

1 STATE OF NEW HAMPSHIRE

2 PUBLIC UTILITIES COMMISSION

3
4 October 21, 2014 - 9:03 a.m.
Concord, New HampshireDAY 5
Morning Session only5
6 NHPUC NOV03'14 PM 4:137 RE: DE 11-250
8 PUBLIC SERVICE COMPANY OF NEW HAMPSHIRE:
9 Investigation of Scrubber Costs and
10 Cost Recovery.11
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PAGE NO.

WITNESS: MICHAEL E. HACHEY (resumed)

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E X H I B I T S

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P R O C E E D I N G

1
2 CMSR. HONIGBERG: So, what do we need to
3 deal with before we get started this morning?

4 MR. GLAHN: I've got one issue. And,
5 that's the issue that we were discussing at the end the
6 other day, which is the data request dealing with
7 Mr. Hachey's knowledge. I'd make the following offer of
8 proof. I've made an effort over the weekend to cut those
9 down pretty substantially, and I think I've cut them down
10 by more than half. And, it seems to me there's two ways
11 to go about this. It's to ask Mr. Hachey every one of
12 those questions and have him refer to the data requests.
13 But the parties have all had the data requests over the
14 weekend to look at and they know the question I'm going to
15 ask. My proposal is that I simply read the requests on
16 which TransCanada has indicated Mr. Hachey has no
17 knowledge. And, if no one has any objection to them, that
18 will simply be part of the record. I think it would save
19 a lot of time.

20 CMSR. HONIGBERG: Mr. Patch.

21 MR. PATCH: Well, we appreciate the fact
22 that PSNH gave us those copies on Friday, because we did
23 have a chance to look at them over the weekend. And,
24 unfortunately, what they provided to us isn't the complete

1 story, because those are the original objections that were
2 made. Subsequent to that, TransCanada answered some of
3 those questions. PSNH, as a result of the meeting we had
4 with them, at the direction of the Commission, decided not
5 to pursue those questions, and some of them ended up as
6 part of a motion to compel, which the Commission
7 addressed.

8 So, if we're going to do it the way
9 Mr. Glahn suggests, then I think the record needs to be
10 complete about which ones were subsequently answered and
11 which ones the Commission may have ordered TransCanada to
12 answer, which they did answer. So, --

13 MR. GLAHN: Though, I think the --

14 MR. PATCH: So, it's not quite as
15 simple, I think, as Mr. Glahn points out.

16 CMSR. HONIGBERG: Mr. Glahn.

17 MR. GLAHN: Yes. I'm not aware that in
18 any question that TransCanada subsequently answered they
19 withdrew their objections. I think every subsequent
20 answer said "TransCanada objected to this question", and
21 then went on to provide, to the extent that there was a
22 subsequent answer, some information. That means that the
23 representation that "Mr. Hachey has no knowledge about a
24 subject" stands. If there is such a question that

1 TransCanada wants to point out, they can do that, after I
2 have read the list of questions and the subject of the
3 questions.

4 MR. PATCH: The only other thing, if I
5 could, Mr. Chairman?

6 CMSR. HONIGBERG: Uh-huh.

7 MR. PATCH: We had, obviously, a fair
8 amount of back-and-forth on Friday about what was relevant
9 and what wasn't. And, I thought where we ended up was
10 discovery disputes were basically irrelevant. And, so,
11 seems to me we're going back there by following this.

12 CMSR. HONIGBERG: Oh, I don't know
13 what's in the data requests. So, I'm not sure that that's
14 true. I understand what you're saying, though. But, as I
15 understand what Mr. Glahn is saying, what he wants to do
16 is just nail down the things on which Mr. Hachey isn't
17 purporting to give any evidence. Am I right about that,
18 Mr. Glahn?

19 MR. GLAHN: Yes, although with a slight
20 variation, I would say. Rather than "giving any
21 evidence", I'd say the answer to the data request was "Mr.
22 Hachey has no knowledge on this subject." So, whether you
23 treat it as "doesn't intend to give evidence on it" or
24 "has no knowledge on the subject", I think that is the

1 point.

2 CMSR. HONIGBERG: That strikes me as a
3 fairly simple thing to establish. That, if the response
4 to the data request is still accurate, or still accurate
5 as far as TransCanada is concerned, that's it. He has no
6 knowledge.

7 MR. PATCH: Well, it's not the response,
8 it's the original objection that Mr. Glahn wants to put
9 in. He doesn't want a full -- he doesn't want to fill the
10 record out, although I guess he's willing to let us do
11 that. He doesn't want to fill the record out with
12 subsequent action that was taken or not by TransCanada in
13 responding or by PSNH in withdrawing the question. So, it
14 just seems like we're back in the middle of the whole
15 discovery issue, and I just don't see how relevant it is.

16 MR. GLAHLN: If I may? It's not a
17 discovery dispute at all. We're not -- we're not -- we
18 were perfectly happy with some of these requests to leave
19 the answer as an objection that Mr. Hachey has no
20 knowledge on the subject. As I said, if TransCanada wants
21 to take the position with respect to any of these topics,
22 that subsequently Mr. Hachey says he "has knowledge on it"
23 in the answer that they provided, then, fine, we can delve
24 into that. But I'm just trying to establish on some of

1 the -- and we'll do them by topic, on some of the topics
2 on which Mr. Hachey has given testimony in this case, in
3 direct evidence, that, in fact, in the answers to the data
4 requests he has said "I have no knowledge of the subject."
5 So, it goes to credibility. It goes to what an opinion
6 that he can give in this case.

7 (Commissioners conferring.)

8 CMSR. HONIGBERG: I think, Mr. Glahn,
9 you're going to be allowed to proceed the way you
10 proposed. And, I think, Mr. Patch, you understand that,
11 if there are -- if there's additional information you want
12 to elicit, you're going to be able to do that.

13 MR. PATCH: And, so, just to be clear
14 then, Mr. Chairman. Should I do it data request by data
15 request, when he asks a question, should I stand up and
16 say "well, for the record that", or should I do it at the
17 end or should I do it on redirect?

18 CMSR. HONIGBERG: I think --

19 MR. PATCH: Or when should I do it?

20 CMSR. HONIGBERG: I'm sorry. I didn't
21 mean to interrupt. I think it's going to come up on
22 redirect. I think that's going to be the way to do it.
23 Because, if we end up with redirect within further
24 examination, it's just going to become a total mess.

1 Ms. Chamberlin.

2 MS. CHAMBERLIN: I just wanted to point
3 out for the record that the Commission did order the
4 parties to resolve as many data requests and responses
5 informally as possible, and the parties got together and
6 they did that. So, I wouldn't want there to be a
7 incentive to go back before the settlement discussions,
8 essentially. I mean, if he's going to go back to things
9 that took place before the parties worked it out, then it
10 is undermining the intent of parties to resolve discovery
11 questions amicably, which is what the Commission orders
12 the parties to do.

13 CMSR. HONIGBERG: I think we agree with
14 you on that. I don't understand Mr. Glahn to be doing
15 that. I may be wrong. I may be misunderstanding what's
16 about to take place. But I don't think that's where he
17 intends to go. If it looks like that's where he's going,
18 and we don't pick it up, I encourage you, and I'm sure
19 you're not shy, you'll let us know that that's where we're
20 headed. But I don't think that's -- I don't think that's
21 where Mr. Glahn intends to go, but let's find out.

22 MR. GLAHN: Okay. So, I'd make the
23 following offer of proof. In area of fuel price
24 forecasts, with the exception of the two forecasts that

1 Mr. Hachey provided on Friday and that we discussed, he
2 has no knowledge of fuel price forecasts relating to coal
3 or natural gas available to TransCanada.

4 CMSR. HONIGBERG: Mr. Glahn, just make
5 sure you slow down for the court reporter.

6 MR. GLAHN: Okay. He has no knowledge
7 of any after-the-fact evaluation TransCanada made of any
8 of its forecasts. I should give you the number, because I
9 think that will make it easier. The first one that I
10 mentioned was -- all these are objections to data
11 requests -- that's 34(a). The after-the-fact evaluation
12 is 34(d). He has no knowledge of how TransCanada
13 believes --

14 CMSR. HONIGBERG: Wait Mr. Glahn. Wait,
15 Mr. Glahn. Yes, Ms. Chamberlin.

16 MS. CHAMBERLIN: Could you also include
17 the date of the response, so that we can know when it took
18 place?

19 MR. PATCH: Yes. I'd just like to note
20 for the record, 34 wasn't part of what they gave us on
21 Friday. This is a new one.

22 MR. GLAHN: Well, I don't have the date
23 of the specific data requests. But we've given them the
24 data requests, and --

1 MS. CHAMBERLIN: I don't have one.

2 MR. GLAHN: -- the date should be on the
3 data request itself. So, they should know that.

4 (Ms. Frazier handing document to Ms.
5 Chamberlin.)

6 MS. CHAMBERLIN: Thank you.

7 CMSR. HONIGBERG: All right. Is there a
8 set of these -- you've given us a set of documents that I
9 assume are data requests and responses. Do the other
10 parties have what counsel for PSNH has given us?

