project costs would exceed  
20 250 million, the discussion of permanent rate recovery  
21 should focus on the actual costs, the management of the  
22 Project, and the rate impacts of the Project." I don't  
23 know if you've looked at his testimony. But, you know,  
24 that was from Page 15. Do you have any reason to

1 disagree with that?

2 A. (DiPalma) If you just give us a moment, we'll find it.

3 Q. Sure.

4 A. (Dalton) Page?

5 Q. Page 15.

6 A. (Dalton) Fifteen.

7 Q. No, I'm sorry. Pages 11 to 12. It's Exhibit 15.

8 A. (DiPalma) That's what it says.

9 Q. And, in terms of how long it has been known that the  
10 total Project cost would exceed 250 million, do you  
11 have an understanding of when that information about it  
12 rising to the level of 457 million first came out, when  
13 PSNH first knew that?

14 A. (DiPalma) I believe it was mid-2008.

15 Q. And, so, just to refresh your recollection,  
16 Exhibit 20-4, which is Bates Page 48, is a response to  
17 TransCanada 2-12, in which PSNH says "as of May of  
18 2008".

19 CMSR. HONIGBERG: I'm confident they  
20 don't know what you're referring to.

21 MR. PATCH: Okay.

22 CMSR. HONIGBERG: I believe that's the  
23 Hachey testimony and the exhibits thereto, correct?

24 MR. BERSAK: Again, for sake of

1       expediency, we will agree that that exhibit says that the  
2       preliminary proposal bids came in around May of 2008, and  
3       that would be the first time we would have an  
4       understanding of the size of the new cost estimate for the  
5       Project.

6                       CMSR. HONIGBERG: I think that's  
7       helpful.

8                       MR. PATCH: Okay. Thank you.

9       BY MR. PATCH:

10      Q.   And, I believe in your testimony you had referred to a  
11            URS cost estimate. And, would that be consistent with  
12            the timing of the URS cost estimate?

13      A.   (DiPalma) Yes.

14      Q.   So, that would have been in the vicinity of May of  
15            2008?

16      A.   (DiPalma) That's correct.

17      Q.   Now, Ms. Chamberlin asked you a couple of questions  
18            about this. But I want to walk through, because your  
19            use of the terminology "conceptual", you refer on Page  
20            14, Line 295, to the original 250 million estimate as  
21            being "conceptual", correct?

22      A.   (DiPalma) Yes.

23      Q.   And, then, on Page 24, Line 518, you refer to "an  
24            initial conceptual project estimate of 250 million",

1 correct?

2 A. (DiPalma) Yes.

3 Q. Page 25, Lines 544 to 546, "Based on limited available  
4 information, Sargent & Lundy issued an initial  
5 conceptual estimate of 250 million for the installation  
6 of a flue gas desulphurization system at Merrimack  
7 Station." Correct?

8 A. (DiPalma) Yes.

9 Q. Page 25, "Sargent & Lundy was contracted to develop an  
10 early conceptual estimate to satisfy legislative and  
11 stakeholders' discussions." I think Ms. Chamberlin has  
12 already taken you through that. Is that correct?

13 A. (DiPalma) We've discussed it, yes.

14 Q. Now, I want to make sure I understand what you mean by  
15 use of that phrase "early conceptual estimate". Is  
16 that a phrase generally accepted in the industry?

17 A. (Dalton) Yes.

18 Q. And, what does it mean?

19 A. (Dalton) Pardon?

20 Q. Could you tell me what it means in the industry?

21 A. (Dalton) It means that it's the early stages of  
22 developing a concept. Things are not firmed up, but  
23 there has to be a first step. And, that's the first  
24 step on determining a scope and cost of a project.

1 Q. First of how many steps? You said "it has to be the  
2 first step".

3 A. (Dalton) First step of -- there were three, four steps  
4 in the estimate for this Project before the scope was  
5 set and the final cost was determined.

6 Q. And, so, you're saying the final costs weren't  
7 determined until the URS report in May of '08, is that  
8 what you're saying?

9 A. (DiPalma) I think we're saying, in May of '08, the  
10 budget was refined or the cost concept was refined and  
11 further developed into a detailed design budget.

12 Q. Was there anything in the contract that PSNH had with  
13 Sargent & Lundy that said they were to provide a  
14 conceptual estimate?

15 A. (Dalton) I don't know if we saw that contract.

16 Q. You never saw the contract?

17 A. (DiPalma) I don't believe we did, no.

18 Q. So, then, the only reason that you're using that phrase  
19 is because you're saying that's generally accepted in  
20 the industry?

21 A. (DiPalma) Well, no. I think we're saying, when you  
22 first start a project, you have to start with a  
23 concept, and you develop a budget to support that  
24 concept. But, as you refine your budget, and you get



[WITNESS PANEL: DiPalma~Dalton]

1 actual prices for certain major pieces of equipment,  
2 you refine that budget, developing it into a detailed  
3 budget.

4 Q. So, the initial estimate isn't all-inclusive then?

5 A. (DiPalma) That's correct.

6 MR. PATCH: Well, I'd like to show you a  
7 PSNH response to a data request from TransCanada, TC 5-10,  
8 and ask that it be marked.

9 SP. CMSR. IACOPINO: This is one that's  
10 not already an exhibit?

11 MR. PATCH: That's right.

12 CMSR. HONIGBERG: This will be "58".

13 (Atty. Goldwasser distributing  
14 documents.)

15 (The document, as described, was  
16 herewith marked as **Exhibit 58** for  
17 identification.)

18 BY MR. PATCH:

19 Q. Now, the question that TransCanada asked of PSNH was  
20 "Did the Sargent & Lundy report include an estimate of  
21 PSNH retained work? If not, please explain why. Was  
22 the fact that this was missing from the Sargent & Lundy  
23 estimate ever communicated to any state official? If  
24 so, please provide copies of related documentation."

[WITNESS PANEL: DiPalma~Dalton]

1 And, the answer was "No. Specifically, PSNH believed  
2 the Sargent & Lundy scope was all-inclusive." Did I  
3 read that correctly?

4 A. (DiPalma) Yes, you did.

5 Q. That's a little different than your understanding of  
6 what was involved with the Sargent & Lundy scope, isn't  
7 it?

8 A. (DiPalma) When we looked at the detail of the  
9 conceptual estimate with what was eventually the full  
10 detailed estimate, it was clear that the PSNH work  
11 effort associated with the Project was not included.

12 Q. But you just told me you thought it was  
13 all-inclusive -- was not all-inclusive, and PSNH says  
14 it was. So, there's a difference of opinion there,  
15 isn't there?

16 A. (DiPalma) I can't explain that response.

17 MR. PATCH: I'd like to show you a  
18 response from Matthew Kahal to PSNH 1-23, and ask that  
19 this be marked.

20 CMSR. HONIGBERG: This is "59".

21 (Atty. Goldwasser distributing  
22 documents.)

23 (The document, as described, was

24 herewith marked as **Exhibit 59** for

[WITNESS PANEL: DiPalma~Dalton]

1 identification.)

2 BY MR. PATCH:

3 Q. Now, this was a question of the Consumer Advocate's  
4 expert witness propounded by PSNH on them. And, it's  
5 with regard to a specific portion of Mr. Kahal's  
6 testimony. And, if you want to take a minute to read  
7 it, please do so. But I'm really interested in the  
8 response here, and any comments you have on it. "PSNH  
9 either knew or should have known that the original cost  
10 estimate was uncertain from the time when the original  
11 cost estimate of 250 million was first determined until  
12 the time the much more detailed and precise estimate of  
13 457 million was developed in early to mid-2008." Would  
14 you agree with that?

15 A. (DiPalma) Can you just give us a minute? I'd like to  
16 read the request also.

17 Q. Sure.

18 (Short pause.)

19 WITNESS DiPALMA: And your question,  
20 sir?

21 BY MR. PATCH:

22 Q. Whether you agree with that first sentence in the  
23 response? "PSNH either knew or should have known".

24 A. (DiPalma) It's really hard for us to precisely respond

[WITNESS PANEL: DiPalma~Dalton]

1 to that. I've been involved with many projects where  
2 conceptual estimate was actually higher than the  
3 final -- the final estimate. So, it can go actually  
4 either way. So, I'm not -- I'm struggling a little bit  
5 with that.

6 Q. But you've said that the original estimate didn't  
7 include a number of things. So, how could it go the  
8 other way, if it didn't include all of the things that  
9 you list?

10 A. (DiPalma) Well, suppose there was things that we did  
11 not include turned to be, on an aggregate, less than  
12 what was included.

13 Q. But they "weren't included", I thought is what you  
14 said. You said they "weren't included in the original  
15 estimate". So, that doesn't make --

16 A. (DiPalma) So, let's say that the things that weren't  
17 included totaled 50 million, and, within the 250, there  
18 were some savings that developed that reduced it more  
19 than 50 million, it could be actually less than the  
20 conceptual estimate. I'm just giving you the benefit  
21 of my experience. I've seen them go both ways.

22 A. (Dalton) When we do an estimate in the industry, it's  
23 usually listed as a "plus or minus" some percent. And,  
24 as Frank says, sometimes it's plus, sometimes it's

1 minus.

2 Q. But I thought you listed all the things that weren't in  
3 there. And, it just doesn't -- your response just  
4 doesn't make any sense to me. Because, like, for  
5 example, you listed, see if I can find this in my  
6 notes, but --

7 MS. AMIDON: I object to this. Because  
8 I believe that the witnesses have already answered this  
9 question, and I think we should move on.

10 CMSR. HONIGBERG: Well, I'm not sure  
11 he's asked a question yet. I can see why you might object  
12 to preliminaries to the question.

13 (Laughter.)

