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STATE OF NEW HAMPSHIRE
PUBLIC UTILITIES COMMISSION

October 17, 2014 - 1:18 p.m.
Concord, New Hampshire

DAY 4
AFTERNOON SESSION ONLY

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

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

F. Anne Ross, Esq., General Counsel

Sandy Deno - Clerk

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I N D E X

WITNESS: MICHAEL E. HACHEY

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AFTERNOON SESSION

CMSR. HONIGBERG: We're back for the afternoon. Are we ready to start with Mr. Hachey? Apparently not.

Mr. Glahn, yes.

MR. GLAHN: We have an update on the discussion we had this morning on the EVA documents.

CMSR. HONIGBERG: Okay. Is your microphone on?

MR. GLAHN: Yes.

MR. BERSAK: Yes, and we'll be talking through this one --

MR. GLAHN: Yes, but it's irrelevant.

[Laughter]

MR. BERSAK: This morning we had a discussion about missing forecasts from Energy Ventures Associates. And as a result of Attorney Patch pointing us to our 2007 Least Cost Plan, he provided the key to unlock the mystery. So we owe him both a thank you and an apology, which I already gave him, with respect to the fact that these

1 documents had not been located up until this
2 morning. The key that they gave us, like I
3 said, was in the 2007 Least Cost Plan. We
4 were able to say, okay, who was responsible
5 for that portion of that plan, and we came up
6 with a name of a Northeast Utility employee.

7 CMSR. HONIGBERG: Who hasn't
8 moved on to Liberty yet?

9 MR. BERSAK: No, but he
10 retired several years ago. So it's the same
11 situation, but different variation on the
12 theme. It's somebody who left before
13 discovery in this proceeding began. As a
14 result of the merger with NSTAR, that
15 particular job responsibility then moved from
16 Berlin to Westwood, Massachusetts. And along
17 with that change in location of the
18 responsibilities, the files got shipped to
19 Westwood. But the people there said this is
20 fine. We've got brand new files. But this
21 is all stuff from 2005, '-6, '-7, '-8, '-9,
22 so they put them where old files go. And as
23 soon as we identified the person whose
24 responsibility it used to be and which files

1 we were looking for and the fact it moved
2 from Connecticut to Massachusetts, they were
3 able to go find them, look and say we found
4 them. They're sending them to me in real
5 time. And as soon as this hearing is done
6 today, it will be my first order of business
7 to take those and send them to the discovery
8 service list.

9 CMSR. HONIGBERG: Do you have
10 a sense of what the volume of material is
11 we're talking about?

12 MR. BERSAK: I'm guessing that
13 they were quarterly reports for about five or
14 six years, so we're talking about 25 or 24
15 different reports. We'll try to get them in
16 electronic format so that I can do it through
17 the normal electronic discovery service list.

18 CMSR. HONIGBERG: Okay.
19 That's good.

20 MR. BERSAK: I'm sorry. We
21 tried. But this is what happens when we're
22 dealing with things that were years ago and
23 people have moved on and jobs have changed
24 and -- yeah, should we have provided them

1 earlier? Yes. If we had found them, would
2 we have? Yes. We found them today. We'll
3 get them out today.

4 MR. GLAHN: These are not
5 things we could have found through electronic
6 discovery. As everyone who's been through
7 electronic discovery knows, it has its
8 advantages and disadvantages. You can see
9 where you've been and haven't been, and you
10 can probably find things easier. This is
11 finding something in a file, like Mr. Bersak
12 said. We apologize for not producing them,
13 and we'll see what they amount to when Mr.
14 Hachey resumes next week.

15 CMSR. HONIGBERG: Okay. Good
16 enough. Thank you.

17 Anything else we need to do on
18 this topic right now, Mr. Patch?

19 MR. PATCH: The only thing I'd
20 say, obviously we haven't seen them yet.

21 CMSR. HONIGBERG: Right.

22 MR. PATCH: And the second
23 thing is, in response to the request from the
24 Bench this morning, we have a letter that

1 momentarily will be here, sort of laying out
2 what it is that we think, you know, should be
3 provided. And so I'll make sure that we
4 submit that letter once it gets here, and
5 then I guess we'll wait to see what we get.

6 CMSR. HONIGBERG: I think
7 that's the right way to go. Thank you, Mr.
8 Patch.

9 So, now are we ready to call
10 Mr. Hachey?

11 (No verbal response)

12 CMSR. HONIGBERG: Seems like
13 we are.

14 Mr. Hachey, come on down.

15 (WHEREUPON, MICHAEL E. HACHEY was duly
16 sworn and cautioned by the Court
17 Reporter.)

18 MICHAEL E. HACHEY, SWORN

19 DIRECT EXAMINATION

20 BY MR. PATCH:

21 Q. Would you please state your name for the
22 record.

23 A. My name is Michael Hachey.

24 Q. And by whom are you employed and in what

1 capacity?

2 A. I'm employed by TransCanada Power, and I am
3 the vice-president of regulatory affairs and
4 compliance.

5 Q. And could you give the Committee a brief
6 summary of your qualifications and background
7 and experience.

8 A. I've been in this industry my entire life. I
9 served -- I worked 20 years for one of the
10 New England Electric System subsidiaries, for
11 the most part, New England Power Company.
12 And from the divestiture of the New England
13 power generation, I've worked for
14 TransCanada. My experience has been in the
15 various areas, primarily in the generation,
16 the electric generation side, beginning as a
17 engineering analyst, production modeling,
18 doing analytical work, moving on to working
19 for the executive vice-president of the New
20 England Electric System. I spent three years
21 at Brayton Point Station in Somerset,
22 Massachusetts, as the assistant plant
23 manager. I've worked as the manager of
24 technical services. I've also served as a

1 vice-president of generation marketing up to
2 the point of the NEES divestiture. And for
3 TransCanada, I've worked in the -- manager of
4 and subsequent director and subsequent
5 vice-president in the areas of generation
6 marketing, regulatory affairs, compliance,
7 legislative activities, property taxes and
8 the like.

9 Q. Are you the same Michael Hachey who submitted
10 prefiled testimony in this docket, dated
11 December 23, 2013?

12 A. Yes, I am.

13 Q. And that's been marked as Exhibit 20. And
14 that included 30 attachments to that
15 testimony?

16 A. Yes, it did.

17 Q. And those have been marked as 20-1 through
18 20-30.

19 A. Yes.

20 Q. Is it your understanding that the prefiled
21 testimony that we have marked has the deleted
22 portions of your testimony that the
23 Commission ordered to be stricken from the
24 testimony?

1 A. That's the version that I'm looking at.

2 Q. Do you have any corrections or updates to
3 your prefiled testimony?

4 A. I have two corrections, and I have a very
5 brief summary and update. But first
6 correction is on Page 12 of 32, Line No. 3.
7 The dollar figure \$3.19 appears, and on
8 further review it should have been \$3.18.

9 On page -- and this was a change. We
10 certainly notified PSNH and in our discovery
11 responses. On Page 21 of 32, Line 16, the
12 words appear -- I'll read the whole sentence
13 and then I'll make the correction.

14 "Unconventional natural gas was
15 exceeding production from conventional
16 natural gas," and it should have said --
17 between the words "from" and "conventional"
18 should have been inserted the word "onshore."
19 And that's it.

20 Q. With those two corrections, if you were asked
21 the same questions contained in Exhibit 20
22 today under oath, would your answers be the
23 same?

24 A. Yes.

1 Q. And you had indicated you had a brief
2 summary. Would you please summarize your
3 testimony for the Commission.

4 A. Well, what I wanted to do was just focus on a
5 few of the core points of my testimony. And
6 I'll spare you a complete review and give a
7 very modest update based on some of the
8 issues that have arisen.

9 It's been my opinion that, first, PSNH
10 failed to provide this Commission and the OCA
11 and electric representatives with key
12 information relative to the sensitivity of
13 the Scrubber economics to the natural gas and
14 coal price differential prior to their
15 expenditures of enormous sums of money for
16 which it would demand to earn a return on for
17 its shareholders.

18 Second, again, in my view, PSNH provided
19 to this Commission a substandard analysis of
20 the Scrubber's economics and ignored
21 information that should have led them to
22 realize market dynamics were changing in a
23 way that was adverse to the Scrubber
24 construction. For market pricing, their

1 analysis relied on four months of Newington
2 dispatch prices and market forwards, but
3 failed to recognize other contradictory data
4 available to them, and failed to update the
5 Commission and the Legislature as market
6 conditions were changing drastically.

7 And third -- and this is something of an
8 update to my testimony based on the recent --
9 our recent discovery of documents, and these
10 relate to the Yankee Gas documents and some
11 of the documents that PSNH had -- documents
12 that should have been provided long ago in
13 this proceeding, we now know that PSNH and
14 its affiliates had two sets of numbers for
15 gas price projections. The first was a very
16 sophisticated gas price forecast for its gas
17 operations in some of PSNH purposes; so
18 sophisticated that, in fact, the U.S. EIA
19 uses it as one of the comparison forecasts to
20 its own forecast. In another subset of
21 numbers, it had another set of numbers to
22 justify its Scrubber.

23 Worse yet, the document I reviewed
24 proves that at some point prior to March of

1 2009, perhaps as early as November of 2008,
2 but what I can say without question is prior
3 to March of 2009, PSNH and its affiliates
4 were fully aware of the implications of shale
5 gas development in the U.S. on natural gas
6 price.

7 MR. GLAHN: Your Honor, I move
8 to strike this portion of his summary. You
9 struck Mr. Hachey's testimony on the very
10 point that changes in the natural gas markets
11 were "evident" when PSNH entered into
12 contracts --

13 (Court Reporter interrupts.)

14 MR. GLAHN: -- struck his
15 testimony on the very issue of whether -- he
16 testifies to when he says everyone in the
17 world knew about fracking. But you struck
18 his testimony on the conclusion of when
19 changes in the natural gas markets were
20 evident to PSNH, which is at Page 24, Line 2
21 of his testimony.

22 THE WITNESS: That wasn't my
23 testimony. My testimony --

24 CMSR. HONIGBERG: Mr. Hachey,

1 just a moment. Wait, please. Mr. Patch.

2 MR. PATCH: Well, Mr. Hachey's
3 talking about new information that has since
4 come in that was provided to this Commission
5 on Tuesday, that we found on Monday. And I
6 think it's information that's important for
7 the Commission to have. You've already got
8 the information, so -- but it seems to me
9 that it's appropriate for Mr. Hachey to
10 comment on this new information.

11 MR. GLAHN: Well, that -- if I
12 may --

13 CMSR. HONIGBERG: Yes, Mr.
14 Glahn.

15 MR. GLAHN: I'm not sure that
16 matters at all. The point was you struck his
17 testimony based on what they didn't produce.
18 And we have -- we are going to present some
19 testimony about what PSNH -- what TransCanada
20 knew about fracking. But you struck that
21 testimony. If he wanted to now have you --
22 if he wanted to change that, he should have
23 been filing a motion with you to remove the
24 stricken testimony. Instead, they're in here

1 having him testify to the very things that
2 you struck from his testimony as a sanction.

3 CMSR. HONIGBERG: Mr. Patch.

4 MR. PATCH: The only reason
5 Mr. Hachey's testifying about this today,
6 PSNH did not produce the information we
7 brought in. They were clearly required by
8 the language of the data requests that were
9 submitted by the Commission's orders and
10 motions to compel to produce; they didn't.

11 (Commissioners conferring)

12 SP. CMSR. IACOPINO: Mr.
13 Patch, you said the information that's new
14 just came in on Tuesday. Are you talking
15 about the filing in Connecticut by Yankee
16 Gas?

17 MR. PATCH: That's right.

18 SP. CMSR. IACOPINO: Okay. I
19 just thought -- is there some reference in
20 there to "fracking" --

21 MR. PATCH: Yes --

22 SP. CMSR. IACOPINO: -- in
23 terms of --

24 MR. PATCH: -- there is. And

1 there's a reference to the EVA forecasts that
2 they used as a basis for that.

3 (Commissioners conferring)

4 CMSR. HONIGBERG: Mr. Glahn,
5 can you specify what statements you are
6 moving to strike?

7 MR. GLAHN: I think what Mr.
8 Hachey just said is he has information that
9 PSNH knew about the testimony -- or about the
10 impact of fracking, and that's what he wanted
11 to testify to.

12 CMSR. HONIGBERG: So it's the
13 statements regarding fracking.

14 MR. GLAHN: Yes. Yes.

15 CMSR. HONIGBERG: Then, that
16 motion to strike is granted.

17 MR. GLAHN: Thank you.

18 CMSR. HONIGBERG: Other
19 than -- I think that's the only thing
20 you requested; right?

21 MR. GLAHN: No, I think I
22 asked to have stricken.

23 CMSR. HONIGBERG: Fine.

24 MR. PATCH: Two things:

1 First, Mr. Hachey's available for
2 cross-examination. Second, I would like to
3 provide to the Bench the letter that you had
4 asked for this morning. I'd just like to get
5 it in the record.

6 CMSR. HONIGBERG: This is
7 related to the EVA reports and their
8 discovery?

9 MR. PATCH: We can do it
10 during a break if you prefer.

11 CMSR. HONIGBERG: Why don't we
12 wait to do that during the break.

13 MR. PATCH: Thank you.

14 THE WITNESS: I have to ask
15 the Commission a question. What is it I am
16 prohibited from talking about? Because what
17 I was talking about was a Yankee Gas report,
18 which is a factual item. It's a filing that
19 they made.

20 CMSR. HONIGBERG: What we'll
21 do is deal with that on a
22 question-by-question basis and an
23 answer-by-answer basis. You can discuss that
24 with your counsel at the next break if you

1 need to, okay.

2 Who's going to be asking
3 questions of Mr. Hachey first? I'll go to
4 the back of the room. Mr. Fabish, do you
5 have any questions?

6 MR. FABISH: No, I do not.

7 CMSR. HONIGBERG: Ms.

8 Frignoca, do you have any questions?

9 MS. FRIGNOCA: No, I do not.

10 CMSR. HONIGBERG: Ms.

11 Chamberlin, do you have any questions?

12 MS. CHAMBERLIN: No questions.

13 CMSR. HONIGBERG: All right.

14 So, looks like, Mr. Glahn, will you be
15 handling this?

16 MR. GLAHN: If I said "No
17 questions," you'd be surprised. So let me
18 start --

19 CMSR. HONIGBERG: I'm not even
20 going to say I had my hopes up on that
21 because I knew better.

22 CROSS-EXAMINATION

23 BY MR. GLAHN:

24 Q. Mr. Hachey, we've not met before, have we?

1 A. Not to my knowledge, no.

2 Q. So let me make sure I get this right. How do
3 you pronounce your name again? Is it
4 "Hatchey" or "Hashey"?

5 A. Think of the CH as SH.

6 Q. I suspect you and I are going to disagree
7 about a lot of things, so let me start with
8 some things that we may not disagree on.

9 Let me read a statement to you and see
10 if you agree with it. "The basic premise of
11 the cost to ratepayers being reasonable is
12 also reflected in the language of the Purpose
13 section in RSA 125-O:11, V: 'The installation
14 of scrubber technology will not reduce'" --
15 will not -- "'will reduce mercury emissions
16 significantly, but will not only'" -- I
17 apologize -- "'reduce mercury emissions
18 significantly, but will do so without
19 jeopardizing electric reliability and with
20 reasonable costs to consumers.'"

21 A. Could you read that from the start, because
22 you had three interruptions in there, and I
23 kind of lost track.

24 Q. Let me find a document for you which will

1 make this easy.

2 A. Particularly if I read it, yes.

3 MS. AMIDON: Want this?

4 (Discussion off the record.)

5 BY MR. GLAHN:

6 Q. Mr. Hachey, show you a motion for
7 reconsideration and rehearing that
8 TransCanada filed in Docket 08-103 and ask
9 you if you can take a look at Page 13,
10 please.

11 MR. PATCH: Could I just ask
12 which motion for reconsideration? We've had
13 a lot of those in this docket.

14 CMSR. HONIGBERG: Actually,
15 this isn't -- at least in looking at it, it's
16 from a different docket.

17 MR. PATCH: Oh, a different
18 docket.

19 MR. GLAHN: It's in 08-103,
20 Doug. It's the first -- it's the motion for
21 reconsideration that you filed on Order
22 24,898.