11 MR. GLAHN: My understanding is yes, but
12 it looks as though perhaps we didn't give them three or
13 four requests, which are 34, 35, 36, and 37. And, I don't
14 know why that happened. I'll blame that on Denise, but
15 that's my fault, not hers.

16 MS. AMIDON: Aw.

17 CMSR. HONIGBERG: Wow.

18 MR. GLAHN: Well, as I just said, it's
19 my fault, not hers.

20 CMSR. HONIGBERG: Let's take a -- let's
21 take a quick break. We're going to take five minutes.
22 Get sorted out who should have what documents. If there's
23 something that needs to be marked as an exhibit, let's get
24 it marked. But let's get these documents sorted out over

1 the next 5-6 minutes. We're going to leave. We'll be
2 back at about 18 minutes after, according to that clock.

3 MR. GLAHN: Thank you.

4 (Recess taken at 9:13 a.m. and the
5 hearing resumed at 9:22 a.m.)

6 MR. GLAHN: So, we've gone over the
7 requests that we copied the other day and gave to the
8 parties. And, it looks like there were a couple of
9 subparts in one that we left out. We have now added that
10 back in.

11 MS. AMIDON: For the record, Mr.
12 Chairman, I would just ask Mr. Glahn to tell us which
13 parts were added in, because I received four pages, and he
14 just referenced two subparts.

15 MR. GLAHN: Well, I think I said "a
16 couple". But I think the -- I think there was some
17 confusion, but it looks like the ones that got left out
18 were some variation of the following: 34(a), 34(d), as in
19 "dog", 34(e), and 34(f).

20 MS. FRAZIER: I think it was (c),
21 instead of (f).

22 MR. GLAHN: Well, I've got (c) as a
23 different --

24 SP. CMSR. IACOPINO: Mr. Glahn, we've

1 now been provided with 34(a), 34(c), 34(d), and 34(e).

2 MR. GLAHN: Let me look at that, because
3 I think we're wrong here.

4 (Short pause.)

5 MR. GLAHN: Thirty-four (c) is wrong.
6 It should be our "34(f)".

7 MS. FRAZIER: Okay. No big deal. I'll
8 hand these out.

9 CMSR. HONIGBERG: So, we're going to put
10 34(c) aside.

11 MR. GLAHN: Yes. That's one I took out
12 of the outline.

13 (Ms. Frazier distributing documents.)

14 SP. CMSR. IACOPINO: Any reason why
15 these shouldn't just be added into the same package?

16 MR. GLAHN: No.

17 CMSR. HONIGBERG: Do you want them
18 marked as an exhibit?

19 MR. GLAHN: Yes.

20 CMSR. HONIGBERG: So, this would be
21 "Exhibit 92".

22 (The document, as described, was
23 herewith marked as **Exhibit 92** for
24 identification.)

1 MR. GLAHN: And, let me note for the
2 record, because perhaps Mr. Patch will as well.
3 TransCanada did subsequently, in April, provide an answer
4 to some sections of 34, but that answer was preceded --
5 the answer stated as follows: "The Company has previously
6 objected to this request, notwithstanding the objection,
7 and without waiving the same", and then Mr. Hachey
8 indicates forecasts -- the four forecasts that he reviewed
9 and that he discussed on Friday. Those kinds of
10 objections, I'm not aware of any objection, but Mr. Patch
11 will raise this, in which TransCanada asserted that the
12 prior objection with respect to Mr. Hachey's knowledge had
13 been withdrawn.

14 CMSR. HONIGBERG: Before you proceed,
15 Mr. Glahn, since we're not doing this with Mr. Hachey on
16 the stand, Mr. Patch, if you want to respond at some
17 level, when Mr. Glahn is done with this list, it might
18 make sense for you to do it at that time. I know that's
19 what you asked a minute ago, and I think I've changed my
20 mind, based on how this is going to go.

21 MR. PATCH: So, just so I'm clear, Mr.
22 Chairman, after he does the entire package?

23 CMSR. HONIGBERG: Let's wait until he's
24 done with the package and you see -- you can make a list

1 of the ones you feel you need to deal with in some way,
2 and we can decide how best to deal them. Okay, Mr. Glahn.

3 MR. GLAHN: If I may ask just one
4 question.

5 MR. PATCH: Yes. And, Mr. Chairman, I
6 don't know if this is the time to raise it, but, before we
7 took the break, Mr. Glahn gave an offer of proof that I
8 think was much broader than the language in the request
9 that was made in these data requests. And, so, I just
10 don't want the record to have that in it without some
11 response from us. Which is, I think they speak for
12 themselves, what they asked and what the response was, and
13 what the ultimate response is.

14 CMSR. HONIGBERG: That is certainly
15 true. And, I don't -- I don't want to spend the next hour
16 and a half with the parties arguing about what the data
17 requests say. So, to the extent, Mr. Glahn, that you can
18 stick to the language of the data request, that will
19 certainly limit the opportunities of Mr. Patch and others
20 to quibble with you.

21 MR. GLAHN: Well, I can do that one of
22 two ways, your Honor. One is simply to refer to the data
23 request, you have them in the -- you have the package, and
24 you can look at the data requests and see the topics on

1 which Mr. Hachey has no knowledge. If that's easier for
2 you, then I won't try to summarize what is in the specific
3 request.

4 CMSR. HONIGBERG: That's a very
5 appealing offer. Because, seriously, --

6 MR. GLAHN: Yes.

7 CMSR. HONIGBERG: -- we will, the ones
8 you feel are important, we will be looking at, to the
9 extent we haven't already. So, if you just want to go
10 through, and if there is -- we're flipping through the
11 answers, they all are very similar, not necessarily
12 identical in all respects. If there is language within
13 the response, specific language within the response that
14 is the same in all, you give us the -- you've given us the
15 numbers, you don't need to do much more than that, and
16 highlight the part of the response that is significant.
17 And, if it's the same for all, this won't take very long.

18 MR. GLAHN: The only portion of them,
19 these are all objections, rather than responses. And, the
20 only part of the response that we are addressing is that
21 "Mr. Hachey has no knowledge" of the subject matter of the
22 specific request to which they have objected.

23 CMSR. HONIGBERG: And, I think that,
24 specifically, each response says "Mr. Hachey has no

1 knowledge of the information being requested." That's the
2 phrase you're highlighting? Starts on the third line of
3 the first one, and pretty much the third line of every
4 other one.

5 MR. GLAHN: Exactly.

6 CMSR. HONIGBERG: All right. So, --

7 MR. GLAHN: So, let me do it that way.
8 And, let me just say that the first -- what I'll do is
9 I'll group these by topic. And, I want to add one other
10 qualifier here. The package that we gave you on Friday
11 was before I went through the outline and cut out
12 questions. So, there's a number of objections that you
13 have that I'm not going to mention. And, so, I think the
14 exhibit should only be the objections that I actually
15 mention this morning.

16 CMSR. HONIGBERG: Well, I'm not sure we
17 got any package on Friday. So, I think all we have is
18 what we got this morning.

19 MR. GLAHN: Okay. What I'm -- happy to
20 put this on the record or off, which ever way is easy for
21 you. But I had an outline of a number of areas. And, in
22 order to speed this up, I cut that down pretty
23 substantially. The package that we gave the parties on
24 Friday included all of the things in my outline, and now

1 I've cut it way down. So, the only -- so, that same
2 package I think was given to you this morning. The only
3 thing that should be in the actual Exhibit Number 92 is
4 the specific objections that I reference now, if that's
5 plain. And, we can, you know, if you want, what we'll do
6 after the -- after the session this morning, and Mr. Patch
7 can pull them out, if he wants, because he's going to know
8 which ones we actually mention, is we'll get an exhibit
9 for the Commissioners which only includes the ones that I
10 mention.

11 CMSR. HONIGBERG: That makes sense to
12 me. Does anybody have a problem with that?

13 (No verbal response)

14 CMSR. HONIGBERG: All right. Go ahead,
15 Mr. Glahn.

16 MR. GLAHN: In the area of fuel
17 forecasts, the specific questions on which Mr. Hachey
18 indicated he has no knowledge of the information requested
19 are items 34(a), 34(d), -- and, again, these are all
20 objections -- 34(e), 34(f), 66, 68, 85, 40 -- I'm sorry,
21 72(a).

22 On the area of the four -- of the four
23 forecasts that he referred to last Friday that he included
24 in his Cost to Go Analysis and in his Attachment 20 to his

1 testimony, the request for which he indicated he had no
2 knowledge or no knowledge of the information requested are
3 70(b), (c), and (e).

4 On the issue of unconventional gas
5 supplies or fracking, 74(a), 71(a) and (d), 75 --

6 CMSR. HONIGBERG: I'm sorry. What was
7 that one again?

8 MR. GLAHN: Seventy-one (a) and 71 (d).

9 SP. CMSR. IACOPINO: Thank you.

10 MR. GLAHN: 75(c) and 75(d). Mr. Hachey
11 testifies that Trans -- or, that "PSNH is in a death
12 spiral". And, on those issues, the area in which he
13 indicated he has no knowledge of information requested is
14 93. And, finally, on the Jacobs Consultancy report,
15 number 171.

