

STATE OF NEW HAMPSHIRE

PUBLIC UTILITIES COMMISSION

October 15, 2014 - 9:09 a.m.
Concord, New Hampshire

DAY 2
Morning Session only

NHPUC OCT31'14 PM 3:36

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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P R O C E E D I N G

1
2 CMSR. HONIGBERG: Good morning,
3 everyone. Welcome back. We are in the middle of
4 questioning of Mr. Frantz. But are there things that need
5 to be wrapped up from yesterday? I know one thing was
6 Ms. Goldwasser's outstanding motion, which we have denied.
7 Circumstances are very different, and there's no basis to
8 grant the relief Ms. Goldwasser requested. So, that issue
9 has been dealt with. Yes, ma'am.

10 MS. GOLDWASSER: Can I just ask a
11 follow-up question to that?

12 CMSR. HONIGBERG: I suppose.

13 MS. GOLDWASSER: Under the Commission's
14 rules, my understanding is that there is an ongoing
15 obligation to provide discovery. Given the information
16 that was contained in that request, including the fact
17 that Yankee Gas had Energy Ventures Analysis forecasts
18 that it used in the relevant time period, I believe that
19 PSNH has an obligation to produce those materials as
20 quickly as possible.

21 CMSR. HONIGBERG: I think that PSNH is
22 well aware of its obligations under 203.09 to supplement
23 whatever discovery responses it has made up through the
24 time that a final order is issued. So, I expect that,

1 after yesterday's hearing, they got on the phone with
2 their various affiliates and made sure that they had
3 located every possible relevant document. And, I expect
4 that, if PSNH locates any documents that would be called
5 for under that request, they will be providing them to
6 everyone. Is that fair assessment, counsel?

7 MR. GLAHN: I don't know whether we've
8 done that yesterday, Mr. Honigberg. But I can tell you
9 this. We produced Energy Venture documents, that's the
10 document that Ms. Goldwasser is referring to, to them in
11 June of this year, or earlier than that, because they
12 reference those documents in a pleading that they filed on
13 June 20th of this year.

14 Now, my understanding is, from
15 Ms. Goldwasser said yesterday, is it was their contention
16 that they just got this document yesterday. In fact,
17 their pleading of June 20th, objecting to our motion to
18 rescind their intervenor status, refers to Energy
19 Ventures, Inc. documents. And, in September of this year,
20 they filed an additional document request asking
21 whether -- whether one of those Energy Ventures reports
22 that we produced was complete. We responded to that
23 request. They never followed up with any further document
24 requests.

1 So, I'm not sure I know what -- I think
2 this is a dispute that's manufactured today. There's no
3 indication that we didn't produce Energy Venture documents
4 to them.

5 MS. GOLDWASSER: I'm sorry, I just --

6 CMSR. HONIGBERG: Just a minute. And, I
7 accept that. All of that may be true. I think there's
8 always the possibility, when lawyers ask their clients "Do
9 I have everything?", that they may not have asked the
10 question in a way that conveys to the client the level of
11 inquiry that's going to be required within the client's
12 organization. It may well be that you're satisfied that
13 every document that the Company and its affiliates has has
14 been located and produced.

15 And, given what happened yesterday, I
16 think a phone call would probably be in order, to make
17 sure that nothing's been missed.

18 MR. GLAHN: We will do that.

19 CMSR. HONIGBERG: Okay. Ms. Goldwasser.

20 MS. GOLDWASSER: Just to clarify the
21 record. Mr. Hachey, in his testimony, references what he
22 believes may be some EVA documentation that provided no
23 narrative and no information about where it was from, but
24 he thought might be from Energy Ventures Analysis. That

1 was produced by PSNH in response to a request for
2 information from 2008 that PSNH had in its possession.

3 Mr. Long was then asked about that
4 information in a deposition. And, there was a subsequent
5 discovery request for additional information from Energy
6 Ventures Analysis, which did not provide any additional
7 information.

8 I just wanted to make sure the record is
9 clear, Mr. Honigberg.

10 CMSR. HONIGBERG: And, all that may be
11 true, and I accept that. You didn't get -- that we didn't
12 grant their motion to exclude you from the case. You're
13 here. You've made your request. They have an obligation
14 to review and supplement. Is there more information you
15 needed to convey right now?

16 MS. GOLDWASSER: The only additional
17 piece of information is that the discovery -- the document
18 that was provided to the Commission yesterday from
19 Connecticut is one that was never produced in discovery.
20 The document that we used to demonstrate what an EVA
21 analysis might look like, and we don't know for sure, is
22 one from 2013 that was provided by PSNH last Friday.

23 So, there isn't anything that's been
24 produced, as far as I'm aware, that contains natural gas

1 forecasts from any of the affiliates of PSNH.

2 CMSR. HONIGBERG: And, to you and to
3 Mr. Glahn, I would say that this is not really significant
4 to the merits of this case. There may be reasons why
5 actions are going to need to be taken if discovery wasn't
6 complied with. But I think we've got it clear that you
7 think you found something that wasn't produced. You asked
8 for a certain sanction based on that; that was denied.
9 They have an obligation to supplement, if they locate
10 additional documents, which they understand. And, if they
11 find something else, they will produce it.

12 Is there anything else we need to do
13 with that issue before we proceed?

14 MR. GLAHN: If I could just say one
15 other thing?

16 CMSR. HONIGBERG: Yes, Mr. Glahn.

17 MR. GLAHN: I asked Ms. Goldwasser for
18 this document a moment ago, and she said to me that "it
19 was not responsive to a data request." So, I don't
20 understand what the issue is. If we -- we will go back
21 and ask the questions again. Fair enough. But they have
22 had Energy Venture documents in this case. Their pleading
23 of June 20th, in Footnote 2, specifically references
24 "Energy Ventures Analysis forecasts" that we produced to

1 them for 2008. So, I just want to make that point.
2 Because that was the basis for her motion, I understand
3 it's been denied, but I think some clarification is
4 helpful.

5 MS. GOLDWASSER: But that's not --
6 that's not the basis of my motion. The basis of my motion
7 is the Connecticut filing that an affiliate made, and the
8 failure to respond fully to TC 6-038 and TC 6-039.

9 CMSR. HONIGBERG: Yes.

10 MS. GOLDWASSER: I think, Commissioner,
11 you understand that.

12 CMSR. HONIGBERG: We understand that,
13 yes.

14 MS. GOLDWASSER: Okay.

15 CMSR. HONIGBERG: Thank you both. Yes,
16 Ms. Amidon?

17 MS. AMIDON: This is just procedural, if
18 we're moving onto procedural things? The parties
19 understand the Commission's desire to have -- to strike
20 the identification of exhibits and to move them into
21 evidence. And, we appreciate that you want to do that on
22 an ongoing basis, but we haven't yet agreed when we're
23 going to do that. And, I would propose that we try a
24 little later this week. We didn't have time enough this

1 morning to fully discuss that.

2 CMSR. HONIGBERG: That's fine.

3 MS. AMIDON: But that's just for your
4 information.

5 CMSR. HONIGBERG: That's fine. Thank
6 you.

7 MS. AMIDON: Thank you.

8 CMSR. HONIGBERG: I understand that
9 there has been further discussion of the bottom columns of
10 the big document spreadsheet we were looking at yesterday.
11 And, Mr. Smagula was going to go back and try to figure
12 out what was going on with that, Mr. Bersak?

13 MR. BERSAK: Yes. That is correct.
14 And, Mr. Smagula is prepared to try to explain that. I
15 don't know how you want to do it. Whether you want him to
16 go back to the witness stand or just explain it from his
17 seat here at his table.

18 CMSR. HONIGBERG: Is it something you've
19 discussed with the other parties?

20 MR. BERSAK: No, not yet. I haven't
21 even discussed it with him. He just told me he
22 understands it now.

23 CMSR. HONIGBERG: And, I understand it
24 was my question that led to this, so it may be something

1 the other parties don't really care about. But my
2 inclination would be for you, at the next break, to have a
3 brief discussion with the other parties, with Mr. Smagula
4 there --

5 MR. BERSAK: We shall do that.

6 CMSR. HONIGBERG: -- to explain it.

7 And, then, if it's an explanation that can be handled in a
8 couple of minutes by counsel or by Mr. Smagula from that
9 table, I'd just as soon do it that way. If it's the kind
10 of thing that's going to require some extensive follow-up,
11 then I think we'd bring him up to the witness stand. Is
12 that all right?

13 MR. BERSAK: That's fine. That's great.
14 Thank you.

15 CMSR. HONIGBERG: Is that it for right
16 now? Oh, one other housekeeping matter that's related to
17 tomorrow. I just want to put a flag on it, out for
18 everybody, that, on Thursday, we're going to need to end
19 at 4:00. So, other than that, I was just getting that out
20 there.

21 So, are we ready to continue with Mr.
22 Patch's questioning of Mr. Frantz?

23 MR. PATCH: Yes.

24 CMSR. HONIGBERG: Okay. Thank you. Mr.

[WITNESS: Frantz]

1 Patch.

2 MR. PATCH: First of all, I think we
3 ought to mark the charts that we had been using. I don't
4 think I asked that they be marked as exhibits yesterday.
5 So, --

6 CMSR. HONIGBERG: You did not. So,
7 we're talking about the two big charts that are the
8 blow-ups from the two different presentations?

9 MR. PATCH: That's correct.

10 CMSR. HONIGBERG: So, what would the
11 next numbers be?

12 MS. DENO: Forty-four and forty-five.

13 CMSR. HONIGBERG: Forty-four and
14 forty-five?

15 MS. DENO: Yes.

16 CMSR. HONIGBERG: Identify which is
17 which.

18 MR. PATCH: Well, 44 I would subject the
19 one from the presentation to Staff, and 45 would be the
20 one from the presentation to the Board of Trustees. And,
21 so, let me get closer.

22 CMSR. HONIGBERG: But, as we're looking
23 at them, if there are further questions about them, those
24 are pages from other exhibits, is that right?

[WITNESS: Frantz]

1 MR. PATCH: That's right.

2 CMSR. HONIGBERG: So, it would be
3 helpful, if anyone is going to be asking questions about
4 those exhibits, to flag for the people who aren't close
5 enough to those boards where they can find the eight and a
6 half by eleven documents that are in other exhibits.

7 (The two oversized charts, as described,
8 were herewith marked as **Exhibit 44** and
9 **Exhibit 45**, respectively, for
10 identification.)

11 CMSR. HONIGBERG: All right. So, Mr.
12 Patch, go ahead.

13 MR. PATCH: Thank you.

14 **THOMAS C. FRANTZ, PREVIOUSLY SWORN**

15 **CROSS-EXAMINATION (RESUMED)**

16 BY MR. PATCH:

17 Q. Now, Mr. Frantz, in looking at what we have now marked
18 as "Exhibit 44", the blue at the bottom of that chart
19 indicates, as I understand it, basically what coal
20 prices had been going back to 1993. Is that your
21 understanding as well?

22 A. Yes.

23 Q. And, as I look at that chart, it looks like coal prices
24 had generally been pretty stable. I think we talked

[WITNESS: Frantz]

1 about that yesterday.

2 A. We did.

3 Q. I'm particularly interested in the numbers. If you
4 look at -- I sort of drew a pencil line through the
5 number "4", to the left of the chart, all the way
6 across the chart to the right, and "4", which I
7 understand to be \$4.00 per MMBtu, comes out a little
8 bit above that blue line, you know, the top of the coal
9 price in 2008. Would that be your understanding as
10 well?

11 A. It appears to be right around \$4.00 per million Btu,
12 yes.

13 Q. And, if you look back, historically back to '93, it
14 looks like the price of coal is somewhere in the range
15 of \$2.00, or even a little bit less. And, it's like
16 that probably at least through 2002 or so, and maybe
17 even a little longer. Would you say that's fair?

18 A. Yes. It looks to be right around \$2.00 per million Btu
19 up until about the 2001-2002 time frame, and slightly
20 increased and stayed steady again until about 2004.
21 And, then goes up and down a little bit in 2005-06
22 period, and then a slow, steady increase through 2006,
23 and sort of levels off again after that.

24 Q. And, the number again, in the 2008 time frame, is

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

[WITNESS: Frantz]

1 somewhere under \$4.00, correct?

2 A. It's hard to say, but it looks to be right around \$4.00
3 per million Btu.

4 Q. So, I would ask you to look at Exhibit 42, which is the
5 colored presentation that PSNH made to the Board of
6 Trustees, and ask you to look at Page 8.

7 A. Are we still in Exhibit 42?

8 Q. Yes. We're in Exhibit 42. Which is the colored
9 presentation of the -- the colored version of the
10 presentation made on July 15th of '08.

11 A. And, this is Page 8 that starts -- states at the top
12 "Financial Scenarios"?

13 Q. That's correct.

14 A. I'm there.

15 Q. And, if you look at the base case scenario, which, as I
16 understand it, is the one that shows the \$132 million
17 in net present value, could you tell me what the price
18 of coal is that they assumed?

19 A. 2012 coal prices per million Btu is \$4.82.

20 Q. So, \$4.82 is significantly higher than what it had been
21 historically, is that correct?

22 A. Well, I think that depends on your definition of
23 "significant". It's higher than what's in those
24 charts, that is true.

[WITNESS: Frantz]

1 Q. And, so, in order for the spread that they said was
2 required to make the Project economic in these
3 presentations, then, obviously, a higher coal price,
4 you know, would help that spread to be more favorable
5 to PSNH, would it not?

6 A. The spread was based on the difference between natural
7 gas prices and coal prices.

8 Q. Correct.

9 A. So, a higher coal price would make it, all else equal,
10 less economic.

11 Q. Thank you. In your testimony, Pages 11 to 12, you talk
12 about how the \$250 million estimate was "preliminary",
13 and say that the Jacobs report indicates this, that it
14 "did not include certain things, like the cost of
15 emission removal guarantees, site-specific
16 considerations, and PSNH's internal costs." And, you
17 also say that "it has been" -- "it has long been known
18 that the total Project costs would exceed 250 million."
19 How long has it been known?

20 A. Well, from the time that this testimony was filed,
21 which was December 2013, the \$457 million figure was in
22 place since 2008. So, that's at least three years.

23 Q. And, so, what's your understanding of when they first
24 knew of the increase to 457 million?

[WITNESS: Frantz]

1 A. My understanding is the \$457 million came to light in
2 the Summer of 2008.

3 Q. Well, I'd like to just refresh your recollection, and
4 I'm looking at -- it's actually, I think, in two
5 places, but deposition -- well, first of all, the
6 response to TransCanada 2-2, which I -- 2-12 -- well,
7 I'm sorry. Let's back up. Exhibit 20-4, Bates Page
8 48. Exhibit 20 is Mr. Hachey's testimony. Attachment
9 4 to his testimony is a response to a TransCanada Data
10 Request 4-13. And, I believe, in that deposition -- in
11 that response, it indicates that that information was
12 first known in either the second quarter of 2008 or in
13 May of 2008. Does that refresh your recollection?

14 A. Can you refer to me -- refer me to exactly where that
15 is in his attachments?

16 Q. It's Attachment 4 to Mr. Hachey's testimony. It's been
17 premarked as "Exhibit 20-4". It's Bates Page 48.

18 (Atty. Sheehan handing document to the
19 witness.)

20 WITNESS FRANTZ: I'm there.

21 BY MR. PATCH:

22 Q. Doesn't that indicate it was approximately May of 2008
23 that they learned of it?

24 A. Yes. I said "Summer of 2008". I was off by a few

[WITNESS: Frantz]

1 weeks.

2 Q. And, I mean, as I think was established in some
3 questions yesterday, they didn't tell the Legislative
4 Oversight Committee on June 18th, is that correct?

5 A. That's my understanding.

6 Q. And, in fact, in support of that, not just the exhibit
7 that Ms. Chamberlin identified, but there is an
8 attachment to Mr. Hachey's testimony, Attachment 7, so
9 that will be 20-7. And, that's Representative Kaen's
10 report on that Oversight Committee meeting, and I'll
11 quote from that and see if you disagree. It says
12 "There was no cost information provided to indicate a
13 significant departure from the projections made in
14 2006." Is that your understanding?

15 A. Yes.

16 Q. In your response to TC 1-16, and we had marked as an
17 exhibit yesterday I think all of the responses that
18 Staff provided to TransCanada. And, so -- that was
19 Exhibit 40. And, so, I would just like you to focus
20 for a minute on 1-16.

21 A. I'm there.

22 Q. And, --

23 A. Is this the question that starts "If the answer to Data
24 Request Number 14 is that there is no such evidence"?

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[WITNESS: Frantz]

1 Q. Yes. I mean, it's your response about that you "expect
2 the Commission to take the totality of evidence in this
3 proceeding into consideration." And, we talked about
4 that a little bit yesterday. But I guess I just want
5 to understand what you mean by that. You're meaning,
6 of course, I hope you're meaning, that, obviously, the
7 Commission is going to listen to what is presented this
8 week, and look at all the exhibits and all of the
9 things that were said or not said, to the Commission
10 and the Legislature and the Staff and everybody. Is
11 that what you mean?

12 A. It is what I meant. I think --

13 (Court reporter interruption.)

14 **BY THE WITNESS:**

15 A. I believe the Commission always, in these proceedings,
16 looks at the totality of the evidence, and I would
17 expect in this proceeding the Commission would do the
18 same. And, there's a lot of exhibits, a lot of
19 information, a lot of old data and old analysis. But
20 that's what the Commission has always done, and I
21 expect the Commission to do no different in this
22 proceeding.

23 BY MR. PATCH:

24 Q. Were you present at the August 2013 meeting of the

[WITNESS: Frantz]

1 Legislative Oversight Committee, when Mr. Long
2 testified and said that "the Legislature made them do
3 the Scrubber Project." And, Senator Bradley told them
4 that "PSNH was complicit in the mandate." Were you
5 present for that meeting?