23 MR. PATCH: Okay. I have a
24 copy. Thank you.

1 A. I'm on Page 13. Do you want to point me to a
2 certain portion of Page 13?

3 BY MR. GLAHN:

4 Q. I do, Mr. Hachey. If you look at the top of
5 the -- it's the first full sentence on that
6 page that begins, "This basic premise of the
7 costs to ratepayers being reasonable is also
8 reflected..." see that?

9 (Witness reviews document.)

10 A. So you're asking me if I agree with what is
11 RSA 125? I mean, I guess it's the law. So,
12 I mean, whether I agree or not doesn't
13 matter, does it?

14 Q. Yes, I was asking whether you agree with the
15 statement that TransCanada made in that
16 docket.

17 (Witness reviews document.)

18 A. Well, I'm seeing a restatement of the law.
19 So if you're asking me if that's a proper
20 statement of the law, I would defer to
21 counsel. I could look it up if I had a
22 computer.

23 Q. Well, I asked you a slightly different
24 question.

1 A. Okay.

2 Q. So let me ask it a different way.

3 A. Okay.

4 Q. Do you agree that the public interest
5 considerations that the Legislature
6 enunciated when it passed RSA 125-O:11-18
7 included three considerations: One, reducing
8 mercury emissions; two, not jeopardizing
9 electric reliability; and third, doing that
10 with reasonable costs to consumers, the
11 language that you italicized in that
12 pleading?

13 A. I'm sorry, but you referred me to a section,
14 asked me if there are three parts to that. I
15 see the one part, "reduce mercury emissions
16 significantly, but will do so without
17 jeopardizing electric reliability and with
18 reasonable costs to consumers." That's what
19 it says. Now, if you're asking me about two
20 other parts, my memory is what my memory is.
21 I've read a lot of documents in this. Do I
22 recall specifically, sitting here, with a
23 hundred percent certainty, that those other
24 parts are there? I don't know. If you want

1 to show them to me, show them to me and I can
2 read them and then perhaps agree that those
3 three parts are there. Off the top of my
4 head, I don't recall whether all three of
5 those are there or whether they're in the
6 form that you presented.

7 Q. And I guess this is the part of the testimony
8 I thought we might agree on, so --

9 A. Well, I --

10 (Court Reporter interrupts.)

11 Q. I didn't ask a question, Mr. Hachey. I'm not
12 asking about the three parts of the statute.
13 I'm asking you about this part of the
14 statute. So let me make it a little plainer
15 for you.

16 (Witness reviews document.)

17 A. Part V is Scrubber technology means a wet
18 flue gas desulphurization system.

19 Q. Part V.

20 A. I'm sorry. I'm looking --

21 Q. Okay. Let me give you the introduction to it
22 so we're plain about this. This is RSA
23 125-0:11, V, and it is entitled -- see if you
24 agree -- "Statement of Purpose and Findings."

1 A. I see it.

2 Q. The General Court, the way sometimes the New
3 Hampshire Legislature is referred to, finds
4 that... and then there are subparts. And
5 Part V is one of the findings of the
6 Legislature when they passed the act.

7 (Witness reviews document.)

8 A. Part V says, "The installation of scrubber
9 technology will not only reduce mercury
10 emissions significantly, but will do so
11 without jeopardizing electric reliability and
12 with reasonable costs to consumers."

13 Q. My point is, Mr. Hachey, and the question I'm
14 asking you is: In that section of the
15 statute, the Legislature is referring to
16 three things; right? It's referring to its
17 findings are that the installation will not
18 only reduce mercury, but will do so without
19 jeopardizing electric reliability and with
20 reasonable costs to consumers. Can we agree
21 on that?

22 A. That's what it says.

23 Q. And isn't it also true, Mr. Hachey, that your
24 testimony about prudence only takes into

1 account one of those three factors? In other
2 words, all of your prudence testimony focuses
3 on whether the actions of PSNH would result
4 in reasonable costs to consumers.

5 A. I will agree with you that the focus of my
6 testimony was on the economic issues at hand.

7 Q. Now, because there's been a lot of talk about
8 this, does the law require the installation
9 of the Scrubber or not?

10 MR. PATCH: I'm going to
11 object. I think this is a request that the
12 Commission made clear in orders prior to this
13 hearing, that it doesn't want to hear legal
14 opinions from non-legal witnesses, and that's
15 exactly what's been asked.

16 CMSR. HONIGBERG: Mr. Patch is
17 correct. To the extent you want any
18 particular witness to assume a law means
19 something, tell them what assumption you want
20 them to make. If they have an understanding
21 that forms the basis for a conclusion or a
22 statement by them, you can ask them what
23 their assumption is. But simply asking the
24 witness --

1 MR. GLAHN: I'll reask the
2 question.

3 CMSR. HONIGBERG: Okay.

4 BY MR. GLAHN:

5 Q. Mr. Hachey, in preparing your testimony, did
6 you assume that the law did not require the
7 installation of a scrubber?

8 A. In preparation of my testimony, I read the
9 entirety of the law, which included a number
10 of different provisions, including variances.
11 So, among what was in the law was to install
12 a scrubber, and there were also other
13 variances -- there were also variance
14 provisions as well.

15 Q. Can you answer my question "Yes" or "No"?

16 A. I'm trying to give you a complete question
17 [sic] because you're trying to --

18 Q. What I'm asking you is this, sir: Can you
19 answer my question "Yes" or "No"? And if you
20 can, feel free to qualify it any way you want
21 to.

22 A. I thought that's what I was going. Can we go
23 over the question again?

24 MR. GLAHN: Could you read the

1 question back to the witness, please.

2 (Record read as requested.)

3 Q. "Yes" or "No," and then feel free to qualify
4 it any way you want.

5 A. As I understood the law, the law was directed
6 to tell PSNH to build a scrubber.

7 Q. And can we agree on this: That the law also
8 identified the specific type of scrubber that
9 was to be installed?

10 A. In terms of a mercury scrubber? Yes.

11 Q. The technology that was to be installed.

12 A. Yes.

13 Q. Okay. Question about prudence for the
14 moment. Would you agree with me that, in
15 determining prudence, that you looked to a
16 range of activities? In other words, a
17 utility, to be prudent, doesn't have to be
18 specifically right; they just have to be
19 within a range of reasonable behavior or
20 conduct?

21 A. I think that's fair.

22 Q. Thank you. What are the prudent costs that
23 PSNH is entitled to recover in this case? By
24 that I don't mean what's the amount. I mean,

1 what are the types of costs that they're
2 entitled to recover? Let me say it a little
3 bit differently. So, strike that.

4 Is what PSNH is entitled to recover in
5 this case the prudent cost of constructing
6 the Scrubber or the prudent cost of complying
7 with the law?

8 MR. PATCH: I'm not sure --
9 I'd like to place an objection. I'm not sure
10 I understand that question. I'm not sure the
11 witness does either.

12 MR. GLAHN: Well, if the
13 witness doesn't understand my question, he
14 can say so, not Mr. Patch.

15 CMSR. HONIGBERG: Mr. Hachey,
16 do you understand the question Mr. Glahn
17 asked?

18 THE WITNESS: Well, I'm not an
19 attorney. And we're getting into some fine
20 points, so --

21 CMSR. HONIGBERG: I think the
22 question was: Do you agree with me that the
23 law -- or no. The question was: Did the law
24 require PSNH -- no. I'm sorry. I'm

1 having --

2 MR. GLAHN: My question was:
3 Does the law entitle PSNH to recover the
4 prudent cost of construction or the prudent
5 cost of complying with the law?

6 CMSR. HONIGBERG: Do you
7 understand that question?

8 MR. PATCH: Well, I'd like to
9 place an objection now that I've heard the
10 question because, again, we're into what does
11 the law require. He's not a lawyer.

12 MR. GLAHN: Well, if I may --

13 MR. PATCH: I thought the
14 Bench has already ruled that those kinds of
15 questions are not appropriate for these
16 witness.

17 CMSR. HONIGBERG: Mr. Glahn.

18 MR. GLAHN: Mr. Hachey spent
19 an entire page of his testimony under the
20 subject heading, the following: "Are you
21 familiar with the Scrubber Law that was
22 passed by the Legislature?" and then a full
23 page of his interpretation of what the law
24 means.

1 CMSR. HONIGBERG: I'm going to
2 sustain the objection. Mr. Patch is correct.
3 You can come up with a way to get him to
4 answer this question I think without asking
5 him to interpret the law as to what it
6 required or allowed the Company to recover.

7 BY MR. GLAHN:

8 Q. Mr. Hachey, do you agree with me that, in
9 your testimony, you set forth a whole series
10 of statements about what you view the law to
11 mean?

12 A. Could you give me a reference to --

13 Q. Just take a look at Pages 3 to 4, Mr. Hachey.

14 MR. PATCH: Mr. Chairman, I'm
15 sorry to keep interrupting. But I think the
16 Commission made very clear in prehearing
17 orders that it was basically going to
18 disregard portions of a lot of testimony from
19 a lot of witnesses that included things like
20 where Mr. Glahn's going right now.

21 CMSR. HONIGBERG: You are
22 correct.

23 Mr. Glahn?

24 MR. GLAHN: Your Honor, this

1 witness is in here claiming to be a prudence
2 expert. I'm asking him what are the types
3 of -- what's the standard for determining
4 prudence under this statute? Because he's in
5 here saying, "I've read all these provisions
6 of the law." And it bears on his testimony,
7 because if there are constraints on the types
8 of costs that can be recovered, they frame
9 his testimony.

10 CMSR. HONIGBERG: Is there
11 some part of his contextual understanding of
12 the law that he's stated in his prefiled
13 testimony that you need to ask him about?

14 MR. GLAHN: We're living in a
15 parallel universe here. We live in a
16 universe in which all of these witnesses say
17 there was no obligation to construct this
18 Scrubber at all. And so what I'm asking
19 about is not only that, but what is it --
20 when he looks at prudence, what is he looking
21 at? Is he looking at the prudent cost of
22 construction, or is he looking at the prudent
23 cost of complying with the law? Maybe I'll
24 ask it that way, if that's not an

1 objectionable question.

2 CMSR. HONIGBERG: I actually
3 thought that's where you started.

4 MR. GLAHN: No. Well, let me
5 try it again. Mr. Patch will probably object
6 again.

7 BY MR. GLAHN:

8 Q. When you considered the prudence standard,
9 were you considering the prudent cost of
10 constructing the Scrubber or complying with
11 the law?

12 A. I have to go back on something you contended,
13 that I never did. You contended that I am a
14 prudence expert. I never contended that.
15 What would help me a lot is if you could
16 refer me to something in my testimony, and
17 then we can go from there, or if you can
18 refer me to something in the law, because
19 you're asking me about something that -- I
20 need to be grounded somewhere here, either in
21 my testimony or in this document.

22 Q. Let me try to ground you, Mr. Hachey.

23 A. Thank you.

24 Q. Your testimony in this case, is it not, is

1 that PSNH acted in an imprudent manner?

2 A. Yes.

3 Q. So what I'm asking you is, how did you
4 measure that prudence? Did you measure it
5 against the prudent cost of constructing the
6 Scrubber, or did you measure it against the
7 prudence of complying with the law?

8 MS. FRIGNOCA: I'm going to
9 object to the question. Am I allowed to
10 object at this point?

11 CMSR. HONIGBERG: Go ahead.

12 MS. FRIGNOCA: I object to the
13 characterization of the question that there
14 was a choice between complying with the law
15 or failing to construct the Scrubber. This
16 Commission has issued numerous rulings saying
17 that it will consider the prudence of whether
18 to construct and then whether or not -- if it
19 was prudent to construct the Scrubber,
20 whether or not the construction was prudently
21 managed. And to ask this witness to frame a
22 question saying you had a choice to either
23 comply with the law or to not install the
24 Scrubber is legal argument.

1 CMSR. HONIGBERG: Mr. Glahn.

2 MR. GLAHN: I'm trying to find
3 out the standard that he applied in
4 determining whether PSNH was prudent --

5 CMSR. HONIGBERG: Your
6 question's very broad, however.

7 MR. GLAHN: All right. Let
8 me --

9 CMSR. HONIGBERG: It does seem
10 to ask him to say what does this -- what
11 costs are they allowed to recover under the
12 law and setting it up as one being a subset
13 of another, and without a little more
14 specifics, I think it is a very difficult
15 question to understand and put in any kind of
16 context that relates to the witness's
17 testimony. If you can narrow it a little bit
18 and maybe build from the ground up rather
19 than from the top down?

20 BY MR. GLAHN:

21 Q. Okay. Mr. Hachey, on Pages 3 to 4 of your
22 testimony, you were asked whether you were
23 familiar with the law and whether you wish to
24 point out sections of the law that you think

1 were important.

2 A. I'm sorry. I was looking at the wrong
3 document. Hold on.

4 Q. I'm still going to have to get close to it,
5 but I don't have to breathe down the table.
6 Can you hear me?

7 (Witness reviews document.)

8 A. I'm on Page 3 of my testimony. And the
9 question?

10 Q. Turn to Pages 3 to 4 of your testimony. You
11 were asked, "Are you familiar with the
12 Scrubber Law?"

13 And you say, yes. You say you reviewed
14 the law and the legislative history of the
15 law. And there are a few provisions of the
16 law you wanted to point out; right?

17 A. Yes. Correct.

18 Q. Those are the sections of the law that you
19 think were important to your testimony.

20 A. Correct.

21 Q. One of those sections of your testimony, or
22 one of those bullet points was the
23 requirement in the law that, during ownership
24 and operation of the station by a regulated

1 utility, the Scrubber costs would be
2 recovered by the default service charge;
3 right?

4 A. Absolutely correct.

5 Q. Did you read the first sentence of Section 18
6 when you were reviewing the law to prepare
7 your testimony?

8 A. Well, I would have read the entirety of it.
9 We're talking over a year ago when I prepared
10 this testimony. So if I have the first
11 sentence here --

12 Q. You have it in the book. Just look at it.
13 It's RSA 125-O:18, first sentence.

14 (Witness reviews document.)

15 A. Under "Cost"? Am I in the right section?
16 "Cost Recovery"?

17 Q. Right. Let me read it for you.

18 "If the owner is a regulated utility,
19 the owner shall be allowed to recover all
20 prudent costs of complying with the
21 requirements of this subdivision in a manner
22 approved by the" -- I want to make sure I
23 don't leave a word out here. My glasses are
24 failing me -- "in a manner approved by the

1 Public Utilities Commission." See that
2 sentence?

3 A. Absolutely. Yes.

4 Q. In preparing your testimony and evaluating
5 prudence, did you take into account that the
6 law references the prudent costs of complying
7 with the requirements of the law?

8 (Witness reviews document.)

9 A. I recognize that the law said that the owner
10 shall be allowed to recover all prudent costs
11 of complying with the requirements of this
12 subdivision.

13 Q. So the answer --

14 A. I think -- just to expand, I think there are
15 a number of issues associated with prudence
16 that certainly were at work in my mind that
17 went well beyond this. But this was
18 certainly part of the issues that we have at
19 hand, yes.

20 Q. Fair to say, then, that the answer to my
21 question is, yes, you did take it into
22 account?

23 A. Yes.

24 Q. Thank you.

1 Now, we can agree, I think, I hope, that
2 your testimony in this case focuses, as you
3 said I think in your summary, on three
4 general issues -- we might: Natural gas
5 prices, fuel forecasting prices -- is that
6 one of them?

7 A. I spent time, certainly, on that issue.

8 Q. And the effect of fracking and when people
9 knew it or didn't know it?

10 A. What I talked about was the issues involving
11 shale gas and implications for natural gas
12 pricing, yes.

13 Q. When generally that was known in the -- among
14 utilities; right?

15 A. I pointed to two documents. And we've since,
16 you know, provided other documents, including
17 a momentous document prepared by the --
18 variety of the producers in the middle of
19 2008, yes. That certainly --

20 MR. GLAHN: Strike the word
21 "momentous."

22 (Court Reporter interrupts.)

23 CMSR. HONIGBERG: We'll let it
24 stand. I'm not sure you should have asked

1 the question that way if you didn't want that
2 answer. But we'll let it stand.

3 THE WITNESS: But I think I
4 was in the middle of an answer --

5 MR. GLAHN: I have -- Your
6 Honor, just so it's clear, I have no problem
7 referring to the document. That's not what
8 you struck. What you struck is the
9 conclusion that can be drawn from that
10 document by PSNH. So, for him to mention the
11 document is fine. I don't have a problem
12 with that.