16 CMSR. HONIGBERG: By my count that's 17
17 individual responses. Is that your number as well?

18 MR. GLAHN: I didn't add them up, your
19 Honor.

20 MR. BERSAK: I noted 18.

21 CMSR. HONIGBERG: Yes, 18 is correct.

22 MR. GLAHN: Okay.

23 CMSR. HONIGBERG: Let's give Mr. Patch a
24 minute.

1 MR. SHEEHAN: So, the understanding is,
2 when we're all done, Exhibit 92 will have those 18 data
3 requests?

4 CMSR. HONIGBERG: That's correct.

5 MR. GLAHN: That's my understanding as
6 well.

7 CMSR. HONIGBERG: Mr. Patch.

8 MR. PATCH: Okay. I'm sorry. I just
9 want to make sure I know what we're doing now. Are we
10 going to put Mr. Hachey on the stand and ask him about
11 each of these 18? Is that the plan?

12 CMSR. HONIGBERG: Well, I think
13 Mr. Glahn feels like he's done what he needs to do with
14 them. If you want to expand on that, if there's going to
15 be extensive questioning, it might -- it would make more
16 sense to do it at the end. If, instead, there's something
17 you want to put out there that is limited to what you
18 would do, I think you should do it now. But, if involves
19 Mr. Hachey testifying, we're going to do that on redirect,
20 after Mr. Glahn and the others are done.

21 MR. PATCH: Okay. Well, I'll kind of do
22 this on the fly, subject to further checking. But 34,
23 TransCanada ultimately responded to; 66, TransCanada
24 responded to; 68, TransCanada responded to; 71,

1 TransCanada responded to; 72, PSNH elected not to pursue;
2 74, TransCanada responded to.

3 MR. GLAHN: Could we back up just one
4 minute, Doug. Could you slow down and give us those
5 numbers again?

6 MR. PATCH: Tell me where you want me to
7 start.

8 MR. GLAHN: Just start at the beginning
9 again. I think it was 34 is where you started.

10 MR. PATCH: Thirty-four (34),
11 TransCanada responded to.

12 MR. GLAHN: Okay. Sorry to interrupt.

13 MR. PATCH: Sixty-six (66), 68 and 71,
14 TransCanada responded to; 72, PSNH elected not to pursue;
15 74 and 75, TransCanada responded to; 85, 93, and 171, PSNH
16 elected not to pursue.

17 MR. GLAHN: If I may ask, Doug, in any
18 of those responses did you withdraw your objection?

19 MR. PATCH: I'm not subject to
20 questioning, I don't think, by counsel for PSNH, am I?

21 MR. GLAHN: I'm not questioning, I'm
22 just asking for purposes of the Commission.

23 CMSR. HONIGBERG: Well, the supplemental
24 response should probably get put in the record by

1 somebody.

2 MR. GLAHN: And, that's fine. That's
3 fine. Why don't we do that, either on redirect or at the
4 end of the morning, at the morning break or something like
5 that, if Doug wants to pull them together.

6 CMSR. HONIGBERG: I think, as part of
7 redirect, Mr. Patch, why don't you deal with it with Mr.
8 Hachey at that time.

9 MR. PATCH: Okay. We came prepared to
10 respond to all the ones they gave us on Friday. So, we
11 have to pull out the ones that are not included in the
12 package.

13 CMSR. HONIGBERG: Understood. If you
14 need a break in between, we will give you time to sort it
15 out, so that you've got them all together.

16 MR. PATCH: Well, the other problem with
17 that is the package we brought is double-sided. So,
18 there's going to be some overlap. I don't know what we
19 do, go back and try to make more copies or --

20 CMSR. HONIGBERG: No. What we do is we
21 just take Xs.

22 MR. PATCH: Okay. Thank you.

23 CMSR. HONIGBERG: And, we don't worry
24 about it that much, --

[WITNESS: Hachey]

1 MR. PATCH: Yes.

2 CMSR. HONIGBERG: -- because I don't
3 think it's that important.

4 MR. PATCH: The only other thing would
5 be, I think I overlooked 70, which was among the ones that
6 Mr. Glahn listed. And, that's another one where PSNH
7 elected not to pursue.

8 MR. GLAHN: Just so it's clear, the fact
9 that we elected not to pursue it in discovery has no
10 meaning at all. The question is whether this is an
11 admission in the record as to his lack of knowledge. I
12 think that's clear, but --

13 CMSR. HONIGBERG: That's understood.
14 All right. So, are we ready to bring Mr. Hachey back to
15 the stand at this point? You have more -- I assume you
16 have more questions for him?

17 MR. GLAHN: I do.

18 CMSR. HONIGBERG: Mr. Hachey, when you
19 are ready.

20 MR. HACHEY: This is a logistical
21 challenge.

22 CMSR. HONIGBERG: Off the record.

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

[WITNESS: Hachey]

1 (Whereupon **Michael E. Hachey** was
2 recalled to the stand, having been
3 previously sworn.)

4 CMSR. HONIGBERG: Are we ready to keep
5 going then?

6 MR. GLAHN: I am whenever Mr. Hachey is.

7 CMSR. HONIGBERG: All right. Mr.
8 Hachey, let us know when you're set.

9 WITNESS HACHEY: I'm ready.

10 MR. GLAHN: Good morning, Mr. Hachey.

11 CMSR. HONIGBERG: Go ahead, Mr. Glahn.

12 MR. GLAHN: Good morning.

13 WITNESS HACHEY: Good morning.

14 MR. GLAHN: I remind you that you're
15 still under oath from Friday.

16 WITNESS HACHEY: Yes.

17 BY MR. GLAHN:

18 Q. On Friday, we spoke about the fact that you were
19 critical of the \$11.00 gas price that PSNH forecasted
20 beginning in the year 2012. Do you recall that.

21 A. I believe my test -- that's consistent with my
22 testimony.

23 Q. When you prepared your testimony, were you aware that
24 this Commission had approved a \$12.00 price for natural

[WITNESS: Hachey]

1 gas as part of a cost of energy rate for Concord Steam
2 Company in November of 2008?

3 A. No.

4 Q. Would that change your testimony in any way?

5 A. No.

6 Q. If you turn to Page 25, Line 9 of your testimony.

7 SP. CMSR. IACOPINO: I'm sorry, what was
8 that page reference?

9 MR. GLAHN: Twenty-five (25), Line 9.

10 BY MR. GLAHN:

11 Q. These are a series of factors that you say a prudent
12 utility would have taken into account when deciding
13 whether to proceed with the Scrubber Project, correct?

14 A. Correct.

15 Q. And, the second bullet point is "what the reasonably
16 foreseeable environmental regulations were and possible
17 capital costs that they would require", is that -- did
18 I read that correctly?

19 A. That's correct.

20 Q. And, is it also true, Mr. Hachey, that you don't
21 address environmental regulations anywhere in your
22 testimony?

23 A. Not to my -- not to my recollection.

24 Q. Okay. Thank you. Now, on Friday, you indicated that

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[WITNESS: Hachey]

1 you are not testifying in this case as a prudence
2 expert. Do you recall that?

3 A. Yes.

4 Q. Are you testifying in this case as an expert?

5 A. I'm testifying in this case based on the background
6 that I have in the industry.

7 Q. Are you testifying in this case as an expert?

8 MR. PATCH: Objection. Objection. He's
9 already answered the question. I think it's actually
10 asking for a legal conclusion that the Commission can
11 ultimately make. But I think he's answered the question.

12 CMSR. HONIGBERG: Mr. Glahn.

13 MR. GLAHN: I don't think he did answer
14 the question. That's why I asked it again.

15 CMSR. HONIGBERG: He certainly didn't
16 answer the question "yes" or "no", although he did provide
17 some information. Mr. Hachey, can you answer the question
18 "yes" or "no"?

19 WITNESS HACHEY: I would need Mr. -- Is
20 it "Mr. Glahn", "G-L" -- to define "expert", because I was
21 using the common sense version of that word.

22 BY MR. GLAHN:

23 Q. Okay. With the common sense version of the word, how
24 do you define what an "expert" is?

[WITNESS: Hachey]

1 A. Well, I think of it as a detailed set of knowledge and
2 training on a particular area. I think I'm more of a
3 generalist in the industry, if you will.

4 Q. Okay. I want to just ask you a couple of questions
5 about the PowerAdvocate report and your conclusions on
6 that.

7 A. Okay.

8 Q. Would you turn to Page 9, Line 18, of your testimony
9 please. Actually, I'm interested in the question that
10 begins, and the answer, on -- that begins on Page 9,
11 Line 10.

12 A. The question was: "Did PSNH commission a study by
13 PowerAdvocate on the project in the Summer of 2008?"

14 Q. Yes. And, I want to ask you a couple of questions
15 about that. So, your testimony, on Line 18, says "My
16 review of the report indicates that it", PowerAdvocate,
17 "apparently relied upon an estimate of 355 million, not
18 the total estimate of \$457 million which PSNH had
19 adopted in May 2008." Did I read that correctly?