14 MS. AMIDON: Right.

15 CMSR. HONIGBERG: And, I think we  
16 probably all can agree that we'll ignore the preliminaries  
17 to the question. But, if there is a question, I think we  
18 might be interested in hearing it.

19 MR. PATCH: I'll try to avoid the  
20 preliminaries.

21 BY MR. PATCH:

22 Q. As I understood it, you have said that there were a  
23 number of things missing from the original estimate.  
24 And, I'm just trying to find exactly where it is that

[WITNESS PANEL: DiPalma~Dalton]

1       you said that. I think it's in your testimony. And,  
2       I'm going to make an effort to just try to find that.  
3       Actually, I think we went through this in a question  
4       that I had before.

5               MS. AMIDON: And, I believe that the  
6       record would show that they had answered that question,  
7       because they talked about PSNH labor, I believe, and a  
8       few -- and some other elements generally.

9               MR. PATCH: I think that's right. But,  
10      I think, Mr. Chairman, you understand where I'm trying to  
11      go with this question. For example, they said that the  
12      "cost of emissions removal guarantees was not included,  
13      site-specific considerations were not included, PSNH's  
14      internal costs were not included."

15   BY MR. PATCH:

16   Q.   So, I guess I'm just -- I would like to ask the  
17       witnesses, given that list of things that wasn't  
18       included, and maybe there are other things that weren't  
19       included in the original estimate. If there are, first  
20       of all, is there anything else other than that that was  
21       not included?

22   A.   (DiPalma) Those are the most significant variables. I  
23       would just like to clear it up.

24   Q.   Yes.

[WITNESS PANEL: DiPalma~Dalton]

1 A. (DiPalma) Because we're doing this for a living,  
2 basically. If you recall back in that time frame,  
3 commodity prices were going up 40 to 60 percent. Well,  
4 commodity prices go either way. And, when you think of  
5 the potential impact of that on a large project of a  
6 quarter of a million dollars, even though you forgot  
7 certain things in that preliminary conceptual estimate,  
8 you could still come in under a quarter of a million,  
9 or a billion.

10 Q. Okay. I understand that. You know, commodity prices  
11 could change. But what about the three things that I  
12 just mentioned that were not included? Did those ever  
13 change to the -- explain to me how they could change to  
14 the benefit of the utility in this case to bring the  
15 price down, those three things?

16 A. (DiPalma) Well, obviously, if you add prices to the  
17 conceptual estimate, and the conceptual estimate is  
18 solid, it has to raise the price. There's no question  
19 about that.

20 CMSR. HONIGBERG: Mr. Patch, isn't the  
21 real problem the basic answer to the question that you  
22 asked them, which is whether they agree with the first  
23 sentence that -- and, now, I might ask the question a  
24 different way, and maybe I will, and I'm sorry to

[WITNESS PANEL: DiPalma~Dalton]

1 interrupt. But I think the first line of Mr. Kahal's  
2 response is that "PSNH either knew or should have known  
3 that the original cost estimate was uncertain." That  
4 seems to be, based on what you have already testified to,  
5 a perfectly accurate statement. You've already said that  
6 such a cost estimate is going to be -- is often stated as  
7 "plus or minus" a certain amount. It's almost by  
8 definition an certain estimate, is it not?

9 WITNESS DiPALMA: Yes. We agree.

10 CMSR. HONIGBERG: All right. Mr. Patch,  
11 did that help?

12 MR. PATCH: Probably not, but thank you.

13 (Laughter.)

14 MR. PATCH: I don't mean to be flip, Mr.  
15 Chairman. I'm sorry. I just --

16 CMSR. HONIGBERG: That's all right. I  
17 do it all the time.

18 MR. PATCH: Okay.

19 BY MR. PATCH:

20 Q. Have you, and when I ask questions, either one of you  
21 should feel free to answer them, but have you reviewed  
22 the New Hampshire law that was passed in 2006? Did you  
23 review that as part of your responsibilities here?

24 A. (Dalton) Briefly. We didn't spend three days reading



1 all of the pages to it, but we did.

2 Q. And, you're not lawyers. So, you probably wouldn't pay  
3 as much attention to the law as some of us who are  
4 lawyers would, correct?

5 A. (Dalton) Absolutely.

6 Q. There's a statement in the law, in RSA 125-O:11, VIII,  
7 it says "The mercury reduction requirements set forth  
8 in the subdivision represent a careful, thoughtful  
9 balancing of costs, benefits, and technological  
10 feasibility and therefore the requirements shall be  
11 viewed as an integrated strategy of non-severable  
12 components."

13 Now, I point that out to you because I  
14 think it's a foundation for the question I want to ask  
15 about that's associated with where Ms. Chamberlin was  
16 going. To the extent that the estimate was going to be  
17 provided to legislators and relied upon, and the  
18 Legislature put a statement like that in the law, then  
19 wasn't it important that they know if the \$250 million  
20 cost estimate that they provided to the Legislature was  
21 "conceptual"?

22 MS. AMIDON: I'm going to object to  
23 that. The witnesses said that they gave a cursory look to  
24 the law. They did not spend a great deal of time going

[WITNESS PANEL: DiPalma~Dalton]

1       into it. And, what Mr. Patch is referring to is a rather  
2       complex concept, which is, you know, integration --  
3       integrated, you know, it's a non-severable, it's all  
4       integrated together. I don't think that these engineers  
5       can answer that question. And, I don't -- I believe that  
6       I wouldn't be able to assist them at all.

7                   CMSR. HONIGBERG: Mr. Patch.

8                   MR. PATCH: Well, I mean, I understand  
9       there may be limits to what they can say. But I think  
10      they're fully qualified, very experienced people. And, if  
11      there are any limits to what they say, I'm sure they will  
12      say them. So, it seems to me it's a question that kind of  
13      goes fundamentally to, you know, their point that the  
14      estimate was "conceptual" seems to me is an important one.  
15      And, it's one that we need to try to have explained by  
16      them about how they got there and how it relates to the  
17      law.

18                   MS. AMIDON: I don't --

19                   CMSR. HONIGBERG: Do you understand --  
20      oh, Ms. Amidon. I'm sorry.

21                   MS. AMIDON: I was going to say, I don't  
22      see how this answer relates to the, you know, their  
23      testimony regarding the conceptual estimate that was  
24      provided by Sargent & Lundy. But I would ask that, you

[WITNESS PANEL: DiPalma~Dalton]

1 know, Mr. Patch once again refers to the law and allow  
2 them to take the time to look at it, if he wants the  
3 answer to that question.

4 CMSR. HONIGBERG: Do you understand  
5 Mr. Patch's question?

6 WITNESS DiPALMA: Not fully. And, I  
7 don't feel qualified to answer it.

8 WITNESS DALTON: No.

9 CMSR. HONIGBERG: I think there may be  
10 an understanding problem, Mr. Patch. So, maybe if you can  
11 simplify it, it might both obviate the objection and give  
12 the witnesses a better opportunity to answer it.

13 MR. PATCH: Okay.

14 BY MR. PATCH:

15 Q. I think you were here this morning for the  
16 cross-examination of Mr. Frantz, weren't you? Were you  
17 both here or was at least one of you here?

18 A. (Dalton) Most of it.

19 A. (DiPalma) Most of it. No, we didn't hear all of it.

20 Q. And, are you familiar with the information that was  
21 presented then, and you may have seen it for other  
22 reasons, about what PSNH told the Legislature about  
23 this being a not-to-exceed number, a not-to-exceed  
24 number of \$250 million? It's the two letters from

[WITNESS PANEL: DiPalma~Dalton]

1 Commissioner Nolin at DES that say that, the fiscal  
2 note on the bill that says that. Are you familiar with  
3 that information?

4 MR. GLAHN: I'm going to object. I  
5 think he's misstating the testimony.

6 MS. CHAMBERLIN: Can he turn on his  
7 microphone?

8 CMSR. HONIGBERG: I'm sorry. We  
9 can't -- people over there can't hear you.

10 MR. GLAHN: He's misstating the  
11 testimony. He can state what Mr. Nolin said in the -- in  
12 his statements. But I don't think there's any evidence in  
13 this record that there's a PSNH representation that this  
14 price was a not-to-exceed price, as opposed to an  
15 estimate.

16 CMSR. HONIGBERG: I'm going to sustain  
17 that. So, see if -- I think you can get where you're  
18 going, but I just don't think you can get it that way.

19 MR. PATCH: I guess I've got to show it  
20 to you then. These are letters from --

21 MS. AMIDON: Can you tell us what you're  
22 looking at?

23 MR. PATCH: Yes. I'm looking at  
24 attachment to Michael Hachey's testimony. And, it's Bates

1 Page 37 and 39.

2 MS. AMIDON: We don't have the Bates  
3 page.

4 MR. PATCH: Okay. Attachment 2 to  
5 Michael Hachey's testimony would be, I think, 20-2. And,  
6 it would be the --

7 MR. GLAHN: What are we referring to  
8 here?

9 MR. PATCH: Do I need to repeat it  
10 again?

11 MR. GLAHN: Yes.

12 MR. BERSAK: Yes, you do.

13 MR. PATCH: We gave you, I think, Bates  
14 pages.

15 MR. BERSAK: Yes, we're getting there.

16 MR. PATCH: And, it was 37 and 39, and  
17 Exhibit 20-2.

18 BY MR. PATCH:

19 Q. And, I'm going to show you the two letters from Michael  
20 Nolin, the Commissioner of the Department of  
21 Environmental Services, to the House and to the Senate.  
22 And, I want to point out to you in this letter where it  
23 says "Based on information from PSNH" --

24 (Court reporter interruption.)