13 BY MR. GLAHN:

14 Q. And the third part of your testimony --

15 CMSR. HONIGBERG: Hang on,
16 hang on, Mr. Glahn.

17 MR. PATCH: Mr. Chairman, I
18 don't think -- I thought I got Mr. Glahn
19 saying that there was a document that was
20 struck by the Commission. I don't think
21 there was. I think there were portions of
22 the testimony. But no attachments were --

23 CMSR. HONIGBERG: You're
24 correct, Mr. Patch, and I --

1 MR. GLAHN: It certainly --

2 (Court Reporter interrupts.)

3 CMSR. HONIGBERG: If Mr. Glahn
4 said that, I don't think he meant it. I
5 think Mr. Hachey's actually in the middle of
6 an answer.

7 MR. PATCH: Okay. Well, I
8 guess the other problem that I have is that
9 you struck from the record any testimony he
10 gave about shale gas, and now Mr. Glahn's
11 asking him about shale gas, and I just don't
12 understand.

13 MR. GLAHN: That's not what
14 you struck. You specifically left in his
15 testimony his conclusion about when the world
16 knew about shale gas. What you struck out of
17 his testimony was his ability to conclude
18 anything about the prudence of PSNH's actions
19 from that -- or let me be very precise about
20 what you struck.

21 Mr. Hachey talked about a
22 critical period in 2008 or 2006 when
23 supposedly shale gas was becoming known. And
24 then what you struck was, "and this was when

1 significant changes in the natural gas
2 markets became evident."

3 CMSR. HONIGBERG: I think I
4 remember that. Now, I think -- all I think
5 you were trying to do just now was set up
6 some areas that you wanted to ask him
7 questions about. And by doing it the way you
8 did it, you invited him to give you an answer
9 that caused you a problem. Now, if you want
10 to ask him about an area -- why don't you
11 focus on the area and start asking him
12 questions about it, and we'll see if we can
13 get him to focus on the simplest answer to
14 your question, that if he wants to expand he
15 can then do, rather than assuming that your
16 question is then leading someplace else. So,
17 let's see if we can get both of you on the
18 same page here.

19 BY MR. GLAHN:

20 Q. So, Mr. Hatchey -- Hashey -- I'm sorry. I've
21 gotten too used to pronouncing your name the
22 other way. So that we get on the same page,
23 let's make sure you had a chance to finish
24 your answer, if you remember what the

1 question was.

2 CMSR. HONIGBERG: I don't
3 think we have any hope of getting back there.

4 BY MR. GLAHN:

5 Q. Well, then, can we agree on this, Mr. Hachey:
6 The third area of your testimony is that it's
7 your position that PSNH purposely misled the
8 PUC, the Legislature and other parties in
9 this case?

10 A. It's certainly my testimony. And if I used
11 the word "purposely," I'll let you find it
12 for me. But there was a set of documents
13 that were presented internally at PSNH and at
14 NU that talked about the sensitivity of the
15 Scrubber relative to customer benefits to
16 natural gas and coal price differentials, and
17 the number that was in those documents that
18 PSNH had determined was a \$5.29 per million
19 BTU spread that showed there would then be
20 customer benefits in excess of that spread.

21 Q. And your testimony --

22 A. I haven't finished my answer, sir. Can I
23 finish?

24 CMSR. HONIGBERG: Go ahead.

1 BY MR. GLAHN:

2 Q. You paused Mr. Hachey. So, please, go ahead.

3 A. Well, please don't take -- take my pause as a
4 momentarily recollection of thought, not as a
5 completion of answer.

6 When that document was presented to the
7 PUC Staff and the OCA, that vital, critical
8 piece of information was missing. If that's
9 properly construed as "purposeful," somebody
10 had to go into that document and remove that
11 term, those provisions, remove some of the
12 history. That was certainly purposeful.
13 Now, whether it was in their mind to try to
14 deceive, mislead, I don't know because I
15 can't read minds. All I know is what I know
16 for a fact, which is from my review of those
17 documents.

18 Q. You can quarrel with me anytime you want to
19 on a word. So, on a word like "purposeful,"
20 if you agree with me, that's fine. Please
21 tell me.

22 A. I'm okay with that.

23 Q. So I want to be sure I -- let me ask a
24 different question.

1 TransCanada is a competitor of PSNH;
2 right?

3 A. I don't believe so.

4 Q. You don't think you're a competitor?

5 A. Nope.

6 Q. And you never would describe yourself as a
7 "competitor"?

8 A. I would describe myself as a "competitor."
9 But I don't regard PSNH as really somebody we
10 "compete" with, in the common sense of that
11 word.

12 Q. Help me out with the distinction of that.
13 You're a competitor, and one of the reasons
14 you're in this docket is because you are a
15 competitor. But you don't compete with them?
16 That's your testimony?

17 A. I don't regard PSNH as a competitor. I think
18 the a regulated utility is not in the
19 competitive mode. We compete with others,
20 market players who do not have recourse to
21 captive customers. That's what I think --
22 that's who I believe we compete with.
23 Whether or not our rates are better than
24 PSNH's rates is really kind of an accident of

1 markets and really not because I feel like
2 we're in competition with them.

3 Q. When you intervened in this docket, did you
4 describe yourself as a "competitor"?

5 A. I'm sure we described ourselves as a
6 "competitor," as I just said.

7 Q. And the basis on which you intervened in this
8 proceeding is that you are a competitor.

9 A. There's a variety of reasons why we
10 intervened in this docket, and I think I
11 developed that within my testimony.

12 Q. And we'll get to those.

13 A. That's fine.

14 Q. Would you agree with me on this: The
15 allegations that you're making about Public
16 Service Company in this case are serious
17 allegations that you would not want anyone to
18 make about your company?

19 A. This is a serious issue. I agree with you
20 there.

21 Q. So if you're going to make those allegations,
22 you'd want to be sure you're right, wouldn't
23 you?

24 A. I would certainly want to make sure that I

1 had a series of documents and facts to back
2 them up, yes.

3 Q. And see if you can agree on this: The
4 principal basis on which you claim PSNH
5 misled, purposely or otherwise, the PUC or
6 the Legislature in this case is that they
7 didn't tell them about the sensitivity of the
8 gas/coal price spread and that somehow they
9 manipulated the information in a chart that
10 was given to the PUC as opposed to given to
11 the Risk and Advisory Committee, or the Board
12 of Trustees of Northeast Utilities.

13 A. Well, I think there's a series of issues, one
14 of which is the different discrepancies
15 between the charts. I think there's other
16 issues related to what PSNH became aware of,
17 what the NU companies became aware of as time
18 went on. From the mid -- from the summer of
19 2008 and continuing on into 2009, I think
20 there are issues with respect to the Senate
21 Bill 152, in terms of seeking -- one
22 representative seeking a review of the PSNH
23 economics, the Scrubber economics, and PSNH's
24 objections or contentions that disputed that.

1 Those are three that come quickly to mind.

2 Q. Can we agree on this, that two issues which
3 you say they misrepresented facts or failed
4 to disclose facts are the sensitivity
5 break-even point, if you will, of the
6 coal/gas price spread and the alleged
7 manipulation of this chart?

8 A. I think the fact -- I want to put it in my
9 words -- that there's a significant
10 discrepancy between the two charts, which in
11 my experience leaves out a key piece of
12 information, which is that customer benefits
13 are dependent on a spread between coal and
14 gas prices in excess of \$5.29.

15 Q. Mr. Hachey, do you know whether, for example,
16 the PUC Staff has taken the position that
17 they were misled or had facts misrepresented
18 to them in this case?

19 A. I wasn't here the other day for the testimony
20 of Mr. Frantz, so --

21 Q. So the answer to my question is no, you don't
22 know.

23 A. I don't know. I'd have to go back and look
24 and see how he responded to those questions,

1 as to precisely what he said.

2 Q. Well, before you claim in this proceeding
3 that PSNH misrepresented facts to the PUC
4 Staff, wouldn't you want to ask them?

5 A. I don't believe I said -- well, if I used the
6 word "misrepresented," you'll have to point
7 it out to me. What I'm focusing on right now
8 is that there was a very key piece of
9 information between what was presented
10 internally at NU and what was presented
11 externally to the PUC Staff and OCA.

12 Q. Okay. Let's not use the word
13 "misrepresented." Let's use "failed to
14 disclose."

15 A. Certainly failed to disclose a crucial piece
16 of information.

17 Q. Before you accuse your competitor of that,
18 wouldn't you want to ask the Staff whether in
19 fact that information was disclosed?

20 A. Well, you just used -- you're starting your
21 questions, and I don't know why --

22 Q. Can you answer my question without arguing
23 with me?

24 A. No, I can't, because you said "before you

1 accuse your competitor," and I think --

2 CMSR. HONIGBERG: I got it,

3 Mr. Hachey.

4 I actually heard the same word

5 and thought he would stop you on

6 "competitor."

7 MR. GLAHN: He's already said

8 he was a competitor.

9 CMSR. HONIGBERG: I know. But

10 you also --

11 Mr. Hachey, there are a number

12 of "Yes" or "No" questions you've been asked

13 so far, that neither "Yes" nor "No" has come

14 out of your mouth.

15 Mr. Glahn, there's a number of

16 questions you've asked him that are

17 complicated and are difficult to parse.

18 So, if you can both try to

19 listen carefully to each other, I think

20 you'll both find some common ground if you

21 try. So let's let Mr. Glahn try the

22 question.

23 BY MR. GLAHN:

24 Q. Before you accuse anyone of failing to

1 disclose facts to a particular party,
2 wouldn't it be wise to ask that party whether
3 in fact they take that position?

4 A. This is -- you're referring to the
5 Commission.

6 Q. The Staff of the Commission.

7 A. The Staff of the Commission. I don't know.
8 It seems to me that it's a factual matter
9 that some things very material wasn't
10 presented to the Commission. So that's a
11 fact. And I --

12 Q. How do you know it's a fact, Mr. Hachey?

13 A. Because I compared the two charts.

14 Q. Yeah, you know it from comparing the charts.
15 But you also know from the responses in the
16 case that there was a meeting between PSNH
17 and the Staff of the Commission.

18 A. My recollection from discovery that we
19 provided --

20 Q. Do you know whether there was a meeting or
21 not?

22 A. Yes, and it's my recollection -- I'm trying
23 to give you a complete answer. Can I give
24 you a complete answer?

1 It's my recollection from our discovery
2 of the Commission that the Commission said
3 they had not been presented with the
4 information, because we were trying to --

5 Q. Which information?

6 A. Relative to the \$5.29. We wanted to make
7 sure that, in fact, the discussion hadn't
8 come up at the meeting. We knew it wasn't in
9 the charts, and we wanted to make sure that
10 it hadn't come up in another way. And my
11 recollection from the discovery is we found
12 out that, no, it had not come up in any other
13 way. So at that point, we believe we had a
14 complete understanding of that meeting.

15 Q. Mr. Hachey, you are aware of the fact, are
16 you not, that the PUC Staff and the PUC was
17 told what the assumption for the gas price
18 was in the PSNH analysis?

19 A. Absolutely.

20 Q. And you are aware that they were also told
21 what the assumption for the coal price was;
22 right?

23 A. Yes.

24 Q. And they could determine what the coal/gas

1 price spread was between those two numbers;
2 correct?

3 A. You could subtract one from the other and get
4 there, yes.

5 Q. That's exactly right. And if the Staff or
6 the PUC had questions about was there a break
7 point at which that would be economic or not
8 economic for PSNH's customers, they could
9 have asked; right?

10 A. Certainly could have asked, yes.

11 Q. There were meetings in which they could have
12 asked those questions; right?

13 A. I presume so, yes.

14 Q. Well, presume so. You know so; right?

15 A. Well, I know there was at least one meeting.
16 I don't recollect how many meetings there
17 were.

18 Q. Do you know who Meredith Hatfield is?

19 A. She was the consumer advocate prior to the
20 present consumer advocate.

21 Q. Did you know her?

22 A. Yes.

23 Q. Do you think she was a shrinking violet?

24 A. No.

1 Q. So if she had a concern about that at that
2 meeting, she certainly could have asked about
3 it.

4 A. Certainly. The difference, I would say,
5 however, when somebody like me sees that
6 chart and then when someone like Meredith --
7 I've spent my whole life in the industry and
8 Meredith hasn't.

9 Q. So you're --

10 A. So, someone in Meredith's shoes could well
11 use a little bit of assistance, in terms of
12 understanding that that spread -- because the
13 Gary Long letter of September 2, 2008, as I
14 recall, which is where those numbers were,
15 certainly didn't lay out the fact that the
16 customer benefits were dependent on that
17 spread escalating as it did.

18 Q. So, PSNH was imprudent because it didn't
19 specifically lay out in a PowerPoint chart
20 what that spread was or what the break-even
21 point was.

22 MR. PATCH: I'll object,
23 because I think his response just said it
24 wasn't just because of the chart, it was also

1 because of what they said in the
2 September 2nd letter. So I think the
3 formulation of the question is inaccurate.

4 CMSR. HONIGBERG: Well, I
5 think he can answer the question, though.
6 Overruled.

7 A. Okay. Can I have the question read back?

8 BY MR. GLAHN:

9 Q. So, PSNH was imprudent -- I'll reask it --
10 because it didn't include the actual
11 break-even point in the PowerPoint to the PUC
12 Staff or in Mr. Long's letter of
13 September 2nd?

14 A. I'm referring back to my testimony on this
15 subject.

16 (Witness reviews document.)

17 Q. Well, after you refer back to it, please
18 answer my question "Yes" or "No."

19 A. When I think of the word "imprudence," I'm
20 thinking in terms of the typical terms in
21 utility parlance, which requires that there
22 was an action that cost money --

23 Q. Can you answer my question "Yes" or "No," Mr.
24 Hachey, and then if you want to explain it --

1 A. I don't believe that was my testimony.

2 Q. I didn't ask you whether it was your
3 testimony. I asked you a question.

4 A. I don't know whether or not that rises to the
5 level of something that is imprudent. What I
6 tried to say in my testimony, answering the
7 question, do I have any concerns about the
8 methodology that PSNH employed, well, some of
9 this got slashed. I expressed concerns about
10 the spread between natural gas and coal
11 prices as "being vital to Scrubber economics"
12 and that this should have been presented.

13 Q. So the answer to my question is "No."

14 A. I think I said I don't know whether it rises
15 to a standard of imprudence. It certainly
16 should have been done. I don't know that I
17 can properly --

18 CMSR. HONIGBERG: I think
19 you've answered the question. There's no
20 pending question right now.

21 BY MR. GLAHN:

22 Q. Mr. Hachey, I want you to look at these two
23 charts. And I'll represent to you that the
24 chart on the right -- I've forgotten what the

1 number is, either Exhibit 43 or 44.

2 MR. GLAHN: Could somebody
3 tell me what the chart on the right, what the
4 number of that is? I think it's 43, but...

5 CMSR. HONIGBERG: There are
6 also 8-1/2-by-11 versions of both of these
7 charts in other exhibits.

8 MR. GLAHN: Right.

9 CMSR. HONIGBERG: It might be
10 helpful if the witness had those in front of
11 him while he's being asked questions about
12 the larger version.

13 MR. GLAHN: So there's --

14 CMSR. HONIGBERG: If you just
15 hang on for one second, Mr. Glahn. Let's get
16 the 8-1/2-by-11 version so Mr. Hachey can see
17 them.

18 MR. GLAHN: The number is 45
19 and 44.

20 CMSR. HONIGBERG: Okay.

21 (Atty. Sheehan hands document to
22 witness.)

23 SP. CMSR. IACOPINO: Mr.
24 Sheehan, what exhibits were those, so we can

1 be sure we're dealing with the same
2 documents?

3 MR. SHEEHAN: Attachment 17-6
4 and 42.

5 BY MR. GLAHN:

6 Q. Okay. Mr. Hachey, do you have these in front
7 of you?

8 A. Yes.

9 Q. And just for purposes of the questions, let's
10 call the chart that's on the right, we'll say
11 the "1993 chart" because it's the one that
12 starts in 1993. And then there's another one
13 that starts in 2000; right?

14 A. There is.

15 Q. Okay. And if I understand your testimony --
16 and you'll correct me if I'm wrong -- one of
17 the things you say is that PSNH presented
18 information to the PUC and the Legislature to
19 justify their investment in the Scrubber; is
20 that right?

21 A. I believe so, yes. And specifically relative
22 to the PUC, I think of the September 2nd,
23 2008, Gary Long letter. I don't recall
24 whether that -- I don't recall whether that

1 was sent on to the Legislature but there's
2 certainly other legislative presentations,
3 yes.