20 A. You read that correctly.

21 Q. Is it your testimony that PSNH somehow gave
22 PowerAdvocate the wrong number?

23 A. My testimony is factual. No, I didn't -- well, I don't
24 know whether PSNH did or not. What I do know is that

{DE 11-250} [Day 5/Morning Session ONLY] {10-21-14}

[WITNESS: Hachey]

1 it, as the testimony says, it apparently relied on an
2 estimate of 355 million.

3 Q. And, we know why they did, don't we?

4 MR. PATCH: Mr. Chairman, I just -- Mr.
5 Hachey hasn't been here for all of the testimony during
6 this docket. I don't think he was here when -- when there
7 was some testimony provided with regard to this. So, I
8 guess I'd ask Mr. Glahn to elaborate in that question,
9 because I don't think Mr. Hachey under -- well, I'll let
10 him --

11 MR. GLAHN: I'm not referring -- I'm not
12 referring to anything that's happened here on this
13 question. So, let me go back.

14 BY MR. GLAHN:

15 Q. Mr. Hachey, you know where the \$355 million number came
16 from, don't you?

17 A. The PowerAdvocate report.

18 Q. Pardon?

19 A. The PowerAdvocate report.

20 Q. But you know what the number represents, don't you?

21 A. Well, I'll have to refer to the PowerAdvocate report.

22 Q. Well, you said they "apparently relied upon a
23 \$355 million" number. What does that number represent?
24 Mr. Hachey, to speed this up a little bit, let me

[WITNESS: Hachey]

1 direct you to something in your testimony, okay? Would
2 you turn to Page -- Exhibit -- Attachment 10 in your
3 testimony, and turn to Bates number 87.

4 A. I'm sorry. These aren't Bates stamped. So, I'll need
5 a little assistance.

6 (Atty. Glahn showing document to the
7 witness.)

8 BY MR. GLAHN:

9 Q. Mr. Hachey, this is -- this is Exhibit 10 of your
10 report. And, I'm referring to the presentation that
11 PSNH made to the Risk and Capital Committee on June 25,
12 2008. And, I'm looking at Page 6 of that presentation,
13 it's Bates 87. It's part of your testimony.

14 A. Okay.

15 Q. The question is, when you prepared your testimony, did
16 you know what the \$355 million represented?

17 A. Well, I saw a number in the PowerAdvocate report that
18 I couldn't find just now that was 355.

19 Q. Yes. And, you indicate that they apparently relied on
20 the wrong number, right? Because, if they relied on
21 the higher number of 457, the report would have
22 resulted in even less favorable conclusions, correct?

23 A. That's what the testimony says, yes.

24 Q. Okay. And, we know that what PowerAdvocate was

[WITNESS: Hachey]

1 actually doing -- or, let me say that differently, did
2 you know that what PowerAdvocate was actually doing was
3 preparing only the direct cost of the project to the
4 direct costs of the construction of other scrubbers
5 around the country in the applicable time period?

6 A. I didn't know that at the time. If that's the fact,
7 then so be it.

8 Q. Had you known that, would it have changed your
9 testimony?

10 A. I likely would have dropped off the comparison to the
11 457. These are truly all direct costs. Although, on
12 the other hand, you'd want to then look at the other
13 projects to see whether their owners' costs are in line
14 with the Scrubber, to do a complete --

15 Q. Were you aware of --

16 A. -- to do a complete analysis.

17 Q. Were you aware of that, of the fact that that is what
18 PowerAdvocate did? That is, they compared the direct
19 costs of this Project to the direct costs of other
20 projects?

21 A. I was not aware.

22 Q. Thank you. Let me read you a statement, see if you
23 agree with it. "History in New Hampshire and across
24 the United States has demonstrated multiple times that

[WITNESS: Hachey]

1 the construction of electric generation is a capital
2 and risk-intensive business. Even with substantial
3 regulatory oversight, it is difficult and challenging
4 to accurately forecast future electricity prices and
5 costs associated with large capital projects in a
6 volatile economy." Do you agree with that statement?

7 A. Is there a reference to my testimony or --

8 Q. No, I'll give you the reference.

9 (Ms. Frazier distributing documents.)

10 (The document, as yet to be described,
11 was herewith marked as **Exhibit 93** for
12 identification.)

13 BY MR. GLAHN:

14 Q. Before I give you that, Mr. Hachey, who's Cleve Kapala?

15 A. Cleve Kapala, who is retired now, but he worked for me.

16 Q. He worked at TransCanada?

17 A. Yes.

18 Q. And, he's here in the court room today?

19 A. Yes.

20 Q. I've put before you, Mr. Hachey, what will be "Exhibit
21 93". And, this includes a letter that Mr. Kapala wrote
22 to the Energy and Transportation Analyst of the Air
23 Resources Division, on TransCanada stationary, on
24 November 3, 2008. And, if you will look at the bottom

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[WITNESS: Hachey]

1 of Page 2 of that letter, under the heading -- or,
2 under Section Number 2.7, entitled "Allow Regulated
3 Utilities to build renewable generation", you'll see
4 the statement that I just read to you.

5 (Short pause.)

6 **BY THE WITNESS:**

7 A. Okay. I've read EGU Action 2.7, the bottom, and then
8 the next paragraph on Page 3.

9 BY MR. GLAHN:

10 Q. My question was, do you agree with Mr. Kapala's
11 statement in this letter, which was written in November
12 of 2008?

13 A. You want my agreement on each sentence?

14 Q. I read you the -- I read you the sentences that end up
15 to the point of "volatile economy". Do you agree with
16 that statement?

17 A. I just want to go through this slowly. So, you began
18 with "history", and you ended with --

19 Q. "Volatile economy" on the top of the next page.

20 A. I'm in general agreement with it, yes.

21 Q. Okay. So, I wrote a couple of numbers up on the board,
22 Mr. Hachey. Do I understand that your opinion is that,
23 when the cost of this project went to \$457 million in
24 2008, that PSNH should have stopped constructing the

[WITNESS: Hachey]

1 Scrubber or should not have started constructing the
2 Scrubber?

3 A. I think that the -- at that point, the Scrubber should
4 have received an awful lot more analysis and attention.
5 And, perhaps, best case, PSNH should have put the
6 matter on hold to wait and see, and this is going to
7 vary over time, of course, how the relationships
8 between coal and natural gas prices were unfolding. I
9 think that's what they should have done.

10 Q. Okay. And, that's because that was about, I'm going to
11 do the math for you, Mr. Hachey, and see if you agree
12 with me. That, if we divide 207 million by
13 250 million, that's about an 83 percent increase in the
14 price of the Project. And, that's -- that's one of the
15 things that you noted, that this was about an
16 83 percent increase in the Project, right?

17 A. Okay.

18 Q. Is that correct?

19 A. Again, if it's in my testimony and you've already found
20 it, just point me to it.

21 Q. Do you need to look at your testimony to draw that
22 conclusion?

23 A. No. No, if you've done the math properly.

24 Q. Well, let me give you the computer, if you want to look

[WITNESS: Hachey]

1 at it.

2 CMSR. HONIGBERG: I think the math is
3 the math.

4 WITNESS HACHEY: Right.

5 MR. GLAHN: I agree.

6 BY MR. GLAHN:

7 Q. So, Mr. Hachey, when you prepared your testimony, you
8 knew that the Scrubber had actually been completed for
9 a price of \$422 million, isn't that right?

10 A. I believe so, yes.

11 Q. And, I'll do the math for you. That's about a 68
12 percent increase, almost 69 percent, over the original
13 \$250 million estimate. Would you agree with me on
14 that?

15 A. Subject to check, sure.

16 Q. Thank you. But you didn't include that number in your
17 report, did you? You stuck with the 82 percent?

18 A. The testimony was intended to reflect the situation at
19 the time when the decisions were being made.

20 Q. So, Mr. Hachey, were you aware that the \$422 million
21 completion price for the Scrubber included in that
22 total amount a \$35 million change order added for a
23 secondary wastewater treatment facility?

24 A. I wasn't aware of that at the time I prepared the

[WITNESS: Hachey]

1 testimony.

2 Q. Okay. And, if, and I want you to assume that's the
3 case for the moment, then the amount -- the actual
4 amount at which the Scrubber was constructed over the
5 original \$250 million estimate is about a 55 percent
6 increase, would you agree with me on that? I just
7 divided 137 by 250.

8 A. Well, I'm sorry, I just don't understand enough about
9 the secondary wastewater treatment system to know --

10 Q. Okay.

11 A. I'd have to know, was that related to the construction
12 of the Scrubber?

13 Q. So, do you think that an increase in a project of this
14 magnitude, of 60 percent, is unusual?

15 A. I think that's a pretty broad question. And, I really
16 haven't done a survey of project construction to know
17 whether it's unusual or not.

18 Q. Well, you were pretty critical in your testimony of the
19 increase in this Project, and it was one of the reasons
20 that you said that either the Project should have been
21 put on hold or other things should have been done,
22 right?