6 A. I was at the August 13th legislative hearing. And, I
7 did witness that exchange.

8 Q. Do you agree with Senator Bradley?

9 A. I mean, I think this is somewhat beyond my testimony.
10 And, you're asking if I agree with one part of a long
11 discussion between Mr. Long and Senator Bradley at the
12 time. And, I'm not even sure that that's relevant to
13 this proceeding, to be honest. I think this decision,
14 this case is about the evidence on the record in
15 this -- in this proceeding and in this hearing.

16 CMSR. HONIGBERG: Mr. Glahn, do you have
17 something?

18 MR. GLAHN: Yes. I'd like to object on
19 two grounds. First, I think he's talking about an
20 August 13th meeting of some year long after the Scrubber
21 was completed. I'm not sure, because he didn't identify
22 August of which year. And, this Commission has made clear
23 that that's not relevant. Secondly, what was said by
24 Senator Bradley at some meeting, I think -- I think this

[WITNESS: Frantz]

1 Commission has struck testimony from a number of witnesses
2 on what the Legislature did or didn't do.

3 In your Order 25,592, "We have
4 previously addressed the relevance of whether PSNH pursued
5 or blocked legislation when we ordered Mr. Long to appear
6 for deposition." And, "we see no relevance in PSNH's or
7 Mr. Long's involvement with the Legislature."

8 CMSR. HONIGBERG: Mr. Patch.

9 MR. PATCH: Well, first of all, Mr.
10 Frantz, I believe, has taken the position that the law is
11 a mandate. That's been PSNH's position throughout this
12 docket. The Commission has made it clear that it would be
13 fine for TransCanada and others to pursue the issue of
14 inconsistencies in what PSNH told the Legislature, the
15 Commission, you know, public officials, all of that. And,
16 what I'm trying to do is to point out inconsistencies.
17 And, I think Senator Bradley's question to Mr. Long, and I
18 have a copy of the transcript of that particular meeting
19 with the Oversight Committee, Mr. Long's testimony. And,
20 I want to use it for a couple of reasons, not just this.
21 But I'm going to ask that this be marked as an exhibit.
22 And, I think it's relevant and consistent with what the
23 Commission has said about avenues that we can pursue.

24 MR. GLAHN: Could we first know when

[WITNESS: Frantz]

1 this meeting supposedly occurred? I did not hear it.

2 MR. PATCH: As I said in my question, it
3 was August of 2013.

4 MR. GLAHN: Okay. So, it wasn't August
5 13th, it was August of 2013. So, what the relevance of
6 that is to this proceeding is very unclear to me. But,
7 also, Order 25,566, "We see no relevance to PSNH's or
8 Mr. Long's involvement in cooperating with the Legislature
9 to pass the Scrubber law."

10 CMSR. HONIGBERG: I believe, though, Mr.
11 Patch also read from an order, or I think it was from an
12 order, that talks about inconsistent statements made by
13 the Company to either Executive Branch or Legislative
14 Branch officials. I think that's from an order, is it
15 not?

16 MR. PATCH: It is. I can give you the
17 cite to that order, if you give me a minute.

18 CMSR. HONIGBERG: You don't need to.
19 Mr. Glahn.

20 MR. GLAHN: Well, again, I don't know
21 what the relevance of the statement that was allegedly
22 made by Senator Bradley at a meeting on August 13th, in
23 which Senator -- August 2013, in which Mr. Bradley accuses
24 PSNH of certain conduct is relevant to this proceeding.

[WITNESS: Frantz]

1 SP. CMSR. IACOPINO: Mr. Glahn, what
2 about the fact that the question simply asked for the
3 witness's opinion, it doesn't ask for Senator Bradley's
4 opinion. It asked for whether the witness -- what the
5 witness's opinion is essentially, doesn't it?

6 MR. GLAHN: Well, this is --

7 SP. CMSR. IACOPINO: Doesn't that make
8 it relevant?

9 MR. GLAHN: It's two years after the
10 Scrubber was completed. And, I mean, it just seems to me
11 that we're way off base here.

12 CMSR. HONIGBERG: We understand. We
13 understand the objection.

14 (Commissioners and Atty. Ross
15 conferring.)

16 CMSR. HONIGBERG: The objection is
17 overruled. You can answer the question. Which you
18 started to do anyway, although I don't think you actually
19 answered the question. I think the witness explained a
20 number of reasons why it might not be appropriate to
21 answer the question. But maybe it would be appropriate
22 for Mr. Patch to re-ask it or for it to be repeated.

23 MR. PATCH: I felt like I got a response
24 to the question. I'm not sure, Mr. Frantz, if you feel

[WITNESS: Frantz]

1 like there's anything else you needed to add on that.

2 But, obviously, you have taken --

3 WITNESS FRANTZ: Well, I do have --

4 MR. PATCH: Okay.

5 WITNESS FRANTZ: -- an additional
6 response to that.

7 MR. GLAHN: What page is the question on
8 in the transcript? You're talking about a statement that
9 Senator Bradley made. You've given us the transcript.
10 Can we have a citation to the transcript, so we can look
11 at it?

12 MR. PATCH: Sure. If you can hold on
13 for a minute, I'll get that for you. Fifty-one (51) to
14 52.

15 CMSR. HONIGBERG: So, before we do that
16 then, since now we have the transcript in front of us, and
17 you want to mark that as an exhibit, let's do that. So,
18 the next exhibit number is going to be what, 46?

19 MS. DENO: Yes.

20 CMSR. HONIGBERG: Forty-six.

21 (The document, as described, was
22 herewith marked as **Exhibit 46** for
23 identification.)

24 MR. GLAHN: Commissioner Honigberg, if I

[WITNESS: Frantz]

1 may?

2 CMSR. HONIGBERG: Turn your microphone
3 on.

4 MR. GLAHN: I realize the objection has
5 been overruled, but let me just read what Senator Bradley
6 said. "You were willing", he's talking now to Mr. Long, I
7 assume, "you were willing and complicit in the passage of
8 House Bill 1673 in 2006. I wasn't there. But, even
9 though the Legislature ordered that and ordered the
10 technology" -- "specific technology, you embraced it." I
11 think this Commission has made very clear in its past
12 orders that PSNH's involvement or lack of involvement in
13 passage of this act, which speaks for itself, was
14 irrelevant to this proceeding.

15 CMSR. HONIGBERG: Okay. Understood.

16 MR. PATCH: The only -- well, the only
17 reason that I'm -- I don't know if you need anything
18 further.

19 CMSR. HONIGBERG: You don't need to
20 respond to that.

21 MR. PATCH: Okay. Thank you.

22 BY MR. PATCH:

23 Q. You know, Mr. Frantz, is there anything else you would
24 like to say?

[WITNESS: Frantz]

1 A. No, I was there. I heard the exchange. It was a long
2 exchange. It concerned a lot of things, and more than
3 just the Scrubber. And, I think the conversation
4 speaks for itself. I will say that I was also at a
5 meeting -- testifying, actually, at the Legislature a
6 few months earlier, when Senator Bradley had a
7 statement about PSNH recovering its costs, I believe,
8 on the Scrubber. So, you know, I think these are
9 fairly dynamic, and that was a very dynamic exchange
10 between Senator Bradley and Gary Long on that day.

11 Q. I would ask you to look at Page 17 of that transcript I
12 just handed out. And, Mr. Long makes a statement to
13 the Oversight Committee that fracking has resulted in a
14 huge availability of natural gas. And, that has been
15 followed by a reduction in gas prices. And, that it
16 has been a "sea change". Do you agree with that?

17 A. You're at Page --

18 Q. Seventeen.

19 A. Can you give me a minute please?

20 MS. AMIDON: Doug, can you give us a
21 line. There are line references in the transcript.

22 CMSR. HONIGBERG: I think he was reading
23 from Page 17, Line 10 or 11, in that ballpark, through
24 about Line 20.

[WITNESS: Frantz]

1 BY MR. PATCH:

2 Q. Yes. I think the --

3 A. And, you're asking me "do I agree with that statement
4 today?"

5 Q. That fracking is a "sea change" event?

6 A. I do today. I would point out that I'm not sure that
7 word was used in 2007 or '08.

8 Q. Okay. Well, I have a few questions about that. I want
9 to show you a response of Mr. Kahal -- Kahal, did I say
10 that correctly?

11 MS. CHAMBERLIN: "Kahal".

12 BY MR. PATCH:

13 Q. "Kahal"? Provided to a question from Staff 1-3.

14 MR. PATCH: And, I would ask that this
15 be marked as an exhibit.

16 (The document, as described, was
17 herewith marked as **Exhibit 47** for
18 identification.)

19 BY MR. PATCH:

20 Q. You had asked the question, you, the Staff, had asked
21 the question about providing copies of all forecasts,
22 publications, and other documents that supported his
23 statement about changes becoming obvious to
24 professionals in the energy and electric utility

[WITNESS: Frantz]

1 industry that, by late '08 and early '09 particularly,
2 the sharp downturns in commodity markets particularly
3 for natural gas. I don't know if you recall this data
4 request and the response to it.

5 CMSR. HONIGBERG: I think you're going
6 to have to give him a chance to take a look at it.

7 MR. PATCH: Yes.

8 CMSR. HONIGBERG: Because you were
9 reading while it was being distributing to a bunch of
10 people.

11 MR. PATCH: Yes.

12 CMSR. HONIGBERG: So, I'm not sure
13 anybody really has caught up with where you are at this
14 point.

15 MR. PATCH: Okay. I'm just trying to
16 save a little time.

17 CMSR. HONIGBERG: I understand. And, I
18 appreciate that.

19 **BY THE WITNESS:**

20 A. I'm familiar with it now.

21 BY MR. PATCH:

22 Q. Okay. And, so, he, in the response, he refers to
23 numerous articles in the energy industry trade press
24 discussing the impending expansion of gas supply from

[WITNESS: Frantz]

1 unconventional gas and provides cites for those
2 articles, is that fair to say?

3 A. Yes.

4 Q. And, then, I want to show you a couple of other
5 articles from that time frame. First, we have an
6 article from the New York Times, dated August 25th of
7 2008, that we'd like to have marked as an exhibit.
8 Ms. Goldwasser is going to hand that out. And, then,
9 to save time, there are actually two articles. There's
10 one from the Toronto Globe and Mail, dated August 29th
11 of '08. So, I'd ask that they both be marked as
12 exhibits.

13 CMSR. HONIGBERG: So, that's two
14 articles total?

15 MR. PATCH: That's right. Two separate
16 ones. So, we can mark them --

17 CMSR. HONIGBERG: The New York Times is
18 going to be "48" and the Globe and Mail is going to be
19 "49".

20 (The documents, as described, were
21 herewith marked as **Exhibit 48** and
22 **Exhibit 49**, respectively, for
23 identification.)

24 (Atty. Goldwasser distributing

[WITNESS: Frantz]

1 documents.)

2 CMSR. HONIGBERG: Let's go off. Let's
3 go off the record for just a sec.

4 (Off the record.)

5 CMSR. HONIGBERG: All right. Sorry, Mr.
6 Patch. Now we're back on.

7 MR. GLAHN: If I may, Commissioner?

8 CMSR. HONIGBERG: Yes, Mr. Glahn.

9 MR. GLAHN: So, now we're in a situation
10 in which TransCanada is asking the witness about
11 information they intentional withheld on this very topic,
12 that is the issue of gas fracking and its importance.
13 This Commission ruled that they were required to provide
14 that information, and they intentionally refused to do so.
15 I'd move that they not be permitted to ask questions about
16 this, because they have not disclosed the very information
17 that they may have had in their possession that would
18 allow us to counter this evidence.

19 And, the following is true. There are
20 two possibilities here. Either TransCanada has this
21 information in its possession, and it is contrary to the
22 position they are taking, or they have it in their
23 position and it supports the position that they are
24 taking. We don't know, because they refused to produce

[WITNESS: Frantz]

1 it. So, it's an appropriate sanction to say at this
2 point, either there's an adverse inference that what they
3 failed to produce would counter what they are now arguing
4 about, or that they should be prohibited from advancing
5 this claim or this defense because of their intentional
6 refusal to produce the information.

7 CMSR. HONIGBERG: Mr. Patch.

8 MR. PATCH: Well, first of all, the data
9 request didn't ask us to do all of their work for them.
10 They didn't ask us to search the internet for articles.
11 All they asked for was forecasts from TransCanada
12 affiliates. That's not what this is. So, in and of
13 itself, I think the objection is absurd. You know, if
14 that's what they wanted, was for us to do all of their
15 research for them, then they should have presented it
16 differently. But, apparently, that's what they were
17 expecting of us. But it's certainly not what the data
18 request asked for. So, I think the motion is absurd.

19 MR. GLAHN: On the contrary. On the
20 contrary. Mr. Patch is right on one point. We did not
21 ask them to do all our research for us. We asked them to
22 produce what they had in their possession. And, this
23 Commission ordered them to produce what they had in their
24 possession on the issue of the significance of fracking.

[WITNESS: Frantz]

1 We will demonstrate in this hearing, by the way, that
2 TransCanada had an abundance of information in their
3 possession that directly contradicts their testimony --

4 MR. PATCH: Just like PSNH apparently --

5 MR. GLAHN: -- from public sources. So,
6 having failed to comply with this Commission's orders,
7 having failed to produce the information in their
8 possession on this issue, they should not now be permitted
9 to examine other witnesses. Frankly, they have no basis
10 to do so, because either they looked for it and they have
11 it and won't produce it or they didn't look for it.

12 CMSR. HONIGBERG: We've got it. Do you
13 want to say anything else, Mr. Patch, before we caucus?

14 MR. PATCH: I think I've said what I
15 need to say.

16 CMSR. HONIGBERG: I thought so, too.

17 (Commissioners and Atty. Ross
18 conferring.)

19 CMSR. HONIGBERG: We're going to take a
20 short break.

21 (Recess taken at 9:47 a.m. and the
22 hearing reconvened at 9:57 a.m.)

23 CMSR. HONIGBERG: PSNH's motion to stop
24 this line of the questioning by TransCanada is denied. We

[WITNESS: Frantz]

1 view it as a request to expand the sanctions imposed on
2 TransCanada from the discovery dispute last spring that
3 continued on. As proceedings go on, I'm sure there will
4 be opportunities for PSNH to point out that, if it had
5 discovery from TransCanada, it is likely that it would
6 have contained studies that would have supported PSNH's
7 position, in an appropriate time they may raise that with
8 witnesses that they are examining. But the questions that
9 TransCanada is currently asking of this witness don't call
10 for that kind of response.

11 MR. GLAHN: If I may, --

12 CMSR. HONIGBERG: Is your microphone on?

13 MR. GLAHN: I would either like to ask
14 that an adverse inference be given, or alternatively, or
15 in addition to that, that we be permitted to examine this
16 witness on this issue. This is -- we have the burden of
17 proof here. And, they have refused to produce
18 information. So, if they now get to ask about things they
19 haven't produced, we should be permitted to follow up on
20 that with this witness.

21 CMSR. HONIGBERG: I'm not sure I
22 understood the first part of what you said. But the
23 ability to come back and ask this witness further
24 questions on this topic, does anybody object to that?

[WITNESS: Frantz]

1 Ms. Chamberlin.

2 MS. CHAMBERLIN: Well, then we would
3 have an opportunity to follow up on that, is that true?

4 CMSR. HONIGBERG: Mr. Patch.

5 MR. PATCH: Well, I think this
6 proceeding is going to go on for weeks, if we're going to
7 be doing something like that. You know, clearly, you
8 know, we talked about this yesterday, but we were
9 instructed not to do friendly cross with witnesses. PSNH
10 got to do some already.

11 CMSR. HONIGBERG: Mr. Patch, let's not
12 rehash that. Thank you very much.

13 MR. PATCH: Okay.

14 CMSR. HONIGBERG: Is there another
15 reason why perhaps they shouldn't be allowed to ask
16 limited redirect?

17 MR. PATCH: Yes. Well, they're
18 asking --

19 CMSR. HONIGBERG: Or, I'm sorry, it
20 would be a limited cross of this witness. Sorry about
21 that.

22 MR. PATCH: Yes. I just think it's
23 unnecessary. They have other witnesses, rebuttal
24 witnesses, that they had a full and fair opportunity to

[WITNESS: Frantz]

1 rebut, you know, in this proceeding. I just think, if
2 we're going to start going there, it's going to take a
3 long time. And, I think, like Ms. Chamberlin says, if you
4 do allow that, then I think we would have to be able to
5 come back and follow up.

6 CMSR. HONIGBERG: Mr. Sheehan.

7 MR. SHEEHAN: We don't have an objection
8 to that. The sequence that we had -- we had to pick some
9 sequence for questioning, and this particular sequence did
10 put PSNH in an odd position of not knowing where the
11 intervenors would go, and not really having a chance to
12 respond to that. So, we would not object to some limited
13 recross of Mr. Frantz.

14 CMSR. HONIGBERG: Ms. Chamberlin.

15 MS. CHAMBERLIN: If I may respond to
16 that. PSNH set this hearing up with its own direct
17 testimony, our testimony, and then rebuttal testimony.
18 They could have put in a huge amount of direct testimony,
19 they chose not to. So, they're really not at any
20 disadvantage, that was their plan, essentially.

21 MR. GLAHN: Could I say one thing about
22 that? I apologize. I'll make it quick. This proceeding,
23 and the scope of this proceeding, changed very
24 dramatically from when the original direct testimony was

[WITNESS: Frantz]

1 put in and the subsequent rebuttal testimony.

2 (Commissioners conferring.)

3 CMSR. HONIGBERG: We're going to hold
4 off on ruling on PSNH's request to ask further questions
5 of this witness until after everyone else has asked
6 questions, they can make an offer at that time as to what
7 questions they would want to ask.