[WITNESS PANEL: DiPalma~Dalton]

1 BY MR. PATCH:

2 Q. I'm looking at Page 2 of the first of the two letters  
3 that are included as attachments.

4 MR. GLAHN: What's the attachment?

5 MR. BERSAK: Got it.

6 MR. GLAHN: We've got it.

7 BY MR. PATCH:

8 Q. And, I'm going to read it to you, and then I'll show it  
9 to you. It says "Based on data shared by PSNH, the  
10 total capital cost for this full redesign will not  
11 exceed \$250 million (in 2013 dollars) or 197 million  
12 (in 2005 dollars), a cost that will be fully  
13 mitigated", "fully mitigated by the savings in SO2  
14 emission allowances."

15 MR. GLAHN: What's the question?

16 BY MR. PATCH:

17 Q. And, my question is, did I read that correctly.

18 A. (Dalton) Yes.

19 A. (DiPalma) Yes.

20 Q. And, without having to read it all again, there is  
21 virtually the same statement, I believe, on Page 2 of  
22 the letter that was provided to the Chairman of the  
23 Senate Committee, and this is the next, actually skip a  
24 page, it's the page after that, in Attachment 2 to

[WITNESS PANEL: DiPalma~Dalton]

1 Exhibit 20. Is it approximately the same language?

2 A. (DiPalma) Has the same "it will not exceed  
3 \$250 million".

4 Q. Okay. And, then, while I'm here, I want to show you  
5 the other attachment to Mr. Hachey's testimony, which  
6 is a fiscal note on the bill that's Attachment 1. It's  
7 Bates Page 35. And, ask you to read this.

8 A. (DiPalma) "The installation will be at a cost not to  
9 exceed \$250 million in 2013 dollars or \$197 million in  
10 2005 dollars."

11 Q. Okay. And, this is the fiscal note on the legislation  
12 that's provided to the Legislature.

13 MS. AMIDON: Is there a question?

14 MR. PATCH: Not yet.

15 BY MR. PATCH:

16 Q. And, so, I guess my question is, given what you've said  
17 about this being an "conceptual estimate", and also  
18 given what you said about the Sargent & Lundy estimate  
19 being "necessary to satisfy legislative discussions", I  
20 mean, it seems to me that those two are basically  
21 irreconcilable. They certainly didn't represent to the  
22 Legislature that it was "conceptual".

23 MR. BERSAK: I would ask you the  
24 question, who is "they"?

[WITNESS PANEL: DiPalma~Dalton]

1 CMSR. HONIGBERG: It's not even a  
2 question. It's still just a statement by Mr. Patch.

3 MR. PATCH: I haven't got there yet.

4 CMSR. HONIGBERG: Okay. So, finish the  
5 question.

6 BY MR. PATCH:

7 Q. Does this in any way change your opinion of PSNH in how  
8 they approach this? To the extent that they  
9 represented to the Legislature, as indicated in the  
10 legislative history, that it was a not-to-exceed number  
11 of 250 million, and that their understanding was that  
12 that number was all-inclusive?

13 CMSR. HONIGBERG: No, wait. Don't  
14 answer it. We're going to get objections from two  
15 different places.

16 MR. GLAHN: So, where we are in this now  
17 is we have statements that he's talked about before where  
18 it's very clear that PSNH described this as an "estimate".  
19 We have Mr. Nolin saying "based on information provided",  
20 no representations by PSNH, that he -- that he viewed this  
21 to be, Mr. Nolin reviewed this to be or considered this to  
22 be a not-to-exceed number. So, now he's asking whether  
23 PSNH represent something to the Legislature.

24 CMSR. HONIGBERG: No. The question was



1 "does this change your opinion?", I believe is what he  
2 asked.

3 MR. GLAHN: Well, what exists in that  
4 question, though, is PSNH's representations to the  
5 Legislature that this was a not-to-exceed price.

6 CMSR. HONIGBERG: And, the basis for the  
7 objection then is?

8 MR. GLAHN: Is that there's no  
9 foundation for that testimony in this case, other than a  
10 hearsay statement in a letter from Mr. Nolin, that he took  
11 information provided by PSNH to be a not-to-exceed number.

12 CMSR. HONIGBERG: Ms. Amidon.

13 MS. AMIDON: No, I won't object.

14 CMSR. HONIGBERG: Mr. Patch.

15 MR. PATCH: Well, I think there's  
16 actually four pieces of information in the record now.  
17 There's the fiscal note that we showed Mr. Frantz this  
18 morning that has the information in that. And, we went  
19 through what that says. There are the two Nolin letters.  
20 And, there is the actual fiscal note that appeared on the  
21 legislation itself. And, they all refer to the fact that  
22 PSNH estimated it would not exceed 250 million. Actually,  
23 there's another piece, too. There's the information that  
24 they provided, that I showed to Mr. Frantz, which was a

[WITNESS PANEL: DiPalma~Dalton]

1 Q&A, in which -- that they said was provided to the  
2 Legislature, in which they said "it was not going to  
3 exceed 250 million". So, there's a clear foundation for  
4 that evidence. And, is it hearsay? Well, you know, I  
5 don't know. There's four or five pieces of information to  
6 that effect, and the Commission is not bound by the rules  
7 of evidence.

8 CMSR. HONIGBERG: I understand that.  
9 But what you really want to know is, do any of those  
10 documents change the witnesses' testimony in any way?  
11 Isn't that what you're interested in? That was ultimately  
12 where you got with your question.

13 MR. PATCH: No, that's right. And,  
14 maybe if I rephrase the question, and then I'll let people  
15 object to it.

16 BY MR. PATCH:

17 Q. But, I guess, based on your years of experience, --

18 MR. PATCH: I'll withdraw the question  
19 and I'll rephrase it.

20 CMSR. HONIGBERG: Okay.

21 BY MR. PATCH:

22 Q. And, based on your years of experience, do you think it  
23 was appropriate for PSNH to tell the Legislature that  
24 the Project cost would not exceed 250 million?

[WITNESS PANEL: DiPalma~Dalton]

1 MR. GLAHN: Still an objection. There's  
2 no foundation.

3 CMSR. HONIGBERG: I agree.

4 MR. GLAHN: There's a simple question  
5 here. "Would it be appropriate for PSNH to tell the  
6 Legislature that their estimate was \$250 million, given  
7 what they know?" If he asks that question, I can't object  
8 to it.

9 CMSR. HONIGBERG: Or, he could also ask,  
10 if it would have been appropriate for PSNH to say that "it  
11 would not exceed \$250 million"? Not necessarily that they  
12 did, but would it have been appropriate to say that? Both  
13 of those would seem to be okay.

14 MR. PATCH: I'm happy to take the  
15 Chairman's question and use that as the one for the  
16 witnesses.

17 CMSR. HONIGBERG: Do you remember which  
18 of those iterations I came up with there?

19 WITNESS DiPALMA: I think your question  
20 was, "would it be appropriate to ask if PNH -- PSNH  
21 presented the not-to-exceed price appropriately?"

22 CMSR. HONIGBERG: No. I think, more  
23 precisely, would it have been appropriate for PSNH to say  
24 that "it would not exceed 250"?

1                   WITNESS DiPALMA: My opinion is that I  
2       would not have presented it that way. I would have said  
3       that "this is a conceptual estimate that has a plus and  
4       minus associated with it."

5 BY MR. PATCH:

6 Q. And, if somebody else said it, and it wasn't PSNH,  
7       would it have been appropriate for PSNH to correct them  
8       in the way that you just said?

9 A. (DiPalma) I would agree.

10 Q. Okay. Page 15 of your testimony, Lines 327 and 28 --  
11       328, you say that "PSNH was proactive in getting the  
12       project underway as soon as possible", correct?

13 A. (DiPalma) Yes.

14 Q. What did you mean by the statement? What is your  
15       understanding of when they got the Project underway?

16 A. (DiPalma) As I recall, in 2008, they presented the  
17       Project to NU management. NU management basically  
18       signed off on it. And, they immediately got to work on  
19       the Project.

20 Q. Okay. And, do you know when the Scrubber Law was  
21       passed?

22 A. (DiPalma) No, I don't.

23 Q. Well, subject to check, May 9th, 2006 is the date that  
24       the Governor signed the law into effect. So, that's

[WITNESS PANEL: DiPalma~Dalton]

1 more than two years before what you just cited,  
2 correct?

3 A. (DiPalma) About four years, yes. Two years. Yes, I'm  
4 sorry, it's two years.

5 Q. And, in your testimony, Page 29, you say "in the time  
6 period between the Sargent & Lundy -- Sargent & Lundy  
7 cost estimate in 2005 and the URS cost estimate," which  
8 was done in 2008, "significant commodity price  
9 escalation was being experienced both nationally and in  
10 the world economy." And, this was one of the reasons  
11 for the increase in the cost estimate of the Project,  
12 correct?

13 A. (DiPalma) That's correct.

14 Q. And, "Jacobs estimated that during this time period,  
15 prices for certain materials and commodities escalated  
16 between 45 and 60 percent." Correct?

17 A. (DiPalma) That's correct.

18 Q. Are you familiar with the first statement in the  
19 Scrubber Law, 125-O:11, I, where it says "It is in the  
20 public interest to achieve significant reductions in  
21 mercury emissions at the coal-burning electric power  
22 plants in the state as soon as possible"?