23 A. I said that the increase in the Scrubber cost to the
24 level that it did would have required the utility to

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[WITNESS: Hachey]

1 take a good hard look at the economics and make sure
2 that it was based on a conservative fuel price
3 estimate, so that those numbers that PSNH were using
4 were robust, conservative, and they were going to stick
5 over time.

6 Q. In your view, Mr. Hachey, was construction of the
7 Scrubber prudent at \$250 million?

8 A. We didn't do that analysis.

9 Q. Okay. We'll come back to that. Could you go back to
10 Mr. Kapala's letter please. In the third paragraph
11 down, on Page 3 of the letter, the one that begins "the
12 reality exists". Do you see that paragraph?

13 A. I see the paragraph.

14 Q. Let me read you something: "TransCanada is proud of
15 its recent redevelopment of Vernon Station on the
16 Connecticut River but acknowledges that what began as a
17 \$30 million project ended up costing well over
18 50 million. This environment is, we think, relatively
19 typical of the generation build and refurbish
20 landscape. The risks, challenges and rewards should be
21 shouldered by investors, either utility or competitive,
22 not competitive" -- "not captive ratepayers going
23 forward." Did I read that correctly?

24 A. Yes.

[WITNESS: Hachey]

1 Q. Do you agree with that statement?

2 A. Well, I don't know that his conclusion "relatively
3 typical of the generation build and refurbish
4 landscape", I don't know if it's fully robust, if you
5 will.

6 Q. It certainly -- it is a statement that TransCanada made
7 in November of 2008 to the Air Resources Division,
8 correct?

9 A. That's correct.

10 Q. And, although I don't know exactly what the project
11 costs, because Mr. Kapala simply says "costing well
12 over 50 million". At 50 million, that would be about a
13 66 percent increase in the cost of that project, right?

14 A. I'll accept that subject to check.

15 Q. Thank you. Do any of your duties at the TransCanada
16 entities involve the forecasting of gas prices?

17 A. No.

18 Q. In any of your roles for TransCanada entities, did your
19 duties include responsibility for determining the
20 prudence of plant construction in real time?

21 A. What does "the prudence of plant construction in real
22 time" mean?

23 Q. Deciding whether, as a facility is being constructed,
24 it remains prudent to continue to build it.

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[WITNESS: Hachey]

1 A. That's -- I haven't had that responsibility.

2 Q. Thank you. In any of your roles at TransCanada, have
3 you had any involvement with the proceedings in the
4 National Energy Board in Canada involving TransCanada's
5 Mainline?

6 A. No.

7 Q. In your testimony, you use the term "death spiral".
8 Could you define for the Commission what a "death
9 spiral" -- how you interpret the term "death spiral".
10 And, if you want to know where you refer to it, it's at
11 Page 26, Line 14.

12 A. I think the way I've used it begins on Page 10 [Line
13 10?]. "It was an important issue because the more
14 customers migrated, the fewer customers from whom the
15 Scrubber costs could be recovered and more costs would
16 increase for that dwindling base of customers."

17 Q. Were you aware when you prepared your testimony that
18 TransCanada has -- that TransCanada's involvement in
19 the Mainline has been described to be a "death
20 spiral"?

21 A. No.

22 Q. No knowledge of that at all?

23 A. No.

24 Q. Would it have been important to your testimony to know

[WITNESS: Hachey]

1 that?

2 A. Excuse me?

3 Q. Would it have been important to your testimony to know
4 that?

5 A. No. My testimony is all about the Scrubber and not --
6 it's irrelevant to my testimony.

7 Q. Whether PSNH recovers -- let me go back to one thing
8 you said on Friday. If I understand your testimony,
9 and I'm not sure I do, you entered this proceeding as a
10 competitor in the energy market, but it's your view
11 that you don't compete with TransCanada -- or, with,
12 I'm sorry, with PSNH, is that correct?

13 A. My testimony is that we are a competitor in wholesale
14 and retail power markets, but I do not regard PSNH as a
15 competitor with TransCanada.

16 Q. And, one of the positions that TransCanada has taken in
17 this docket, and other ones, including some of
18 Mr. Kapala's comments, is that it's unfair for
19 regulated utilities to be able to recover specific
20 costs, when TransCanada can't in the competitive
21 market. Is that correct?

22 A. Well, I think one of the reasons we got into this, what
23 seems to be a stream of dockets now, is -- began with a
24 case where PSNH was attempting to take energy costs and

[WITNESS: Hachey]

1 put them on the wires and thereby artificially lower
2 its costs. And, we didn't think that was appropriate.

3 Q. Okay. Whether PSNH recovers its prudent costs of
4 complying with the requirements of 125-0 in this docket
5 or not, there's no injury to TransCanada, is there?

6 A. Can you repeat the question?

7 Q. Yes. Whether or not PSNH recovers the prudent costs of
8 complying with RSA 125-0 in this docket, either way,
9 TransCanada will not suffer any harm. Is that correct?

10 A. The concern is related to the costs being borne by
11 customers, whose then ability to maintain their
12 businesses is impaired.

13 Q. Okay.

14 A. So, to the extent that, one of our concerns has been
15 that if, depending on how the scenario follows out from
16 here, our customers, and other industrials that we
17 don't presently serve and commercials, could be
18 required to bear stranded costs. And, what I'm driving
19 at here, with the notion that -- of migration, is that
20 one of the outcomes could be, and this is an outcome
21 that PSNH had alluded to several times, that all
22 customers would benefit from the Scrubber Project, and,
23 therefore, it was either intimated or explicitly said
24 that all customers should pay. So, that was one of our

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[WITNESS: Hachey]

1 concerns.

2 Q. So, the answer to my question is "yes", your view is
3 there may be some charge that will be imposed on the
4 customers of TransCanada, if PSNH recovers the prudent
5 costs of complying with the law, is that correct?

6 A. In scenarios that could conceivably play out, yes.

7 Q. And, the key word in your answer you just gave and in
8 the prior answer is "could", right?

9 A. Yes.

10 Q. Because the Scrubber Law doesn't allow for a
11 non-bypassable charge, right?

12 A. That's correct. The Scrubber Law places the cost on
13 the ES rate customers. Again, the concern that we have
14 is, and we're getting, in the previous discussion,
15 about the "death spiral", so to speak, that was our
16 concern, that how would that scenario play out? And,
17 in fact, that wasn't just a TransCanada concern, that
18 was generally discussed.

19 Q. Well, as you pointed out, the default -- the rates, the
20 recovery of the rates would be in the default service
21 charge, which is an electricity service charge, right?

22 A. Right. But I also went on to talk about what one of
23 the other scenarios could be.

24 Q. Okay. Well, that other scenario couldn't happen unless

[WITNESS: Hachey]

1 the Legislature changed the law, right?

2 A. Well, you mean, in the terms of a PSNH divestiture?

3 I'm not quite sure which law you're referring to.

4 Q. In order for TransCanada customers to suffer a
5 non-bypassable charge, the Legislature would have to
6 change the law, isn't that correct?

7 A. Well, I'm not an attorney. But I could see that there
8 are measures where stranded costs are recovered from
9 all customers.

10 Q. So, let me go back. There are no non-bypassable
11 charges in the Scrubber Law as it currently exists,
12 right?

13 A. Correct.

14 Q. And, nothing in this proceeding, whether the costs are
15 allowed or not, would result in such a change in the
16 law, right?

17 A. I would not think that the PUC has the ability to
18 change the law.

19 Q. So, in order for a customer for PSNH, who leaves PSNH
20 and goes to TransCanada, to be subject to a
21 non-bypassable charge, the Legislature would have to
22 change the law?

23 A. Again, I said I'm not -- I think we've answered that
24 question. I'm not an attorney. I'd want to sit down

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[WITNESS: Hachey]

1 and spend some time with the laws and seek counsel on
2 it.

3 Q. But, in your testimony in this case, you've testified
4 about the fact that your interest in this is that your
5 customers may suffer a non-bypassable charge, isn't
6 that right?

7 A. That's correct. And, I've given you the scenario.

8 Q. Yes. But you testified to that and you don't know
9 whether your customers could be subject to such a
10 charge without a change in the law, is that your
11 testimony?

12 A. As I sit here today, I'd want to go back and look at
13 the laws and see what needed to be done.

14 Q. Okay.

15 A. And with the advice of counsel.

16 Q. So, earlier today I asked you a question about your
17 testimony regarding what the Legislature knew or didn't
18 know. And, you're critical of PSNH for the fact that,
19 when it made a presentation to the Legislative
20 Oversight Committee in June of 2008, it didn't
21 reference the \$457 million cost, is that right?

22 A. I believe that's part of my testimony.

23 Q. Okay. And, isn't your testimony in this case that the
24 Legislature, in the Summer of 2008, didn't know about

{DE 11-250} [Day 5/Morning Session ONLY] {10-21-14}

[WITNESS: Hachey]

1 the \$457 million cost?