8 Mr. Patch, I believe you have the floor.

9 MR. PATCH: Yes. Thank you.

10 BY MR. PATCH:

11 Q. Mr. Frantz, the August 25th, 2008 article in the New
12 York Times, the opening sentence says "American natural
13 gas production is rising at a clip not seen in half a
14 century, pushing down prices of the fuel and reversing
15 conventional wisdom that domestic gas fields were in
16 irreversible decline." Is that correct?

17 A. That is what it says, yes.

18 Q. And, the Globe and Mail article, August 29th of '08,
19 also refers to, for example, in the fifth paragraph
20 down "Driven by sharply rising shale gas volumes, U.S.
21 production of natural gas is on track to rise by more
22 than 6 percent this year." Is that correct?

23 A. That is what that says also, yes.

24 Q. I want to direct your attention to a response to a data

[WITNESS: Frantz]

1 request.

2 MR. PATCH: And, I would ask that this
3 be marked as an exhibit. It's a response to a PSNH data
4 request of TransCanada. It's number 66. And, I'd ask
5 Ms. Goldwasser to hand that out.

6 CMSR. HONIGBERG: That's going to be
7 "Exhibit 50".

8 MR. PATCH: Thank you.

9 (Short pause.)

10 MR. PATCH: We'll come back to that when
11 we can find it. I apologize.

12 CMSR. HONIGBERG: So, we're going to
13 hold off on 50, whatever will be the next one you find,
14 that will be 50.

15 MR. GLAHN: And, when we get back to it,
16 I have an objection, too.

17 CMSR. HONIGBERG: Okay.

18 BY MR. PATCH:

19 Q. You're familiar with NARUC, what the organization
20 "NARUC" is, correct?

21 A. Yes.

22 Q. And, they have an annual convention, typically in
23 November?

24 A. Yes.

[WITNESS: Frantz]

1 Q. And, typically attended by regulators and members of
2 the industry, is that fair?

3 A. Yes.

4 Q. And, PSNH or NU typically has representatives in
5 attendance at those, is that correct?

6 A. I don't know that.

7 Q. Have you ever seen them? Have you ever been to an
8 annual convention?

9 A. I have only gone to one or two NARUC conventions during
10 my career here.

11 Q. Well, I'm going to show you a copy of a presentation
12 that was made to the NARUC convention in November of
13 2008 by the Clean Skies Foundation.

14 MR. PATCH: And ask that this be marked
15 as an exhibit.

16 CMSR. HONIGBERG: So, this is going to
17 be "Exhibit 50"?

18 MR. PATCH: Yes.

19 (Atty. Goldwasser distributing
20 documents.)

21 (The document, as described, was
22 herewith marked as **Exhibit 50** for
23 identification.)

24 MR. PATCH: And, actually, if I could

[WITNESS: Frantz]

1 ask that the other document be marked, too, because the
2 two are interrelated in my questioning. And, so, as "51",
3 we found the other one, which is the response of
4 TransCanada to the PSNH Data Request Number 66.

5 MR. GLAHN: And, my objection --

6 CMSR. HONIGBERG: Wait. Wait just a
7 second, Mr. Glahn. All right, Mr. Glahn. Go ahead.

8 MR. GLAHN: So, my objection is that
9 this data request, which was answered by Mr. Hachey, in
10 April of 2014, gives Mr. Hachey's opinion that, in July of
11 2008, there was tremendous growth in the natural gas
12 markets. Subsequent to that, this Commissioner
13 struck testimony -- this Commission struck from Mr.
14 Hachey's testimony any statements regarding whether
15 changes in the natural gas markets were evident when PSNH
16 entered into contracts to build the Scrubber. That's at
17 Line 24 -- or, Page 24, Line -- begins at Line 2 of
18 Mr. Hachey's testimony. So, now, they're asking Mr.
19 Frantz about a data request on a topic that Mr. Hachey is
20 prohibited from testifying about. And, they should not be
21 permitted to do that.

22 CMSR. HONIGBERG: Mr. Patch.

23 MR. PATCH: Well, I guess there are a
24 number of things I could say. But maybe just to try to be

[WITNESS: Frantz]

1 as brief as possible. First of all, it appears -- this
2 takes case is about PSNH. And, it's about, you know, the
3 prudence of their investment in this. It isn't about
4 TransCanada. And, it appears, based on the information
5 that we presented yesterday, that they have not fully
6 answered data requests of virtually the same substance as
7 the ones that they have accused us, and the Commission has
8 sanctioned us for not answering. They didn't answer that
9 fully. You know, so, if anything, the adverse inference
10 against TransCanada ought to be lifted.

11 CMSR. HONIGBERG: Okay. Have you got
12 another reason? Have you got another response to the
13 objection?

14 MR. PATCH: So, that's my first one, and
15 I just want to make sure that's on the record, because I
16 think it's a matter of fairness. Secondly, this is a
17 response to a data request. We complied with the
18 requirement that we respond to this data request. You
19 know, it's -- my purpose for providing it is really just
20 for what it says, it's very similar to the articles that
21 you have allowed us to present, the articles with regard
22 to the increase in fracking and the impact that it had on
23 natural gas prices.

24 I have maybe one or two questions about

[WITNESS: Frantz]

1 this. And, so, I think at least it ought to be in the
2 record. You can decide what weight to give to it at some
3 point later, if you want.

4 CMSR. HONIGBERG: Mr. Glahn, are you
5 saying that this is an attempt to get in to evidence,
6 testimony that was struck from Mr. Hachey's testimony?

7 MR. GLAHN: Yes. I mean, clearly, if
8 they want to ask -- go back to the objection I raised
9 yesterday that you denied. We're beyond that. But they
10 shouldn't now be bolstering Hachey's testimony with things
11 that were struck. If they want to ask Mr. Frantz, and
12 this goes back to the objection I made a moment ago that
13 you also denied, if they want to ask Mr. Frantz about his
14 opinion based on things that appeared in the press or the
15 newspaper, without regard to Mr. Hachey, that's fine. But
16 what they're now trying to do is get in through the
17 backdoor Hachey's opinion. And, that's been struck.
18 That's a different issue.

19 SP. CMSR. IACOPINO: So, if I understand
20 your position correctly, Mr. Glahn, you would have no
21 problem with Mr. Patch asking the witness about the
22 contents of Exhibit 50, being the Clean Skies documents,
23 and for his opinion on that on what may be in there?

24 MR. GLAHN: With respect, I have a

[WITNESS: Frantz]

1 problem with it, but you don't like my problem, and you've
2 overruled it. So, I have no problem --

3 SP. CMSR. IACOPINO: But in this present
4 objection.

5 MR. GLAHN: Exactly. On this issue. If
6 he wants to ask about the documents, fine. But let's not
7 get into what Hachey said or didn't say.

8 SP. CMSR. IACOPINO: Can I ask you then,
9 what's the difference of him asking him about the response
10 to the data request?

11 MR. GLAHN: Because the question that
12 was asked was a question -- let's look at what that
13 question was. The question was, "was it reasonable to
14 expect gas production across North America to remain
15 flat?" The answer is, PSNH says -- they objected to it.
16 We objected to this request. Okay? And, now, what
17 they -- and they didn't produce any documents that they
18 had on it. So, I just want to be clear that they can't
19 use other people to now get Hachey's testimony into the
20 record, which you have struck.

21 SP. CMSR. IACOPINO: But doesn't this
22 data request simply say "See the Clean Skies report"?

23 MR. GLAHN: Oh, it does, and it says
24 that because that is Hachey's opinion. In other words,

[WITNESS: Frantz]

1 the question asked "tell us what you know about this
2 topic." And, what he said was "See this report", and
3 that's all they will tell us, and that's the problem.

4 (Commissioners conferring.)

5 CMSR. HONIGBERG: It seems to us pretty
6 clear, based on prior rulings, that Mr. Patch can ask
7 about the document. And, I don't think anybody -- and
8 subject to the objection that you raised yesterday that's
9 been overruled, can clearly ask about what's in
10 Exhibit 50. And, as long as the questions don't attempt
11 to bring in the testimony that was struck, I think Mr.
12 Patch is free to continue to ask questions about this
13 document.

14 In reviewing the data -- the response to
15 the data request, it does not appear to contain much in
16 the way of testimony or assertions regarding the state of
17 things from Mr. Hachey. I think we're going to allow it
18 to stay marked as an exhibit. It may be that, at the time
19 when there's a motion to strike the ID from all of these
20 exhibits, you might want to raise it again. But, at this
21 point, we're going to allow it, allow Mr. Patch to proceed
22 with it as a premarked Exhibit 51.

23 (The document, as described, was

24 herewith marked as **Exhibit 51** for

[WITNESS: Frantz]

1 identification.)

2 CMSR. HONIGBERG: Mr. Patch.

3 BY MR. PATCH:

4 Q. Mr. Frantz, the attachment to 66 is pages from a
5 July 4th, 2008 Supply Assessment, North American
6 Natural Gas Supply Assessment, prepared by -- prepared
7 for American Clean Skies Foundation by Navigant
8 Consulting, is that fair to say?

9 A. That's what it indicates, yes.

10 Q. And, given as much time as we've already spent arguing
11 about this, I just have a couple of quick questions. I
12 think it kind of speaks for itself. But, for example,
13 on Page 5, it says "EIA forecasts of unconventional gas
14 production in each Annual Energy Outlook from '98
15 forward have been significantly outstripped by actual
16 behavior." Is that what it says?

17 MR. GLAHN: I'm sorry, which page?

18 Which exhibit are we referring to?

19 MR. PATCH: Page 5 at the bottom, in the
20 middle.

21 CMSR. HONIGBERG: He's looking at 51.

22 MR. GLAHN: Of 51, okay.

23 MR. PATCH: Yes.

24 BY MR. PATCH:

[WITNESS: Frantz]

1 Q. Did I read that correctly?

2 A. Yes.

3 Q. And, then, on the next page, on Page 15, the first
4 bullet, "Unconventional gas, especially shale, has
5 ramped up sharply over the last several years, both in
6 terms of annual production, and in terms of
7 economically recoverable reserves. The extent of this
8 ramp-up has not been fully captured by many reserve
9 estimators, in particular the EIA." Did I read that
10 correctly?

11 A. That is what it says.

12 Q. And, then, Exhibit 50, which was handed out, I asked
13 you a couple of questions about NARUC. This is a
14 presentation on the Clean Skies report that was done in
15 November of 2008 to the NARUC Annual Convention. Does
16 it appear that that's the case based on what it says on
17 the cover sheet?

18 A. Yes. "NARUC Annual Convention November 17th, 2008".

19 Q. And, without going into great detail about this, if I
20 represent to you that it makes essentially similar
21 points to what I just read to you from the Clean Skies
22 report, it's a longer version of that than what has
23 been handed out, but would you accept that subject to
24 check?

[WITNESS: Frantz]

1 MR. GLAHN: Is this a question or
2 testimony from Mr. Patch, I object. If he wants to point
3 the witness to a specific point in the exhibit, fine. But
4 for Mr. Patch to say "well, if I represent to you that" --

5 CMSR. HONIGBERG: I appreciate
6 Mr. Patch's attempt to streamline somewhat his -- the
7 inclination to read from various pages. Since you have
8 raised the objection, Mr. Patch, why don't you direct the
9 witness to the pages you'd like him to look at.

10 BY MR. PATCH:

11 Q. For example, Page 9, in the lower right-hand corner,
12 where it talks about "Robust Growth". "Gas shales have
13 experienced explosive growth in the past ten years,
14 increasing from only 0.3 Tcf a year production in '98
15 to 1.1 Tcf a year in 2007." Did I read that correctly?

16 A. Yes.

17 MR. SHEEHAN: Commissioners, may I be
18 heard? If the only probing of the questions is for
19 Mr. Frantz to say "yes, that's what it says", we'll all
20 read the document, and Mr. Patch can make whatever
21 argument he thinks is appropriate with this document when
22 the time comes.

23 CMSR. HONIGBERG: That's not unfair.
24 Mr. Patch, why don't you just flag the pages that you

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1 think are most significant. I think we'll all agree that
2 you'll read them correctly, --

3 MR. PATCH: Okay.

4 CMSR. HONIGBERG: -- if you need to.

5 But, I think, if you just direct us to the pages, we can
6 read them, too.

7 MR. PATCH: Okay. Well, Page 3.

8 CMSR. HONIGBERG: Three?

9 MR. PATCH: Yes. We've already referred
10 to Page 9. Page 11. Page 2. I think that's it for now.
11 Thank you.

12 CMSR. HONIGBERG: Okay.

13 BY MR. PATCH:

14 Q. Turning to the deposition of Mr. Long, we had asked him
15 some questions about the authority that the Board of
16 Trustees had with regard to this project. And, he took
17 the position, and I'm looking at Page 49 of the
18 deposition, which has been marked as "Exhibit 27", that
19 "the Scrubber Law was a mandate, and the only realistic
20 option the Board of Trustees had was to approve the
21 Project." Do you agree with that?

22 A. This is page -- what page, Mr. Patch.

23 Q. Page 49 of the deposition.

24 A. And, you're asking if I agree with that statement by

[WITNESS: Frantz]

1 Mr. Long concerning the authority of the Board of
2 Trustees?

3 Q. Yes.

4 A. I'm not familiar with the rules of the Board of
5 Trustees.

6 Q. Well, assume for a minute that what he said is correct.
7 Then, could you help me try to understand why PSNH then
8 did the economic analysis that they did and presented
9 to the Board of Trustees. Why would they have done
10 that, if they really didn't need to prove to the Board,
11 because it was a mandate? Why would they have done
12 that? Have you got some explanation for that?

13 MR. SHEEHAN: Objection to speculation.
14 This is clearly beyond Mr. Frantz's knowledge and
15 expertise.

16 MR. GLAHN: Could I also note for the
17 record that I think Mr. Patch has misquoted what Mr. Long
18 said. The question was "so, the only authority that the
19 Board of Trustees had was to approve the expenditure?
20 Answer: Well, no. It's to ensure that the Project is
21 managed" -- that the management is managing the Project
22 well."

23 CMSR. HONIGBERG: I'll sustain the
24 objection.

1 BY MR. PATCH:

2 Q. I'd ask you to look at your responses to TransCanada 20
3 and 21. Now, if I understand your responses to these
4 questions correctly, in terms of any obligation that
5 PSNH had to update cost projections that they made in
6 the Summer of 2008, all they had to do was hire
7 PowerAdvocate, as they did, and then to update the PUC
8 regarding those costs in October of 2010? They had no
9 other ongoing obligation to update cost projections,
10 particularly with regard to the price of natural gas?
11 Is that fair to say or have I mischaracterized that?

12 A. Which data responses? Number 20 and 21?

13 Q. Yes. Our question in 20 was, "Do you think PSNH had
14 any duty to update financial analyses that were done in
15 the Summer of '08?" And, your response was "PSNH hired
16 PowerAdvocate to review the costs, and then, in October
17 of 2010, they filed an update." So, is that it? Is
18 that the only obligation they had?

19 A. Well, I think they have an obligation to meet the
20 requirements, rules and orders of the Commission. To
21 the extent that that was an annual filing at the
22 Legislature, that was something they should have done.
23 In a perfect world, things change dramatically with a
24 project this large. I think it would be nice to be

[WITNESS: Frantz]

1 updated. Is that a legal requirement? I'm not a
2 lawyer. But, as a regulator, it's nice to get that
3 kind of updated information.

4 Q. Did you have a chance to look at Exhibit 37 that we
5 handed out yesterday? This is the Connecticut docket,
6 the Connecticut affiliate of PSNH, Yankee Gas. And,
7 the letter of November 13th, which says "due to the
8 significant economic and energy price market changes
9 and outlooks since the original filing, Yankee is in
10 the process of evaluating the impact of these market
11 drivers on its most recent sales forecast with the
12 expectation of developing an additional forecast by the
13 end of '08."

14 A. I saw that.

15 Q. Isn't that the kind of thing you would have expected
16 PSNH to do here? You say a "perfect world", but isn't
17 that a regulatory world? Isn't that what you want of a
18 regulated utility?

19 A. Well, that was --

20 MR. GLAHN: Could we have one question
21 at a time.

22 **CONTINUED BY THE WITNESS:**

23 A. That was part of a filing in Connecticut, is my
24 understanding, and a requirement from the Commission.

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[WITNESS: Frantz]

1 Again, as a requirement in a least cost plan, that
2 would be appropriate. As a requirement in a filing
3 here for energy service rates or default service rates,
4 that would be appropriate. And, it would have,
5 obviously, been nice, I'm not sure it would have been
6 legal -- it was legally necessary. I'll let the
7 attorneys decide that.

8 BY MR. PATCH:

9 Q. Uh-huh.

10 A. But I believe that they filed what they were asked to
11 file, and when they were asked to file it.

12 Q. Even though they didn't include in that September
13 filing anything about natural gas price changes? And,
14 they didn't include the \$5.29 spread requirement, you
15 know, as we pointed out yesterday. You say they
16 complied in September of '08, is that what you're
17 telling us?

18 MR. GLAHN: If Mr. -- I object. Is Mr.
19 Patch representing that there was no reference to natural
20 gas prices in the September 2nd, 2008 report? That's his
21 question. He loads it up with the -- with no foundation
22 for the statement that there was no statement. If he
23 wants to ask Mr. Frantz "was there any reference to
24 natural gas prices in the presentation of September 2nd?",

[WITNESS: Frantz]

1 that's fine. But his question has no foundation for it.

2 MR. PATCH: I think Mr. Glahn is
3 forgetting the line of cross from yesterday, where I
4 pointed out specific provisions in that report and what
5 they did not say about natural gas.

6 MR. GLAHN: Does Mr. Patch want to
7 represent to this Commission now that there's no reference
8 to the natural gas prices in the September 2nd, 2008
9 report? It's the foundation of his question.

10 CMSR. HONIGBERG: I understand. Mr.
11 Patch, I think the bottom line question that you asked was
12 "are you saying that it's okay for the Company to lie to
13 the Commission?" I think that was the actual question you
14 asked after the set up. Am I remembering that correctly?