23 A. (DiPalma) No, I'm not. I'm not specifically aware of  
24 that, no.

[WITNESS PANEL: DiPalma~Dalton]

1 Q. Were you aware of the incentives included in the  
2 Scrubber Law for PSNH completing the Project early?

3 A. (DiPalma) I've heard about that as a result of  
4 attending the hearings.

5 Q. So, it was in their interest to get this done as soon  
6 as possible, was it not?

7 A. (DiPalma) I would say so, yes.

8 Q. Now, based on what you said about commodity price  
9 escalation during that two-year period, doesn't this  
10 mean that, if they had proceeded with the Project and  
11 entered into contracts sometime earlier than the Fall  
12 of 2008, which by their own testimony is when they  
13 first entered into contracts, that they could have  
14 saved money for ratepayers by avoid much of the  
15 commodity price escalation?

16 A. (DiPalma) I couldn't say that. We'd have to do a much  
17 more in-depth look at commodity prices in previous  
18 years, and also availability of labor, because that's  
19 another big factor.

20 Q. In your testimony, on Page 19, you indicate that "PSNH  
21 hired PowerAdvocate in 2008 to conduct a thorough  
22 review of the market conditions associated with capital  
23 construction projects and retrofit scrubber projects."  
24 Is that correct?

1 A. (DiPalma) Yes, we did.

2 Q. What's your understanding of why they hired this  
3 company?

4 A. (DiPalma) It was basically two-fold. First was to get  
5 a sense of the market, and some of the issues related  
6 to it. And, then, second, to develop potential cost  
7 savings as the Project evolved.

8 Q. Do you know if that study ever addressed natural gas  
9 prices?

10 A. (DiPalma) I don't believe so. I don't believe so.

11 Q. Wouldn't that have been an important part of assessing  
12 the market conditions?

13 A. (DiPalma) I think this was the market conditions  
14 associated with the Project. Not necessarily the, you  
15 know, the execution of the Project, as opposed to the  
16 political ramifications.

17 Q. I don't know if you were here this morning when I read  
18 to Mr. Frantz some of the conclusions from that draft  
19 that was presented in June of 2008. And, I'll read  
20 them again and just ask if you have any comment on  
21 this. That draft said "The Merrimack Station cost  
22 estimate was on the high end of the cost per  
23 kilowatt-hour range similar to other FGD retrofit  
24 projects." It also said "capital construction costs

[WITNESS PANEL: DiPalma~Dalton]

1 for new generation remained at historic levels, with no  
2 clear understanding of whether or not a peak had been  
3 reached." It said, "there were significant levels of  
4 uncertainty around projected carbon regulations and  
5 effects of a tight labor market." And, their  
6 conclusion was "there were no good and reliable  
7 indicators to follow for investment decisions." Have  
8 you seen that report? Have you seen those conclusions?

9 A. (DiPalma) I do recall hearing that from Mr. Frantz's  
10 testimony. But I have not specifically seen it in the  
11 report.

12 Q. So, today is the first time you've heard that?

13 A. (DiPalma) Yes.

14 Q. We, on Monday, received a copy of the September 2013  
15 analysis that Mr. Bersak had asked you a few questions  
16 about.

17 MR. PATCH: I don't think that's been  
18 marked as an exhibit. So, what I would like to do for the  
19 record is to mark the two-page report as an exhibit. I  
20 didn't bring any of the spreadsheets that were provided  
21 with it. It's just the two-page report that I'm  
22 interested in. But I don't know whether Staff or anybody  
23 else is interested in having the spreadsheets marked as  
24 well. But that's all I'm asking to be marked at this



1 point.

2 CMSR. HONIGBERG: That's going to be  
3 "Exhibit 60". While this is being handed out, Mr. Patch,  
4 where are you in your outline?

5 MR. PATCH: I've got two or three more  
6 questions.

7 (Atty. Goldwasser distributing  
8 documents.)

9 (The document, as described, was  
10 herewith marked as **Exhibit 60** for  
11 identification.)

12 MR. BERSAK: If this is going to be  
13 marked as an exhibit, we would request that the entirety  
14 of what was supplied to the parties be included, not just  
15 the cover sheet, but also the spreadsheets that were part  
16 of the report.

17 CMSR. HONIGBERG: I think Mr. Patch is  
18 indifferent as to whether those are included, I think  
19 that's what he said. Do we have copies of it for now?  
20 Can we agree then that those will be added to the exhibit,  
21 after, you know, when there's a break or an opportunity to  
22 do so?

23 MR. BERSAK: That will be satisfactory.

24 CMSR. HONIGBERG: All right. Sounds

1 good. Mr. Patch.

2 BY MR. PATCH:

3 Q. So, according to what the report says, and I think  
4 you've already testified to, you were asked to review  
5 the early termination provisions of the various  
6 contracts, to determine potential financial  
7 consequences if PSNH had terminated the Project at  
8 various points in time. And, it looks like Staff kind  
9 of picked those points in time for you, is that  
10 correct?

11 A. (DiPalma) Yes. That's correct.

12 Q. And, on Page 2, you have that Table 1 that has the  
13 "Early Termination Analysis Summary", and then there's  
14 a line one up from the bottom, or a row that goes  
15 across, "Total Termination Expense". And, then, it  
16 correlates with the time frames at the top of that  
17 chart, correct?

18 A. (DiPalma) Yes. That's correct.

19 Q. And, for example, in September of 2008, according to  
20 your analysis, total termination expense at that point  
21 would be basically 11 and a half million dollars,  
22 correct?

23 A. (DiPalma) That's correct.

24 Q. And, in March of '09, it would have been \$36 million,

1 correct?

2 A. (DiPalma) Correct.

3 MR. PATCH: I have no further questions.

4 Thank you.

5 CMSR. HONIGBERG: Who's going to go  
6 next? Mr. Fabish.

7 MR. FABISH: Good afternoon.

8 WITNESS DiPALMA: Good afternoon.

9 WITNESS DALTON: Good afternoon.

10 MR. FABISH: One side or the other, so  
11 we can see each other. So, I have a few questions about  
12 both your report and your testimony.

13 BY MR. FABISH:

14 Q. Just speaking very generally to begin with. The  
15 information that's in your reports, how is that  
16 collected?

17 A. (DiPalma) it's a combination of requesting data from  
18 the Company, as well as interviews. And, that would be  
19 for the initial report. And, for the ongoing quarterly  
20 reports, that would be through visitation, and also  
21 requesting reports.

22 Q. So, about how many interviews did you conduct?

23 A. (Dalton) Twenty, thirty. I mean, we talked to multiple  
24 people, PSNH, and with the contractor, URS, multiple

[WITNESS PANEL: DiPalma~Dalton]

1 times. And, so, it was probably 30 or more.

2 A. (DiPalma) And, these are both formal and informal.

3 Q. And, would you talk to the same person on multiple  
4 occasions?

5 A. (DiPalma) Certain individuals, like let's say  
6 Mr. Smagula, we'd speak to him probably every time we  
7 were there.

8 A. (Dalton) Yes.

9 Q. And, did part of your process involve evaluating  
10 information you received from PSNH?

11 A. (DiPalma) Yes.

12 Q. And, then would you ask follow-up questions about that  
13 information?

14 A. (DiPalma) I'm sorry?

15 Q. No, I'm sorry. And, then would you ask follow-up  
16 questions about that information?

17 A. (DiPalma) Yes.

18 Q. And, would you take steps to verify that information?

19 A. (DiPalma) We have a process where we try and confirm  
20 what we hear in an interview from a factual  
21 presentation in the form of a document request. So, we  
22 always try and basically do a full cycle on everything,  
23 so that it is fact-checked.

24 Q. Okay. So, you mean you receive something in writing,

{DE 11-250} [Day 2/Afternoon Session ONLY] {10-15-14}

[WITNESS PANEL: DiPalma~Dalton]

1 and then you would ask in an interview if the writing  
2 was accurate?

3 A. (DiPalma) Or vice versa.

4 Q. Or vice versa.

5 A. (DiPalma) It's typically, there is something typical  
6 documents you would ask at the beginning of a project.  
7 Then, you do an interview, you learn more about what  
8 you were reading, and you ask for additional  
9 documentation.

10 Q. Can I ask you some questions -- well, scratch that.  
11 Your testimony discusses in part the secondary  
12 wastewater treatment system, correct?

13 A. (DiPalma) Yes, it does.

14 Q. Looking at Page 35 of the testimony, I think around  
15 Line 761. You referred to this system as "the single  
16 largest change in scope item", correct?

17 A. (DiPalma) That's correct.

18 Q. So, in your estimation, it's a pretty significant part  
19 of the overall Project?

20 A. (DiPalma) Certainly, from a dollar perspective, it was,  
21 yes.

22 Q. And, that dollar perspective, that's 36.4 million, is  
23 that correct?

24 A. (DiPalma) If you include the enhancement for the

1 primary system, yes.

2 Q. So, looking at Page 12, sorry to make you flip back and  
3 forth, Line 263. The testimony says "the secondary  
4 wastewater treatment system was a necessary addition in  
5 order to reduce the liquid effluent to zero", correct?

6 A. (DiPalma) That's correct.

7 Q. Similarly, and I'm asking you to flip back, I  
8 apologize, Page 34. Looking at Line 729, that  
9 paragraph there. Your testimony says that the  
10 secondary wastewater treatment system would have  
11 resulted "in no liquid being discharged into the  
12 river", correct?

13 A. (DiPalma) Correct.

14 Q. Similarly, on Page 36, Line 773, you testified that the  
15 system "reduces the liquids effluent to zero"?

16 A. (DiPalma) Correct.

17 Q. Line 779, that "the redesign eliminated the need for  
18 the discharge portion into the river"?

19 A. (DiPalma) Correct.

20 Q. And, at Line 782 to 783, the wastewater systems "work  
21 together to have true zero liquid discharge". Is that  
22 correct?

23 A. (DiPalma) That's correct. That's what it says.

24 Q. Okay. So, I'd like to ask the basis for those

1 statements? What was the information that PSNH gave  
2 you that led you to include that in your testimony?