4 Q. So, explain to me, from the 2008 letter, what
5 it is in that letter that you say was crafted
6 solely -- or crafted to justify the
7 investment in the Scrubber?

8 A. Well, it provided an economic analysis of the
9 Scrubber.

10 Q. And you disagree with the analysis that was
11 done.

12 A. Yes.

13 Q. Okay. So, your lawyers left this chart up
14 here for a long time. And I assume you think
15 these two documents are important; right?

16 A. Yes.

17 Q. One of the reasons they're important is
18 because PSNH hid the information, in your
19 view, about the \$1.52 average spread for the
20 years 1993 to 2000. They hid that from the
21 PUC.

22 A. They certainly didn't disclose it to the PUC.

23 Q. That's fine. I'll take that as an answer.
24 If you want to expand on it --

1 A. Not really.

2 Q. And that's because, if they -- if the PUC had
3 had that information, they would have known
4 that the coal/gas price spread that PSNH was
5 using on the chart to the left was -- really,
6 that all the information was unfavorable to
7 PSNH -- but the chart on the left was
8 designed to be favorable to PSNH; is that
9 right?

10 A. You just keyed in on the average spread of
11 \$1.52. And I think you need it in the
12 same -- you need it in context with the
13 \$5.29, because otherwise it's -- if you're a
14 novice to the area, okay, fine, I'd look at
15 the two charts, what's the diff. But the key
16 piece of information is the \$5.29, because
17 what that says is, in a very -- in a
18 nutshell, that's the key determinant of
19 customer benefits.

20 Q. So, again, going back to -- and that's the
21 key to your testimony is customer benefits;
22 right?

23 A. Customer break-even level, customer benefits.
24 There's a variety of ways of characterizing

1 it, yes.

2 Q. You think the PUC Staff were neophytes in
3 this area?

4 A. In terms of the natural gas and coal spreads
5 and the dynamics of natural gas markets?
6 Unless you live in it every day, you're going
7 to be somewhat less familiar with the
8 significance of a variety of things,
9 particularly, you know, the natural gas price
10 movements over time and the like.

11 Q. Well, PSNH told the PUC Staff that their
12 model, their analysis, was highly sensitive
13 to the gas/coal price spread; right?

14 A. Can you give me a reference to that? I
15 don't --

16 Q. Can you answer that question without looking
17 at documents? And if you need to look at a
18 document, that's fine.

19 A. I would like to look at a document, yes.

20 MR. GLAHN: Do we know which
21 exhibit? He's got the exhibit that was --
22 hang on. What I'm looking for is...

23 SP. CMSR. IACOPINO: I think
24 the 8-1/2-by-11 is in Exhibit 39, about three

1 quarters of the way through.

2 MR. GLAHN: It's the one that
3 has Mr. Mullen's underlining on it?

4 SP. CMSR. IACOPINO: Yes, 39.

5 Have you got the exhibits up
6 there, Mr. Hachey?

7 MS. AMIDON: Just to help, I
8 was up at the Bench, and, you know, the
9 witnesses do see the exhibits, but they don't
10 number them. So if you have an exhibit you
11 want to reference to, you know, refer to the
12 witness, you might want to provide him with a
13 copy of that exhibit. There's numerous
14 papers up there, but none of them are marked
15 with exhibit numbers. Just FYI.

16 (Pause)

17 BY MR. GLAHN:

18 Q. So, Mr. Hachey, Exhibit 39, which are Staff
19 responses to TransCanada document requests --
20 or data requests contains within it a copy of
21 the PowerPoint slide given to the PUC with
22 handwritten notes from Steve Mullen. Do you
23 know Mr. Mullen to be a member of the PUC
24 Staff?

1 A. I do.

2 Q. Smart guy?

3 A. Your characterization.

4 Q. No, I'm asking.

5 A. I can't say smart or -- one way or the other.

6 I haven't had that much exposure to Mr.

7 Mullen, quite frankly.

8 Q. In general, based on your past experience,

9 have you had some exposure to members of the

10 PUC Staff?

11 (Court Reporter interrupts.)

12 A. Yes, exposure to one member of the PUC Staff

13 in particular, and that's George McCluskey.

14 Q. And your opinion --

15 A. Much more limited to Mr. Mullen or Mr.

16 Frantz.

17 Q. And your opinion of Mr. McCluskey?

18 A. Smart guy.

19 Q. Good. He was at this meeting. At the

20 meeting was Mr. Mullen, Mr. McCluskey, Mr.

21 Frantz and Ms. Ross for the PUC Staff, and

22 Meredith Hatfield and Ken Traum for OCA.

23 A. Okay.

24 Q. Then several representatives of PSNH.

1 Who's Ken Traum?

2 A. I believe he worked for the OCA at the time.

3 Q. And did you think Mr. Traum was capable of
4 asking questions at this meeting to determine
5 whether he was getting all the information he
6 wanted?

7 MS. FRIGNOCA: I'm going to
8 object to this line of questioning since no
9 one else is. But this is speculative as to
10 what other people could do, and it's really
11 getting pretty far afield.

12 CMSR. HONIGBERG: Mr. Glahn.

13 MR. GLAHN: It's not
14 speculative at all. I'm asking him what his
15 opinion is of people at the meeting. He's
16 claiming that they weren't told things. My
17 questions relate to does he know these people
18 and does he think they're capable of
19 following up on things in meetings.

20 CMSR. HONIGBERG: He can
21 answer.

22 A. I know Mr. Traum.

23 BY MR. GLAHN:

24 Q. And do you think Mr. Traum is someone who,

1 working for the OCA, is capable of following
2 up on things if he wants an answer to a
3 question?

4 A. I'm sure he is.

5 Q. Okay. Would you read the last bullet point
6 on that page, please.

7 A. "Our analysis shows that customer economics
8 are most sensitive to the coal/natural gas
9 price spread and far less sensitive to
10 capital costs or RGGI cost increases."

11 Q. So, we can agree, can't we, that at a meeting
12 on July 30th, 2008, the PUC Staff was told
13 that the analysis that PSNH did shows that
14 customer economics -- that's how the
15 customer -- what the price would be to the
16 customers; is that right? Well, let me ask
17 the question differently.

18 What do you take "customer economics" to
19 be?

20 A. Can I see it again?

21 (Witness reviews document.)

22 A. Whether customer benefits --

23 Q. So what was most --

24 (Court Reporter interrupts.)

1 A. Let me restate. Whether customer economic
2 benefits would appear.

3 BY MR. GLAHN:

4 Q. And that really is what you're talking about
5 when you're talking about the break-even
6 point; right? That's the point at which
7 customer economics don't work anymore.

8 A. That's what I'm focusing on, yes.

9 Q. Okay. So what they were told was, "Our
10 analysis shows that customer economics are
11 most sensitive to the coal/natural gas price
12 spread and far less sensitive to capital
13 costs or RGGI cost increases"; right?

14 MR. PATCH: Mr. Chairman,
15 asked and answered. I mean, we're wasting a
16 lot of time on something he's already said is
17 in there, and now he's being asked again
18 about it. I mean, it's very clearly there.
19 I think we're wasting time on this.

20 CMSR. HONIGBERG: I'm not sure
21 -- I think I agree with the last thing you
22 said, although, given the way this question
23 and answer came up, I think he can answer the
24 question again to keep the flow moving.

1 A. I will agree that that sentence is there.

2 BY MR. GLAHN:

3 Q. So, if the members of the PUC Staff wanted to
4 ask it, "At what point do the customer
5 economics" -- "What is the point at
6 which the" -- "What is the sensitivity?"
7 They could have asked about that; right?

8 MR. PATCH: Mr. Chairman, he's
9 already asked that question and he's gotten
10 an answer already and he's asking it again.
11 I object.

12 MR. GLAHN: I'll withdraw the
13 question.

14 BY MR. GLAHN:

15 Q. So, Mr. Hachey, let's go back to these
16 charts, because, in your view, the purpose of
17 taking off the 1993 to 2000 spread was to
18 hide it from the PUC; right?

19 MS. FRIGNOCA: Object to
20 characterization.

21 A. I think I've already been asked that
22 question, and I said I don't know what was in
23 someone's mind who altered or changed or
24 revised the chart.

1 BY MR. GLAHN:

2 Q. Well, your testimony is that there was a
3 regulator chart prepared and there was a
4 chart given to the board and they're
5 different and there must be a reason for
6 that; right?

7 A. There must be a reason for that, yes, that in
8 fact there were two charts and they differed
9 and there must be a reason. I can't read
10 people's minds as to know precisely what the
11 reason was. It's troubling.

12 Q. What you said in this case, Mr. Hachey, is
13 that documents were prepared to build a case
14 for PSNH to construct the Scrubber. In other
15 words, they weren't prepared in good faith;
16 right?

17 MR. PATCH: Objection. That's
18 not what he said.

19 CMSR. HONIGBERG: Sustained.

20 MR. GLAHN: There's explicit
21 testimony in this case that PSNH presented a
22 case in order to justify the construction of
23 the Scrubber.

24 CMSR. HONIGBERG: And that's

1 not what you said just a second ago.

2 MR. GLAHN: Let me ask -- I'll
3 ask -- I'll withdraw and ask a different
4 question.

5 A. Testimony references --

6 CMSR. HONIGBERG: There's no
7 pending question. He withdrew the question.

8 THE WITNESS: I'm just trying
9 to help expedite. Testimony references are
10 very helpful to me.

11 BY MR. GLAHN:

12 Q. Mr. Hachey, all of the information that's on
13 these charts is available publicly; right --
14 that is, the gas price, the coal price and
15 the difference between the two?

16 MR. PATCH: Objection. I
17 mean, that's not true. All of the
18 information on this chart --

19 MR. GLAHN: Wait a minute.

20 (Court Reporter interrupts.)

21 MR. GLAHN: Mr. Hachey can
22 answer as opposed to Mr. Patch.

23 MR. PATCH: No. There's no
24 foundation for that question. These were

1 sensitive. They're marked at the bottom
2 "confidential." These were presented
3 confidentially to the board of trustees at
4 the time. They later became public. But at
5 the time they certainly weren't. So there's
6 no foundation for that question.

7 CMSR. HONIGBERG: Well, I
8 heard the question a different way, actually.

9 MR. GLAHN: Let me ask the
10 question. And I'd ask Mr. Patch not to coach
11 the witness.

12 BY MR. GLAHN:

13 Q. Mr. Hachey, would you agree that -- and I'm
14 not talking about any information on these
15 charts now, other than the price of coal, the
16 price of gas and the difference between the
17 two was publicly available.

18 A. Absolutely not.

19 Q. All right. Well, then, let's ask a different
20 question. Take a look -- well, let me ask it
21 differently.

22 Do you think that PSNH eliminated the
23 1993 to 2000 data in order to make the coal
24 price spread look better for them?

1 MS. FRIGNOCA: Objection.
2 Calls for speculation.

3 MR. GLAHN: Asking for his
4 opinion.

5 CMSR. HONIGBERG: He can
6 answer that.

7 A. I have no idea why someone at PSNH altered
8 that chart in that manner. I can't read
9 people's minds.

10 BY MR. GLAHN:

11 Q. But you can conclude that they altered it;
12 right?

13 A. The charts are different. Somebody had to
14 get into the PowerPoint or whatever it was
15 and alter it, yes.

16 Q. From 2000 to 2006 -- let me say it
17 differently.

18 We know what PSNH assumed the difference
19 between gas and coal to be because we know
20 the gas price and we know the coal price;
21 right?

22 A. I'm struggling as I did with one of your
23 prior questions. As I understand this gas
24 chart, this is Newington gas prices, which I

1 don't know what -- the problem with this
2 chart specifically is these are Newington gas
3 prices. I have not gone back to say how did
4 these Newington prices compare to natural gas
5 prices across New England, because that's the
6 market price. And as a result, this is a
7 pretty -- kind of a substandard way of trying
8 to represent it. When you asked me the
9 question, "Is this information publicly
10 available?" I know that the price information
11 for Newington is cloaked, as is the price
12 information for TransCanada's Ocean State
13 Power. It's competitive information; so,
14 it's not public. It's specifically not
15 publicly available, as best I know.

16 Q. Let me help you out, Mr. Hachey, because
17 you're a question behind me. It's not the
18 question I asked you. But I'll clarify the
19 question a little bit for you, so perhaps
20 it's easier.

21 If we look at these charts, we know from
22 the information displayed on the charts what
23 the difference between the gas price and the
24 coal price is on those charts; right?

1 A. We have a representation of the Newington gas
2 prices and coal prices. That's what we have
3 here.

4 Q. Okay. And we also know, do we not, from the
5 information that PSNH disclosed, what the gas
6 price they were assuming -- what they assumed
7 the gas price to be going forward escalated
8 and what they assumed the coal price to be
9 going forward escalated; right?

10 A. That was in the Gary Long letter of
11 September 2nd, 2008. Yes.

12 Q. Well, it was in a lot of other things, too;
13 right?

14 A. That's the one I distinctly remember.

15 Q. Well, we know that the spread, as you said,
16 could be determined simply by deducting 482
17 from 11; right?

18 A. Correct.

19 Q. I want you to assume for a minute, Mr.
20 Hachey, that this chart was prepared to be
21 favorable to PSNH. Okay? You got that?
22 Assume that for a moment. If that were true,
23 during how much of the period of time between
24 2000 and 2006 was the spread between coal and

1 gas less than the difference between 11 and
2 482?

3 (Witness reviews document.)

4 A. I need the question again. I mean, you want
5 me to take the difference between the gas
6 prices, which of course are, as I pointed
7 out, for Newington and not necessarily
8 representative of the New England market --
9 but that's an important caveat -- and the
10 coal price. So I'm to deduct the -- for
11 example: If I go right at the beginning of
12 Hurricane Katrina, we see \$14 gas price. And
13 I'm to deduct roughly, I guess it's a \$2 coal
14 price? And I'd say, okay, there you have it,
15 \$12, right there. Is that what you want me
16 to do?

17 Q. Let me ask you a different question, Mr.
18 Hachey. Would you agree with me that, for
19 much of the period between 2000 and 2006, the
20 gas/coal -- gas and coal prices didn't cover
21 a spread between 11 and 482? There were
22 times when it did; there here were lots of
23 times when it didn't.

24 A. That's correct.

1 Q. So if PSNH was putting this chart in, in
2 order to justify that spread, it wasn't a
3 very helpful chart to them, was it?

4 A. Correct.

5 Q. So if they were hiding that issue, it was
6 hidden in plain sight, from this chart;
7 right?

8 A. I guess, yes. I suppose. Yes.

9 Q. Who's John Reed?

10 A. He's the president of Concentric Energy
11 Advisors.

12 Q. Is he highly regarded in his field?

13 A. I don't know.

14 Q. Do you know whether he's experienced in the
15 field of prudence determinations?

16 A. That I don't know.

17 Q. Have you read his testimony in this case?

18 A. Yes.

19 Q. From his testimony, can you draw any
20 conclusions on those areas?

21 A. Not really.

22 Q. How many times has Mr. Reed testified for
23 TransCanada in prudence cases?

24 A. No idea.

1 Q. You don't know? Did you ask?

2 A. No.

3 Q. Did you ask anyone whether Mr. Reed has ever
4 testified for TransCanada in a prudence
5 decision?

6 A. I'm aware he was testifying for TransCanada,
7 but I don't know the context of it.

8 Q. And you know Mr. Reed, as we speak today, has
9 testified in Canada for TransCanada; right?

10 A. I believe so.

11 Q. What did you do before you prepared your
12 written testimony in this case? What
13 information did you gather and look at in
14 order to prepare that testimony? In general.
15 I don't want specifics. I just want how you
16 went about it.

17 A. We looked at gas pricing information. We
18 looked at, you know, a number of the things
19 that turned into exhibits. We looked at
20 discovery provided by PSNH. My general
21 background information that I have readily
22 available to me.

23 Q. So, there are a couple things you mentioned.
24 You looked at the gas forecast information;

1 right?

2 A. I looked at gas price information. That
3 could be gas forecasts. It could be historic
4 gas information and the like.

5 Q. And did you look at that information for
6 TransCanada?

7 A. No.

8 Q. Why not?

9 A. I didn't have it.

10 Q. Did you look at that? Did you ask for it?

11 A. No.

12 Q. Why not?

13 A. It was irrelevant.

14 Q. Irrelevant why?

15 A. Because this issue is about PSNH and its
16 decisions. And whatever TransCanada's
17 forecast was is completely irrelevant. It
18 was unavailable to me, it was unavailable to
19 PSNH.