15 MR. PATCH: Well, I don't think it's a
16 question of lying. I wouldn't accuse the Company of that.
17 I think it may be a question of candor.

18 CMSR. HONIGBERG: But I think that the
19 question, wasn't it? I think that was the question you
20 asked, was it not?

21 MR. PATCH: I don't think it was the
22 question.

23 CMSR. HONIGBERG: Well, why don't we go
24 back and either rephrase it or we'll go back and ask the

[WITNESS: Frantz]

1 reporter to find the question.

2 MR. PATCH: I think the question -- and
3 I'll be happy to reask it, if you'd like?

4 CMSR. HONIGBERG: Why don't we try that.

5 BY MR. PATCH:

6 Q. Mr. Frantz, I guess I'm trying to understand what the
7 obligation of a public utility is with regard to
8 forthrightness, you know, and what they did and didn't
9 do in this case, what they provided to their Board of
10 Trustees, what they didn't provide to the Commission,
11 what they didn't provide to the Staff, what they didn't
12 provide to the Legislature. We walked through that
13 yesterday.

14 A. Correct.

15 Q. And, so, I want to have an understanding of what your
16 expectation is of a public utility in this state. And,
17 I tried to point out to you what they had done in the
18 case of Connecticut, which they did not do here. And,
19 so, I'm looking --

20 A. And, I did make a distinction between that. Now, there
21 was a filing in Connecticut, and that was part of a
22 docket, I'm not aware of whether it was an order or
23 not. In short, I think every regulator likes the best
24 information, the most accurate information available at

[WITNESS: Frantz]

1 the time.

2 Q. Then, I would just like to direct your attention to
3 another response to a data request from TransCanada,
4 and it's 1-35. And, this is where we had asked the
5 Staff "what categories of information would you expect
6 a prudent utility to provide to the Legislature and
7 regulators regarding the Scrubber?" And, the response
8 was that the statute spelled out the responsibilities
9 to the Legislature. And, as for the Commission, and
10 I'm going to read this, "PSNH and any utility would be
11 expected to provide any and all information necessary
12 to support its case in any proceeding before the
13 Commission, or any information required by the
14 Commission as part of its duty to keep informed
15 pursuant to 374:4."

16 A. Uh-huh.

17 Q. I mean, when they're presenting a case, do you expect
18 them to just be advocates entirely? You don't expect
19 them to present any adverse information that they might
20 have available to them? Is that what you're saying
21 there?

22 A. I think most companies that come here that have a
23 position provide that information that best suits their
24 case.

[WITNESS: Frantz]

1 Q. So, there's no necessity, in order to make the
2 regulatory compact between the regulated utility and
3 the Commission and the regulators work, there's no
4 necessity that the utility have candor, have
5 forthrightness?

6 A. I think candor and forthrightness are expected, however
7 I'll give you an example, Mr. Patch. If a company
8 expected a project, whatever project, based on a need
9 for construction of let's say a generating plant,
10 there's numerous inputs that go into that. And, what
11 you seem to say is that, if there were 20 forecasts or
12 20 studies that said (a) that support it, and four or
13 five that didn't, you're saying that they should put
14 all of the ones in there, even those that perhaps
15 don't. And, to me, I'd say that's part of the
16 discovery process. I mean, that's something you ask
17 for. That's something Staff would ask for. In
18 general, by experience is that utilities file cases
19 supporting their case. That's why we have discovery.
20 That's why we have hearings.

21 Q. Did you ask any discovery of PSNH rebuttal witnesses in
22 this case?

23 A. We did not.

24 Q. We talked about the June 17th, 2008 PowerAdvocate

[WITNESS: Frantz]

1 report. It's Exhibit 20-9. And, I'm going to read to
2 you a couple of things that were in that draft report
3 in the Summer of '08. They said "The Merrimack Station
4 cost estimate was on the high end of the cost per
5 kilowatt-hour range similar to other FGD retrofit
6 projects." I think we've been through that before.
7 "Capital construction costs for new generation remained
8 at historic levels, with no clear understanding of
9 whether or not a peak had been reached. There were
10 significant levels of uncertainty around projected
11 carbon regulations and effects of a tight labor
12 market." And, the conclusion that they reached, "There
13 were no good and reliable indicators to follow for
14 investment decisions." Do you recall that from that
15 report, those statements?

16 A. I do, in general, yes.

17 Q. Do you know when you first saw that draft report? Did
18 you see it in the Summer of '08? Did they provide it
19 to you during that presentation?

20 A. I don't recall.

21 Q. Was the first time you saw it when PSNH responded to
22 the TransCanada data request in August of 2012, that
23 was TC 4-17? Did you ever see it before then?

24 A. I said "I don't recall". It's been six years.

[WITNESS: Frantz]

1 Q. Do you know if that report says anything, anything
2 about natural gas prices, or the follow-up report in
3 March of '09 that they did?

4 A. Again, if you can refer me to some document, that's
5 fine. I don't recall.

6 Q. I guess the record will speak for itself on that. I'm
7 going to give you a couple of quotes from Mr. Long's
8 deposition. One of them is on Page 89, where he said
9 "one has to be very cautious in taking what I call a
10 "point forecast" over multiple years in the future,
11 and, then, you know, not -- and assuming that's the way
12 it will be."

13 MR. GLAHN: Could we just find the
14 deposition. What's the page?

15 MR. PATCH: Eighty-nine.

16 MS. AMIDON: A line reference would be
17 helpful.

18 CMSR. HONIGBERG: Mr. Patch, while
19 everybody is looking for that, can you give us a sense of
20 how much longer you think you have?

21 MR. PATCH: I think maybe another hour
22 or so.

23 CMSR. HONIGBERG: Thank you.

24 WITNESS FRANTZ: I see the comments,

[WITNESS: Frantz]

1 yes.

2 BY MR. PATCH:

3 Q. Do you agree with that --

4 (Court reporter interruption - multiple
5 parties speaking at the same time.)

6 MR. GLAHN: If he's going to read an
7 answer from the deposition, he ought to read the whole
8 answer, and not just a portion of it. Because, again, we
9 don't have -- if we don't have an opportunity to go back
10 to this witness, he should be at least accurate in what
11 Mr. Long supposedly said.

12 MR. PATCH: I am accurate. I read
13 exactly what he said.

14 CMSR. HONIGBERG: I think the
15 question -- I'm not sure there was an objection there,
16 but, to the extent there was --

17 MR. GLAHN: Which lines did you read,
18 Doug?

19 CMSR. HONIGBERG: I think it was
20 Page 89. He started on Line 5.

21 MR. PATCH: Yes.

22 CMSR. HONIGBERG: The sentence that
23 starts "And one".

24 MR. GLAHN: And, what he did was to take

[WITNESS: Frantz]

1 a statement that was one portion of a very long answer
2 that went on for two pages.

3 MR. PATCH: So, if the Commission would
4 like me to read the whole answer into the record then, but
5 I think they will have a full and fair opportunity in post
6 hearing briefs or whenever to point out other things that
7 Mr. Long might have said.

8 CMSR. HONIGBERG: Yes. And, I don't
9 even think he's asked a question yet. So, you know, let's
10 find out what the question is, and then find out what --
11 whether there might be a problem with it, given how it was
12 structured.

13 BY MR. PATCH:

14 Q. Do you agree with what Mr. Long said?

15 A. I agreed to the point where he states, I believe, that
16 "point forecast over multiple years in the future" is
17 probably not the best way to do forecasting. I mean,
18 he talks a little bit about volatility in the page
19 before. And, if I may, he says "Although we weren't in
20 the gas business, we understood that you don't look at
21 a short-term forecast and assume that's the way it's
22 going to be forever." I agree with that statement.

23 Q. I was going to ask you about that one, too. So, I
24 appreciate your jumping ahead on that. That's what

[WITNESS: Frantz]

1 they did here, though, didn't they? Isn't that what
2 they did? They looked at April, May, June, July
3 dispatch costs, and that was their "forecast". Isn't
4 that what they did?

5 A. I would characterize as they did not continually
6 reevaluate forecasts of gas prices throughout the
7 period.

8 Q. But it wasn't even a forecast, *per se*, that they did,
9 was it?

10 A. Well, it was NYMEX prices.

11 Q. Yes. And, that's not a forecast. You've seen
12 forecasts before.

13 A. Well, --

14 Q. You've seen an EVA forecast. You've seen other
15 forecasts that are done with narrative around it and
16 looking at much more than that. That's not a forecast,
17 is it?

18 A. No. These were based on contract prices for NYMEX.
19 Forecasts, in the short-term, contract prices are
20 probably the best way to go, because that's people
21 putting money down, buyers and sellers. The problem
22 with those types of contracts is they only go out two,
23 three, four years or so, depending on the structure of
24 the contract. And, long-lived projects, such as this,

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1 go out long beyond the actual contract periods for
2 futures.

3 MR. PATCH: I want to show you a
4 response to a PSNH request of TransCanada, Number 54, and
5 ask that it be marked as an exhibit.

6 CMSR. HONIGBERG: Fifty-two?

7 MS. DENO: Yes.

8 CMSR. HONIGBERG: Fifty-two.

9 (The document, as described, was
10 herewith marked as **Exhibit 52** for
11 identification.)

12 BY MR. PATCH:

13 Q. I think this is a follow-up to the comments you just
14 made. But the question was about Mr. Hachey's
15 testimony. And, the response was a reference to a
16 Unitil States Senate Subcommittee on Investigations,
17 and a particular quote from that that says "Many
18 natural gas producers and users buy or sell futures
19 contracts for up to 12 months in the future to hedge
20 their purchases or sales. The volume of trading in
21 natural gas contracts more than 18 months in the future
22 is not large, and most of the trading this far into the
23 future is done by speculators."

24 MR. GLAHN: May I object. This is again

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1 an instance in which the Commission specifically struck,
2 and I'll give you the lines of this, specifically struck
3 Mr. Hachey's testimony on this exact issue. Now, what Mr.
4 Patch is trying to do is buttress Hachey's testimony or
5 test areas of testimony that you have struck by
6 referencing an answer to a data request, in which the
7 question was to "provide your opinions". And, now what
8 Hachey says is "see this other report". Well, they have
9 not produced -- because they did not produce any
10 information about TransCanada's projections of NYMEX
11 prices in response to this, Mr. Hachey is now trying to
12 come back and get it in through the backdoor.

13 CMSR. HONIGBERG: Mr. Patch.

14 MR. PATCH: Well, we, in fact, did
15 provide information in response to a data request. We
16 provided it for the affiliates that are parties to the
17 contract. So, first of all, I object to that
18 characterization. I think that's incorrect. And,
19 secondly, in light of the Commission's rulings earlier
20 this morning, I thought we were entitled to ask this
21 witness about this issue. It isn't about what Mr. Hachey
22 said or didn't say, it's really about the substance of
23 what's attached to the data request again.

24 MR. GLAHN: Then, let Mr. Hatch -- Mr.

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1 Patch make a very different -- ask a very different
2 question. Let him show this witness this report, and ask
3 him for his opinion on NYMEX gas prices, as opposed to
4 trying to get Hachey's testimony in through the backdoor.

5 MR. PATCH: Well, and I just want to
6 point one other thing out for the Commission. I think
7 Mr. Glahn is wrong. That portion of his testimony was not
8 struck. So, I think he's just incorrect on that.

9 CMSR. HONIGBERG: A pretty fundamental
10 question.

11 MR. PATCH: It is a pretty
12 fundamental --

13 CMSR. HONIGBERG: Can somebody confirm?

14 MR. GLAHN: Yes.

15 CMSR. HONIGBERG: Let's go off the
16 record for a minute.

17 (Off-the-record discussion ensued.)

18 CMSR. HONIGBERG: We're back on the
19 record. Mr. Patch.

20 MR. PATCH: The Question 54 that PSNH
21 asked of TransCanada has a specific quote from Page 16.
22 You know, it's within quotes, and the entire statement
23 within quotes was not struck by the Commission.

24 CMSR. HONIGBERG: Correct.

[WITNESS: Frantz]

1 MR. GLAHN: Well, what wasn't struck was
2 simply the statement that "NYMEX futures are widely used"
3 and what he said about them. But now the question was
4 "provide" -- this question was to Hachey "provide your
5 opinions". That's different. That's what has been
6 struck.

7 MR. PATCH: "The basis".

8 CMSR. HONIGBERG: "Basis". He was to
9 "provide the basis". And, I think consistent with the
10 ruling we made earlier, Mr. Patch can ask the questions
11 that he's intending to ask here. The attachment is
12 something clearly he could ask questions about, as you,
13 Mr. Glahn, you agreed. The data response is right now
14 marked for identification as "Exhibit 52". And, if, at
15 the time that it's moved to be a full exhibit, we may --
16 we may consider not striking the ID on that.

17 But I think Mr. Patch can clearly
18 proceed with asking questions about what is attached, as
19 he did with the earlier exhibit, I forgot the number right
20 now. But, Mr. Patch.

21 BY MR. PATCH:

22 Q. Mr. Frantz, I read to you that quote from that portion
23 of the Subcommittee report. Did I read it correctly,
24 to the best of your recollection? I don't want to read

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1 it again.

2 A. Is it the one "Many natural gas producers and users buy
3 or sell futures contracts for up to 12 months in the
4 future to hedge". And, I believe that was the
5 question, and the answer is "you read it correctly."

6 Q. Do you have any reason to disagree with that statement?

7 A. Well, my understanding of NYMEX futures is it's used a
8 lot for hedging. But I'm not and don't pretend to be
9 an expert in NYMEX futures.

10 Q. One of the forecasts that Mr. Hachey reviewed for his
11 testimony was the Synapse study. Do you recall that?

12 A. Yes.

13 Q. And, I think that's Exhibit 20-17. And, that begins on
14 Bates Page 228. And, this is something that was
15 available in the time frame that we're talking about,
16 in the Summer of '08, correct?

17 A. Correct.

18 Q. And it was sponsored by NU, among other companies?

19 A. That's for the avoided energy supply costs?

20 Q. Well, it's the one that the New Hampshire Public
21 Utilities Commission was part of the study group listed
22 at the beginning of the study.

23 A. Yes. Synapse was chosen to provide for the region
24 avoided energy supply costs to evaluate energy

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1 efficiency programs.

2 Q. And, so, you're familiar with that study, generally at
3 least?

4 A. Generally, yes. Absolutely.

5 Q. Did anyone from Staff or the Commission participate in
6 that?

7 A. Yes. That data request was asked and answered. I
8 participated, I believe Jim Cunningham of the Electric
9 Division also participated in numerous calls concerning
10 various aspects of the Avoided Energy Supply Cost
11 Study.

12 Q. I would just like to focus on your response to TC 1-33
13 of that package that we provided, the exhibit number of
14 which I've forgotten now. But I think it was 30 --

15 CMSR. HONIGBERG: Exhibit 40.

16 MR. PATCH: Is it 40?

17 WITNESS FRANTZ: Forty.

18 BY MR. PATCH:

19 Q. And, in the response, we asked you a question, first of
20 all, about whether Staff ever "at any point considered
21 whether the Synapse study or any other study regarding
22 natural gas prices conflicted with the PSNH gas
23 forecast?" And, I guess I didn't see an answer to that
24 in that question -- in the response.

[WITNESS: Frantz]

1 CMSR. HONIGBERG: What's the question,
2 Mr. Patch?

3 MR. PATCH: Well, I guess I would like
4 an answer to the question that we asked at that time.

5 "Did any member of the Staff at any point consider whether
6 the Synapse study or any other study regarding natural gas
7 prices conflicted with the PSNH gas forecast?"

8 **BY THE WITNESS:**

9 A. I believe it was answered at the bottom. "As stated in
10 my testimony, based on the information available at the
11 time PSNH's analyses were performed, PSNH's analyses
12 were not unreasonable."

13 BY MR. PATCH:

14 Q. So, the answer was "no"?

15 A. Correct. I don't, and this was some time ago, but I
16 don't believe we specifically -- well, I'll let the
17 data response speak for itself.

18 Q. The Synapse forecast, Bates Page 990, is significantly
19 below the PSNH assumption of \$11 per MMBtu escalated at
20 2.5 percent per year going forward. Isn't that fair to
21 say?

22 MR. GLAHN: Can we see a copy of that?

23 WITNESS FRANTZ: And, I'd like to see a
24 copy also.

[WITNESS: Frantz]

1 CMSR. HONIGBERG: And, we're talking
2 about something that's an exhibit to Mr. Hachey's
3 testimony, is it not?

4 MR. PATCH: Yes. So, it's Bates Page
5 990, in Exhibit 20. 20-20 I think is the Synapse report.

6 CMSR. HONIGBERG: And, what's the Bates
7 page you said?

8 MR. PATCH: I said "Bates Page 990".

9 MR. BERSAK: It's going to take us a
10 while to find it.

11 MR. PATCH: But, actually, I think it's
12 -- I think it may be 378. I may have confused that.

13 MR. GLAHN: Do you have copies of it?

14 SP. CMSR. IACOPINO: Is it a table or is
15 it a chart?

16 MR. PATCH: It's a chart.

17 SP. CMSR. IACOPINO: I'm sorry.

18 MR. PATCH: I'm going to move on. I
19 have the wrong page site on that, and I apologize for
20 that. And, I don't know why I do, but I'll come back to
21 that.

22 BY MR. PATCH:

23 Q. I want to show you a copy of a U.S. EIA Natural Gas
24 Henry Hub Gas Spot Price Chart, that shows the spot

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1 prices by month, going back to 1997.

2 CMSR. HONIGBERG: This a new exhibit?

3 MR. PATCH: This is a new exhibit.

4 CMSR. HONIGBERG: It will be 53.

5 (Atty. Goldwasser distributing
6 documents.)

7 (The document, as described, was
8 herewith marked as **Exhibit 53** for
9 identification.)