3 A. (DiPalma) There was two data requests that we had in  
4 that record. One was JCI-042, which was titled "Risks  
5 in Obtaining the Remaining Operation Permit - Wet Flue  
6 Gas Desulphurization Discharge". And, that's footnoted  
7 on Page 35, Footnote 30. And, Footnote 31, Jacobs WWT  
8 Inquiry 821, on Page 36, Footnote 31.

9 Q. Were you in the room yesterday when Mr. Smagula was  
10 testifying?

11 A. (DiPalma) In and out, but heard most of it.

12 Q. Okay. Were you surprised when Mr. Smagula indicated  
13 that the secondary wastewater treatment system did not  
14 result in zero liquid discharge?

15 A. (DiPalma) Appreciate that our involvement was from,  
16 basically, a theoretical perspective. So, the  
17 documentation that we reviewed was before that  
18 secondary system was placed into operation. So, we've  
19 had no contact with the unit since that point.

20 Q. So, when you say, for example, in the Jacobs report, on  
21 Page 11, which is the continuation of Subsection 1.4,  
22 "Overall Opinion", when you say "The secondary  
23 wastewater treatment system reduces the liquid effluent  
24 to zero, resulting in nothing being discharged into the

1 river", that that was a theoretical statement?

2 A. (DiPalma) That was the information that we were  
3 provided with. That was the expectation, yes.

4 Q. Does your report qualify that statement saying that was  
5 based on information provided to you?

6 A. (DiPalma) Well, we described how we obtain our  
7 information. So, I mean, everything that we have in  
8 the report basically is a result of that interview and  
9 document request process.

10 Q. So, you felt it was appropriate in that report to make  
11 a declarative statement about what the system does,  
12 despite only understanding the system on a theoretical  
13 basis before it was implemented?

14 A. (DiPalma) I think that's a fair assessment, yes.

15 Q. So, I'd like to refer your attention to Exhibit 56,  
16 which -- that's the Comments by PSNH filed on the  
17 Revised Draft NPDES permit for Merrimack Station. I  
18 want to take a look at, I think it's, depending on how  
19 you want to count it, the third page of the document,  
20 under the heading "Executive Summary". There's no page  
21 number at the bottom, but I believe it's Roman Numeral  
22 i would be that. Are you there?

23 A. (DiPalma) Yes.

24 Q. If you look at the second to last sentence of the first



[WITNESS PANEL: DiPalma~Dalton]

1 paragraph, under the heading "Executive Summary", "The  
2 secondary wastewater treatment system (SWWTS) installed  
3 at Merrimack Station does not and cannot at this time  
4 reduce FGD wastewater to zero liquid." Do you see that  
5 statement?

6 A. (DiPalma) Yes.

7 A. (Dalton) Yes.

8 Q. Does that square with what information you collected  
9 during the process you alluded to earlier, when you  
10 were developing your reports?

11 A. (DiPalma) What is in the document, I believe, as we  
12 mentioned we just saw that for the first time this  
13 morning, is the actual operation. We did not testify  
14 at all or report on the actual operation. We only  
15 talked about the information that was provided to us as  
16 to how it theoretically should operate.

17 Q. Can you point to in your report where you state that  
18 your statements about the operation of the secondary  
19 wastewater treatment system are theoretical in nature?

20 A. (DiPalma) If you look at the document references, which  
21 we have here, we can go through those, and you will see  
22 in several spots that that, in theory, is how it's  
23 supposed to work. On Page 2 of Document Request 042,  
24 under the heading --

[WITNESS PANEL: DiPalma~Dalton]

1 Q. I don't mean to cut you off, but I'm asking you a  
2 question about your testimony.

3 A. (DiPalma) This is directly related to our testimony.

4 Q. I'm asking for questions about statements in your  
5 testimony, not what material that you relied on to  
6 prepare your testimony.

7 CMSR. HONIGBERG: I thought the pending  
8 question was about what's in the report, not the  
9 testimony. I could be wrong, but --

10 MR. FABISH: I think you're actually  
11 right.

12 BY MR. FABISH:

13 Q. So, let's -- we'll go to the report, then we'll go to  
14 the testimony. So, please continue. I apologize for  
15 interrupting.

16 A. (DiPalma) Are we talking about testimony or report now?  
17 I'm confused, because we left off on testimony, I  
18 thought.

19 Q. Let's take a look at the report. Let's take a look at  
20 the report. Chronologically, that came before the  
21 testimony. So, we'll start there.

22 CMSR. HONIGBERG: While they're  
23 considering that, Mr. Fabish, how much more do you think  
24 you have?

[WITNESS PANEL: DiPalma~Dalton]

1 MR. FABISH: Maybe have ten minutes,  
2 depending on answers to questions.

3 CMSR. HONIGBERG: All right. I think  
4 what we're going to do is have him answer this question as  
5 best they can, do whatever follow-up you need to do on  
6 this particular topic, and then we'll take a break. And,  
7 you may be able to continue after that.

8 MR. FABISH: All right.

9 **BY THE WITNESS:**

10 A. (DiPalma) On Page 51 of our report, and I recognize you  
11 have a redacted copy of it and we do not. So, it would  
12 be "EPA's position", Page 51.

13 CMSR. HONIGBERG: Is there a number  
14 heading, a section heading?

15 WITNESS DALTON: Not close.

16 WITNESS DiPALMA: No, it's way back.  
17 The closest one would be 7.4.3. And, it's a good five  
18 pages beyond that.

19 BY MR. FABISH:

20 Q. So, could you describe --

21 WITNESS DiPALMA: Subtitle is "EPA  
22 Position".

23 MS. AMIDON: On the redacted, I'm  
24 finding it at Page 57.

**CONTINUED BY THE WITNESS:**

A. (DiPalma) The footnote that refers to that section is "51", and also "52" on the following page. And, in both cases, the information that was provided to us states something similar to the following: "The technical solution path is the installation of a treatment system to reduce the volume of liquid waste to a magnitude of zero to 5 gallons per minute. Beneficial reuse of this remaining liquid for fly ash dust control or for use in other station processes would then be employed or disposed of."

BY MR. FABISH:

Q. So, referring to that same section that you just looked at in the report, if you look under "EPA's Position", that subheading, look in the paragraph starting "Consequently", second sentence says "As previously mentioned the output of this secondary system reduces", right? It doesn't say "would reduce", "could reduce", "theoretically could reduce based on information you received", it says "reduces the liquid effluent to zero, resulting in nothing being discharged to the river", is that correct?

A. (DiPalma) That's correct. That's what it says.

Q. Okay. So, do you see a discrepancy between this sort

1 of declarative language that you have in the report and  
2 your testimony, and the statements made in Exhibit 56,  
3 the Comments on the Revised Draft NPDES Permit, about  
4 the ability of the secondary wastewater treatment  
5 system to reduce discharges to zero?

6 A. (DiPalma) I would say from, you know, from what we've  
7 heard this morning, or yesterday, there appears to be a  
8 difference between the theoretical performance and the  
9 actual operation of the unit.

10 Q. So, and I believe you were asked this question earlier,  
11 but you would -- would you feel it would be appropriate  
12 to revise your testimony to indicate that your  
13 statements are based on a theoretical basis and not  
14 actual performance of the facility?

15 A. (DiPalma) I would read that it was implied in our  
16 testimony that it was on a theoretical basis, based on  
17 the references that we used.

18 Q. So, even though these are statements that are made with  
19 declarative language, saying that "it reduces", not  
20 "could reduce", "would reduce", "might reduce based on  
21 information", you believe that that's implicit in those  
22 statements, is that correct?

23 A. (DiPalma) I feel comfortable with what we have in our  
24 testimony as being the theoretical application of the

[WITNESS PANEL: DiPalma~Dalton]

1 secondary wastewater treatment. And, the fact that in  
2 operation it's different, we really don't know enough  
3 about how it's being operated to have any opinion as to  
4 whether or not those are results that you would expect  
5 to see based on its operation.

6 Q. So, to clarify, when you say that "the system achieved  
7 zero" -- "results in zero liquid discharge", the fact  
8 that later a statement comes out that it does not  
9 actually achieve zero liquid discharge, you don't --

10 MR. BERSAK: Commissioner Honigberg, I  
11 think we've gone over this many times. I think the real  
12 issue here is whether the folks from Jacobs Consultancy  
13 felt it was a reasonable and prudent decision by the  
14 Company, facing what it faced in light of EPA permitting  
15 requirements, to install a secondary wastewater treatment  
16 facility that would allow it to continue to operate the  
17 plant. Whether or not that achieves zero liquid discharge  
18 is interesting, but not relevant.

19 CMSR. HONIGBERG: Well, I think --

20 MR. FABISH: But I would --

21 CMSR. HONIGBERG: I'm going to, and to  
22 the extent that's an objection, I'm going to overrule it.  
23 Although, I am going to ask Mr. Fabish, how much better is  
24 he going to get than the transcript that is going to come

[WITNESS PANEL: DiPalma~Dalton]

1 out of here where they have now said three or four times  
2 that it was based on the "theoretical"? Which, I mean, it  
3 pretty effectively amends the prefiled testimony, does it  
4 not?

5 MR. FABISH: It does. But what I'm  
6 interested in getting at, and what I'm curious about is,  
7 what I see is three conflicting sets of statements. One,  
8 the testimony -- one, the prefiled testimony, two, what  
9 we're hearing here today, and, three, statements in the  
10 comments by PSNH to EPA. And, I'm trying to understand  
11 the distinction between those three things.

12 CMSR. HONIGBERG: So, what we're going  
13 to do is take a few minute break and give you a chance to  
14 collect your thoughts as to maybe how to do that  
15 efficiently, because I think you may already have it, if  
16 you think about it, but maybe you need to do a little bit  
17 more. But give you a chance to think about that and  
18 finish whatever else you're going to do when we come back.