2 MR. PATCH: Objection. I think that's
3 asking for speculation. I don't think he knows whether
4 the Legislature knew in the Summer of '08 about "457
5 million". You know, he did testify, as he's already said,
6 about what was presented by PSNH to the Legislative
7 Oversight Committee. But we've been instructed, in
8 previous Commission orders, that speculating about what
9 the Commission -- what the Legislature did or didn't know
10 isn't appropriate.

11 CMSR. HONIGBERG: The last statement you
12 made, Mr. Patch, is correct. Mr. Glahn.

13 MR. GLAHN: Well, this witness has
14 testified that PSNH "didn't disclose the \$457 million
15 number to the Legislature." I'm asking him whether it's
16 his opinion that the Legislature didn't get that
17 information in the Summer of '08?

18 MR. PATCH: That's a different question.

19 CMSR. HONIGBERG: I think -- well, it's
20 close to the question he asked.

21 MR. GLAHN: Yes. Okay.

22 CMSR. HONIGBERG: But that is a
23 different question, though.

24 MR. GLAHN: So, let me restate the

[WITNESS: Hachey]

1 question.

2 BY MR. GLAHN:

3 Q. Is it your testimony, Mr. Hachey, that the Legislature
4 of New Hampshire was not given information about the
5 \$457 million projected cost of the Scrubber in the
6 Summer of 2008?

7 A. That was certainly the case, based on the materials
8 that I saw that were presented to the Legislature.

9 Q. Okay. And, were you aware that the Governor of New
10 Hampshire and one of the members of the Senate of New
11 Hampshire wrote to the PUC in early September talking
12 about the cost of the Scrubber?

13 A. I don't recollect any document to that effect.

14 Q. Okay. But TransCanada has been involved in fighting
15 the Scrubber for a very long time, hasn't it?

16 A. We've made several filings going back a ways.

17 Q. Okay. So, let me see if I can summarize them for you,
18 and you tell me if you disagree with this. TransCanada
19 attempted to intervene in the PUC Docket 08-105, I
20 believe it is, --

21 MR. BERSAK: 03.

22 BY MR. GLAHN:

23 Q. -- 08-103, in September of 2008. Do you agree?

24 A. If you have a document, it would help.

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[WITNESS: Hachey]

1 MR. GLAHN: I certainly won't blame
2 Denise this time. Before we -- while we're looking for
3 that, Mr. Hachey, let me show you a document which was
4 submitted to the PUC.

5 (Ms. Frazier distributing documents.)

6 CMSR. HONIGBERG: Are we marking this,
7 Mr. Glahn?

8 MR. GLAHN: Yes. Yes, I'm sorry.

9 CMSR. HONIGBERG: It's "Exhibit 94".

10 (The document, as described, was
11 herewith marked as **Exhibit 94** for
12 identification.)

13 BY MR. GLAHN:

14 Q. Mr. Hachey, I'll represent that Exhibit 94 is a letter
15 that Senator Gatsas sent to the Chairman -- to the
16 Commissioners of the Public Utilities Commission on
17 September 5, 2008. Have you seen this letter before?

18 A. I don't recall whether I've seen it or not.

19 Q. Do you know who Senator Gatsas is?

20 A. No.

21 Q. If you turn to the top of the second page of this
22 letter, says "The increased cost of the scrubber
23 project is now at \$457 million." Did I read that
24 correctly?

[WITNESS: Hachey]

1 A. You did.

2 Q. So, I've written some dates down on this chart up here,
3 I hope you can see them. But the first one is, it was
4 on June 30th, 2008 that PSNH reported to the
5 Legislative Oversight Committee, and that's the time at
6 which you say "PSNH failed to disclose the \$457 million
7 number", right?

8 A. That's my recollection.

9 Q. Okay. And, you know that, in July, on July 15th, PSNH
10 made a presentation to the Northeast Utilities Board of
11 Directors. Do you recall that? It's in your
12 testimony.

13 A. That's my recollection, yes.

14 Q. Okay. Do you know when PSNH publicly disclosed the
15 increased price?

16 A. I think that's in my testimony as well, referring to
17 the SEC filing.

18 Q. Well, PSNH issued a Form 8-K with the Securities &
19 Exchange Commission on August 1st, and then
20 subsequently issued a 10-Q. Both of those documents
21 described the price. Were you aware of that?

22 A. I think one of them is in my testimony, yes.

23 Q. Okay. And, you also know that, on July 30th, there was
24 a meeting with the PUC Staff and with the OCA, and that

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1 that meeting was confidential?

2 A. There's a meeting that I referred to in my testimony.

3 Q. Okay. The Commission will be aware of the date from
4 the testimony that's already in. Are the TransCanada
5 entities that you -- that intervened in this case
6 publicly traded companies?

7 A. TransCanada Power Marketing isn't and TransCanada Hydro
8 Northeast isn't.

9 Q. Have you ever worked for a publicly traded company?

10 A. Well, I've worked for -- well, I worked for the --
11 within the New England Electric System, which was
12 publicly traded. I worked for one of the subsidiary
13 companies. And, of course, TransCanada is publicly
14 traded, and I work for, you know, one of the affiliates
15 down the chain, so to speak.

16 Q. Okay. And, TransCanada is a publicly traded company,
17 correct?

18 A. Yes. You can purchase their stock.

19 Q. They trade in the Canadian Stock Exchanges or the New
20 York Stock Exchange, if you know?

21 A. I believe both.

22 Q. Okay. Can you think of a reason why PSNH might not
23 have wanted to disclose the details of the projected
24 price increase to the Legislature in June, before they

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[WITNESS: Hachey]

1 disclosed it to the market in August?

2 A. Probably they were thinking about -- well, I really
3 can't speculate. But I know that, generally speaking,
4 there's the expectation that publicly traded companies
5 will disclose material information broadly, rather than
6 out to various parties in bits and pieces.

7 Q. Right. So, on -- and, do you know or did you ask
8 whether any representatives of PSNH disclosed or had
9 conversations with the Legislature after that August
10 disclosure, as to the increased price of the Scrubber?

11 A. When you say "did I ask", did I ask PSNH whether they
12 talked to anybody about the increased cost of the
13 Scrubber after they had made their SEC filing?

14 Q. Yes.

15 A. I didn't ask anybody at PSNH, no.

16 Q. Okay. It turns out that I don't have the document that
17 I wanted to refer you to. But I'm going to show you my
18 copy. I think Mr. Patch is not going to disagree with
19 what I ask you here. So, --

20 CMSR. HONIGBERG: Why don't you show it
21 to Mr. Patch.

22 (Atty. Glahn showing document to
23 counsel.)

24 CMSR. HONIGBERG: Does any other counsel

[WITNESS: Hachey]

1 want to see the document before it goes to the witness?

2 MS. CHAMBERLIN: I would like to.

3 CMSR. HONIGBERG: Ms. Chamberlin would.

4 MR. GLAHN: So, it's clear what I'm
5 going to show Mr. Hachey is TransCanada's Motion for
6 Reconsideration of the Commission's Order Number 24,898.
7 And, I'm simply going to ask him the date of it and refer
8 him to one footnote in that document.

9 MR. PATCH: If he could have that in
10 front of him, I think that would be helpful.

11 CMSR. HONIGBERG: Oh, yes. He's going
12 to. We're just letting counsel see it, before it goes to
13 the witness, Mr. Patch.

14 MS. AMIDON: Thank you.

15 BY MR. GLAHN:

16 Q. So, Mr. Hachey, you know that, in August of 2008, by
17 secretarial letter, that the PUC opened a docket in
18 this matter or opened a docket relating to the
19 Scrubber, correct?

20 A. I believe that's in my testimony.

21 Q. And, the PUC wanted two things. Do you recall this?
22 They wanted a report on the cost of the Scrubber and
23 they wanted legal memoranda on whether they had any
24 jurisdiction to consider the construction of the

[WITNESS: Hachey]

1 Scrubber at all. Do you recall that?

2 MR. PATCH: Mr. Chairman, I'd just like
3 to object to the question. Because I think the
4 August 22nd letter, that is in the docket, I believe, I
5 can't remember the exhibit number, is very clear about
6 what the Commission asked for. I think it's more than
7 just those two things. I think it's a little broader than
8 that. And, I just think that the question tries to narrow
9 what that docket says, and that docket -- I mean, that
10 letter says, and I think it speaks for itself.

11 MR. GLAHN: Let me ask it differently.

12 BY MR. GLAHN:

13 Q. You're aware that the PUC asked for information from
14 PSNH, correct?

15 A. Yes.

16 Q. And, you're aware that, among other things that the PUC
17 asked for, was an estimate of the costs of the Project,
18 information relating to the cost of the Project, and a
19 memorandum on whether the PUC had any authority to deal
20 with the matter at all?