20 Q. How do you know it was unavailable to you?

21 A. I didn't have it.

22 Q. Well, okay. But if you don't ask for it, how
23 do you know whether it's available to you or
24 not?

1 A. Well --

2 MR. PATCH: Mr. Chairman, I'm
3 going to object. I mean, this line of
4 questioning -- I mean, Mr. Hachey made it
5 very clear in responses to data requests,
6 made it very clear in his testimony what he
7 looked at and why he looked at it, what he
8 relied upon, what he considered and what he
9 didn't. And so I don't know where this is
10 going, but I just think it's a waste of time
11 and irrelevant.

12 MR. GLAHN: I can -- can I
13 comment on where it's going, unless you want
14 to --

15 CMSR. HONIGBERG: Why don't
16 you -- I think he can answer the question,
17 because he did say it was unavailable to him,
18 and I think it's a reasonable follow-up to
19 say, "Did you ask?" I mean, I think there's
20 an aspect of why he didn't look at it. But
21 in his own testimony, he said that it was
22 unavailable to him. He also said it was not
23 relevant, which Mr. Glahn hasn't gone into
24 yet. But he did say one of the reasons he

1 didn't look at it was because it wasn't
2 available to him. So, you can continue, Mr.
3 Glahn.

4 BY MR. GLAHN:

5 Q. I think the question was: How did you know
6 it wasn't available to you if you didn't ask
7 for it?

8 A. I could have asked for it.

9 Q. And you just chose not to.

10 A. I would have -- well, first off, I had no
11 reason to ask for it because it was
12 completely irrelevant to this proceeding.
13 What TransCanada's views were, first off, as
14 we detailed in many filings in this regard,
15 are proprietary and competitive information;
16 so it would provide no value in this
17 proceeding.

18 Q. Well, it would provide no value because it
19 was proprietary and you couldn't produce it,
20 or it would provide no value even if it
21 wasn't proprietary?

22 A. It would provide no value because it's not
23 information that was available to PSNH. My
24 focus was on information that was available

1 to PSNH. And that would have included --
2 anyone in this room could have simply gone
3 online and looked up the EIA forecast. We
4 know that the Synapse forecast was available
5 to PSNH if you just look at the intros. In
6 fact, I believe PSNH and other Northeast
7 affiliates are a sponsor of that forecast.
8 And the Brattle forecast, I believe, was a
9 CLMP forecast. Those are three forecasts
10 that I absolutely knew were available to
11 PSNH. That was a determining factor of the
12 forecast that I focused on in developing my
13 testimony. A forecast that wasn't available
14 to PSNH, that I didn't have and that was only
15 just going to create a whole lot of
16 TransCanada issues, seemed to be of no
17 particular value.

18 Q. So, all of your testimony in this case, then,
19 is based only, only, on information that you
20 say was available to PSNH when? Well, let me
21 break that into two questions.

22 Is it your testimony that the only
23 information regarding gas prices that is
24 relevant to your testimony is information

1 that PSNH had in its possession? Answer that
2 question first.

3 A. Three forecasts that PSNH had readily
4 available to it --

5 Q. That's not the question I asked, Mr. Hachey,
6 if I can interrupt you.

7 A. Let's try again.

8 CMSR. HONIGBERG: I think the
9 qualifier, Mr. Glahn, is "in PSNH's
10 possession." I think that was the part of
11 the sentence he was interested in.

12 A. The beginning of the question was what's --
13 "The only forecasts that are relevant are
14 those that were in PSNH's possession," and I
15 said that isn't what I said.

16 BY MR. GLAHN:

17 Q. Relevant to your testimony.

18 A. What I -- because I began with the EIA
19 forecast. I don't know whether PSNH had that
20 document in its shop. I don't know whether
21 it had a download of the document. All I
22 know is all you had to do is click on "EIA"
23 and a few other EIA annual energy outlook,
24 and you would have had it. So I thought --

1 and that's a rather widespread -- widely used
2 forecast. In fact, Mr. Reed used it in one
3 of his analyses that we requested for the
4 Oberlin coal plant. It's a transparent,
5 universally available, heavily documented
6 forecast, and certainly was one of the ones
7 on the list. Absolutely.

8 The final forecast -- and I'll throw it
9 out and stop it there before everything
10 breaks in this room -- but the final
11 forecast, of course, was the Energy Ventures
12 analysis forecast, which is a forecast that's
13 actually, in a very summary form, included in
14 the EIA forecast. The EIA looked at the EVA
15 forecast as one of the comparison forecasts
16 in the EIA documents.

17 Q. Mr. Hachey, I apologize to you. But let me
18 go back, because I'm not sure I heard your
19 answer to the question. Perhaps Commissioner
20 Honigberg did. Because I think you and I are
21 -- as far as your determination of prudence,
22 the only thing that's relevant to your
23 testimony on gas prices is what was in PSNH's
24 possession.

1 MR. PATCH: He's already
2 answered that question.

3 MR. GLAHN: I did not hear his
4 answer. That's why I'm asking.

5 CMSR. HONIGBERG: I think you
6 were trying to figure out if that was his
7 testimony. And I think his answer is no, it
8 was not -- it's not just what was in PSNH's
9 possession.

10 MR. GLAHN: Okay. Then --

11 CMSR. HONIGBERG: Is that
12 correct?

13 THE WITNESS: That's correct.
14 What I included were forecasts that are
15 readily available to them.

16 MR. GLAHN: Okay, okay.

17 THE WITNESS: A few clicks of
18 a mouse and you have it.

19 CMSR. HONIGBERG: Now we've
20 connected on that --

21 (Court Reporter interrupts.)

22 BY MR. GLAHN:

23 Q. Did you have any concerns when you were
24 preparing your testimony that there might be

1 information in TransCanada's possession on
2 gas pricing that either conflicted with your
3 testimony --

4 A. Not really.

5 Q. Did you ask?

6 A. TransCanada has 5,000 employees. Who do I
7 ask?

8 Q. Did you ask anyone?

9 A. I'm not quite sure of the value of asking
10 everyone or anyone --

11 Q. No. My question is -- my question was: Did
12 you ask anyone else to determine whether
13 there were gas price forecasts or gas price
14 analyses in TransCanada's possession to
15 determine whether they might contradict your
16 testimony?

17 A. I don't recall asking. I was interested in
18 other gas forecasts, and I was racking my
19 brain to think what other forecasts may have
20 been out there. But this is -- that were
21 available to PSNH. That's what my focus was
22 on.

23 Q. When you "racked" your brain, did you say to
24 yourself: Maybe I ought to ask some of the

1 other TransCanada entities?

2 A. No, because it wasn't relevant to the
3 proceeding.

4 Q. Why wasn't it relevant to the proceedings?

5 A. What was relevant to the proceeding was the
6 information that was available to PSNH that
7 seemed to contradict the -- and all of which
8 seemed to contradict the \$11 take-off point.

9 Q. Well, you understand, don't you, Mr. Hachey,
10 that this Commission has determined exactly
11 the opposite, that information in
12 TransCanada's possession was relevant to this
13 proceeding?

14 MR. SHEEHAN: With due
15 respect, I don't think that's what the
16 determination was. But the order speaks for
17 itself.

18 MR. GLAHN: Well, let me be
19 more precise about it.

20 BY MR. GLAHN:

21 Q. You understand that the Commission ordered
22 you to produce certain information in this
23 case because they determined that it was
24 relevant.

1 MR. PATCH: Objection.

2 CMSR. HONIGBERG: To be
3 precise, the orders were about discovery.
4 And "discoverable" doesn't necessarily mean
5 "admissible." Discoverable does include a
6 relevance consideration.

7 MR. GLAHN: Right.

8 CMSR. HONIGBERG: So, relevant
9 to the subject matter of the proceeding.

10 BY MR. GLAHN:

11 Q. With that qualifier, you understood, Mr.
12 Hachey, that the Commission had determined
13 that information relating to gas pricing and
14 to when -- and to fracking -- that is, when
15 did people know that there was a shale gas
16 revolution -- was relevant for the purposes
17 of discovery and ordered you produce it.

18 MR. PATCH: I'll object, Mr.
19 Chairman. I'm not sure where this is headed,
20 but it's issues that were resolved by the
21 Commission, and sanctions have been imposed.
22 And we are where we are today. I don't know
23 the relevance or the utility in doing this.

24 MR. GLAHN: There are two

1 grounds for it. One is, what did he do to
2 lay the basis for his testimony? That's the
3 first one. The second one does go to the
4 adverse inference. There are two choices
5 here, and we'll get to this in more detail.
6 But if he did absolutely nothing, then it
7 follows that he has no knowledge about what
8 is in TransCanada's possession. A conclusion
9 can be drawn from that. If he looked for
10 things and found them and didn't produce
11 them, a conclusion can be drawn from that.
12 One of the things I'm trying to find out is
13 what basis does he have for making a prudence
14 decision if he doesn't have that information.

15 MR. PATCH: Mr. Chairman, a
16 prudence determination is about, as Mr.
17 Hachey has said, it's about what PSNH did or
18 didn't do. It's about what was available to
19 them at the time. It isn't about what was
20 available to TransCanada. That's got nothing
21 to do with a prudence determination about
22 PSNH.

23 MR. GLAHN: On the contrary.
24 This Commission has at least determined for

1 purposes of discovery that is not so. And
2 it's very clear he wants to draw the
3 conclusion that, if there were forecasts or
4 pricing or fracking information from other
5 third parties that was out there and
6 available to us, we should have looked at it.
7 And one of those other things that might have
8 been available was information in the
9 possession of the party that entered into
10 this case saying that they have experienced
11 as a gas company.

12 MR. PATCH: The key words in
13 what Mr. Glahn just said are "for purposes of
14 discovery." We're not doing discovery
15 anymore; we're in the hearing. And I just
16 don't see the relevance.

17 CMSR. HONIGBERG: I think that
18 Mr. Glahn can finish asking the witness what
19 he asked, what he looked for and why; and if
20 there are things he didn't look for, why he
21 didn't look for them. If he needs to go
22 beyond that, then I think we're going to --
23 then we have an issue. But I think he can
24 continue to inquire what Mr. Hachey looked

1 for and why; and if he didn't look for
2 things, why he didn't look for them.

3 MR. GLAHN: Could you read my
4 last question back, please.

5 (Discussion off the record.)

6 (No testimony read back.)

7 BY MR. GLAHN:

8 Q. Mr. Hachey, so let me go back.

9 Do you understand that the Commission
10 made a determination in this case that
11 certain information was relevant for purposes
12 of discovery and ordered you to provide that
13 information?

14 A. I recollect that.

15 Q. Probably a pretty clear recollection, isn't
16 it?

17 A. I think I answered the question, sir.

18 Q. And after you got that order, what did you do
19 to try to find the information that the
20 Commission ordered you to produce?

21 MR. PATCH: Mr. Chairman, in
22 light of your prior ruling, is this an area
23 that you thought it was okay for him to go
24 in? I mean, I made my objection clear before

1 that I thought it was irrelevant. But it's a
2 different question now. And I hate to keep
3 objecting, but it seems to me we're going
4 down a path that we don't need to go down.

5 MR. GLAHN: Your Honor, I've
6 been told that I need to keep trying to get
7 an adverse inference in this case where I
8 think it's appropriate. And this is one of
9 those --

10 CMSR. HONIGBERG: Well, now I
11 think --

12 MR. GLAHN: This is one of
13 those areas. But I'm also -- that's not the
14 only reason I'm asking. I'm asking because
15 I'm trying to find out what information may
16 or may not be in his possession.

17 MR. PATCH: I'm not sure what
18 difference it makes what is in his
19 possession. We made clear in our pleadings
20 what our position was. We produced a lot of
21 information. You know, we produced
22 information for the non- -- for the party
23 affiliates; we didn't for the non-party
24 affiliates on the two questions involved. In

1 fact, we produced some on the non-party
2 affiliates on one of the questions. So I
3 just don't see the utility of going there
4 with this now. It just seems as though it's
5 far beyond what the hearing should be about.
6 This was the discovery dispute, and that's
7 been resolved and sanctions imposed.

8 MR. GLAHN: It's not a
9 discovery dispute at all. I'm trying to find
10 out what basis this man has for the opinions
11 that he's offering here. He comes into this
12 case, and he offers an opinion that PSNH was
13 imprudent. In order for us to test that
14 proposition, we need to know what information
15 he looked for or had.

16 MR. PATCH: He's already
17 answered that question.

18 CMSR. HONIGBERG: I
19 understand. Mr. Patch may well be right.
20 What we're going to do is we're going to
21 break now, and we're going to break for 15
22 minutes. We're going to come back at ten
23 after three, see if we can bring some clarity
24 to this and then move on. So we're going to

1 take a break until ten after three.

2 (Whereupon a brief recess was taken at
3 2:55 p.m., and the hearing was resumed at
4 3:26 p.m.)

5 CMSR. HONIGBERG: We had a
6 chance to caucus about the line of
7 questioning that we were just involved in,
8 and I think I may have been unclear on
9 something I said a few minutes ago about
10 where I think PSNH is okay to ask questions.

11 I really was talking about a
12 different time period. I think there are two
13 different time periods you could be asking
14 this witness about. One is the time period
15 during which he was developing his testimony
16 for this case, and the other is the time
17 period around the discovery order and the
18 discovery process. We're not talking about
19 the discovery process with him. We don't --
20 in our view, I think Mr. Patch's objection is
21 well founded, that questions about that, what
22 this witness did or didn't do to comply with
23 the discovery order, are not, at this point
24 that we can see, relevant to the testimony

1 he's provided. Questions regarding what he
2 did to prepare his testimony, reports that he
3 looked at, looked for, whatever questions he
4 asked within the Company or outside are fair
5 game. You may have already asked those
6 questions and gotten all of those answers.
7 But questions regarding responding to
8 discovery we think are not -- at this point
9 we do not see the relevance of those
10 questions.

11 MR. GLAHN: Well, note my
12 objection. Part of it is --

13 CMSR. HONIGBERG: Microphone.

14 MR. GLAHN: Please note my
15 objection. Part of what I -- you know, I've
16 been told that you would hear during this
17 proceeding, you would decide the issue of
18 adverse inferences. And one of the ways we
19 get there is to simply ask whether, in fact,
20 they've made any effort at all to find
21 information. And if they haven't, then we
22 may draw some inferences from that. So I
23 think I'm entitled to ask about that. But
24 let me try a line of questions, and we'll see

1 where we go with it.

2 CMSR. HONIGBERG: Fair enough.

3 BY MR. GLAHN:

4 Q. Let me -- Mr. Hachey, I want to back up a
5 little bit, and then I want to come to the
6 letter that you wrote to the Commission
7 saying that you wouldn't produce documents.

8 You are an officer of --

9 MR. PATCH: Mr. Chairman, I'd
10 just like to note for the record that Mr.
11 Hachey didn't write that letter. It was a
12 letter that I wrote as counsel for
13 TransCanada.

14 MR. GLAHN: I'm not going to
15 ask him whether he wrote the letter.

16 CMSR. HONIGBERG: Well, you
17 just said that.

18 MR. GLAHN: But we're not
19 there yet, so...

20 BY MR. GLAHN:

21 Q. You're an officer of TransCanada Marketing,
22 Limited and TransCanada Hydro Northeast;
23 right?

24 A. I have to restate the company names.

1 TransCanada Power Marketing, Ltd. And
2 TransCanada Hydro Northeast.

3 Q. Okay. And you are also an officer of other
4 TransCanada entities; right?

5 A. Correct.

6 Q. Is that correct?

7 A. I said "correct."

8 Q. Okay. One of them is you're vice-president
9 of TCPL Power [sic], Limited; is that right?

10 A. I serve as an officer of quite a number of
11 companies. And if that's one of them, so be
12 it. I don't have a comprehensive list in
13 front of me. There's quite --

14 Q. I've got some in front of me, so let me ask
15 you about them. I take it from your answer
16 that that's correct?

17 A. I will assume so, subject to check.

18 Q. Well, what is TCPL Power, Limited?

19 A. Oh, I'm sorry. I misheard you. TransCanada
20 Pipelines.

21 Q. Are they the same thing as -- is TCPL Power,
22 Limited the same as TransCanada PipeLine USA,
23 Limited?

24 A. I was thinking of TCPL USA. Yes, that's a --

1 you know, the U.S. pipeline operations.