19 So, we're going to break until quarter  
20 of. And, let's go off the record for just a second.

21 (Brief off-the-record discussion ensued  
22 and then a recess was taken at 3:38 p.m.  
23 and the hearing resumed at 3:51 p.m.)

24 CMSR. HONIGBERG: Mr. Fabish.

[WITNESS PANEL: DiPalma~Dalton]

1 MR. FABISH: Thank you. I think I just  
2 have two, maybe two and half or three questions remaining.  
3 So, beg your indulgence for just a few more minutes.

4 CMSR. HONIGBERG: If you identify the  
5 half question for us, we'll be looking forward to that.

6 MR. FABISH: Okay. It's a statement  
7 without a question.

8 BY MR. FABISH:

9 Q. So, over the course of the 30-ish interviews and the  
10 data requests and the informal meetings that you  
11 discussed earlier today, did PSNH ever convey to you  
12 that the secondary wastewater treatment system did not,  
13 in actuality or in practice, reduce discharges to zero  
14 liquid discharge?

15 A. (DiPalma) We concluded our investigation prior to any  
16 operation of the secondary water treatment.

17 Q. And, so, subsequently there's no communication?

18 A. (Dalton) The answer is "no, they did not."

19 Q. So, at no point in time --

20 MR. FABISH: That was maybe the half  
21 question there, actually. So, I think that's all I have.  
22 Thank you.

23 CMSR. HONIGBERG: Mr. Irwin.

24 MR. IRWIN: Thank you. Good afternoon.



[WITNESS PANEL: DiPalma~Dalton]

1 My name is Tom Irwin. I represent the Conservation Law  
2 Foundation. I'd like to start by admitting into evidence  
3 the Fact Sheet that accompanied -- the Fact Sheet  
4 published by Environmental Protection Agency accompanying  
5 the Revised Draft Permit for the NPDES.

6 CMSR. HONIGBERG: This will get marked  
7 as "60". Although, I think as Ms. Amidon has clarified  
8 this morning, we're not going to make anything a full  
9 exhibit until sometime later. But, at this point, it's  
10 marked as "60" -- no, I'm sorry, "61". My bad.  
11 "Sixty-one".

12 (The document, as described, was  
13 herewith marked as **Exhibit 61** for  
14 identification.)

15 MR. IRWIN: Thank you.

16 BY MR. IRWIN:

17 Q. If I could please direct your attention to Page 24 of  
18 the Fact Sheet. And, I guess just to start off, I  
19 assume your familiar with the NPDES permitting process  
20 and the role that a Fact Sheet plays in that permitting  
21 process?

22 A. (Dalton) Yes.

23 Q. Okay. Thank you. So, directing your attention to  
24 Page 24, and continue onto Page 25, I'd like to just

[WITNESS PANEL: DiPalma~Dalton]

1 ask you a few questions about Table 4-1, if we could  
2 just walk through that briefly. Does this appear to  
3 you to be a documentation of wastewater hauled away  
4 from Merrimack Station to various POTWs in the region?

5 A. (Dalton) Yes.

6 Q. And, I assume you would agree that the table contains  
7 dates on which wastewater was shipped, the volume  
8 shipped, and the destination?

9 A. (Dalton) Yes.

10 Q. And, if you were to look at this all together, again,  
11 looking onto Page 25 as well, rough calculation, would  
12 you say that there have been millions of gallons of  
13 wastewater shipped from Merrimack Station to publicly  
14 owned treatment works?

15 A. (Dalton) Certainly more than 2 million, yes. I don't  
16 do math like that in my head today.

17 Q. And, I don't know how familiar -- how familiar you are  
18 with the area, but would it surprise you to learn that  
19 some of these destinations, Franklin, for example,  
20 Hooksett, have wastewater treatment plants or are POTWs  
21 that discharge to the Merrimack River?

22 A. (Dalton) I'll take your word for it. I don't know that  
23 they do. But I would assume that they are taking it to  
24 a POTW.

1 Q. And, by the way, looking at the dates, all of these  
2 dates post date the construction of the Scrubber,  
3 correct? Post date operation of the Scrubber?

4 A. (Dalton) Yes.

5 Q. If you could turn back to Page 23 of the Fact Sheet  
6 please. And, looking at the second full paragraph, and  
7 I'll represent to you this is a narrative description  
8 by EPA of the shipments of wastewater to area POTWs at  
9 various times during the evolution of the wastewater  
10 treatment system. Looking at that second paragraph,  
11 third sentence, "Region 1", that's Region 1 of the EPA,  
12 "initially thought that PSNH had stopped hauling  
13 treated FGD wastewater off-site for disposal after  
14 October 2012 but the Region later learned that this was  
15 not the case. This confusion resulted from PSNH's  
16 unilateral decision to discontinue submitting the  
17 monthly reports regarding off-site disposal that were  
18 required by Region 1's March 22nd, 2012 Clean Water Act  
19 Section 308 information request." Did I read that  
20 correctly?

21 A. (Dalton) Yes.

22 Q. In your interviews with PSNH, did they share  
23 information about their shipments of wastewater to  
24 POTWs?

[WITNESS PANEL: DiPalma~Dalton]

1 A. (Dalton) In the documentation we were provided, and I  
2 guess our last visit up here was 2012, the  
3 documentation we were provided was that, until the  
4 secondary wastewater treatment system was operational,  
5 they would be hauling to the POTW. Yes. And, there's  
6 a sketch in some of the information that that is an  
7 alternative disposal position.

8 Q. So, the representation was that, until it was  
9 operational, --

10 A. (Dalton) Yes.

11 Q. -- those shipments would be taking place?

12 A. (Dalton) Yes.

13 Q. Did that lead you to believe that, once operational,  
14 those shipments would no longer take place?

15 A. (Dalton) That's what I understood. And, I think Frank  
16 would --

17 A. (DiPalma) Yes.

18 (Court reporter interruption.)

19 **BY THE WITNESS:**

20 A. (Dalton) Yes, that's what we understood.

21 BY MR. IRWIN:

22 Q. Referring you to Page 26 of the Fact Sheet. Actually,  
23 I guess, before we go there, I just want to turn  
24 briefly to your report, Exhibit 16, Page 12. I know

[WITNESS PANEL: DiPalma~Dalton]

1 attorney Fabish went into this with you. I'm going to  
2 take it one clause further. Page 12, Line -- starting  
3 at Line 263. "The installation of the secondary  
4 wastewater treatment system" --

5 CMSR. HONIGBERG: I'm sorry. Are you  
6 looking at the testimony or the report?

7 MR. IRWIN: I'm sorry. Testimony.

8 WITNESS DALTON: Testimony.

9 MR. IRWIN: The testimony. Prefiled  
10 testimony, Exhibit 16.

11 WITNESS DALTON: All right. Would you  
12 repeat that location.

13 MR. IRWIN: Yes.

14 BY MR. IRWIN:

15 Q. It's Page 12, starting at Line 263. "The installation  
16 of the secondary wastewater treatment system was a  
17 necessary addition in order to reduce the liquids  
18 effluent to zero, resulting in nothing being discharged  
19 into the river." You would agree that there are  
20 discharges to the Merrimack River, correct?

21 A. (Dalton) No.

22 Q. No?

23 A. (Dalton) No.

24 Q. That there is no effluent going to the Merrimack River

1 through, indirectly, an indirect discharge through a  
2 POTW?

3 A. (Dalton) But what we were told is the water would be  
4 recycled for use into the plant. That's in our report.

5 Q. Okay. So, that's your report and based on what you  
6 were told?

7 A. (Dalton) Yes.

8 Q. All right. So, getting back to Page 26 of the Fact  
9 Sheet, let's see, the last full paragraph above Section  
10 4.4.2. This is a statement from EPA. Last sentence:  
11 "Yet Region 1 of EPA also notes that in support of  
12 PSNH's then pending energy service rate application,  
13 William H. Smagula, PSNH's Director of Generation,  
14 stated that the following" -- "stated the following to  
15 the NHPUC: "The secondary wastewater treatment system  
16 is a technology that will be used on a permanent basis  
17 to complement the primary treatment system"." Is that  
18 consistent with what you were informed by PSNH?

19 A. (Dalton) Yes.

20 MR. IRWIN: Thank you. I have no  
21 further questions.

22 CMSR. HONIGBERG: Then, it's up to us, I  
23 believe. Commissioner Iacopino.

24 SP. CMSR. IACOPINO: Thank you. I've

1 got some more questions about the secondary wastewater  
2 treatment system for you gentlemen.

3 BY SP. CMSR. IACOPINO:

4 Q. First of all, I didn't notice which one of you  
5 mentioned -- I'm sorry. I didn't notice which one of  
6 you had indicated earlier in your direct testimony that  
7 you had worked with this type of system before?

8 A. (Dalton) I have.

9 Q. Okay. On how many occasions?

10 A. (Dalton) Well, we use this technology in the paper  
11 industry, for evaporation, concentration,  
12 crystallization. Same technology, different  
13 application. There we're concentrating the by-product  
14 of the pulping operation to burn in the boiler. This  
15 technology is something we've dealt with, and that  
16 we've done quite a few combined cycle combustion  
17 turbine plants. We did one in California that had the  
18 zero liquid discharge installation in it.

19 Q. And, in those applications where you have used this  
20 technology, it's been used for the purposes of  
21 eliminating discharge that would otherwise require some  
22 kind of environmental permit?