10 BY MR. PATCH:

11 Q. And, could you look in there at the prices for 2008 and
12 the first half of 2009.

13 A. Yes.

14 Q. And, looks like the spot prices for the first four
15 months of '08 go from 7.99 to 10.18, is that correct?

16 A. Correct.

17 Q. And, then they peak in June of 2008 at 12.69?

18 A. Correct.

19 Q. And, if you look at the graphic representation of that,
20 at the top of the page, you see the peak, you know,
21 soon after, where it designates "2008", which I assume
22 is that, represented by that chart, correct?

23 A. Correct.

24 Q. And, then, there's a peak back in 2000 and -- late

[WITNESS: Frantz]

1 2005, presumably because of Hurricane Katrina. I mean,
2 that had an impact on gas prices, correct?

3 A. Absolutely. Yes.

4 Q. And, if you were take out Hurricane Katrina, then,
5 obviously, the highest peak in these Henry Hub Gulf
6 Coast natural gas spot prices, going back to in 1998,
7 was really that Summer of 2008, was it not?

8 A. Yes.

9 Q. And, it went down significantly after that peak of
10 12.69. For example, by October, it was, not quite, but
11 almost half that, at 6.74. Am I correct?

12 A. That is correct. October 2008, the price was \$6.74 per
13 million Btu.

14 Q. And, in March, it was \$3.96?

15 A. March of 2009, that is correct.

16 Q. And, that's the time the Legislature had the hearing on
17 Senate Bill 152 --

18 (Court reporter interruption - multiple
19 parties speaking at the same time.)

20 CMSR. HONIGBERG: Yes, Mr. Glahn.

21 MR. GLAHN: I expect I know your ruling
22 on this. But I'd like to preserve the objection. That
23 this is an area again in which Mr. Hachey's testimony on
24 this precise issue, i.e., was it appropriate to rely on a

[WITNESS: Frantz]

1 gas price that allegedly peaked in 2008, and that --

2 MR. PATCH: I can't hear Mr. Glahn. I
3 don't know if you could turn on his mike.

4 MR. GLAHN: My objection is, and I just
5 want to preserve it for the record, that this again is an
6 area on which this Commission has struck testimony from
7 this very company on this exact issue, namely, whether it
8 was appropriate to rely upon gas price peaks in June or
9 July of 2008 for PSNH's projections.

10 CMSR. HONIGBERG: Understood. He can
11 ask this witness about these issues, though.

12 BY MR. PATCH:

13 Q. I think you answered the question that I asked anyway.
14 That, in March, you said what the price was in March of
15 '09, which is at the same time the Legislature was
16 considering Senate Bill 152, correct, to the best of
17 your recollection?

18 A. In March of '09? Yes.

19 Q. According to Mr. Mullen's notes from the July 2008 PSNH
20 presentation to Staff, and that was an attachment to TC
21 1-6, which is included I think in two different
22 exhibits, I think one of them is 40, we just included
23 that one page of his notes. And, that's what my
24 question is about, the attachment to 1-6.

[WITNESS: Frantz]

1 A. I have it.

2 Q. John MacDonald from PSNH said that they have "an
3 extreme confidence in the Project". Did I read that
4 correctly?

5 A. Yes. He has it -- it actually says "have an", and then
6 "extreme confidence in this Project".

7 Q. And, did you recall that statement?

8 A. I actually did not recall this statement.

9 Q. Do you have any idea of what he might have meant by
10 that?

11 A. It would be speculation.

12 Q. And, why Mr. Mullen would have included that in his
13 notes, since you've adopted his testimony?

14 A. Well, I believe he probably included it in his notes
15 because he thought it was important.

16 Q. Have you read the deposition of Mr. Long?

17 A. No, I have not.

18 Q. Would you be surprised to know or would you accept
19 subject to check that John MacDonald was one of two
20 PSNH employees who stood to benefit personally from the
21 Scrubber being built?

22 A. I have no knowledge of that.

23 MR. GLAHN: May I object? If there's a
24 point in Mr. Long's deposition that he'd like to point us

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1 to where Mr. Long said that, that Mr. MacDonald was one of
2 two people who were going to benefit from the Project, he
3 could at least point us to it, because --

4 MR. PATCH: Page 126. But I can move it
5 along quicker. I know that's what he said. The more
6 important thing is a response to a data request that we
7 would like to have marked. And, that's Deposition Number
8 10.

9 MR. GLAHN: Is he withdrawing --

10 CMSR. HONIGBERG: Hang on. Hang on.

11 MR. GLAHN: Is he withdrawing the
12 question?

13 CMSR. HONIGBERG: So, are you
14 withdrawing the question about the deposition?

15 MR. PATCH: No. I'm trying to give the
16 Commission in the record as much information as possible
17 about where this issue is located.

18 CMSR. HONIGBERG: Okay. So, why don't
19 we -- you have an exhibit you want marked, is that what's
20 happening? So, why don't we mark that exhibit, then you
21 can ask a question, and it may include both Page 126 and
22 the exhibit, or you may want to break it up into two
23 questions. But let's get the information in front of us.

24 (Atty. Goldwasser distributing

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1 documents.)

2 CMSR. HONIGBERG: So, this is

3 "Exhibit 54"?

4 MS. DENO: Yes.

5 CMSR. HONIGBERG: Thank you.

6 (The document, as described, was
7 herewith marked as **Exhibit 54** for
8 identification.)

9 BY MR. PATCH:

10 Q. Do you have that in front of you, Mr. Frantz?

11 A. I do.

12 Q. And, does it appear to be a response to a question that
13 was asked during the deposition about "providing
14 anything in writing describing specific goals regarding
15 completion of the Scrubber related to Mr. Long's or
16 Mr. MacDonald's compensation package"?

17 A. Well, this data request asked that question, and the
18 responses attached are specific goals regarding the
19 completion of the Scrubber related to Gary Long's and
20 John MacDonald's compensation package. And, following
21 that are a number of pages, and of which at the top
22 state "2006 Executive Incentive Program", the next page
23 states "2007 Executive Incentive Program Goals", and
24 the next page "2008 Executive Incentive Program Goals",

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1 and there's a chart that talks about goals.

2 Q. Okay. That's all the questions I have about that.

3 Thank you. In this docket, we are talking about the
4 prudence of the capital investment in the Scrubber.

5 But the reality of the investment in the Scrubber, and
6 the impact on ratepayers who have to pay for it,

7 assuming continued operation of the station and

8 continued ownership by PSNH, goes beyond that, does it

9 not? In other words, as long as it stays open, and is

10 owned by PSNH, ratepayers have to pay the O&M costs,

11 and other associated costs above and beyond the return

12 on the investment, and other capital investments that

13 may be needed, correct?

14 A. To the extent that the Project is running and is

15 providing service to the default service customers,

16 yes.

17 Q. So, shouldn't the Commission's consideration of the

18 prudence of this investment take all of those costs

19 into account? In other words, shouldn't a prudent

20 utility have taken all of those costs into account?

21 A. I think a prudent utility looks at all aspects before

22 it makes a decision, including the law. And, that's

23 probably the first hurdle, whether or not it was

24 mandated or not. It then looks at the costs, looks at

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1 the alternatives, and does its due diligence based on
2 the best information available to it at the time. And,
3 this Commission looks at projects on an ongoing basis
4 before they're recovered in rates. So, if a project
5 isn't providing -- isn't used and useful going forward,
6 it's possible that it would come out of rate base.

7 Q. Well, --

8 A. And, that's a different decision than what that
9 decision was to build a project and whether it was
10 prudent at the time with the information available to
11 it.

12 Q. But the Commission did tell PSNH, didn't it, in the
13 Fall of 2008, in the 08-103 docket, in the order on
14 rehearing, and I'll quote from it. And, this is a
15 reference to the "variance" provision in the statute,
16 that I think the Commission later corrected and said
17 "it should have been a reference to the "prudence"
18 provision. But, anyway, what it says is "RSA 125-0:17
19 does, however, provide a basis for the Commission to
20 consider, in the context of a later prudence review,
21 arguments as to whether PSNH had been prudent in
22 proceeding with the installation of Scrubber technology
23 in light of increased cost estimates and additional
24 costs from other reasonably foreseeable regulatory

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1 requirements, such as those cited by the commercial
2 ratepayers, which include the Clean Air Act and the
3 Clean Water Act." Do you recall the Commission
4 language in that order about that?

5 A. Yes, I do. There's been a lot of Commission orders in
6 this proceeding, but that's certainly one of the ones
7 that I can recall.

8 Q. And, the estimate that PSNH made in 08-103 of what it
9 was going to cost default service customers was
10 approximately 0.31 cents per kilowatt-hour for the
11 Scrubber, is that correct?

12 A. Yes.

13 Q. And, then, what they ended up seeking in the early
14 stages of this docket was approximately four times
15 that, you know, I think it was 1.18 cents a
16 kilowatt-hour roughly that they were seeking in the
17 first stages of this, and then, of course, the
18 temporary rates were imposed that lowered that a little
19 bit, correct?

20 A. Correct. I remember something right around 1.2 cents
21 per kilowatt-hour.

22 Q. Now, I want to look back at the presentation to the
23 Board of Trustees, Page 10 of that. I don't know if
24 you have that in front of you. I think the exhibit

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1 number on the color copy was --

2 A. Forty-two?

3 Q. Yes. Thank you. And, clearly, the return on the
4 Scrubber was on the minds of the Board of Trustees, or
5 at least on PSNH's mind when it made this presentation
6 to the Board. If you look at Exhibit [Page?] 10, and
7 you look at sort of the bottom, not the bottom bullet,
8 but the bottom little arrow there, it says "Generation
9 ratemaking structure allows PSNH to earn 9.81 cents" --
10 "9.81 percent ROE on equity invested in the Project
11 under all scenarios presented." Is that what it says?

12 A. That is what it says, correct. And, under that, it
13 says "Assumes that Project capital costs are deemed
14 prudent."

15 Q. Right. And, then, on Page 12, it says, the bottom
16 arrow, at the very end of it, "The proposal to
17 construct and operate a scrubber at Merrimack Station,
18 in conformance with New Hampshire Mercury Reduction
19 Law, is in the best interest of PSNH customers and
20 shareholders", correct?

21 A. Correct.

22 Q. Now, if the Commission gives the Company full recovery
23 of this Project, that would clearly be in the best
24 interest of shareholders, wouldn't it?

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1 A. Well, I guess that question begs "compared to what?"
2 Not recovering it or a disallowance?

3 Q. Yes.

4 A. That certainly would benefit shareholders, correct.

5 Q. And, what about customers? Would getting full recovery
6 of this investment truly be in the best interest of
7 customers?

8 A. Well, you're asking a question in 2014 based on a
9 decision that's in review of prudence that actually
10 goes back to 2008 and '09, and then perhaps even a
11 little bit later. And, my answer to that is, in
12 hindsight, it may or may not be, depending on, if we
13 have another winter like last winter, or, if we have a
14 mild winter and prices are very low, these costs could
15 be very high and add to a high default service rate.
16 And, customers may, in fact, migrate away from default
17 service at that point. So, it could contribute to a
18 price of default service that is substantially higher
19 than what customers can get in the market. That's
20 possible. And, even with the rate increase that's
21 mentioned in Mr. Chung's testimony and my testimony, it
22 could be that the rate is actually lower than what's in
23 the market, at least for a number of months.

24 So, I think it's -- that's a

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1 determination for and a balancing of interests here, as
2 I think the Commission always does.

3 Q. I mean, that's the most fundamental role the Commission
4 has, isn't it? RSA 363:17-a, "The Commission shall be
5 the arbiter between the interests of the customer and
6 the interests of the regulated utility", correct?

7 A. Correct. And, in fact, my testimony talks about that
8 balancing when it recommends seven years of recovery of
9 the unrecovered costs associated with the Scrubber.

10 Q. In his deposition, at Page 36 and 37, Mr. Long said
11 that "As a result of the increase in the cost of the
12 Scrubber from 250 to 457 million, the Company would
13 have to raise more money and invest more, but it would
14 also make more from the return on the investment." Do
15 you agree with that?

16 MR. GLAHN: What page is it again?

17 MR. PATCH: Thirty-six to thirty-seven.

18 **BY THE WITNESS:**

19 A. Under traditional ratemaking, the return is based on
20 the rate base, and that answer is correct.

21 BY MR. PATCH:

22 Q. So, given this, what incentive did PSNH have to suggest
23 a second look at this Project, once the Project had
24 escalated from a not-to-exceed number of 250 million to

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1 457 million? What incentive did they have to study it?

2 A. Well, first, let's stop -- start with your statement
3 the "not-to-exceed number of 250 million". That number
4 was never in legislation. It was a talking point at
5 the time for the passage of the bill, but never made it
6 into legislation. So, it was a target at the time, and
7 that number did not include a number of things that are
8 discussed in numerous testimonies, including mine and
9 Jacobs Consultancy, as well as the Company's. So, I
10 think that's overstating to say that that was some kind
11 of cap on this Project at 250 million.

12 Q. Okay. Well, then, before you answer my question, I'd
13 like to go there for a minute, because I think that's
14 an important issue. First of all, PSNH responded to a
15 data request from TransCanada, TC 02-003. And, it's
16 Exhibit 27-2. And, we had asked for "a copy of any and
17 all documents provided to elected and appointed
18 officials related to its position on the 2006
19 legislation."

20 MR. SHEEHAN: It's an attachment to the
21 Long deposition. Attachment 2.

22 MR. GLAHN: Doug, can you tell us which
23 request you're looking at again?

24 MR. PATCH: It's TC 02-003. It was an

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1 attachment to the deposition or an exhibit in the
2 deposition, 27-2.

3 MR. GLAHN: Is this the one that deals
4 with SO2 emission allowances?

5 MR. PATCH: Well, no. It's "any and all
6 presentations and documents that PSNH made to officials,
7 representatives, agents or lobbyists", you know, blah,
8 blah, blah.

9 MR. BERSAK: Keep reading.

10 BY MR. PATCH:

11 Q. And, I want to direct your attention, Mr. Frantz, to,
12 it's a little hard to read in the upper right-hand
13 corner, but it's right near the end of that --

14 MR. GLAHN: May I object?

15 CMSR. HONIGBERG: Just a minute,
16 Mr. Patch. Yes, Mr. Glahn?

17 MR. GLAHN: Let's read the whole
18 question. He hasn't -- I'm sorry.

19 CMSR. HONIGBERG: He directed us to --
20 all he's done so far, --

21 MR. GLAHN: Right.

22 CMSR. HONIGBERG: -- really, all he's
23 done so far is directed us to --

24 MR. GLAHN: I'm sorry.

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1 (Multiple parties speaking at the same
2 time.)

3 CMSR. HONIGBERG: -- an exhibit to
4 Mr. Long's deposition, it was Exhibit 2 to Mr. Long's
5 deposition. Let's let him get there and let him ask the
6 question.

7 BY MR. PATCH:

8 Q. It's actually, I think, the very last page in that
9 exhibit. I mean, at the bottom right it says "November
10 of '05", and it has italicized Q&As, do you see that?

11 A. And, this is TC --

12 Q. 02-003.

13 A. I see "TC-003".

14 Q. On the very last page of the attachment.

15 CMSR. HONIGBERG: Off the record.

16 (Off-the-record discussion ensued.)

17 CMSR. HONIGBERG: Let's go back on the
18 record.

19 BY MR. PATCH:

20 Q. And, I ask you to focus on the question "How will the
21 project costs be paid?" And, again, remember that this
22 was a question of PSNH of all the documents that they
23 provided to legislators during the 2006 Legislative
24 Session, essentially. So, this was provided during

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1 that time frame. And, the response is, "If the NHPUC
2 approves the Project, the costs will be recovered from
3 customers through PSNH rates. Importantly, many of
4 these costs will be offset by a reduction in the number
5 of related emission reduction credits, which must now
6 be purchased by PSNH." I'm sorry, I'm actually -- it's
7 the wrong one that I'm asking about. "What will the
8 cost of the Project be?" I think that's the area we
9 were talking about. So, it's above that. "It is
10 estimated that the Project will require a capital
11 investment of up to 250 million and annual operating
12 expenses of about 10 million." And, then, it goes on
13 to say that "As a regulated utility, PSNH must receive
14 authorization from the PUC before making any such
15 investment." Isn't that what it says?

16 A. That is what it says.

17 Q. And, so, that's what they provided to legislators in
18 2006, right? That's what they said, and that's what we
19 asked them, that's what they provided in response,
20 right?

21 CMSR. HONIGBERG: This document is dated
22 "2005".

23 MR. PATCH: It is. But the question
24 was -- the question in the data request "provide copies of

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1 all documents provided to legislators in 2006."

2 MR. GLAHN: Now let me object.

3 CMSR. HONIGBERG: Go ahead.

4 MR. GLAHN: The question actually is
5 "provide copies of all documents, *etcetera*, to any
6 legislator or state official to support the statement in
7 Mr. Nolin's January 12, 2006 letter to the House Science,
8 Technology & Energy Committee in support of 1623 to the
9 effect that the cost of the Scrubber will be fully
10 mitigated by savings in SO2 emissions."

11 CMSR. HONIGBERG: Yes, I don't thing
12 that's quite an objection. But I think you're just trying
13 to get a refinement of the date. I mean, --

14 MR. GLAHN: That's correct.

15 CMSR. HONIGBERG: Wait. Wait. Wait.
16 You're assuming 2006 is when it was given, but it's not
17 clear from this. If you want to ask him if he knows when
18 it was given to legislators, you can do that, but --

19 MR. PATCH: I don't. I'm just basing it
20 on the question that was asked and the response that was
21 given by PSNH.

22 MR. GLAHN: My objection is that
23 Mr. Patch has now said three times that he asked for all
24 the documents. And, now, his claim, of course, is that

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1 somehow we didn't give the Legislature all the documents
2 that address the issue.