2 Q. And what's your position with them?

3 A. It would be vice-president.

4 Q. And you are vice-president of OSP Finance
5 Company?

6 A. I've been a vice-president of a variety of
7 the OSP operating companies. If that's one
8 of the companies on your list, then -- the
9 reorganization of that -- of all those OSP
10 companies just took place, and that sounds
11 like the name of the resulting company.

12 Q. Well, so let me ask you this question first,
13 to go back to where we were: In preparing
14 your testimony, did you look for documents
15 relating to fuel price forecasts or the issue
16 of fracking from any of the entities of which
17 you are an officer, other than TransCanada
18 Power Marketing and TransCanada Hydro
19 Northeast?

20 A. I would say I looked for all public documents
21 that would have been available to PSNH. To
22 the extent that that included our companies
23 and that we had information out there that
24 was public that would have been available, I

1 would have included that in my search. So if
2 it wasn't publicly available, it wouldn't
3 have come up in my search. That was what my
4 focus of preparing my testimony was.

5 Q. So, is it a fair summary of what you just
6 said, yes, you did look for that information
7 from entities for which you are an officer,
8 but you only -- if you produced anything, it
9 was only those things that were public
10 information?

11 MR. PATCH: Objection. I
12 don't think it's whether he produced it; it's
13 what he looked at. I think the form of the
14 question's incorrect, based on how he just
15 answered it.

16 MR. GLAHN: All right. Let me
17 ask it again.

18 BY MR. GLAHN:

19 Q. When you looked for that information, did you
20 find anything?

21 A. I want to make sure we're talking about the
22 same information. I looked for all public
23 information that would have been available to
24 PSNH should it have conducted a search,

1 either at the point of preparing my testimony
2 or in the course of discovery.

3 To the extent that TransCanada had
4 information out there in the public -- and I
5 don't believe I found a whole heck of a lot,
6 if anything -- I think we provided one
7 presentation that was public that included
8 the shale gas developments.

9 So, both in terms of the preparation of
10 testimony and the answers to discovery, I
11 included information from any of the
12 TransCanada companies that I found.

13 Q. Let me go back, Mr. Hachey, because, again, I
14 don't think you answered my question.

15 You're an officer of various TransCanada
16 entities, other than the two that have
17 intervened in this proceeding.

18 A. That's correct.

19 Q. You looked for -- if I understand your
20 testimony, it's that you looked for
21 non-public information that related to gas
22 price forecasts and knowledge about fracking
23 from those entities.

24 A. No, that isn't --

1 MR. PATCH: Objection. That's
2 not what he said.

3 CMSR. HONIGBERG: And the
4 witness corrected the question.

5 BY MR. GLAHN:

6 Q. So tell me exactly what it is that you looked
7 for from those entities on those two issues.

8 A. In preparation of my testimony?

9 Q. Or at any time after the preparation of your
10 testimony in response to document requests.

11 A. That's fine. I looked for all public
12 information on those issues. In particular,
13 in the preparation of my testimony, my focus
14 was on information that was available,
15 readily available -- public, readily
16 available to PSNH. And I came up with the
17 four forecasts that, you know, I alluded to.
18 In terms of discovery -- in terms of the
19 discovery, now, I certainly went -- in
20 response to the requests for
21 fuel forecasts --

22 MR. PATCH: Mr. Chairman, I
23 just want to stop the witness because I think
24 he's confused about the question and the

1 ruling of the Chair. I thought the ruling of
2 the Chair was anything in preparation for his
3 testimony was legitimate. But when we start
4 to get into discovery, I thought the ruling
5 of the Chair was you hadn't seen the
6 relevance of that.

7 CMSR. HONIGBERG: That was the
8 ruling. The witness was giving whatever
9 answer the witness -- the witness is not shy
10 about giving answers to questions that he
11 thinks have been asked or wishes had been
12 asked. I think in this instance he was going
13 a little bit beyond the question that was
14 asked.

15 MR. GLAHN: So let me try
16 again.

17 BY MR. GLAHN:

18 Q. You looked for public information in the
19 possession of TransCanada entities for which
20 you are or were an officer; is that right?

21 MR. PATCH: Well, I think the
22 foundation for the question has to be "in
23 preparation of your testimony." And I think
24 this is getting very confusing for the

1 witness --

2 MR. GLAHN: All right.

3 Let's --

4 MR. PATCH: -- probably
5 because I'm objecting and --

6 MR. GLAHN: Fine. I'll ask --
7 (Court Reporter interrupts.)

8 CMSR. HONIGBERG: Mr. Glahn,
9 let Mr. Patch finish. Let him finish.

10 MR. PATCH: I just think it's
11 very confusing for the witness, between the
12 objections and the questions, and I think he
13 may be a little confused about what question
14 he's answering. And I just think we need to
15 be crystal clear. And I think Mr. Glahn
16 changes the question, and then the witness
17 gets confused. And I think we need to be
18 clear about that.

19 MR. GLAHN: I'll reask the
20 question.

21 BY MR. GLAHN:

22 Q. Mr. Hachey, I want you to assume something
23 for the questions I'm about to ask you.

24 Every question I'm asking you would begin

1 with the following: "When you were preparing
2 your testimony in this case..." Okay? So
3 I'm only looking for that information. Got
4 that?

5 A. I am there.

6 Q. Okay. So, you're an officer of various
7 TransCanada entities. And I think what you
8 said is, in preparing your testimony in this
9 case, that you looked for information in the
10 possession of those entities that also would
11 have been publicly available to PSNH. Is
12 that right?

13 A. I think what I said was I looked for
14 information that had a high degree of
15 likelihood of being available to PSNH. And
16 those three pieces of information -- and
17 there was a fourth that came up in the course
18 of discovery. But the three pieces were:
19 The Brattle report, the Synapse report, the
20 EIA, and then this mysterious EVA analysis.

21 Q. Are you done with your answer?

22 A. Yes.

23 Q. What I'm trying to get at is, did you go to
24 the entities of which you are an officer or

1 director to ask for that information?

2 A. No.

3 Q. In preparing -- okay. Fine. So you don't
4 know what they have on those topics.

5 MR. PATCH: Well, I think
6 that's an objectionable question. He said he
7 didn't go to them. The question related to
8 what did he look at in preparing his
9 testimony, and so this is going beyond that.
10 He said he didn't go to it; so he didn't do
11 it in preparing his testimony. So that
12 should --

13 MR. GLAHN: I'm entitled to
14 ask --

15 CMSR. HONIGBERG: I think
16 that's a fair question. I think it's a
17 fairly simple "Yes" or "No" question.

18 Do you know what those
19 companies have?

20 THE WITNESS: Not really. I
21 don't know precisely, for example, what
22 company holds the internal TransCanada fuel
23 forecast. I don't know who holds it. A lot
24 of this stuff relative to corporate

1 boundaries is meaningless, in terms of who
2 has a particular piece of information. But
3 if you looked at the TransCanada chart, the
4 corporate chart that we provided in
5 discovery, you'll find several hundred
6 companies. So --

7 BY MR. GLAHN:

8 Q. I got that.

9 A. So, who has it, I don't know. I really don't
10 know.

11 Q. I got that. I wasn't asking about those
12 entities. I was asking --

13 A. No, I understand.

14 Q. Okay. So let's talk about Ocean State Power
15 for a moment.

16 A. Sure.

17 Q. You're an officer of Ocean State Power;
18 right?

19 A. Yes.

20 Q. And Ocean State Power is a 560-megawatt,
21 gas-fired, combined cycle power plant; right?

22 A. Yes.

23 Q. And its fuel is natural gas.

24 A. Yes.

1 Q. And it only uses Canadian natural gas; right?

2 A. No.

3 Q. Well, did you go to -- did you take a look at
4 whether Ocean State Power had any documents
5 relating to either gas price forecasts or
6 knowledge about fracking? And if that's just
7 included in your prior answer, say so.

8 MR. PATCH: Well, Mr.
9 Chairman, he's already said no, he didn't.
10 So I don't know why we need to go company by
11 company and ask the same question.

12 CMSR. HONIGBERG: Mr. Glahn.

13 MR. GLAHN: I'm asking now
14 about a specific company that is a gas
15 company that produces energy with gas. So
16 that's what I'm asking about.

17 MR. PATCH: And how is it
18 relevant? He's already said that in
19 preparing his testimony, that he didn't go
20 and ask any of these companies. So I just
21 don't understand.

22 CMSR. HONIGBERG: I think I
23 agree with you, Mr. Patch.

24 Mr. Glahn, he has -- I believe

1 his testimony is that he didn't --

2 MR. GLAHN: Okay. I was
3 really trying --

4 (Court Reporter interrupts.)

5 CMSR. HONIGBERG: I believe
6 that he said he didn't go to any of those
7 companies.

8 MR. GLAHN: And I just asked
9 whether this one was -- because I hadn't
10 asked him specifically about Ocean State
11 Power. I asked whether it was included
12 within the group. And that's fine.

13 CMSR. HONIGBERG: Is Ocean
14 State Power included within the group?

15 MR. GLAHN: The group of
16 companies of which he's an officer or
17 director.

18 THE WITNESS: Yes.

19 BY MR. GLAHN:

20 Q. Okay. Good. Got it. And I think from your
21 answer previously, you would give the same
22 answer to my question, if I asked it about
23 the TransCanada entities for which -- that we
24 haven't identified and which you are an

1 officer or director. I mean -- let me phrase
2 that differently.

3 I was just asking you about companies
4 for which you were an officer or director.
5 In preparing your testimony, you did not ask
6 anyone in any of the other TransCanada
7 entities whether they had information
8 relating to gas pricing or gas price
9 forecasts or fracking; is that right?

10 A. I want to give a complete answer. In the
11 preparation of my testimony, I focused only
12 on information that would have been available
13 to PSNH. So I had no reason to go to any
14 other internal TransCanada companies, even
15 leaving aside the fact that it would have
16 been a rather silly inquiry, because in many
17 cases they're really just a corporate
18 enterprise. They don't really possess
19 information. But leaving that aside, no, I
20 did not do that.

21 MR. GLAHN: Okay. Would you
22 give Mr. Hachey the letter of June 6, please.
23 I don't know what the exhibit number is.

24 CMSR. HONIGBERG: We'll pull

1 the random number generator out and find out.

2 (Ms. Frazier hands document to witness.)

3 MR. GLAHN: Okay with me.

4 MR. PATCH: Mr. Chairman, I'm
5 not sure where we're headed with this. But
6 to me, this is a discovery dispute, and I
7 thought the ruling was we're not getting into
8 that.

9 CMSR. HONIGBERG: Let's find
10 out what the question is. This is
11 Exhibit 90.

12 (The document, as described, was herewith
13 marked as Exhibit 90 for identification.)

14 CMSR. HONIGBERG: Off the
15 record.

16 (Discussion off the record.)

17 BY MR. GLAHN:

18 Q. Mr. Hachey, did you see this letter before it
19 was sent?

20 MR. PATCH: Well, Mr.
21 Chairman, I have a standing objection to this
22 line of inquiry that I just made, and I
23 think the -- what was the question again? Is
24 it a privilege --

1 MR. GLAHN: Did he see the
2 letter before it was sent?

3 CMSR. HONIGBERG: The question
4 was did he see it.

5 MR. PATCH: Well, but, you
6 know, contact between attorney and client
7 here, I mean, I don't know how this is
8 relevant to --

9 MR. GLAHN: Public document.
10 (Court Reporter interrupts.)

11 MR. PATCH: No. 1, I don't
12 think it's relevant; and No. 2, we're into
13 attorney/client privilege and how TransCanada
14 and its counsel operates before things are
15 sent to the Commission. I just don't
16 understand the relevance.

17 CMSR. HONIGBERG: There's two
18 different objections. You've got a relevance
19 objection and you've got a privilege
20 objection. The relevance objection is
21 overruled to "did you see this." Privilege
22 objection, I don't know.

23 Mr. Glahn.

24 MR. GLAHN: How could it be

1 privileged to ask him whether he saw it?

2 It's a public document.

3 CMSR. HONIGBERG: I think you
4 asked did he see it before it was sent.

5 MR. GLAHN: Right, right.

6 CMSR. HONIGBERG: I can see
7 how that could come within an
8 attorney/client --

9 MR. GLAHN: All right. Let me
10 ask a different question.

11 CMSR. HONIGBERG: Okay.

12 BY MR. GLAHN:

13 Q. Did you authorize this letter to be sent?

14 MR. PATCH: That's the same
15 question, I think. I don't know -- again, I
16 just don't see -- it seems to me that gets
17 into attorney/client privilege as well: Who
18 authorizes within TransCanada before
19 something's sent, discussions we have about
20 letters before they're sent or pleadings that
21 are made. I mean, I don't know where this is
22 headed.

23 CMSR. HONIGBERG: Sustained.

24 BY MR. GLAHN:

1 Q. All right. Mr. Hachey, turn to the second to
2 last paragraph of this letter. There's a
3 statement in this letter that I want to ask
4 you whether it's true. There's a sentence,
5 second sentence of that next to last
6 paragraph. "Mr. Hachey expended considerable
7 time and effort on developing his prefiled
8 testimony and did not rely in any way on the
9 affiliate documents sought by PSNH." True
10 statement?

11 A. Yes. Sorry. Yes.

12 Q. In this letter, you point out that there were
13 voluminous documents that might respond to
14 the discovery requests that PSNH had made; is
15 that right?

16 MR. PATCH: Objection, Mr.
17 Chairman. Same objection, same issue. This
18 is about discovery. That's what the letter
19 is about. That's what he's asking about. I
20 don't see the relevance. Seems to me we're
21 headed down a path we don't need to go down.

22 CMSR. HONIGBERG: Mr. Glahn.

23 MR. GLAHN: Again, I think
24 it's relevant just to find out what he did,

1 what he knows. He's represented to this
2 Commission that there are "voluminous
3 documents out there," and I want to know how
4 he could make the statement.

5 MR. PATCH: He didn't write --

6 CMSR. HONIGBERG: I've
7 forgotten the question. I apologize for
8 that.

9 BY MR. GLAHN:

10 Q. Did you represent in this letter that there
11 are "voluminous documents" that would be
12 responsive to the question and, therefore,
13 you weren't going to be able to look for
14 them?

15 CMSR. HONIGBERG: I'll sustain
16 that objection. Mr. Glahn, you asked the
17 question a different way when you asked about
18 the sentence in the next to last paragraph.
19 I think you might want to go back to that
20 formulation.

21 MR. GLAHN: Well, let me ask a
22 different question then.

23 BY MR. GLAHN:

24 Q. Take a look at the first page of this letter.

1 One of the reasons that you didn't look for
2 information was because there's a good deal
3 of non-public forecast information in
4 TransCanada's possession; right?

5 MR. PATCH: Objection. Same
6 issue, Mr. Chairman. He keeps pushing the
7 envelope. Mr. Glahn keeps pushing the
8 envelope. I thought the ruling from the
9 Chair was pretty clear: You didn't see the
10 relevance of getting into discovery issues.

11 CMSR. HONIGBERG: Sustained.

12 BY MR. GLAHN:

13 Q. All right, Mr. Hachey, let me ask you a
14 different question. I want you to make an
15 assumption for me.

16 I want you to assume that TransCanada
17 has in its possession multiple gas price
18 forecasts from the 2008 period that are
19 completely inconsistent with the gas price
20 forecasts PSNH relied upon in its economic
21 analysis. Make that assumption.

22 A. Okay.

23 Q. You understand it?

24 A. Yes.

1 Q. If that were the case, are they still
2 irrelevant to this proceeding?

3 MR. PATCH: Objection. It
4 seems to me that, again, you know, we're
5 asking about an issue that has been resolved
6 in discovery. Sanctions were imposed on
7 TransCanada. I just don't see -- and Mr.
8 Hachey's already stated that he didn't look
9 at any of this, didn't review it, didn't
10 consider it, didn't rely upon it. I mean,
11 the case is about PSNH; it's not about
12 TransCanada, as we've said in many pleadings.

13 MR. GLAHN: You certainly have
14 said that a lot. And of course, the reason
15 I'm asking this is because it goes directly
16 to the adverse inference. He said that he
17 didn't produce these because they were
18 irrelevant. Now, I want to know whether
19 there were documents in their possession that
20 were completely consistent with the forecast
21 that PSNH made that he's addressing in this
22 case, whether they would still be irrelevant.
23 I think I'm entitled to an answer to that
24 question.

1 MR. PATCH: That's asking for
2 a legal conclusion --

3 CMSR. HONIGBERG: Yeah, I
4 think that's right. I think what you want to
5 know is if that would change his opinion.

6 MR. GLAHN: No. He earlier
7 said that he didn't look for these things
8 because they were "irrelevant." That wasn't
9 my word. That was his word. So that's what
10 I'm picking up on.