23 A. (Dalton) In the power plants, yes.

24 Q. All right. What about --

[WITNESS PANEL: DiPalma~Dalton]

1 A. (Dalton) The paper mills, it's not as -- it's to be  
2 able to recover the chemicals that are in the pulping  
3 liquids.

4 Q. Okay. When you were doing your analysis, when you were  
5 obtaining information from Public Service, at some  
6 point did you become aware that they were, in fact,  
7 planning to remove effluent by truck from the facility?

8 A. (Dalton) We were aware that, until they got the  
9 secondary wastewater treatment system operational, they  
10 would be trucking to a POTW.

11 Q. Understanding that, did you ask for them to provide you  
12 with any kind of economic analysis on the costs of  
13 trucking the effluent out after going through the  
14 primary wastewater treatment system, versus the  
15 construction of the secondary wastewater treatment  
16 system?

17 A. (Dalton) No, sir, we didn't, because that was, I think,  
18 outside the scope of our charge.

19 Q. Okay. Yet, you made a decision or you gave an opinion  
20 that "the secondary wastewater treatment system was  
21 necessary", that's in your testimony, correct?

22 A. (Dalton) Yes.

23 Q. I think you also gave an opinion at some point that it  
24 was "a good way to avoid litigation before the



[WITNESS PANEL: DiPalma~Dalton]

1 Environmental Protection Agency"?

2 A. (Dalton) Yes, sir. We did say that.

3 Q. Okay. And, where did you get the -- or, what did you  
4 base your opinion that it was necessary on? Was that  
5 from information you received from Public Service?

6 A. (Dalton) Yes, sir, it was.

7 Q. And, what information was that that made you determine  
8 that it was necessary?

9 A. (Dalton) It was, I think, basically, interviews.

10 A. (DiPalma) Interviews and these attachments.

11 A. (Dalton) Yes, and the attachments that --

12 A. (DiPalma) That were previously referred to,  
13 Attachment -- that are footnoted in my testimony.

14 Q. In Footnote 30 --

15 A. (DiPalma) Thirty and thirty-one.

16 Q. Thirty and thirty-one. Okay. And, is that also where  
17 you received the information that this would be a long,  
18 litigious process?

19 A. (Dalton) Yes.

20 Q. Why do you -- you identify the secondary wastewater  
21 treatment system as being "the largest change order in  
22 the Project", is that correct?

23 A. (DiPalma) Yes.

24 Q. All right. And, part of your task was to review the

{DE 11-250} [Day 2/Afternoon Session ONLY] {10-15-14}

[WITNESS PANEL: DiPalma~Dalton]

1 contracting process, and, actually, you spent a fair  
2 amount of time charting and watching the change orders,  
3 correct?

4 A. (DiPalma) Yes.

5 A. (Dalton) Yes.

6 A. (DiPalma) That's correct.

7 Q. And, you have a whole section of your report that is  
8 dedicated to identifying change orders?

9 A. (Dalton) Yes.

10 Q. And, it just seems to me that, if you had such a large  
11 one, the largest change order, you might ask for some  
12 kind of analysis as to whether that -- what made that  
13 necessary economically from the developer. Why do you  
14 say that that's outside the scope of what you were  
15 requested to do?

16 A. (DiPalma) We were never asked to justify the economics  
17 of any change in scope. We were asked to basically  
18 monitor the progress of the Project through completion.

19 Q. Okay. So, -- all right. When you did receive  
20 information from Public Service, did anybody ever  
21 reference to you that the concern leading to the  
22 development of the secondary wastewater treatment  
23 system, the change order, had anything to do with truck  
24 traffic?

[WITNESS PANEL: DiPalma~Dalton]

1 A. (DiPalma) Yes. That was one of the concerns. It's  
2 mentioned, actually, in 042.

3 (Court reporter interruption.)

4 **BY THE WITNESS:**

5 A. (DiPalma) It's in our Footnote 30, DR 042, all right?  
6 It mentions "solution paths". And, one of the solution  
7 paths identified alludes to the fact that it could  
8 continue to be trucked.

9 BY SP. CMSR. IACOPINO:

10 Q. I'm sorry. I didn't hear that?

11 A. (DiPalma) It alludes to the fact that it could continue  
12 to be trucked, but that was considered an unacceptable  
13 alternative.

14 Q. Okay. Now, what is it that you're actually referring  
15 to?

16 A. (DiPalma) It's a Data Request 042 that was provided to  
17 us as a result of a request that we made for  
18 information.

19 Q. Okay. Now, is that data request part of the record in  
20 this case or is that something internal to your  
21 company?

22 A. (DiPalma) That's an attachment to the testimony.

23 Q. Okay.

24 A. (DiPalma) Or a data request highlighted in the

1 testimony.

2 Q. Okay. Well, you have footnotes in your testimony,  
3 right?

4 A. (DiPalma) Right.

5 Q. And, then you have attachments. I'm just trying to  
6 find it, if --

7 MR. BERSAK: Maybe I can clarify for  
8 you, Commissioner Iacopino. As part of Jacobs' task of  
9 reviewing this Project, they asked many, many, many  
10 questions of Public Service Company of New Hampshire. We  
11 provided them with the materials they requested. They are  
12 referencing their -- one of their questions to the Company  
13 and our response thereto in this footnote. We made all of  
14 that material that we provided to Jacobs available as part  
15 of discovery to all the parties in this docket. But I do  
16 not believe that this particular referenced document in,  
17 you know, that the witness is citing of DR 042 is part of  
18 the record here or attached to any piece of other exhibit  
19 or testimony.

20 SP. CMSR. IACOPINO: Thank you. That is  
21 my question. Mr. Bersak, we would request a copy of that  
22 data -- that data request, the data request and the answer  
23 from Public Service, between Public Service and Jacobs  
24 please.

[WITNESS PANEL: DiPalma~Dalton]

1 MR. BERSAK: We will do that.

2 CMSR. HONIGBERG: Off the record.

3 (Brief notation made to the court  
4 reporter.)

5 MR. BERSAK: Would you like to mark that  
6 as the next exhibit, so we reserve a place for it?

7 SP. CMSR. IACOPINO: I don't know if the  
8 Chair would like to reserve places or, if that would be  
9 too confusing, we can just mark it when it comes in.

10 CMSR. HONIGBERG: No, since this is  
11 where it's going to be discussed, let's put it in here.  
12 So, this will be "62".

13 **(Exhibit 62 reserved)**

14 MR. BERSAK: We shall bring that with us  
15 tomorrow.

16 SP. CMSR. IACOPINO: Thank you. And, I  
17 don't have any further questions.

18 CMSR. HONIGBERG: Good afternoon,  
19 gentlemen.

20 WITNESS DALTON: Good afternoon.

21 WITNESS DiPALMA: Good afternoon.

22 BY CMSR. HONIGBERG:

23 Q. Talking about "early conceptual estimates, which are  
24 common." Is it common for them to be off by as much as

[WITNESS PANEL: DiPalma~Dalton]

1       this conceptual estimate was off, from what the numbers  
2       came out to be, from 250 to 423 or thereabouts?

3   A.   (DiPalma) I guess it depends. I've seen where they  
4       have been off even more than that. So, it's within  
5       bounds of our experience certainly.

6   Q.   So, it's not unusual?

7   A.   (DiPalma) Not unusual, right.

8   Q.   Let me make sure I understand some of the testimony you  
9       gave. Saying it's off from 250 to 423 may actually  
10       overstate, because I think you testified that the  
11       secondary wastewater system was not originally  
12       contemplated. So, it was an add-on.

13   A.   (DiPalma) That's correct.

14   Q.   I assume that's also not unusual, for things that are  
15       going to be included in a project to change along the  
16       way? Some get added, some get taken out?

17   A.   (DiPalma) Yes. There's two types of changes. One is a  
18       scope change, and the other would be a change order.  
19       So, a scope change would be where you are materially  
20       changing the original design, and that could be either  
21       an increase or a decrease, depending on what that scope  
22       change is. A change order is more of a detail change  
23       with how something is, let's say, if you're trying to  
24       fit it into a space and you find that it's got to be

1       shaped differently, in that case, that typically runs  
2       around 6 percent. The acceptable range is usually 5 to  
3       7 percent. In this case, it ran around 6 percent,  
4       which is certainly acceptable.

5   Q.   Is the addition of the secondary wastewater treatment  
6       system a change order or is it a scope change?

7   A.   (DiPalma) A scope change.

8   Q.   Because of when you were doing your work and issuing  
9       your report -- or, I guess more accurately, when you  
10      were doing your work, isn't the report, almost by  
11      definition, a pre-operation assessment of the Project?

12  A.   (DiPalma) Yes.

13  A.   (Dalton) Yes.

14                   CMSR. HONIGBERG: I don't have anything  
15      further. Does Staff have any redirect?

16                   MS. AMIDON: I just have -- I just have  
17      one question. Hello again.

18                   **REDIRECT EXAMINATION**

19  BY MS. AMIDON:

20  Q.   In your discussion about your statement regarding "the  
21      secondary wastewater treatment plant producing zero  
22      water discharge", and your comment that that was a  
23      "theoretical evaluation", would it have been clearer  
24      for this audience perhaps to have said that "the

[WITNESS PANEL: DiPalma~Dalton]

1 secondary wastewater treatment plant was expected to  
2 result in zero liquid discharge"?