3 MR. PATCH: No. That's not my --

4 CMSR. HONIGBERG: No. That's not his
5 question and not his point here.

6 MR. GLAHN: But he misstated what the
7 data request itself said.

8 CMSR. HONIGBERG: I think I agree with
9 that.

10 MR. PATCH: I agree with that, too.
11 And, all I want is to put in the record what the data
12 request asked for and what the response was.

13 CMSR. HONIGBERG: I think now the data
14 response is in the record. So, let's circle back and try
15 and ask the question again, without the assumption that
16 was built in that I think is not warranted by the data
17 request and response.

18 BY MR. PATCH:

19 Q. Well, I just -- my question, really, to you,
20 Mr. Frantz, was "did I read that correctly?" Is that
21 what the Q&A that I read says?

22 A. The Q&A says "What will be the cost of the" -- "What
23 will be the cost of the project be?" That's actually
24 what it says. And, it says "It is estimated that the

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1 project will require a capital investment of up to
2 250 million." Yes, you read it correctly. And, if I
3 may say, it says "estimated" in that statement.

4 Q. It does, you're right. I'm not quibbling with that.
5 And, it also says "the Commission, before making such
6 investment, PSNH must receive authorization from the
7 Commission." Doesn't it say that?

8 A. It does say that.

9 Q. And, so, I would like to direct your attention to Staff
10 response to PSNH 1-1.

11 MR. PATCH: And, I would like to ask
12 that this be marked. Actually, I think -- I don't think
13 it's been marked yet. I'm sorry, there's a lot of
14 exhibits in.

15 CMSR. HONIGBERG: So, this is going to
16 be "Exhibit 55"?

17 MR. PATCH: Yes. Thank you.

18 CMSR. HONIGBERG: How are we doing on
19 time, Mr. Patch?

20 MR. PATCH: Well, maybe a half an hour
21 left.

22 (Atty. Goldwasser distributing
23 documents.)

24 (The document, as described, was

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1 herewith marked as **Exhibit 55** for
2 identification.)

3 BY MR. PATCH:

4 Q. And, this was a data request PSNH made of Staff, asking
5 for "a copy of any document provided by Staff or the
6 Commission to elected or appointed government official"
7 with regard to the 2006 legislation, correct?

8 A. That is correct.

9 Q. And, attached is a copy of the Fiscal Note Worksheet
10 submitted to the Office of Legislative Budget
11 Assistant, correct?

12 A. That is correct.

13 Q. And, so, I would like to direct your attention to a
14 couple of things in this document. First of all, on
15 Page -- I guess it's Page 2, at the bottom, "Fiscal
16 Note Worksheet", in about the middle of that first
17 paragraph, it says -- it says "The Scrubber costs are
18 currently estimated to be 250 million (in 2013
19 dollars), costs that would be offset in part by PSNH no
20 longer having to purchase allowances each year for SO2
21 emissions and further by sales of SO2 allowance
22 credits." Did I read that correctly?

23 A. Yes.

24 Q. And, then, I think it's Page 3, in the very bottom

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1 paragraph, in the beginning, "PSNH's preliminary
2 estimate is that the total costs of installing the
3 Scrubber will not exceed 250 million (in 2013
4 dollars)." Correct?

5 A. That's correct.

6 Q. And, then, back to Page 2, about three, or two
7 sentences down, it says "Prior to installation, the
8 owner of the plant must receive necessary permits and
9 approvals from the Department of Environmental
10 Services, the Public Utilities Commission, the United
11 States Environmental Protection Agency, and the Town of
12 Bow." So, "prior to installation, the owner of the
13 plant must receive approval from the Public Utilities
14 Commission", is what it says, correct?

15 A. That is what it says.

16 Q. And, this was provided to the Legislature in 2006, in
17 connection with the Scrubber legislation, correct?

18 MR. GLAHN: It's a 2005 document.

19 **BY THE WITNESS:**

20 A. This was sent to the agency on November 1st, 2005.

21 MR. GLAHN: Right.

22 BY MR. PATCH:

23 Q. And, in fact, this information made its way into the
24 fiscal note on the bill, didn't it? To the best of

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1 your knowledge? I can point you to the attachment to
2 Mr. Hachey's testimony, which is the fiscal note on the
3 bill. It talks about a "not-to-exceed number of 250
4 million based on information from PSNH", if you want me
5 to. And, I can point you to the Mike Nolin letters to
6 the House and the Senate in 2006, that are part of the
7 legislative history, that says "based on information
8 from PSNH, it's a not-to-exceed number of 250 million."

9 MR. GLAHN: Is Mr. Patch giving a speech
10 or is he asking a question?

11 CMSR. HONIGBERG: I think what he's
12 doing -- I think what he's doing is he's asking Mr. Frantz
13 if he's comfortable with it that it ended in the fiscal
14 note, or did Mr. Frantz need Mr. Patch to direct him to
15 all the places where it is that.

16 MR. GLAHN: If that's the question he's
17 trying to ask, then that's fine.

18 MR. PATCH: Yes.

19 CMSR. HONIGBERG: That's what I heard.

20 MR. PATCH: That's my question, really.

21 BY MR. PATCH:

22 Q. Is this what was told to the Legislature? I'm trying
23 to cite all of the places that I know of where it was
24 told to the Legislature. Is that consistent with your

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1 understanding?

2 MR. GLAHN: And "this" being what?

3 MR. PATCH: "Not-to-exceed 250 million,
4 based on information from PSNH."

5 MR. GLAHN: Well, the documents that
6 he's already pointed to, he's now misstating, because they
7 all said "estimated" or a "preliminary estimate".

8 MR. PATCH: Nope. Not true.

9 MR. GLAHN: And, nowhere in those
10 documents --

11 MR. PATCH: Not the ones I just pointed
12 out.

13 MR. GLAHN: Nowhere in those
14 documents --

15 CMSR. HONIGBERG: Well, since we're now
16 having an argument about what those documents say, Mr.
17 Patch, I'm sorry, --

18 MR. PATCH: They will speak for
19 themselves.

20 CMSR. HONIGBERG: Yes. You listed them,
21 they're in the record. So, we don't need to look at them.
22 They will speak for themselves. I actually don't think
23 there's a pending question.

24 MR. PATCH: Well, you know, Mr. Frantz

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1 tried to characterize that as a: Preliminary estimate",
2 and their consultant, Mr. Jacobs -- or, Jacobs Consultancy
3 says that as well.

4 BY MR. PATCH:

5 Q. So, I guess I'm trying to understand how you can come
6 up with the fact that it's a preliminary estimate,
7 given what PSNH told the Commission, which -- what the
8 Commission told the Legislature, what Mike Nolin told
9 the Legislature, I don't know how you can come up with
10 that? Maybe you can explain that to me.

11 A. Because, ultimately, the legislation that required the
12 emissions reduction for mercury doesn't mention
13 anything about capping it at \$250 million.

14 Q. Oh. So, it had to specifically state that? What about
15 the reference in the legislation to the "balancing of
16 the costs and the benefits"?

17 A. Yes. That's an important balancing. But it doesn't
18 say "balancing and a price not to exceed \$250 million".
19 The Legislature was well aware of the estimate of 250
20 million. And, for whatever reason, it did not cap the
21 \$250 million in the legislation.

22 Q. Because nobody asked it to cap it, did they?

23 A. I don't know if anyone asked or not to cap. I'll let
24 the legislative history speak for itself on that. But

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1 all I know is that, when I read the legislation,
2 there's no mention of "\$250 million not to exceed" in
3 the legislation.

4 Q. And, so, that, as I pointed out to you, the information
5 that the Commission provided to the Legislature in the
6 fiscal note, as well as the information that PSNH
7 provided in response to the data request, both said
8 that "the Commission would have to approve the
9 expenditure before the investment was made". Did I
10 characterize that correctly?

11 A. It does say "Prior to installation, the owner of the
12 plant must receive necessary permits and approvals from
13 the Department of Environmental Services, the Public
14 Utilities Commission, the United States Environmental
15 Agency, and the Town of Bow."

16 Q. And, so, my question to you is, and I think you know
17 this, in September of '08, when PSNH filed in response
18 to the Commission's letter of August 22nd, included
19 with that report was a lengthy legal memorandum from
20 Mr. Bersak and others, in which they argued to the
21 Commission that the Commission had no authority to
22 review it before, and yet they told the Legislature and
23 the Commission told the Legislature that it had to be
24 reviewed and approved before, before the investment was

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1 made?

2 MR. BERSAK: Mr. Honigberg, since my
3 name is now being dragged into this, I would just like to
4 point out for the record that the two documents that Mr.
5 Patch is referring to, which is the presentation that was
6 made in 2005, fiscal note to the Legislature in 2005, both
7 predate the enactment of the Scrubber Law. And, it was
8 the Scrubber Law that changed the paradigm under which
9 PSNH had to come to the Commission to seek approval of
10 modifications. And, that's what that memo was about. A
11 law that was not in place when those two documents were
12 prepared.

13 CMSR. HONIGBERG: I expected that legal
14 argument, but I don't think that necessarily precludes the
15 question that Mr. Patch has asked. There may be a perfect
16 explanation for all of this, but I think Mr. Patch has
17 asked a legitimate question.

18 BY MR. PATCH:

19 Q. And, I don't know if you answered the question, Mr.
20 Frantz, but do you recall that legal memorandum?

21 A. I recall it vaguely, yes.

22 Q. And, of course, the Commission decided that it didn't
23 have the authority to review the investment before it
24 was made, although it did clearly say that it would go

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1 back and look at it in a prudency review, is that fair
2 to say?

3 A. That is correct.

4 Q. Is it true that PSNH has been prohibited from building
5 or acquiring any new generation in New Hampshire for a
6 number of years, and was during the time period that's
7 relevant here, '08-'09?

8 A. That would be in reference to RSA 369-B:3-a. I think
9 that's the enabling statute concerning generating
10 assets and building of plant by PSNH.

11 Q. So, is it fair to say then that one of the few ways
12 they could significantly increase the assets on which
13 they could earn a rate of return was through a major
14 capital project that would extend the life of a plant
15 that they still owned, so they could earn an additional
16 rate of return on that project? That was one of the
17 few ways they could do that, is that correct?

18 A. They could, in fact, increase earnings by expanding
19 rate base, if those assets were deemed to be prudent
20 and used and useful.

21 Q. And, isn't it true that the Scrubber basically doubled
22 the return on rate base that PSNH was getting prior to
23 the Scrubber? And, I'll cite, I can --

24 A. If I recall correctly, I think it more than doubled the

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1 actual net plant value at the time.

2 Q. And, then, the Scrubber Law limited which customers
3 would be responsible for the costs of the Scrubber. It
4 limited it to default service customers, correct? And,
5 that was right from the get-go. That was from 2006,
6 right?

7 A. Correct.

8 Q. And, that was part of the so-called "mandate", right?

9 A. It was in the statute.

10 Q. Do you agree that, if PSNH's default service rates
11 exceed prevailing market rates or power supply costs,
12 that PSNH customers are more likely to migrate to
13 competitive suppliers?

14 A. Well, I think that question is a little more complex
15 than you state. I think there are a lot of variables
16 that go into that. Including what the competitive
17 service providers are offering, what the contract terms
18 are, whether there are any cause to get out of those
19 contracts with competitive suppliers. I think there's
20 a lot of decisions that go into whether or not a
21 customer migrates away from PSNH to a competitive
22 supplier. And, I think that varies by customer and by
23 customer class. And, so, I don't think it's quite as
24 simple as what you stated.

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[WITNESS: Frantz]

1 Q. Okay. Fair enough. But would you agree that a prudent
2 utility, under these circumstances, would take into
3 account the possibility that, if it lost customers to
4 the competitive market, it would have an impact on how
5 much the customers who stayed on Default Service would
6 have to pay? Isn't that something a prudent utility
7 would have taken into account, given that it was
8 explicitly stated in that law that passed in 2006?

9 A. Well, I think the first thing a prudent utility would
10 ask itself is "is this a legislative legal mandate?"
11 And, then, of course, --

12 Q. Is it?

13 A. Staff's position was and it's our testimony -- and my
14 testimony that, yes.

15 Q. And, the default, the limit to default service
16 customers was part of it?

17 A. Yes.

18 Q. So, would a prudent utility take that into account?

19 A. Well, I think it would take into account the effect on
20 customers, yes.

21 Q. But Mr. Long said in his deposition that they didn't do
22 so, correct?

23 MR. GLAHN: Which page? Page and line
24 please?

[WITNESS: Frantz]

1 MR. PATCH: Page 197. I'll get you the
2 line.

3 CMSR. HONIGBERG: While everybody is
4 getting to that page, we're going to need to take a brief
5 break for the court reporter in a few minutes. Let's get
6 to the end of this little segment.

7 MR. PATCH: Okay.

8 CMSR. HONIGBERG: And, then, we'll take
9 five, ten minutes, come back, and then try to go till
10 about 12:30 or so.

11 WITNESS FRANTZ: I'm there, Mr. Patch,
12 if you have a question.

13 MR. PATCH: Thank you.

14 BY MR. PATCH:

15 Q. I think it's Line 15, and the answer is Line 18. "In
16 2008, when the cost escalated, did you consider
17 migration rates in your decision-making? No, because
18 the mandate was to install the Scrubber, and we looked
19 at what was the cost of doing that." Did I read that
20 correctly?

21 A. Yes.

22 Q. And, we had provided or Mr. Hachey had provided as an
23 attachment to his testimony a couple of exhibits that
24 were migration documents, Bates Page 1108 and through

[WITNESS: Frantz]

1 11 -- 1113. That shows that PSNH said, in two
2 different instances, that migration was an issue going
3 back to 2008. Do you remember seeing those?

4 A. I don't remember seeing those. But, if you want to
5 show them to me, I'm happy to look at them.

6 Q. Well, if you have in front of you Mr. Hachey's
7 testimony?

8 A. I do have in front of me Mr. Hachey's testimony.

9 Q. And, the attachments pretty far into it, it's
10 Attachment 29. So, it's near the end. And, it's 1108
11 and 1113.

12 MR. GLAHN: Which attachment is it,
13 Doug, again?

14 MR. PATCH: Twenty-nine.

15 BY MR. PATCH:

16 Q. And, on the second page of the attachment, which at the
17 top says "36", at the bottom is 1109, if you look at
18 Line 14, it's really the answer from Mr. Large. "It's
19 been an issue in a variety of different ways, since I
20 would say approximately 2008." And, then, Mr.
21 Errichetti chimes in "Late 2008."

22 A. I see that, yes.

23 Q. And, then, the next document is a portion of the
24 testimony from Mr. Baumann in DE 10-160. And, that was

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- 1 dated July 30th of 2010. And, in that document, on
2 Page 1112, in the lower right-hand corner, Page 3 of 10
3 in the upper right, Line 22, near the bottom, he says
4 "Moving to the present, PSNH's ES load obligation over
5 the past 24 months", and I'll remind you it's July 30th
6 of 2010 the testimony is of, "over the past 24 months
7 has declined significantly, due primarily to the
8 migration of some customers (mostly large customers) to
9 third party supply." Did I read that correctly?
- 10 A. Yes, you did.
- 11 Q. And, so, according to Mr. Long, they didn't take that
12 into account, correct?
- 13 A. Based on the deposition and the question that's in
14 there, "I said in 2006, when the mandate was
15 determined, was there no consideration of migration
16 rates?" And, "no", his answer is, "because the mandate
17 was to install the Scrubber and we looked at what was
18 the cost of doing that."
- 19 Q. Right. But, as we established, and I think you agreed,
20 the limitation on who they could recover the costs from
21 was part of the mandate, too, wasn't it?
- 22 A. Yes. It's default service customers.
- 23 Q. I want to direct your attention to a couple of other
24 documents.

[WITNESS: Frantz]

1 A. And, if I may expand somewhat?

2 Q. Yes.

3 A. Having been part of that at the time, there really
4 wasn't much migration in that time frame, in 2005,
5 2006, 2007. Very little. We didn't have a lot of
6 competitive suppliers registered at the Commission.
7 And, that's just the facts, I think. And, there was
8 very little competitive supply and very little
9 migration in that time frame.

10 Q. Through 2007?

11 A. Correct.

12 MR. PATCH: Is this a good place to take
13 a stop? I do have a few more questions, maybe fifteen
14 minutes.

15 CMSR. HONIGBERG: Sure. But this is
16 good time to take a break. Let's go off the record before
17 we leave the room.

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

20 (Recess taken at 11:33 a.m. and the
21 hearing resumed at 11:48 a.m.)

22 CMSR. HONIGBERG: Mr. Patch.

23 MR. PATCH: Thank you.

24 BY MR. PATCH:

[WITNESS: Frantz]

1 Q. Mr. Frantz, we were talking about migration before we
2 took the break. And, I want to direct your attention
3 to three pages in the Hachey testimony attachments.
4 And, I'll give them all three to you now. They're
5 Bates Page 1022, 1074, and 1104. And, we can do them
6 right in order.

7 CMSR. HONIGBERG: What was the third
8 number? The third number?

9 MR. PATCH: 1022, 1074, and 1104.

10 MR. GLAHN: Which attachments are these
11 in, Doug?

12 WITNESS FRANTZ: Which attachments are
13 they, Mr. Patch?

14 MR. GLAHN: I just don't have the Bates
15 stamp numbers. So, I want to --

16 WITNESS FRANTZ: This doesn't either.

17 MS. GOLDWASSER: The one up there
18 doesn't?

19 WITNESS FRANTZ: No. This one does not
20 have Bates stamp --

21 CMSR. HONIGBERG: Off the record.

22 (Brief off-the-record discussion
23 ensued.)

24 CMSR. HONIGBERG: Let's go back on the

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1 record. Now that everybody has found the pages, Mr.
2 Patch.