21 A. Well, at this point, I'd really like to see the letter,
22 and then I can -- we'll see what the letter says.

23 Q. All right. Well, we'll move on.

24 MS. AMIDON: Just by way of information,

[WITNESS: Hachey]

1 I believe it's marked as an exhibit in this docket. I
2 think it's either Exhibit 2 or 3.

3 MR. GLAHN: Okay.

4 BY MR. GLAHN:

5 Q. In your report, you talk about the fact that -- you
6 talk about what PSNH submitted to the PUC, is that
7 correct?

8 A. I believe so, yes.

9 Q. And, what you said in Line -- at Page 13, Line 12, is
10 that PSNH didn't put "any information about the
11 break-even level of the 5.22 -- 5.29/MMBtu or the
12 historical average of the spread between gas and coal
13 in the filing it made with the PUC in Docket 08-103 on
14 September 2nd, 2008." If you look at Page 13, Line 12,
15 let me know if I accurately stated what you said?

16 A. Between Lines 12 and 15 you accurately stated, yes.

17 Q. Okay. And, it's your testimony that PSNH didn't put
18 "any information" about those topics in front of the
19 PUC, is that right?

20 A. Well, I think, in that instance, between 12 and 14,
21 what we're referring to is the chart that we spent a
22 lot of time on the other day.

23 Q. Okay. But let me make sure I understand the words that
24 you used. The question you were asked is "Did PSNH put

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1 any of the information about the break-even level of
2 5.29/MMBtu or the historical average of the spread
3 between gas and coal in the filing it made to the PUC
4 in DE 08-103 on September 2nd, 2008?" Answer: No, it
5 did not." Correct?

6 A. You've read it correctly for the second time, yes.

7 Q. And, you know that the Staff in this case answered a
8 data request in which they set forward their
9 description of the information that the PUC received,
10 correct?

11 A. I remember that Staff provided responses to data
12 requests. But my recollection of what any of them said
13 is pretty slim right now.

14 Q. So, let's refresh your recollection.

15 A. Thank you.

16 CMSR. HONIGBERG: We're going to need to
17 break sometime in the next ten, fifteen minutes, to give
18 the court reporter a rest. How are you doing there,
19 Mr. Glahn?

20 MR. GLAHN: Well, we're going to be a
21 while, but we're moving along. So, whenever you want to
22 take a break, let me know.

23 (Ms. Frazier distributing documents.)

24 CMSR. HONIGBERG: Is this "Exhibit 95"?

[WITNESS: Hachey]

1 MR. GLAHN: Yes.

2 (The document, as described, was
3 herewith marked as **Exhibit 95** for
4 identification.)

5 BY MR. GLAHN:

6 Q. So, looking at that, Mr. Hachey, the PUC Staff said --
7 describes information that is included in the 2008
8 report. Do you see that? This is --

9 A. I see --

10 Q. This is the response, this is a Staff response to Data
11 Request TC 1-12.

12 A. Okay.

13 Q. You see it?

14 A. I see it.

15 Q. Okay. And, this is -- so, this is the Staff's
16 description of the information that was actually
17 provided to the PUC in the September 2, 2008 report, or
18 a portion of that information, right?

19 A. That's Staff's description, yes.

20 Q. Okay. And, we do know that the \$11.00 natural gas
21 assumption and the 4.82 coal price assumption were
22 given to the PUC in the report of September 2nd, 2008,
23 correct?

24 A. We do know that.

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1 Q. Okay. Thank you.

2 (Atty. Glahn showing document to the
3 witness.)

4 BY MR. GLAHN:

5 Q. So, would you look at that document please.

6 A. Do you want to call my attention to a certain piece of
7 it?

8 Q. First, I'd like to know if you've seen the document
9 before? This is a motion, though, let me go back to
10 the outline for a moment. You understand, do you not,
11 that on September 19th of 2008 the PUC issued an order
12 in this case in which it declined to take jurisdiction
13 over the modification resulting in the construction or
14 installation of the Scrubber. Do you recall that?

15 A. I have some recollection of that.

16 Q. Okay. And, did you also recall that at that time the
17 PUC indicated that it was leaving the docket open, so
18 that it could request additional information, if it
19 chose?

20 A. You know, rather than test my recollection, I'd prefer
21 to look at what the PUC actually said.

22 Q. My question first is, do you know that or not?

23 A. Ask again please.

24 Q. Pardon?

[WITNESS: Hachey]

1 A. Ask again.

2 Q. Okay. Do you know that, in Order 24,898, the PUC left
3 the docket open, indicating that if it -- for the
4 purpose of requesting more information, should it
5 choose to do so?

6 A. Did I -- can you refer in my testimony where I took
7 note of that?

8 Q. I'm not asking about your testimony. I'm asking
9 whether you know that fact? If you don't know the
10 fact, you don't know it.

11 A. I don't recall specifically.

12 Q. Okay. On October 17th, 2008, TransCanada filed a
13 motion to reconsider the Commission's original order.
14 And, that's what you have in front of you. Could you
15 just check the date on that, see if it's accurate?

16 A. It's "October 17th, 2008".

17 Q. Yes.

18 A. That's the date on the document.

19 Q. Now, would you turn to Footnote 1 in that document
20 please.

21 A. I've turned to Footnote 1.

22 Q. And, in that footnote, TransCanada told the Commission
23 that PSNH hadn't told the Legislature about the \$457
24 million price in the report --

[WITNESS: Hachey]

1 (Court reporter interruption.)

2 MR. GLAHN: I'll slow down. Sorry.

3 BY MR. GLAHN:

4 Q. In that document, in that footnote, PSNH told the
5 Commission that TransCanada had not reported the
6 \$457 million price to the Legislature.

7 CMSR. HONIGBERG: You flipped the
8 companies around in the question.

9 MR. GLAHN: I'm sorry. Let me go back.

10 BY MR. GLAHN:

11 Q. In that footnote, TransCanada told the PUC that PSNH
12 had not reported the \$457 million price to the
13 Legislature, right?

14 A. Well, I don't see the "457" mentioned in this footnote.
15 I mean, I can read the footnote to you, if you'd like?

16 MR. GLAHN: Let me look at it for a
17 minute.

18 BY MR. GLAHN:

19 Q. My problem and my mistake. What the footnote says is
20 that, On June 18th there was a meeting of the
21 Legislative Oversight Committee. And, despite the fact
22 that the law required PSNH to provide "updated cost
23 information" to the Committee, at that meeting PSNH did
24 not present any information on costs, nor did it

[WITNESS: Hachey]

1 provide any indication of the costs for the
2 installation of the Scrubber -- that the costs of the
3 installation of the Scrubber had escalated over
4 original estimates.

5 Would you agree with me that that's what
6 the document says?

7 A. I believe you've read it correctly.

8 Q. Okay. And, then, after the PUC denied reconsideration,
9 TransCanada filed an *amicus* brief in the New Hampshire
10 Supreme Court on behalf of various Commercial
11 Ratepayers, is that correct?

12 A. I don't recall.

13 Q. You don't remember that TransCanada was a party in an
14 appeal to --

15 A. Well, you said "TransCanada filed on behalf". I don't
16 recall how the -- I have a vague memory of a filing.
17 How the filing was set up, I don't recall. It's easier
18 if you show me a document.

19 Q. So, when -- you recall that, in the Fall of 2009, there
20 were two bills submitted to the Legislature, Senate
21 Bill 152 and House Bill 496. Do you recall that?

22 MR. PATCH: Objection. I think he's got
23 the timing wrong on that.

24 CMSR. HONIGBERG: I think that's

[WITNESS: Hachey]

1 correct.

2 BY MR. GLAHN:

3 Q. You recall that there were bills submitted to the New
4 Hampshire Legislature asking for two things. One, to
5 put a cap on the Scrubber Project, and, two, for the
6 PUC to take jurisdiction of the Project, right?

7 A. I recall --

8 MR. PATCH: Objection again. I think
9 the bills speak for themselves. But I think he's
10 mischaracterized at least one of those bills.

11 MR. GLAHN: If he wants to explain how I
12 mischaracterized it, I'll ask it.

13 MR. PATCH: Well, you said "for the PUC
14 to take jurisdiction". I think Senate Bill 152 actually
15 said "for there to be a study of whether or not it made
16 sense to proceed with the Project".

17 MR. GLAHN: Okay.

18 BY MR. GLAHN:

19 Q. With that qualifier, do you recall that?

20 A. I recall that there were two bills. And, I recall that
21 they generally did what you've described.

22 MR. GLAHN: This might be a good time,
23 if you'd like to take a break, Commissioner.

24 CMSR. HONIGBERG: All right. We're

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1 going to break then till five minutes to 11:00.

2 (Recess taken at 10:40 a.m. and the
3 hearing resumed at 11:04 a.m.)

4 CMSR. HONIGBERG: I'm sorry. I had a
5 technology issue I had to deal with.

6 Mr. Glahn.

7 MR. GLAHN: Thank you.

8 BY MR. GLAHN:

9 Q. Mr. Hachey, I just want to continue this timeline for a
10 minute. You recall that there were hearings in front
11 of the Legislature on the two pieces of legislation
12 that we discussed a moment ago in early 2009, right?

13 MR. PATCH: I'll object to the question.
14 When he says "early 2009", it's clear that the hearing in
15 the Senate was March of 2009. So, I think being a little
16 more specific might be helpful to the witness.

17 BY MR. GLAHN:

18 Q. Mr. Hachey, you recall that there were hearings in
19 front of the Legislature on the two bills that we
20 discussed a moment ago in March of 2009, is that
21 correct?