11 CMSR. HONIGBERG: They
12 weren't -- now I'm going to put some words in
13 his mouth. But I think it's because he would
14 say they were not relevant in forming his
15 opinion, because his opinion was taking an
16 approach -- if you want to ask him if such
17 documents would have changed his opinion, I
18 think you can ask him that.

19 BY MR. GLAHN:

20 Q. All right, Mr. Hachey. Commissioner
21 Honigberg can be quite persuasive. I want
22 you to assume that TransCanada has in its
23 possession multiple gas price forecasts from
24 2008, from the 2008 period, that are

1 completely consistent with the gas price
2 forecasts PSNH relied upon for its economic
3 analysis. Would that change your opinion in
4 this case?

5 A. Let me ask one clarifying question. Do you
6 mean forecasts produced internally within
7 TransCanada or external forecasts?

8 Q. Either.

9 A. The reason I say that is because we produced
10 the external forecasts that we had. So I
11 don't know where this goes. It's a -- we
12 produced the external forecasts that we had.
13 The internal forecasts, if I'm to presume
14 that it's completely consistent with PSNH's
15 forecasts, however unlikely that may be, that
16 would have been kind of silly of me to have
17 prepared this testimony, wouldn't it.

18 MR. GLAHN: I would now ask
19 for an adverse inference that TransCanada has
20 in its possession information that is
21 directly consistent with the information in
22 PSNH's possession and they have failed to
23 produce it.

24 CMSR. HONIGBERG: Mr. Glahn,

1 we're going to consider whether it's
2 appropriate to draw such inference as part of
3 our deliberation. And I understand the
4 request.

5 MR. GLAHN: Okay.

6 BY MR. GLAHN:

7 Q. Mr. Hachey, I want to talk to you for a
8 moment not so much about what you know, but I
9 want to talk with you about what you have
10 represented you don't know. Fair enough?

11 A. Okay.

12 Q. So you -- we can agree -- well, you
13 understand that there were a number of
14 objections raised to requests, data requests
15 made by PSNH in this case in which you
16 indicated that you had no knowledge of that
17 subject matter; correct?

18 A. Correct.

19 Q. So I want to ask you about those so that we
20 can establish what it is you don't have
21 knowledge of. Fair enough?

22 A. Okay. It will help if you provide me the
23 copies of the data requests.

24 Q. Well, it's going to take some time because

1 there are a number of them. And I'm happy to
2 provide them to you, but let me ask you the
3 question first. And if you can't answer it
4 without seeing the data requests, we're happy
5 to provide them. Fair enough?

6 A. Sure.

7 Q. Okay. You have no knowledge of fuel price
8 forecasts relating to coal or natural gas
9 available to TransCanada, any entity other
10 than your own, is that correct, from 2005 to
11 2012?

12 MR. PATCH: Well, objection,
13 Mr. Chairman. I don't know how much time
14 we're going to spend on this. But it seems
15 to me the Commission's already ruled. You
16 know, the adverse inference you already
17 indicated you will decide what to do with
18 that evidence and how to use it when you
19 weigh all of the evidence provided in this
20 proceeding. So, how many more questions like
21 this are we going to get?

22 CMSR. HONIGBERG: I have no
23 idea.

24 MR. GLAHN: This has nothing

1 to do with that. This has to do with the
2 fact that this witness was represented not to
3 have any knowledge on a broad range of
4 subjects. That's what I want to ask him
5 about. I just want to confirm that he
6 doesn't have any knowledge in those areas.
7 It goes directly to his credibility in this
8 case.

9 MR. PATCH: We need to see the
10 data request responses, I think.

11 MR. GLAHN: Fine, fine.

12 MR. PATCH: It's just unfair
13 to the witness and unfair to counsel not to
14 have them.

15 CMSR. HONIGBERG: I guess what
16 I would say is, if there's a batch of data
17 requests and responses relevant to this, that
18 we assemble them and get them together rather
19 than do it one at a time, because it's going
20 to take a long time to do one at a time. Do
21 you know how many there are that you want
22 to --

23 MR. GLAHN: Probably 50.

24 CMSR. HONIGBERG: 5-0?

1 MR. GLAHN: Yeah.

2 CMSR. HONIGBERG: Because it's
3 going to take a long time if we have to walk
4 each one of those up one at a time. It would
5 be much more efficient to get them all
6 together and do them in a batch.

7 MR. GLAHN: All right, all
8 right. We actually --

9 SP. CMSR. IACOPINO: Well,
10 wait a minute. Does somebody have them in a
11 stapled package or in a notebook or
12 something?

13 MR. GLAHN: I have them all,
14 but I have them all individually. We talked
15 about putting them together. But what we
16 were concerned about was if there would be --
17 one would be in the package that he'd say,
18 "No, that's not right. I have knowledge on
19 that." So that's why we didn't package them
20 up.

21 So let me suggest this,
22 okay -- well, we actually have a full set of
23 objections --

24 CMSR. HONIGBERG: Microphone.

1 MR. GLAHN: Sorry. We do have
2 a full set of objections, and I assume
3 Mr. Patch does as well. So I can refer him
4 as we go along to the specific number of the
5 objection in which Hachey says he has no
6 knowledge. So if that works for him, fine.

7 MR. PATCH: It doesn't work
8 for me. I think the Commissioners ought to
9 have it in front of them. I think all the
10 other counsel ought to have them, and I think
11 I ought to have a copy in front of me. I
12 don't necessarily have that. There's a lot
13 of documents in this case. If Mr. Glahn knew
14 he was going to be cross-examining about
15 these today, he could very well have done
16 what the rest of us has done, which is to
17 bring 15 --

18 MR. GLAHN: I have 15 copies
19 of every one of them.

20 CMSR. HONIGBERG: He just
21 didn't assemble --

22 MR. GLAHN: I didn't have them
23 in the format that Commissioner Iacopino
24 suggested. So, tell you what. Why don't we

1 move to a different topic and we'll come back
2 to that next week.

3 CMSR. HONIGBERG: Ms.
4 Frignoca.

5 MS. FRIGNOCA: Yes, I was
6 actually going to suggest the same thing, if
7 he could give us that packet to review over
8 the weekend. What I found is I don't know
9 when I get a data request whether it's been
10 supplemented later or whatever. And I think
11 for us to be able to have a complete dialogue
12 about this area, we need a chance to review
13 that over the weekend.

14 CMSR. HONIGBERG: I think
15 that's where we are. Right, Mr. Glahn?

16 MR. GLAHN: Well, here's what
17 I'll do: I'll make it easier for them. I'll
18 simply give them the number of the data
19 requests so that they have it. They're all
20 objections to the data requests. And my
21 recollection is that every data request that
22 TransCanada subsequently answered, they also
23 continued their previous objection. There
24 aren't any in which they came back and said,

1 "Sorry, Mr. Hachey actually has knowledge
2 about that area." So, you know, let's -- I'm
3 happy to do it. But if they want to stay
4 afterwards, we'll dole them out to them so
5 they have every single one of them.

6 MR. PATCH: We'd be happy to
7 stay after.

8 CMSR. HONIGBERG: Yeah, I
9 think that's the way to do this. And keep in
10 mind that we don't -- up here, we don't have
11 any data requests and responses that you all
12 don't give us. So --

13 MR. GLAHN: Obviously, I've
14 got 15 copies, and I'll make copies for you
15 before the Tuesday session as well.

16 CMSR. HONIGBERG: All right.
17 Fair enough.

18 MR. GLAHN: So, give me No. 26
19 I think it is, and maybe 28.

20 What's the number on this?

21 CMSR. HONIGBERG: It's 91.

22 (Ms. Frazier hands document to witness.)

23 (The document, as described, was herewith
24 marked as Exhibit 91 for identification.)

1 Q. Mr. Hachey, see if you can agree with this
2 statement: One of the things you take issue
3 with in your testimony is PSNH's use of the
4 \$11 natural gas price and the escalation of
5 that price over time; is that right?

6 A. Yes.

7 Q. I put in front of you TransCanada's responses
8 to supplemental data requests dated June 6th.
9 And attached to that are two forecasts that
10 TransCanada produced. Do you see those?

11 A. The Ventyx and ESAI? Yes.

12 Q. So, one is ESAI. And the other one is what?
13 I'm sorry?

14 A. Ventyx.

15 Q. The one from Global Energy Decisions --
16 that's what it's called -- is from 2006,
17 right, from the spring of 2006, if you look
18 at the bottom of it?

19 (Witness reviews document.)

20 A. Yes.

21 Q. So let's go to the one from ESAI for a moment
22 and see if we can agree on this.

23 But first let me ask one other question,
24 which is: Can we agree that these are the

1 only gas price forecasts that TransCanada has
2 produced to PSNH in this case, other than the
3 ones that you've identified as being
4 "publicly available" in your report?

5 A. There were four forecasts in my testimony.
6 We had -- because they were available to
7 PSNH, these two forecasts were the forecasts
8 that we actually had in the TransCanada Power
9 Marketing offices.

10 Q. And what I'm trying to establish is whether
11 these are the only -- other than the
12 forecasts that you referenced in your report
13 as being "publicly available to PSNH," these
14 are the only forecasts that the two
15 TransCanada entities who are intervenors in
16 this case have produced in this case.

17 A. That's my recollection.

18 Q. Okay. So, the TransCanada price of \$11 that
19 you were critical of --

20 MR. PATCH: Objection. It's
21 not TransCanada price.

22 BY MR. GLAHN:

23 Q. I'm sorry. I apologize. The PSNH \$11
24 forecast from the spring of 2008 that you

1 were critical of was \$11 as of 2012 escalated
2 at 2-1/2 percent from thereon; correct?

3 A. Correct.

4 Q. So I want you to look at the June 2008
5 forecast from ESAI. It's in that package
6 that says "June" --

7 SP. CMSR. IACOPINO: Do you
8 know what page?

9 Q. -- "2008" at the bottom. Now, first of all,
10 see if we can agree on this: We don't know
11 what you redacted from this page; right?

12 SP. CMSR. IACOPINO: You need
13 to focus us on the page.

14 MR. GLAHN: Oh, I'm sorry. I
15 don't have a Bates number. But if you look
16 in the ESAI forecast, the ones that have
17 "redacted" on the page, Commissioner. And at
18 the bottom left-hand you'll see that they're
19 dated, and the one I'm referring to is
20 "June 2008."

21 SP. CMSR. IACOPINO: Thank
22 you.

23 (Witness reviews document.)

24 BY MR. GLAHN:

1 Q. Okay.

2 A. I'm sorry. I'm not there. I'm looking.

3 They're not in order.

4 Q. No, they aren't in order.

5 A. I've got -- well...

6 Q. Got it?

7 A. Okay. I have the June 2008 ESAI.

8 Q. Okay. So we don't know what you have

9 redacted from this page; right?

10 A. When you say "we," I mean --

11 Q. PSNH doesn't know, do they? And no one else

12 in this room other than TransCanada knows.

13 A. We made our redactions at the instruction of

14 ESAI, and that's that.

15 Q. My question is: We don't know what got

16 redacted, right, or why it was redacted?

17 A. Well, you know why. I just told you. ESAI

18 wanted it redacted.

19 Q. Okay. And it could be a discussion of the

20 methodology that ESAI used; right?

21 MR. PATCH: Well, objection,

22 Mr. Chairman. I think it speaks for itself.

23 It does refer to methodology I think right in

24 the response.

1 MR. GLAHN: I'm sorry. Where
2 does it refer to methodology?

3 MR. PATCH: It's the second --
4 third sentence up from the bottom on the
5 first page of the response to 34.

6 MR. GLAHN: Well, it refers to
7 methodology. But what it says is, "ESAI
8 indicated that, while it would permit
9 disclosure of gas price forecasts, it did not
10 agree to release the analysis sections of the
11 reports because they contain proprietary
12 information..."

13 BY MR. GLAHN:

14 Q. So we don't know what methodology ESAI used,
15 do we?

16 CMSR. HONIGBERG: It's fair to
17 say it's not in this document; right?

18 THE WITNESS: Yeah.

19 A. I mean, I don't know if you contacted ESAI.
20 You may well know what methodology -- they're
21 a local firm. It's not hard. We see them at
22 NEEFO meetings all the time. So you may have
23 contacted them. So I don't know whether you
24 knew that or not. From this document, we

1 redacted what they redacted. I don't recall
2 what -- the reason I'm struggling a little
3 bit is I don't think what they redacted was
4 methodology. But I don't recall what they
5 instructed me to redact here. I just don't
6 recall. But what you know about ESAI, I have
7 no idea.

8 BY MR. GLAHN:

9 Q. Well, you contracted with ESAI to produce
10 forecasts to you, right -- "you," being the
11 TransCanada entities that had possession of
12 this document?

13 A. We contract with ESAI to get their market
14 updates for New England, New York and PJM,
15 one part of which is related to gas. But
16 that isn't why we contract with them. But
17 that's neither here nor there.

18 Q. Well, you must think the information is
19 valuable enough to pay for it; right?

20 A. The information that I know others are
21 interested in relate to capacity markets.
22 And the intelligence, if you will, or the
23 scuttlebutt on the street as to what's going
24 on that's driving capacity markets, that's

1 our interest.

2 Q. Well, let me just take you to the numbers on
3 this page, okay.

4 A. Sure.

5 Q. I want to start with 2012.

6 A. Yup.

7 Q. The forecast -- the one forecast for the
8 relevant period in this case that you -- I'm
9 sorry. Let me strike that.

10 The one forecast for spring of 2008,
11 June of 2008, that you produced to us shows
12 prices for the base price and the high -- the
13 base case and the high case that are
14 consistent with PSNH's \$11 number; right?

15 A. It's in the range, yes.

16 Q. Okay. And what's the escalator that's used
17 in this chart? Do you know?

18 A. Nope. No, I don't.

19 Q. If I represented to you that it's higher than
20 2-1/2 percent, would you accept that
21 representation?

22 A. Subject to check.

23 Q. Well, then let me let you check.

24 A. Well, I'll check later.

1 MR. GLAHN: Someone have a
2 calculator other than my iPhone?

3 (Pause)

4 A. I'll accept your representation and save
5 everybody the time, subject to later to
6 check. I'll certainly get back to you if --

7 BY MR. GLAHN:

8 Q. So we can agree that the low case numbers are
9 lower than the number that PSNH used of \$11
10 in 2012, right, for the spring of June of
11 2008?

12 A. Yes.

13 Q. Okay. But we've already said that base case
14 and high case are higher, and those numbers
15 increase in each of the cases -- well, I got
16 to qualify that.

17 In the base case and high case, the
18 numbers increase every year up to 2017;
19 correct?

20 (Witness reviews document.)

21 A. Yes.

22 Q. And in the high -- in the low case, they
23 increase for the first two years and then
24 begin to drop down.

1 A. The numbers are all over the table, so...

2 Q. Well, I'm just -- so that the -- so we
3 have it in the record, I'm asking you --

4 A. The low case drops down, yes.

5 Q. So, go to September of 2008. Same Henry Hub
6 forecast; right?

7 A. Yes.

8 Q. And the high case for 2012, we can agree, is
9 slightly lower; it's \$10.22. So it's
10 about -- \$10.24. So it's about 76 cents
11 lower than the price that PSNH was projecting
12 in the spring of 2008 for 2012; correct?

13 A. Yes.

14 Q. And by 2014, the number in the high case that
15 ESAI was forecasting for September of 2008 is
16 higher than the number PSNH was projecting
17 for 2012 in June of 2008; right?

18 A. I'll accept your math, subject to check.

19 Q. Well, we can just agree that \$11.32 is higher
20 than \$11; right?

21 A. I'm sorry. I was looking at 2017.

22 Q. We're looking at 2014.

23 A. I'm sorry. Restate your question.

24 Q. I was asking you whether by 2014, in this

1 September 2008 forecast, ESAI's high case was
2 higher than the number PSNH projected for
3 2012 as of the spring of 2008.

4 A. Eleven thirty-two is larger than \$11. So,
5 yes.

6 Q. And for their base case, starting with 2012,
7 they project that gas prices will increase in
8 each year from 2012 to 2017; right?

9 (Witness reviews document.)

10 A. Yes.

11 Q. And in their high case, they project that
12 prices, gas prices will increase every year
13 from 2012 to 2017; is that right?