3 BY MR. PATCH:

4 Q. Mr. Frantz, are you ready?

5 A. I am at 1022.

6 Q. Okay. Thank you. With regard to migration, it
7 appears, based on all three of these documents, that
8 what PSNH did or what Mr. Long, in particular, did was
9 to almost dare customers to leave. If they don't want
10 to pay for the Scrubber, they can go to the competitive
11 market. And, I'll start with Page 1022. And, I'll ask
12 you to read the third bullet.

13 A. The third bullet states "PSNH customers", and then
14 "(especially commercial customers) can switch to a
15 different energy supplier at any time to avoid paying
16 costs associated with the Scrubber."

17 Q. And, then, Bates Page 1074, I think there's actually a
18 little arrow next to it. Maybe it's easiest if I read
19 it and ask you if I read it correctly.

20 A. I see the arrow.

21 Q. Okay. "So, when a commercial customer says "I'm
22 concerned about the cost", you know, I don't want to be
23 flippant about this, but if they really are concerned
24 about the cost, and if we really aren't low cost, they

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[WITNESS: Frantz]

1 can go somewhere else and they can completely avoid the
2 cost of the Scrubber." Did I read that correctly?

3 A. Yes. Except it says "of a scrubber", not "the
4 Scrubber". But that is correct.

5 Q. And, then, the next is that Bates Page 1104, which is a
6 newsletter PSNH sent to customers. And, on Page 2,
7 Page 1104, near the top, "The cost of the Clean Air
8 Project will be recovered through PSNH's Energy Service
9 charge. However, customers are not required to
10 purchase energy from PSNH. Utility customers are
11 encouraged to source third party supply offerings to
12 get the price best available."

13 A. That is what it says, correct.

14 Q. So, I guess my question to you, given what the mandate
15 said, which was that only those customers who are on
16 default service would pay for the Scrubber, was this a
17 prudent thing for PSNH to do, these statements, to
18 encourage customers to leave? Given migration, given,
19 you know, don't you think they should have been
20 concerned about migration and about the impact that,
21 you know, migration would have on the remaining
22 customers?

23 MR. GLAHN: Could we have one question.

24 CMSR. HONIGBERG: Yes. Mr. Patch, which

[WITNESS: Frantz]

1 of those questions would you like him to answer?

2 BY MR. PATCH:

3 Q. Was this a prudent thing for a utility to do, to
4 encourage customers to leave, --

5 MR. GLAHN: Objection.

6 BY MR. PATCH:

7 Q. -- if they didn't want to pay for it?

8 A. I don't think it's encouraging customers to leave.

9 What I think it is is stating that customers, in that
10 environment, under a retail choice model, have, in
11 fact, a choice. And, that choice is, you can go to the
12 competitive electricity market in New Hampshire. You
13 may read into it differently. But I actually think the
14 utility, to some degree, has an obligation to be
15 correct and factually truthful with its customers.
16 Now, price is there, they can shop. But stating that
17 "customers do have a choice", I think that's a
18 reasonable thing to let customers know.

19 Q. And, I'm looking at your testimony, Page 29. And, I'm
20 on Line 20. And, this carries over to the top of the
21 next page. But if you let me know when you're there.

22 A. You said Page?

23 Q. Twenty-nine. Line 20.

24 A. I'm there.

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

[WITNESS: Frantz]

1 Q. "In a perfect world, we all could have predicted the
2 movements in the natural gas, electricity and SO2
3 markets". And, it goes on from there and basically
4 talks about "hindsight". "Perfect foresight rarely
5 exists, if at all, especially when it comes to
6 predicting energy markets." And, then, over on the
7 next page, "For purposes of determining prudence, it's
8 important to not use hindsight as a replacement for an
9 assessment of decisions made based on the information
10 available at the time." Correct?

11 A. Correct.

12 Q. And, so, I guess my question to you is, isn't it true
13 that, in fact, all of the intervenors in this docket,
14 and the Consumer Advocate who is here as a statutory --
15 as a matter of right under statute, but the Sierra
16 Club, CLF, TransCanada, and another of others, were
17 saying this was a bad idea back in 2008? Didn't they
18 participate in that 08-103 docket and say that? So,
19 when you talk about "hindsight", I mean, that isn't
20 hindsight, is it?

21 A. Well, I guess it depends on how far back you want to
22 go. Some of those parties actually supported the
23 legislation initially, and then intervened or proposed
24 to intervene in 08-103, when it was known that the

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- 1 rates were much higher. I think what this testimony is
2 referring to is, at the time of the passage of
3 legislation, it would have been beneficial for all to
4 know that SO2 allowances were not going to pay for the
5 price of this Project. It would have been great to
6 know that gas prices were, in fact, going to fall
7 dramatically. Because, at the beginning, our premise
8 is that the legislation actually mandates that PSNH
9 install the Scrubber. That's what I mentioned before.
10 It is in the public interest. So, now, obviously,
11 there's some disagreement about what that legislation
12 states or doesn't state. And, I think the Commission
13 is more than well versed in its ability to interpret
14 that. But this testimony starts with that premise.
- 15 Q. Okay. Well, let's go to that premise then. Mandate,
16 mandate at any cost? It doesn't matter, billion,
17 billion and a half, 2 billion? It doesn't matter, it's
18 a mandate, period?
- 19 A. Well, there's also a prudence review of the costs they
20 are actually incurring to build the Project.
- 21 Q. Okay. So, if the costs had gone to a billion, what
22 should the Commission have done under a prudence review
23 then?
- 24 A. Well, I seriously doubt that a billion dollars would

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1 have ever been recoverable from the Company.

2 Q. I think it's a legitimate question, though. Was there
3 no limit? Was it a mandate at any cost?

4 A. No costs were mentioned. I think that --

5 Q. Costs? What do you mean "no costs were mentioned"?

6 A. No limit on costs. That's a nice hypothetical. I do
7 think that many red flags would have gone up, as they
8 did already at the \$457 million mark about continuing
9 with this Project. And, I think the Commission is
10 going to look at what costs will be included or not
11 included in rates ultimately. You know, none of us,
12 Staff, probably all the intervenors, other people here,
13 are excited or wanted to see the price of this Project
14 go to the price that it did. That doesn't make it
15 imprudent. Just as it could have been found to be
16 imprudent if it was less than 250 million, depending on
17 how PSNH managed the Project, the decisions that were
18 made, and what ultimate costs were incurred. But
19 prudence is based on the information available at the
20 time and the decisions that were made at the time with
21 that information. So, --

22 Q. And, isn't it about, too, about the information that
23 was shared or not shared?

24 A. Oh, --

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[WITNESS: Frantz]

1 Q. Is that part of the consideration the Commission needs
2 to --

3 A. I think it's also about the data that was available and
4 shared and not shared.

5 MR. PATCH: That's all the questions I
6 have. Thank you, Mr. Frantz. I appreciate your patience.

7 WITNESS FRANTZ: You're welcome.

8 CMSR. HONIGBERG: Who is going to go
9 next? Mr. Irwin.

10 MR. IRWIN: Thank you. Thank you,
11 Mr. Frantz.

12 BY MR. IRWIN:

13 Q. I'd like to pick up with Mr. Mullen's testimony as
14 well. Specifically, on Page 9. Page 9, Line 10,
15 there's a statement about "A prudence determination
16 involves the use of foresight rather than hindsight",
17 what Mr. Patch was just discussing with you. Did I
18 read that correctly?

19 A. Yes.

20 Q. And, before that, starting on Line 8, it says --
21 Mr. Mullen's testimony states "As a general matter, a
22 determination of prudence involves a review of the
23 information available to the utility at the time
24 decisions are made to determine if the decisions were

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1 reasonable, based on the then available information."

2 Did I read that correctly?

3 A. Yes.

4 Q. And, so, emphasis on the word "decisions". We're not
5 talking one decision, multiple decisions, correct?

6 A. Correct.

7 Q. Directing you to Page 14 of Mr. Mullen's testimony.
8 His testimony discusses the September 2nd, 2008
9 submission by PSNH to the Commission, is that correct?

10 A. Correct.

11 Q. And, that submission was in the context of Docket DE
12 08-103, correct?

13 A. Correct. That was, I think, based on the Commission's
14 directive to file that report.

15 Q. Okay. And, according to Mr. Mullen's testimony, that
16 submission included considerations of certain
17 projections as to natural gas and coal prices?

18 A. Correct. I think we discussed that to some degree.

19 Q. Yes. And, turning to Page 16 of Mr. Mullen's
20 testimony, the testimony which you adopted, provides
21 the statement that "based on available information,
22 PSNH's 2008 financial analyses do not appear to be
23 unreasonable." Did I read that correctly? And, I'm
24 sorry, that's starting on Line 8 on Page --

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1 A. Yes, I see that. "While my discussion uses natural gas
2 pricing as an example, it helps demonstrate that based
3 on available information, PSNH's 2008 financial
4 analyses do not appear unreasonable." That's the full
5 sentence.

6 Q. Okay. Thank you. And, the reference "2008 financial
7 analyses" are the ones submitted by PSNH in September
8 2008?

9 A. Yes.

10 Q. And, Mr. Patch briefly touched on this earlier. But,
11 in that same docket, the Commission issued an order,
12 post September 2008, an order -- Order Number 24,914,
13 dated November 12, 2008. And, it reads, the pertinent
14 part of that, "RSA 125-0:17 does, however, provide a
15 basis for the Commission to consider, in the context of
16 a later prudence review, arguments as to whether PSNH
17 had been prudent in proceeding with installation of
18 scrubber technology in light of increased cost
19 estimates and additional costs from other reasonably
20 foreseeable regulatory requirements such as those cited
21 by the Commercial Ratepayers, which includes the Clean
22 Air Act and the Clean Water Act." Do you recall that?

23 A. I do.

24 Q. And, Mr. Mullen's testimony does not address any post

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1 2008 analysis and doesn't address the prudence of
2 proceeding with installation of scrubber technology,
3 does it?

4 A. Well, I think the testimony that was filed is based on
5 the information that was available to Staff at the
6 time. And, I'm not sure exactly what post 2009 we're
7 talking to. I think, if you're talking about -- if you
8 could be more explicit, that would be helpful.

9 Q. So, we established earlier that the reference on Page
10 16, Line 9, to "PSNH's 2008 financial analyses", that
11 related to the September 2nd, 2008 submission, the
12 analysis that came along with that?

13 A. Yes.

14 Q. And, you, in your testimony, in Mr. Mullen's testimony,
15 you've not provided any opinion on any further -- on
16 any -- on the prudence of proceeding with installation
17 of scrubber technology after that submission. Am I
18 correct?

19 A. I would phrase it this way: The focus of the testimony
20 was, in fact, on that 2008 time period.

21 Q. Okay. Thank you. Turning your attention to
22 Exhibit 39, this was a data response that includes a
23 presentation July 30th, 2008 made by PSNH to the
24 Commission, or to Staff?

[WITNESS: Frantz]

1 A. Yes.

2 Q. If you could go to Slide 13. That slide is titled
3 "Revised Project Schedule".

4 A. Yes.

5 Q. And, would you agree, based on this slide, that it's
6 clear that major construction was not slated to occur
7 until 2009?

8 A. Correct. However, detailed engineering, contracts
9 awarded, and permitting are all in the 2007, '08, and
10 '09 time frame.

11 Q. But major construction is not until 2009, correct?

12 A. Based on this, yes, that's correct.

13 Q. And, in fact, major construction couldn't occur until
14 the Department of Environmental Services issued a
15 temporary air permit authorizing construction, is that
16 correct?

17 A. That's my understanding.

18 Q. And, that didn't happen until March 2009?

19 A. Well, I'll take that subject to check.

20 Q. Okay. I'd like to refer you briefly to Exhibit 9-8.
21 This is Attachment 8 to the Mullen prefiled testimony.
22 Looking at this exhibit, at the Henry Hub spot gas
23 prices at the bottom of the page, --

24 CMSR. HONIGBERG: Is there a page number

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1 at the bottom of what you're looking at?

2 MR. IRWIN: Oh, I'm sorry, yes. 149.

3 BY MR. IRWIN:

4 Q. Do you have that?

5 A. I'm getting there.

6 Q. Okay.

7 A. This is --

8 Q. This is Attachment SEM-8.

9 A. I'm there.

10 Q. Okay. So, you would agree, looking at the chart at the
11 bottom of the page, that gas prices dipped between the
12 Summer of 2008 and March 2009, and was significantly
13 lower than in the Summer of 2008 and remained that way?

14 A. Yes. The chart, which is similar to ones we've already
15 discussed, shows a peak in the Summer of 2008, and then
16 a rather significant drop, and then increases again in
17 2010, and a slight decrease since then.

18 Q. Yet PSNH did no further economic analysis after the
19 Summer of 2008, did they?

20 A. Not that I'm aware of.

21 Q. And, in its analysis, PSNH, in considering
22 alternatives, didn't consider the construction of a
23 natural gas plant, did they?

24 A. I don't believe they did. I believe that that would

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1 have probably required a change to RSA 369-B:3-a.

2 Q. Thank you. So, you've answered my follow-up question,
3 which was that, in fact, PSNH did not have and does not
4 have the legal authority to construct a natural gas
5 plant?

6 A. I think 369-B:3-a, which probably speaks for itself,
7 but that's my understanding of that statute.

8 MR. IRWIN: Thank you. I have nothing
9 further.

10 CMSR. HONIGBERG: Mr. Fabish.

11 MR. FABISH: Good afternoon. Just a few
12 really quick questions.

13 BY MR. FABISH:

14 Q. Could I direct you to take a look at Page 13 of
15 Mr. Mullen's testimony. So, starting at -- starting at
16 about Line 6, there is a discussion of developments in
17 the Legislature, is that correct?

18 A. Correct.

19 Q. So, I just want to make sure that I understand what
20 you, through Mr. Mullen, or Mr. Mullen through you,
21 however we want to term it, is saying with this
22 section. The Legislature did not affirmatively approve
23 the spending levels, correct?

24 A. Well, I think, to be clear, both bills that were before

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1 the Legislature had different aspects to them, but
2 neither passed.

3 Q. So, the Legislature never affirmatively approved as
4 prudent the level of spending that occurred?

5 A. There is no cap on spending in the bills, in the bill
6 that guides the Scrubber, correct.

7 Q. And, in addition to there being no cap, the Legislature
8 at that time did not sanction the spending? I'm just
9 trying to clarify.

10 A. I don't know what --

11 Q. I'm not trying to trick you with language or anything,
12 I'm just trying to clarify that.

13 A. Well, I don't know what you mean by "sanction the
14 spending". It directed the utility to install a very
15 specific type of technology to reduce mercury emissions
16 by a very specific date, July 1, 2013.

17 CMSR. HONIGBERG: Mr. Frantz, I think
18 the earlier version of his question was "they didn't
19 approve it." "The Legislature didn't approve that level
20 of spending." Is that better than sanction -- do you
21 understand that instead of "sanction"?

22 WITNESS FRANTZ: Yes. They didn't
23 approve a specific level of spending.

24 MR. FABISH: Okay. Thank you.

[WITNESS: Frantz]

1 BY MR. FABISH:

2 Q. Second question, if you turn to Page 30, this is
3 towards the end of the testimony. Starting at about
4 Line 8, the testimony discusses a series of "what-if"
5 scenarios and situations, correct?

6 A. Correct.

7 Q. And, am I correct in understanding that your testimony
8 does not address such "what-if" scenarios?

9 A. Correct.

10 MR. FABISH: Okay. Those are all my
11 questions. Thank you.

12 CMSR. HONIGBERG: Commissioner Iacopino.

13 SP. CMSR. IACOPINO: Thank you.

14 BY SP. CMSR. IACOPINO:

15 Q. Mr. Frantz, you were asked a number of questions
16 regarding the two -- I'm sorry, regarding the two
17 exhibits that are the blowups. And, I believe that
18 they're Exhibit 44 and Exhibit 45. And, a lot of those
19 questions dealt with whether you and the Staff were
20 provided with the same information that was provided, I
21 guess, to the Board of Trustees at Northeast Utilities.
22 Have you had an opportunity to review the contents of
23 both of those exhibits?

24 A. I have.

[WITNESS: Frantz]

1 Q. And, can you tell us whether or not that the
2 differences in them would have made any difference in
3 the testimony that's been provided to the Commission by
4 the Staff? Obviously, if you were provided with the
5 other one back at the time.

6 A. Back at the time.

7 Q. Yes.

8 A. We would have preferred to have the one that was
9 presented back at the time. However, we started with
10 the premise in our testimony that this was a legal
11 mandate. So, I'm not sure it would have actually
12 changed our opinion of that. It may have changed
13 somewhat the focus, however, of the Project concerning
14 the spread on prices. But it's a document that is
15 concerning to Staff at this time. It would have been
16 nice to have had. I don't think it would have overall
17 changed our opinion on the prudence of the case,
18 though. Basically, because we do start with our
19 interpretation of the statute.

20 Q. And, that being that it was a mandate?

21 A. Yes.

22 Q. Okay. You've been presented with a number of exhibits
23 here today, which address concerns back into time, in
24 2008, and there's been suggestions and allegations that

[WITNESS: Frantz]

1 they were not provided to you or the Commission. Did
2 your review of any of those documents, do you believe
3 that that would cause any change to the testimony
4 provided to this Commission?

5 A. Whew. There's been a lot of documents.

6 Q. I understand. And, you've been the one who's been
7 asked to review them all during the course of your
8 testimony.

9 A. I have.

10 Q. And, do you know if there is anything that you've been
11 shown that would have changed the testimony provided to
12 the Commission?

13 A. I think the most significant one is probably the
14 breakeven price, though, as far as the economics.

15 Q. And, that's the one that's exhibited between Exhibit 44
16 and 45. I believe it's on 40. It was on the exhibit
17 presented to the Board of Trustees, but not to the
18 Staff, is that correct?