3 A. (DiPalma) I think, upon reflection, I think that would  
4 have been an appropriate addition, yes.

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

7 CMSR. HONIGBERG: So, I think we are  
8 done with these two witnesses.

9 MR. BERSAK: Commissioner Honigberg, --

10 CMSR. HONIGBERG: Yes, Mr. Bersak.

11 MR. BERSAK: -- the Company respectfully  
12 asks for permission to ask questions in three discrete  
13 areas.

14 CMSR. HONIGBERG: And, those areas would  
15 be?

16 MR. BERSAK: One is the effective  
17 incentives under the law, and how they would affect the  
18 Company's desire to complete the plant early, which these  
19 witnesses were asked about. The second area would be  
20 their -- whether Jacobs had access to and the ability to  
21 review the PowerAdvocate report many years ago, when they  
22 were preparing their report. And, the third is the issue  
23 of whether the secondary wastewater treatment facility,  
24 whether it's important is that it's a technology that



[WITNESS PANEL: DiPalma~Dalton]

1 provides zero liquid discharge or there was a technology  
2 that has allowed the plant to continue to operate under  
3 its current NPDES permit and provide benefits to customers  
4 while the EPA figures out what it's going to do.

5 CMSR. HONIGBERG: Ms. Chamberlin.

6 MS. CHAMBERLIN: Your Honor, I would  
7 object to -- generally object to all three, most of those,  
8 because they have been covered. The incentives under the  
9 law, these guys aren't lawyers, they won't have any  
10 insight on that particularly relevant to the  
11 determination. Access to the PowerAdvocate report, it was  
12 discussed, I don't know that we need to cover that again.  
13 And, the second wastewater treatment, we've gone over and  
14 over that. I don't see that having more questions is  
15 going to change their testimony any.

16 CMSR. HONIGBERG: Staff, do you have any  
17 opinion on this?

18 MS. AMIDON: We're indifferent. If the  
19 Commission wants to allow PSNH to go ahead with these  
20 questions, we don't object.

21 MR. BERSAK: If I may, and we do have  
22 the burden of proof under the Commission's rules. And,  
23 this Commission has stated many, many times, over and over  
24 and over, before construction, during construction, after

[WITNESS PANEL: DiPalma~Dalton]

1 construction, that there was a law requiring us to do  
2 exactly what we did. The Company made that investment.  
3 We've petitioned for recovery under RSA 125-0:18. Under  
4 the Commission's rules, since we have the burden of proof,  
5 we also have the right under Commission's rules to open  
6 and close any part of the presentation. There are matters  
7 being brought up today that happened as recently as three  
8 or four weeks ago. There isn't any possibility that we  
9 could have contemplated these kinds of cross-examination  
10 questions. For the purpose of a clear record, we would  
11 like the opportunity to ask three or four more questions.

12 CMSR. HONIGBERG: Mr. Fabish.

13 MR. FABISH: I would like to object to  
14 the request on the grounds that what essentially PSNH is  
15 asking for is the right to be able to redirect other  
16 parties' witnesses. PSNH had opportunities to ask  
17 questions of these witnesses, PSNH has had ample  
18 opportunity to present their own testimony throughout this  
19 docket. I think that, particularly given that we have a  
20 large number of witnesses to get through, that it's  
21 already after 4:00, that we should -- I would be very,  
22 very concerned about opening up a practice of allowing  
23 serial sets of examination of other parties' witnesses,  
24 your Honor.

[WITNESS PANEL: DiPalma~Dalton]

1 (Cmsr. Honigberg and Sp. Cmsr. Iacopino  
2 conferring.)

3 CMSR. HONIGBERG: Mr. Bersak, we're  
4 going to let you proceed, with the understanding that  
5 you're going to cover just those three discrete topics.  
6 And, that we'll give others the opportunity to follow up,  
7 if appropriate.

8 MR. BERSAK: I appreciate that. Thank  
9 you, Mr. Commissioner.

10 BY MR. BERSAK:

11 Q. Okay. I'm sorry. Mr. DiPalma, you were asked earlier  
12 by Attorney Patch, on behalf of TransCanada, whether it  
13 would be in Public Service Company of New Hampshire's  
14 benefit to complete the Project early due to the  
15 existence of incentives for early completion that exist  
16 under the Scrubber Law? Do you recall that question?

17 A. (DiPalma) Yes.

18 Q. And, do you recall your answer to that question?

19 A. (DiPalma) Yes.

20 Q. And, your answer was?

21 A. (DiPalma) We learned about that since we were here in  
22 the hearing room.

23 Q. Are you aware that any such incentives that might have  
24 been earned by the Company would flow back to customers

[WITNESS PANEL: DiPalma~Dalton]

1 as part of our ratemaking process and not be to the  
2 benefit of shareholders?

3 A. (DiPalma) No.

4 Q. Would that change your answer? Would that change your  
5 answer to the question, as to whether incentives in the  
6 law would be in Public Service Company of New  
7 Hampshire's benefit?

8 A. (DiPalma) That would not change our testimony, no.

9 Q. Okay. You were read some quotations or some extracts  
10 from the PowerAdvocate report that you could not  
11 recall, do you remember that?

12 A. (DiPalma) Yes.

13 Q. Is it true that, in your report, at Page 67, Line 31,  
14 there is a table --

15 A. (Dalton) Our report or testimony?

16 Q. Your final report.

17 A. (Dalton) The report.

18 A. (DiPalma) Dated September 10th?

19 Q. The September 10th report.

20 A. (Dalton) Page?

21 Q. Sixty-seven. There is a table entitled "Data Request".

22 A. (Dalton) It's not 67 in our version. Oh, here it is.  
23 Yes, Page 60.

24 Q. And, Line 31 of that table, do you see that?

{DE 11-250} [Day 2/Afternoon Session ONLY] {10-15-14}

[WITNESS PANEL: DiPalma~Dalton]

1 A. (DiPalma) Yes.

2 Q. Does that indicate that you requested a copy of the  
3 PowerAdvocate report from Public Service in November of  
4 2010, about years ago?

5 A. (DiPalma) Yes. Yes, it does.

6 Q. And, would you -- is it your understanding that you  
7 actually received that report?

8 A. (Dalton) Yes.

9 A. (DiPalma) Yes.

10 Q. And, finally, with respect to the secondary wastewater  
11 treatment facility, I'm going to ask you a question  
12 which I think you know I'm going to ask, which is, for  
13 purposes of your findings and recommendation, was it  
14 important for the secondary wastewater treatment  
15 facility to be a "zero liquid discharge" facility or  
16 was it important for that to be a technology that would  
17 meet the current NPDES permit issued by EPA and allow  
18 the Company to continue to operate the Merrimack  
19 Station, while the EPA goes through the process of  
20 issuing a new NPDES permit?

21 A. (DiPalma) It's the latter, obviously.

22 MR. BERSAK: Thank you. That's it.

23 CMSR. HONIGBERG: Who wants to follow  
24 up? Mr. Patch and Ms. Chamberlin want to follow up. Do

[WITNESS PANEL: DiPalma~Dalton]

1       you care which order you go?

2                       MS. CHAMBERLIN:   You can go.

3                       CMSR. HONIGBERG:   Mr. Patch.

4   BY MR. PATCH:

5   Q.   Mr. Bersak just pointed you to that box 31, he said  
6        "Page 67", that's what it is in my document, but I  
7        guess a different one in yours, refers to a "report  
8        produced by PowerAdvocate", is that correct?

9   A.   (DiPalma) Yes.

10   Q.   Do you know how many reports there were?  There was a  
11        draft report in the Summer of '08 that I was asking you  
12        about.  Then, there was a final report, was there not,  
13        I think it was in 2009?  Are you familiar with the  
14        differences between the two?

15   A.   (Dalton) No.

16   Q.   So, you don't know whether this is about the draft  
17        report or the final report, do you?

18   A.   (Dalton) No, we just referred to it the  
19        "PowerAdvocate", we didn't report -- we didn't know  
20        that, as far as I know, we didn't know there were two  
21        versions, a draft and a final.

22   Q.   So, you don't know whether you even saw the Summer of  
23        2008 report, which we got in response to a data  
24        request?

[WITNESS PANEL: DiPalma~Dalton]

1 A. (Dalton) At this stage, no. We'd have to go back in --  
2 go back in our data to see which one we were given.

3 MR. PATCH: Thank you.

4 CMSR. HONIGBERG: Ms. Chamberlin.

5 MS. CHAMBERLIN: That's the  
6 clarification that I was going to make. So, I don't have  
7 any more questions.

8 CMSR. HONIGBERG: All right. I think  
9 now we are done with these witnesses. Thank you very  
10 much. You can return to your seats.

11 Ms. Chamberlin, it's 4:20. Do we want  
12 to swear Mr. Kahal in and have him adopt his prefiled  
13 testimony, and at least get that out of the way, or do you  
14 want to just wait to do that tomorrow?

15 MS. CHAMBERLIN: I believe I would just  
16 wait till tomorrow and do it all at once, unless people,  
17 you know, feel strong about it. But I think it would  
18 easier to have his direct and cross go together.

19 CMSR. HONIGBERG: I'm indifferent. But  
20 I'll be here either way.

21 MS. CHAMBERLIN: Me, too.

22 CMSR. HONIGBERG: All right. That's  
23 fine. We'll wait till tomorrow morning.

24 Is there any other business we need to

1 transact this afternoon? Did you have a chance to discuss  
2 the bottom four lines of that spreadsheet and talk with  
3 the parties? You may not have. Mr. Bersak.

4 MR. BERSAK: We have not discussed it  
5 yet. And, with discussion at least with some of the  
6 parties, it wasn't anything that was pressing that needed  
7 to be done today. So, we will have that discussion.

8 CMSR. HONIGBERG: I agree. Fair enough.  
9 Is there anything else we need to do today?

10 (No verbal response)

11 CMSR. HONIGBERG: Thank you very much.  
12 We will adjourn till tomorrow morning.

13 **(Whereupon the hearing was adjourned at**  
14 **4:23 p.m., and the hearing to resume on**  
15 **October 16, 2014, commencing at 9:00**  
16 **a.m.)**

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