14 A. Yes.

15 Q. Your testimony is that it was generally known
16 in the world in 2006, 2007, that fracking was
17 going to reduce the prices of gas going
18 forward from those dates; right?

19 A. Excuse me. I'm going to my testimony.

20 MR. PATCH: Yeah. I was just
21 going to suggest. He said 2006 and 2007, and
22 I'd like to know where in the testimony it
23 says that.

24 BY MR. GLAHN:

1 Q. Well, how about if I try it this way, Mr.
2 Hachey: Your testimony says that in 2006,
3 2007, it was generally known that the
4 unconventional sources of gas had outstripped
5 conventional sources of gas. And I think you
6 qualified it for onshore versus offshore. Is
7 that right?

8 MR. PATCH: Could we have a
9 cite to the place in the testimony that --

10 A. Well, I'm there if that will speed things.
11 I'm on Page 21 of 32. And my testimony is,
12 "Clear documentation existed as early as 2006
13 indicating that production of unconventional
14 natural gas was exceeding production from
15 onshore [sic] conventional natural gas
16 sources." And I provided a chart from the
17 U.S. EIA that showed that.

18 BY MR. GLAHN:

19 Q. And a couple of newspaper articles; right?

20 A. It was not -- it was a little more than that.
21 It was an article written by David Yergin,
22 who's the -- who's something of a energy
23 institution in the country.

24 Q. And is it your testimony that, because people

1 knew that, they should -- people should have
2 been projecting that the price of natural gas
3 in the future would go down?

4 A. Well, I think the testimony speaks for
5 itself. A "company taking such a significant
6 risk on behalf of ratepayers should have
7 exhaustively researched natural gas supply
8 developments and been aware of this looming
9 issue."

10 And we also provided in our -- the
11 discovery, really, the -- I'll just bring it
12 to your attention once again -- the American
13 Clean Skies Foundation produced on July 4th,
14 2008, most notably -- most notable about this
15 report is it was produced on behalf of gas
16 producers. So these were people that
17 actually were sitting on the gas wells, that
18 owned the gas wells, and knew what they had.
19 So that's, I think, what is a complete
20 statement of my point on this issue.

21 Q. So, because people -- see if I can try it
22 again.

23 Because people knew, because there was
24 this clear documentation in 2006 and 2007

1 about the impact of the unconventional
2 natural gas was exceeding production from
3 conventional sources, people should have
4 researched that issue and concluded that gas
5 prices were going to go down because of the
6 supply of this unconventional gas; correct?

7 A. Well, I just read what I said, and you're
8 pointing words into it. And "should have
9 exhaustively researched natural gas supply
10 developments and been aware of this looming
11 issue." The "looming issue" shortly
12 thereafter started to play out.

13 Q. "Shortly thereafter" being what? At what
14 point is it your testimony that a prudent
15 utility would have known about the impact of
16 fracking on gas prices?

17 A. Certainly once this report was made public
18 and --

19 Q. And the date of that is what?

20 A. July 4th, 2008.

21 Q. Okay.

22 A. That report was picked up in the national
23 press.

24 Q. As of --

1 A. And further to that, to the extent that one
2 still had concerns about, well, did they
3 really know what they were talking about, if
4 you simply look at natural gas price charts,
5 you'll see that natural gas cratered
6 beginning in about September. So, to the
7 extent that the prudent utility held off
8 before it dropped \$435 million into the
9 ground, it would have seen that natural gas
10 was on a slide and it was -- over time would
11 have been shown that, in fact, the shale gas
12 production was one of the drivers, if not the
13 major driver.

14 Q. Did your TransCanada entities exhaustively
15 research this "looming issue"?

16 A. For what? I don't know. I don't know. And
17 I don't know who would have exhaustively
18 researched it. Perhaps individuals did. I
19 don't know that they did.

20 Q. Do you know whether there are any statements
21 from TransCanada Company that are -- that
22 contradict your statement that certainly
23 everyone would have known of the impact of
24 fracking as of July of 2008?

1 MR. PATCH: Object.

2 BY MR. GLAHN:

3 Q. Let me rephrase the question. Do you know
4 whether TransCanada -- when TransCanada
5 determined that -- do you know when
6 TransCanada -- strike all that.

7 Do you know when TransCanada concluded
8 that a prudent utility would know about the
9 impact of fracking on gas prices?

10 MR. PATCH: Objection. We
11 responded to data requests on this issue, on
12 the fracking. I don't know that it was -- I
13 don't think the question was asked,
14 "prudent." I don't think "prudent" was in
15 that question. But if he wants to show him
16 the response to the data request, then I
17 think that's one thing. But I just --

18 MR. GLAHN: I'm asking a
19 question. I'm not referring to data
20 requests.

21 CMSR. HONIGBERG: He can
22 answer that. I think he can probably answer
23 that question.

24 A. Let's have it again.

1 MR. GLAHN: Can I have the
2 question back, please?

3 CMSR. HONIGBERG: Yeah.

4 (Record read back as requested.)

5 A. I don't know that anybody in TransCanada ever
6 concluded that.

7 BY MR. GLAHN:

8 Q. Do you know whether TransCanada
9 representatives made public statements about
10 the impact of fracking on gas prices?

11 A. There were materials that were provided --
12 I'm sorry. In discovery, you provided a
13 number of materials that you stated were --
14 PSNH stated were representations and
15 statements and the like made by TransCanada
16 representatives. That's about all I know.
17 And those were materials that you provided to
18 us, and they are what they are. If a
19 representative said that, then a
20 representative said that. If that's a
21 factual statement, so be it. I don't have
22 any firsthand knowledge of any of that, other
23 than, again, having read what you sent to us.

24 Q. Well, we're going to come back to your

1 knowledge on that.

2 A. That's fine.

3 Q. The ESAI forecast prices that are in the
4 report that you produced are Henry Hub
5 prices; right?

6 A. Correct.

7 (Court Reporter interrupts.)

8 Q. Just so I can sound like I know what I'm
9 doing, Henry Hub is sort of a mythical or
10 hypothetical place in Louisiana in which gas
11 is delivered; is that right?

12 A. I don't think it's hypothetical. It's a
13 central hub.

14 [Laughter]

15 CMSR. HONIGBERG: It may be
16 mythical, but it's actually real.

17 MR. GLAHN: Whatever it is,
18 it's in Louisiana, and my view of Louisiana
19 is mostly mythical, so...

20 BY MR. GLAHN:

21 Q. But we can agree on this, can't we, Mr.
22 Hachey: The price at Henry Hub is lower than
23 the price delivered to New England?

24 A. In 2008, that was the case.

1 Q. Okay. So these prices that we see here on
2 the ESAI forecast would have to be increased
3 by some amount to reflect the delivery to New
4 England.

5 A. That's correct.

6 Q. You didn't include, when you put together
7 that chart that you attached to your -- could
8 you find Exhibit 20 to your report -- or to
9 your testimony.

10 (Witness reviews document.)

11 CMSR. HONIGBERG: Is there a
12 page number in the lower right hand of the
13 document you're referring to?

14 MR. GLAHN: Yes. I can give
15 you that in a minute. It's 990.

16 (Witness reviews document.)

17 A. You're talking about the chart that has the
18 Northeast -- I'm sorry -- the PSNH projection
19 and then the four gas forecasts?

20 BY MR. GLAHN:

21 Q. Right. So, if it isn't clear from your
22 testimony, let me -- or from your report, let
23 me see if I can summarize this for the
24 Commissioners.

1 What you did as part of your analysis is
2 you took the forecasts that you say was
3 available to PSNH in the spring of 2008, and
4 you plotted the prices on this chart; right?

5 A. Well, not quite. I think what we did with
6 them was to bring them all up to a New
7 England delivery point. That's my
8 recollection.

9 Q. Well, let's assume for the sake of argument
10 that you did that --

11 A. We had to make a number of adjustments
12 because some of the forecasts, taking this
13 from recollection -- I want to go back and
14 look at each individual one. But I think we
15 probably had to make -- some of them may have
16 been in a particular year's dollars. So we
17 had to bring them up to nominal dollars. We
18 had to make a variety of adjustments like
19 that.

20 Q. Okay. Whatever adjustments you made, you
21 plotted the prices as adjusted or not
22 adjusted for those forecasts and for PSNH's
23 forecasts on this attachment to your
24 testimony; right?

1 A. That was my recollection of what we did, yes.

2 Q. And because we don't have a -- I don't have a
3 color version of it in front of me -- the top
4 line here is the PSNH number; correct?

5 A. Correct.

6 Q. Correct?

7 A. Correct.

8 Q. You didn't include the ESAI forecast on this
9 chart, did you?

10 A. No.

11 Q. Had you included -- and the ESAI forecast is
12 a document that you had in your possession
13 when you prepared your testimony; right?

14 A. Yes.

15 Q. If you had included the ESAI forecast on this
16 chart, it would have been higher than the
17 line for PSNH; correct?

18 A. Well, I think we gave you 14 of them. So
19 there might have been one or two that were
20 higher.

21 Q. Well, let's not talk about 14, sir. Let's
22 talk about June of 2008, which is what you're
23 representing here. And we just went through
24 that a moment ago. If you had charted

1 the June -- well, let me clarify this for a
2 minute.

3 See if you can agree on this: The
4 Synapse forecast you used is from January of
5 2008; correct? I think it's spelled out in
6 your testimony.

7 (Witness reviews document.)

8 A. It is, and that's what I'm looking for.

9 Q. Let me make it simpler for you because it's
10 getting late in the day. My recollection is
11 that the Synapse forecast is January of 2008;
12 the Brattle forecast is January of 2008, and
13 the DOE EIA forecast is June of 2008. It's
14 on Page 20 of your testimony.

15 A. Yes, that's what I'm looking at.

16 Q. Okay. So, if we -- and you recall that a few
17 moments ago we talked about the ESAI forecast
18 for June of 2008; correct?

19 (Witness reviews document.)

20 Q. Do you remember that?

21 A. I'm sorry.

22 Q. Do you remember that a few moments ago I took
23 you through the ESAI forecast for June of
24 2008?

1 A. Yes.

2 Q. If we were to use the high case in the ESAI
3 forecast for June of 2008, the line would be
4 above PSNH's line on this chart; right?

5 A. I believe so, yes.

6 Q. And do you know where the base case line
7 would fall?

8 A. I can go back and look.

9 (Witness reviews document.)

10 Q. I'll represent to you that for 2012, the base
11 case -- the base case number is \$10.83.

12 A. Okay.

13 Q. So it would have been very close to the PSNH
14 number; right?

15 A. Okay. Yes.

16 Q. And then, since those numbers grew over time
17 in the base case, it would probably either be
18 equal to or exceed the PSNH line, given that
19 the escalator was higher than PSNH used;
20 right?

21 A. Okay. So what's --

22 Q. And the low case probably would be somewhere
23 down in the bottom of this chart; right?

24 A. Okay.

1 Q. Do you agree?

2 A. Sure.

3 Q. So you had in your possession a document that
4 you've disclosed, and you didn't include it
5 on this chart; correct?

6 A. Correct. The forecasts on this chart, as I
7 stated before, were those that were available
8 to PSNH.

9 Q. Okay. But you had a chart available to you
10 that, in fact, at least in the base case and
11 high cases, were either equal to or higher
12 than PSNH's forecast and would contradict
13 your criticism of the \$11 number; right?

14 A. Well, I had 14 forecasts available. You
15 know, actually, I hadn't even gone back to
16 read the ESAI forecast. I mean, it may well
17 be that they're relying on natural gas
18 forwards, which is going to be, you know, the
19 subject I'm sure we're going to talk about at
20 some point. So that would have had all of
21 the problems with it that we've been talking
22 about in my testimony. So I'll -- in the
23 mean -- between now and next Tuesday, I will
24 go back and see what the basis for the ESAI

1 forecast was and what I will be able to say
2 about it, but --

3 Q. Well, you can't tell us what it says, right,
4 because ESAI said it's confidential and you
5 can't produce it.

6 A. I will find out if -- what I just said is
7 I'll find out what -- how they construct
8 their forecast in the -- if there's any
9 reliance on market forwards and see whether I
10 can talk about that.

11 MR. GLAHN: Well, I object to
12 that, because that's something that should
13 have been produced to us a long time ago, if
14 he is now going to go back and start
15 producing selective information.

16 CMSR. HONIGBERG: Well, he
17 hasn't done it yet. So there may be nothing
18 to object to ultimately. But I hear you.

19 A. Again, just to be clear, I inquired of ESAI.
20 We responded to your request to produce
21 documents. I talked to ESAI. I said, "We've
22 got this request. It pertains to your
23 forecasts. Your forecasts have
24 confidentiality with it. What can I

1 provide? How do I get myself, you know, to a
2 position where we can respond?" And they
3 outlined what I could provide. Now you're
4 focused on one particular inquiry, and I can
5 go back and ask them about that. You're
6 curious and I'm curious, so we'll go find
7 out.

8 BY MR. GLAHN:

9 Q. I want you to assume for a moment that the
10 people at ESAI knew about the impact of gas
11 fracking in 2006 and 2007. Got that?

12 A. Okay.

13 Q. They certainly didn't show it on these
14 charts, did they?

15 A. I don't know what the basis for this is.

16 Q. Let me -- I apologize, Mr. Hachey. That was
17 not a well-crafted question.

18 Let's just take the June 2008 chart. We
19 can agree that, as shown on your graph,
20 Exhibit 20, that these gas forecasts show
21 long-term increases in the price of natural
22 gas for every one of the forecasts on this
23 page -- "this page" being Attachment 20.

24 A. Correct.

1 Q. So if they thought fracking was going to
2 create a revolution, a "looming issue" in gas
3 prices, they're not -- they certainly weren't
4 reflecting it as of June of 2008, were they?

5 A. It's not apparent in this chart. Correct.

6 Q. You had some information in your possession
7 that contradicts what you presented to the
8 PUC in your testimony; right?

9 A. What do you mean?

10 Q. Well, for June of 2008, you're critical of
11 the \$11 price; yet, you had information in
12 your possession that showed projections of
13 prices higher than \$11 in 2012.

14 A. I have an ESAI forecast, yes. As I said, in
15 preparation of my testimony, I looked at the
16 forecasts that were readily available.

17 Q. But you didn't provide that information to
18 the PUC in your testimony, did you?

19 A. Not in my testimony, no.

20 Q. Would you consider that omission to rise to
21 the level of misleading the PUC?

22 A. No.

23 MR. GLAHN: How long do you
24 want to go?

1 CMSR. HONIGBERG: I actually
2 think we're probably at a time to break.

3 MR. GLAHN: It's a good place
4 to break. So we'll give people all the paper
5 they want, and we'll come back on Tuesday.

6 CMSR. HONIGBERG: All right.
7 So we'll be back again Tuesday morning.
8 We'll continue with Mr. Hachey at that time.
9 Thank you all.

10 Mr. Bersak, you have a
11 question?

12 MR. BERSAK: Off the record.

13 CMSR. HONIGBERG: So we're
14 going to close the record and have an
15 off-the-record discussion.

16 (Discussion off the record)

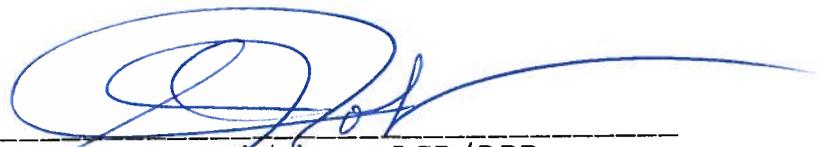
17 (Whereupon the hearing was adjourned at
18 4:30 p.m. and will resume on Tuesday,
19 October 21, 2014, at 9:00 a.m.)
20
21
22
23
24

[WITNESS: HACHEY]

C E R T I F I C A T E

1
2 I, Susan J. Robidas, a Licensed
3 Shorthand Court Reporter and Notary Public
4 of the State of New Hampshire, do hereby
5 certify that the foregoing is a true and
6 accurate transcript of my stenographic
7 notes of these proceedings taken at the
8 place and on the date hereinbefore set
9 forth, to the best of my skill and ability
10 under the conditions present at the time.

11 I further certify that I am neither
12 attorney or counsel for, nor related to or
13 employed by any of the parties to the
14 action; and further, that I am not a
15 relative or employee of any attorney or
16 counsel employed in this case, nor am I
17 financially interested in this action.

18 

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20 Susan J. Robidas, LCR/RPR
21 Licensed Shorthand Court Reporter
22 Registered Professional Reporter
23 N.H. LCR No. 44 (RSA 310-A:173)
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