19 A. Correct.

20 Q. Okay. And, that's a breakeven level of \$5.29 per
21 million Btu?

22 A. Correct.

23 Q. Okay. And, tell me why you think that is significant.

24 A. After you look at whether, get past the legal

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1 hurdles, --

2 Q. Right.

3 A. -- let's assume we're past that, that gets to the
4 fundamental economics of the overall Project over time,
5 based on the information available --

6 (Court reporter interruption.)

7 **CONTINUED BY THE WITNESS:**

8 A. Because of the overall economics of the Project, based
9 on the information that was available at the time, or
10 expected pricing differential between coal and natural
11 gas. It's easy in hindsight to say "well, natural gas
12 prices are, obviously, \$3.00 or \$4.00 per million Btu.
13 And, the question is "what were they expected to be?"
14 But equal to that was, "what was the expected
15 differential that was expected at the time between coal
16 and natural gas?" And, so, I think that's one of the
17 most important pieces of information.

18 Q. That you didn't have?

19 A. Yes. I mean, there are plenty of moving parts in this
20 proceeding. You know, the estimation and the
21 expectation at the time that SO2 allowances would be
22 \$1,000 or \$1,500 per ton and help pay for the Project,
23 that was a major piece of information. Could
24 reasonable people think that based on the prices at the

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1 time? A lot of people did. That turned out not to be
2 even close to accurate looking back. But this isn't
3 about what I know now. Was it reasonable at the time?
4 And, right now, we know, it's a little bit like talking
5 about natural gas prices. Right now, we know that SO2
6 allowances are less than \$100 per ton per allowance, I
7 believe, and possibly under \$10 in today, out there in
8 the market. And, there's really no benefit to that.
9 That doesn't mean that the Company was imprudent based
10 on what they thought at the time. A lot of people
11 thought at the time that the prices, based on the
12 contractual allowance prices at the time were going to
13 be around 1,000, 1,500. And, there was a range
14 discussed, 500 to 1,500. I think we used \$1,000 in our
15 FIS.

16 SP. CMSR. IACOPINO: I have no further
17 questions, Commissioner.

18 BY CMSR. HONIGBERG:

19 Q. Mr. Frantz, I'm also interested in the differing
20 information that we understand was given to the
21 Trustees and was given to you in the Summer of 2008.
22 Can you find Exhibit 43, which is the data request TC
23 6-201 and the response.

24 A. I have it.

[WITNESS: Frantz]

1 Q. If you focus for a minute, just read to yourself the
2 actual question asked, and then the first sentence of
3 the answer, because I don't think they necessarily
4 match up. (Short pause.) Have you had a chance to
5 read them?

6 A. I have read it, yes.

7 Q. The question asked about "information provided to the
8 Risk and Capital Committee and the Board of Trustees".
9 The response doesn't mention the Board of Trustees. It
10 just mentions the RACC, the Risk and Capital Committee.
11 Am I reading that right?

12 A. Yes.

13 Q. When this response was prepared, did Staff know what
14 was provided to the Board of Trustees and know what was
15 provided to the RACC, so that it could make that
16 statement? And, was it making a distinction between
17 the two?

18 A. Well, this question is from TransCanada to PSNH, and I
19 guess the PSNH witness is the best person best able to
20 distinguish --

21 Q. You are correct. For reasons I don't quite understand,
22 I thought this was a question directed to Staff. But
23 will -- I guess we'll pick that up with Mr. Vancho and
24 Mr. Large when they testify. But does it -- just since

[WITNESS: Frantz]

1 you're looking at it now and I have you on the stand,
2 does it strike you as mismatch between the question and
3 the answer?

4 A. It does. But I think that's one to be explored with
5 the PSNH witnesses.

6 Q. Getting back to those presentations and the information
7 provided by the Company in response to the secretarial
8 letter, Mr. Patch started to ask you a question, but
9 never quite finished it or never got an answer to it,
10 about whether it is okay for one of the regulated
11 companies to lie to the Commission or its Staff. Is
12 that okay?

13 A. No. Never.

14 Q. And, if a company is found to have lied to Commission
15 or Staff, what are the possible sanctions for that?

16 A. Possibly fines. I'm not completely aware of what our
17 sanctions would be, but --

18 Q. Say it's in the context of a request for inclusion of
19 something in rate base?

20 A. Well, I think that would probably give the Commission
21 possible grounds for a disallowance.

22 Q. Or reducing rate of return or something like that?

23 A. A number of options would be available for the
24 Commission.

[WITNESS: Frantz]

1 Q. Do you think that you were lied to by the Company?

2 A. No. I just don't think we were given all exactly the
3 same facts that were given to the Board of Trustees.

4 Q. In your answers to Mr. Patch, there was an exchange
5 about what a Company's obligations are?

6 A. Uh-huh.

7 Q. And, your position seems to be that the company should
8 be making an advocacy case, not providing
9 misinformation, but they're not obligated to provide
10 necessarily all information, just what would be helpful
11 to them. Is that a fair assessment of what you said?

12 A. Yes. I think, in an altruistic way, it be great if
13 every party that came here provided all the information
14 they could, whether it helped them or hurt them, and
15 was there for the Commission and the Staff to base
16 decisions. Twenty-five years of experience tells me
17 that is not what happens. I've never actually known
18 utilities personally to come in and outright lie to the
19 Commission, but they have interests, and companies come
20 before the Commission and put their case on. That's
21 part of the process. And, not all information is out
22 there, and part of the discovery process is to get as
23 much and the best information available.

24 Q. When they do provide information, you expect it to be

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1 accurate, correct?

2 A. Absolutely.

3 Q. And, that's true of information provided to the
4 Commission or -- and information provided to customers,
5 correct?

6 A. Correct.

7 Q. I mean, we actually have recent experience of the large
8 default and rates from a couple of the other utilities,
9 there's a question about what information needs to be
10 provided by those companies, not the ones before us
11 today, to their customers about competitive
12 alternatives, isn't that right?

13 A. Correct.

14 Q. Is that really any different from the information that
15 the Company was providing to the Legislature about the
16 customer's ability to avoid the charge?

17 A. No, I think -- I think I stated this to Mr. Patch that
18 I think that was almost incumbent upon a utility to say
19 "look, there exists a competitive retail market out
20 there." As a matter of fact, we'd probably be
21 disappointed and possibly tell the company "you need to
22 let customers know that there exists a competitive
23 retail market, and that they can find those competitive
24 suppliers on the PUC's website." And, in truth, they

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1 should be on every distribution companies' website
2 also.

3 Q. When we're talking about "forecasts", at any time
4 really, there's a high degree of uncertainty when you
5 get farther away from the day that you're making the
6 forecast, in terms of, for example, prices of various
7 types of fuel, right?

8 A. Correct.

9 Q. Back in 2008, 2007, 2009, during that time frame, if
10 one were to make a comprehensive search for every
11 forecast of gas and oil prices, it would be fair to
12 assume that we would come up with forecasts that had
13 broad ranges, isn't that correct?

14 A. I think, in that time frame, which was especially a
15 time frame of change in the markets and volatility,
16 that, and I think it's in evidence, even based on some
17 of the things that Mr. Patch put into the record as
18 exhibits, there were differences of opinion. For
19 example, in that New York Times article, one of the
20 very first sentences is a quote from CERA, the
21 Cambridge Energy Resource Associates, about that
22 there's still question marks about this effect of
23 natural gas fracking, at least at that time frame, time
24 period.

[WITNESS: Frantz]

1 Forecasting is a very challenging and
2 difficult endeavor. And, always looks good in
3 hindsight, but is very difficult actually to do. And,
4 we have a lot of experience with that. We asked for
5 forecasts in the sale of the Seabrook nuclear power
6 plant that I was involved in. And, without stating
7 what the forecast was, I will, as just sort of as a
8 check, it was -- it was by a professional organization,
9 and it was off dramatically looking forward.

10 CMSR. HONIGBERG: I don't think I have
11 any other questions. Does Staff have any questions in
12 redirect?

13 MR. SHEEHAN: I just have one or two,
14 based on the last half an hour.

REDIRECT EXAMINATION

15
16 BY MR. SHEEHAN:

17 Q. Mr. Frantz, you've been asked some about the Company
18 not looking past 2008 to do any more forecasts, and
19 what you looked at. And, I think if you look at Page
20 15, 15 of your testimony, the middle answer starting
21 from 4 to 14, there is some reference that you looked
22 at some information past the Summer of '08, is that
23 correct?

24 A. Correct.

[WITNESS: Frantz]

1 Q. And, again, understanding that your initial position is
2 there's a mandate, but, as you say, put that aside for
3 the moment, you did do some looking at the finances of
4 the Scrubber Project. And, this was a piece of that,
5 correct?

6 A. Correct.

7 Q. What was the purpose of what you did as described in
8 the middle on Page 15?

9 A. Well, we weren't so presumptuous to think that our
10 position on the law would necessarily carry the day as
11 non-lawyers. And, that there -- we knew that market
12 information was important to many parties. And, we
13 decided that it would be a good idea for Staff to
14 actually look at those prices over different periods of
15 time and see how they compared. So, we did.

16 Q. And, the two-line conclusion of what you found was
17 what?

18 A. They weren't significantly different than PSNH's prices
19 at the time.

20 Q. Is it fair to say this is a bit of a, for lack of a
21 better word, a gut check or a quick check to see where
22 PSNH's numbers compare to what you found?

23 A. It was done as a sanity check.

24 Q. Sanity check, that's the word. Not a "gut check", a

[WITNESS: Frantz]

1 "sanity check".

2 A. Well, "gut check" might be the more appropriate term at
3 this point.

4 MR. SHEEHAN: That's all I have. Thank
5 you.

6 MR. GLAHN: Mr. Honigberg, given the
7 questions --

8 CMSR. HONIGBERG: Go ahead. Turn your
9 microphone on.

10 MR. GLAHN: Given the questions that you
11 asked about whether PSNH should have lied to the
12 Commission, I would like to ask less than five minutes of
13 questions about that.

14 CMSR. HONIGBERG: You understand that
15 that will probably open up opportunities for others to ask
16 questions on the same topic?

17 MR. GLAHN: I understand that.

18 CMSR. HONIGBERG: You understand that.

19 MR. GLAHN: Yes.

20 CMSR. HONIGBERG: Does anyone want to
21 object to them going forward, with the understanding that
22 others will be able to follow up? Ms. Chamberlin.

23 MS. CHAMBERLIN: Thank you. I do
24 object. My recollection of the motion was about specific

[WITNESS: Frantz]

1 questions, not to things that came from the Bench at the
2 last minute, but was some other area of inquiry that they
3 wanted to address. So, I don't think they need to get a
4 second bite at the apple a whole new level of inquiry.

5 CMSR. HONIGBERG: Mr. Glahn.

6 MR. GLAHN: Well, we have the burden of
7 proof here, your Honor. And, the Commission's rules
8 specifically indicate that we get to go first and last.
9 And, this is not an area where we had any opportunity with
10 this witness given the questions that you asked. And, I
11 think the question you asked is such a significant one
12 that we ought to at least be able to probe it. And, as I
13 said, it will take less than five minutes.

14 (Commissioners conferring.)

15 CMSR. HONIGBERG: We think
16 Ms. Chamberlin is correct, and that the reserved ability
17 to ask additional questions was about a different topic.
18 And, it would be unusual to allow a company to follow up
19 with further cross-examination.

20 So, at this time, we're going to deny
21 that request to ask further questions.

22 MR. GLAHN: Well, further
23 cross-examination, but we had no opportunity to go into it
24 with him because it was outside the scope of his

[WITNESS: Frantz]

1 testimony, and it was asked by the Commissioner. And, it
2 is -- I ask it because it seems to me it's a very
3 significant point. And, I recognize that there may be
4 specific rules that apply in these proceedings that say
5 "you don't get to do it". But, just as in with the case
6 of having to follow up with adverse inferences, testimony
7 comes out that you don't necessarily expect to come out.
8 And, that was not a subject of his direct testimony that
9 we could have asked about.

10 CMSR. HONIGBERG: Mr. Sheehan, you look
11 like you want to say something.

12 MR. SHEEHAN: I have no objection. I
13 tend to agree that the topic is rather electric, the
14 comments that "they lie". And, whether I agree or
15 disagree doesn't matter. But it seems appropriate to let
16 the Company, if indeed it's five minutes. I pretty much
17 have an idea what he'll be asking, and probably won't
18 trigger much follow-up. So, that's --

19 (Commissioners and Atty. Ross
20 conferring.)

21 CMSR. HONIGBERG: In the interest of
22 making a complete record, we're going to allow you to ask
23 your questions. It may trigger the others' interest in
24 asking further follow-up questions. Go ahead, Mr. Glahn.

[WITNESS: Frantz]

1 BY MR. GLAHN:

2 Q. Mr. Frantz, on your -- when you were being asked
3 questions by Commissioner Honigberg, you said it might
4 have been very helpful for you to know the significance
5 of the gas/coal price spread?

6 A. Correct.

7 Q. And, it was also case, isn't it, that the gas/coal
8 price spread is not the only factor that applies here?
9 As you pointed out in Staff's responses, that there
10 were -- this was as the literal meaning or reading of
11 the PowerPoint you were given says "and other base case
12 scenarios", right?

13 A. There are many other factors. I mentioned the SO2
14 prices and assumptions, there are carbon prices. The
15 Company's statement to us at the meeting was that the
16 gas and coal prices were the significant drivers. But
17 there are, obviously, other drivers.

18 Q. And, you knew that when you met with -- you had a
19 confidential meeting with PUC -- I'm sorry, with PSNH
20 in July of 2008. And, what you were told is that the
21 relationship between gas and coal prices was highly
22 sensitive, isn't that right? That's what Mr. Mullen
23 underlined in his testimony.

24 A. Well, and the actual -- the actual error was our

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1 analysis showed that customer economics are most
2 sensitive to the coal and natural gas price spread, and
3 far less sensitive to capital costs or RGGI cost
4 increases.

5 Q. And, in the meetings that you had with PSNH in that
6 summer, and the presentations that they gave to you,
7 they told you what assumption they were using for gas
8 prices, right?

9 A. That is correct. It was \$11 per million Btu.

10 Q. And, they told you the assumptions that they were using
11 for coal prices, right?

12 A. \$4.82 per million Btu.

13 Q. And, they told you that spread was very sensitive,
14 right?

15 A. Correct.

16 Q. And, you were given an opportunity at those meetings to
17 ask any follow-up questions you wanted to ask about
18 that, right?

19 A. I honestly don't remember. But that would not be
20 unusual for us to be able to ask any questions at any
21 meeting, and that's the normal course of events with
22 PSNH.

23 Q. And, it wouldn't come as a surprise to you that you
24 figure out the difference -- you figure out what the

[WITNESS: Frantz]

1 coal/gas price spread is by subtracting from the gas
2 price the coal price, right?

3 A. That's the spread. That's not necessarily the spread
4 that was needed to make it economic.

5 Q. Okay.

6 A. That's the spread that was -- those were the costs that
7 were assumed.

8 Q. Okay. But if you had wanted to know that, you could
9 have asked about it, right?

10 A. Yes.

11 Q. And, --

12 A. And, I'm sure that, actually, I will say this, I have
13 no doubt the Company would have told us.

14 Q. And -- thank you. And, one of the things we know is
15 that over the course of the years both the gas price
16 and the coal price can move, right?

17 A. Coal prices less so, although they have in the past
18 over certain periods of time. Natural gas prices,
19 absolutely. One of the most volatile commodities out
20 there.

21 Q. And, was it your understanding that there's linear
22 relationship between that, those two prices? In other
23 words, if gas prices drop a bit, it doesn't necessarily
24 mean that the spread still doesn't exist?

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[WITNESS: Frantz]

1 A. That's possibly true. But coal prices are a lot more
2 stable than natural gas prices. So, --

3 Q. I think you said, in response to Commissioner
4 Honigberg's question, that you don't think that PSNH
5 lied to you throughout this process, do you?

6 A. Well, I will state that unequivocally, I'm not aware
7 and don't believe that PSNH lied to us about this
8 process.

9 Q. Do you think PSNH misrepresented facts to you at any
10 time in this process?

11 A. No.

12 Q. Do you think PSNH was less than candid with you at any
13 point in this process?

14 A. No.

15 MR. GLAHN: Thank you.

16 CMSR. HONIGBERG: Who wants to follow
17 up? Ms. Chamberlin.

18 MS. CHAMBERLIN: Thank you.

19 BY MS. CHAMBERLIN:

20 Q. As a regulator, customer benefits is a point of
21 information that is important to you?

22 A. Data and information is always important to us.

23 Q. Does it matter to you whether an investment will result
24 in customer benefits?

[WITNESS: Frantz]

1 A. Of course.

2 Q. And, the concern is that PSNH had a breakeven price.
3 They knew it when they met with you, and they didn't
4 disclose it to you. That is true, correct?

5 A. That wasn't disclosed. The assumptions were disclosed.
6 The actual statement that "this was a breakeven price"
7 was not given to us.

8 MS. CHAMBERLIN: Thank you. That's all
9 I have.

10 CMSR. HONIGBERG: Anyone else?

11 MR. PATCH: No.

12 CMSR. HONIGBERG: Thank you, Mr. Frantz.
13 I think you're done.

14 WITNESS FRANTZ: Thank you.

15 CMSR. HONIGBERG: So, we're at 20
16 minutes to one, probably a time to break. Let's close
17 this, and then go off the record and talk about who's
18 going to come next, and when we'll come back. Well,
19 actually, we'll probably come back on the record about
20 when we'll come back.

21 (Whereupon a brief off-the-record
22 discussion ensued.)

23 CMSR. HONIGBERG: All right. So, back
24 on the record.

1 We're going to come back at 2:00. And,
2 at that time we'll be hearing from the Jacobs
3 witnesses. Thank you all.

4 **(Whereupon the Morning Session of Day 2**
5 **recessed at 12:41 p.m. The Afternoon**
6 **Session of Day 2 is contained under**
7 **separate cover so designated.)**