22 A. The date -- the certainty about the date is the issue
23 that I have.

24 CMSR. HONIGBERG: Is the date

[WITNESS: Hachey]

1 significant to the question?

2 MR. GLAHN: Not particularly.

3 **BY THE WITNESS:**

4 A. I recall reading -- I'm sorry.

5 BY MR. GLAHN:

6 Q. Do you recall that hearings were held on those two
7 bills in front of the Legislature at some point in
8 2009?

9 A. I recall reading about the hearings, yes.

10 Q. Okay. And, TransCanada hired lobbyists relating to
11 those bills, did they not?

12 A. Well, I believe there were people registered as
13 "lobbyists". When you say "hired lobbyists relative to
14 those bills", we had people registered as "lobbyists",
15 and I believe we testified at some point.

16 Q. And, you paid them?

17 A. As far as I know.

18 Q. And, can we agree on this? That TransCanada could have
19 submitted whatever information it wanted to to the
20 Legislature in connection with those hearings?

21 A. Within the bounds of what one would do to the
22 Legislature, yes.

23 Q. Okay. I want to come back to that in just a moment.

24 But, first, let's just, for general purposes here, fill

[WITNESS: Hachey]

1 this timeline out. In March of 2009, do you recall
2 that TransCanada filed a petition in the Site
3 Evaluation Committee relating to the Scrubber Project?

4 A. If you have the document --

5 Q. I don't. I'm just asking if you recall it?

6 A. I recall a filing to the siting committee. I don't
7 recall the date.

8 Q. Okay. And, hearings were held in front of the Site
9 Evaluation Committee, correct?

10 A. Again, I don't recall whether there were hearings held,
11 or whether it was --

12 Q. You don't recall that?

13 A. There may have been. I just don't recall specifically
14 what the nature of the proceeding was before the Site
15 Evaluation Committee.

16 Q. Okay. Fair enough. But you do recall that, after
17 those proceedings were over, TransCanada appealed the
18 Site Evaluation Committee's order to the New Hampshire
19 Supreme Court, correct?

20 A. I have a memory along those lines, but I can't --

21 Q. Okay. And, you also recall that --

22 MR. PATCH: Mr. Chairman, I just have an
23 objection to the form of the question. I don't recall
24 specifically who appealed. I don't think it was

[WITNESS: Hachey]

1 TransCanada. I think it might have been other parties.
2 But I just think we ought to be accurate about this, if
3 we're going to --

4 CMSR. HONIGBERG: I don't think the
5 witness remembered either way. So, I'm not sure it
6 matters.

7 BY MR. GLAHN:

8 Q. Whoever appealed that, Mr. Hachey, you remember that
9 the Supreme Court dismissed the appeal on standing
10 grounds, right?

11 A. Generally, if I'm asked to testify on something, I like
12 to look at the document. And, when you say "the
13 Supreme Court dismissed on standing grounds", I don't
14 know. I'd like to look at the document. Before I say
15 that's what happened, generally it would be my practice
16 to refer to what the Supreme Court said.

17 Q. Fair enough. You just don't have any recollection of
18 it, right?

19 A. I don't have a recollection of the nature of the
20 rejection or dismissal.

21 Q. Okay. I want to show you three documents, Mr. Hachey,
22 which were submitted to the Legislature in connection
23 with these two bills that were before the Legislature
24 in 2009.

[WITNESS: Hachey]

1 (Ms. Frazier distributing documents.)

2 MR. GLAHN: In fact, once again, Denise
3 is right. There are only two documents. So, I'm showing
4 you only two. I'm going to make it up to her at some
5 point today, you can be assured.

6 CMSR. HONIGBERG: I think it may take
7 longer than just today.

8 MR. GLAHN: Flowers might be good.

9 CMSR. HONIGBERG: One of these is going
10 to be "96" and one is going to be "97". Which is which?

11 MR. GLAHN: Well, let's make the
12 Synapse -- well, I'm sorry, let's make the document
13 entitled "Compendium of Concerns Regarding the Proposed
14 Installation of a Scrubber" --

15 CMSR. HONIGBERG: So, that will be --

16 MR. GLAHN: -- as the first number, and
17 then the second --

18 CMSR. HONIGBERG: That will be "96".

19 MR. GLAHN: Okay.

20 (The documents, as described, were
21 herewith marked as **Exhibit 96** and
22 **Exhibit 97**, respectively, for
23 identification.)

24 MR. GLAHN: So, I am, in fact, going to

[WITNESS: Hachey]

1 mark a third one. Denise, if you just grab this one. So,
2 the first number was what, Commissioner Honigberg?

3 CMSR. HONIGBERG: Ninety-six.

4 MR. GLAHN: And, 97 is a PowerPoint from
5 Synapse Energy Economics, Inc., dated March 13, 2009. The
6 next number will be the Initial Report of Synapse to the
7 Senate Energy, Environment and Economic Development
8 Committee, dated March 20, 2009.

9 MR. BERSAK: That's already been marked.

10 MR. GLAHN: Mr. Bersak tells me that
11 one's already been marked.

12 MR. BERSAK: That was 29.

13 BY MR. GLAHN:

14 Q. So, Mr. Hachey, let me direct your attention to the
15 document that's entitled "Compendium of Concerns
16 Regarding the Proposed Installation", by Kenneth
17 Colburn and Symbiotic Strategies, LLC. Do you see that
18 document?

19 A. I see the document.

20 Q. Okay. Take a look at Page 1 of that document.
21 Actually, I'm sorry, apologize, it's Page 3 of 20.
22 And, it's at the top. First of all, I should ask you,
23 Mr. Hachey, do you know who the Commercial Ratepayer
24 Group was in connection with the fight over the

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1 Scrubber in 2008?

2 A. When you say "who they were" --

3 Q. Let me try to refresh your recollection. Do you recall
4 that Stonyfield Farm, the group of Common Man
5 Restaurants, and others challenged the Scrubber in
6 front of the PUC in the Fall of 2008?

7 A. I recall Stonyfield Farm being active.

8 Q. Okay. Did you have any involvement in paying for the
9 preparation of this report? By "you", I mean "did
10 TransCanada?"

11 A. I don't know.

12 Q. So, on Page 1, there's a statement that says "At the
13 expected cost of 250 million", that's about four lines
14 down, "and given what we knew then, that was the right
15 decision", that is to install the Scrubber. Do you
16 agree with that statement?

17 A. As I told you before, I haven't done any analysis on
18 the 250 million.

19 Q. Okay. So, you have no view of whether, at 250 million,
20 construction of the Scrubber would have been prudent?

21 A. What I said was "I didn't do the analysis." So, I
22 don't know.

23 Q. Okay. You don't know. Thank you.

24 A. In preparation of my testimony, I didn't look at

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1 250 million.

2 Q. Okay. So, I'm going to go through this quickly,
3 because I don't want to dwell on it. But you'll see
4 there is a description in this document of the various
5 costs of the Scrubber, and the High Cost and Low Cost
6 Scenario, do you see that? Just further down on that
7 page.

8 A. I see the table, yes.

9 Q. Okay. Over on Page 4, the next page, in Paragraph B,
10 you see the statement that "The scrubber installation
11 was mandated by the Legislature in 2006". Do you see
12 that?

13 A. I'm sorry. Can you give me the reference again?

14 Q. Yes. It's right -- it's in that Paragraph B, on Page
15 4. It's four lines down in that paragraph. It's the
16 sentence that begins.

17 A. I see the sentence.

18 Q. Okay.

19 A. That "The scrubber installation was mandated by the
20 Legislature in 2006".

21 Q. And, if we could go on just for the next few pages,
22 this report discusses a number of environmental issues
23 and issues relating to cost control as a result of
24 environmental regulations. Do you see that? From

[WITNESS: Hachey]

1 Pages 5, over to, say, Page 9?

2 A. I'll read the titles to the sections, and I guess make
3 a conclusion in a second. I see a number of
4 environmental issues addressed, yes.

5 Q. Okay. And, over on Page 9, down at the bottom in
6 Subpart E, there's a section called "Fuel Costs and
7 Issues". You see that?

8 A. I see the section.

9 Q. Okay. And, then, finally, over on Page 11, in
10 Section 7, entitled "Issues regarding PSNH's
11 September 2, 2008 Fuel [Forecast] Assumptions". Do you
12 see that?

13 A. I do.

14 Q. And, in that, there is a discussion of coal prices, and
15 then a statement at the end, in Part (d), that says "In
16 today's marketplace, coal no longer necessarily
17 remains" -- or, "wins economically. If coal stays at
18 \$100 to \$150 per ton and natural gas remains as low as
19 it is or continues to fall in price, a lot of utilities
20 will look to gas instead." Did I read that correctly?

21 A. You did.

22 Q. When you prepared your testimony in this case, did you
23 know that the Legislature had been presented with this
24 report?

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[WITNESS: Hachey]

1 A. I don't recall having seen the report. So, I'm not
2 quite sure that, therefore, I would know that the
3 Legislature had seen the report.

4 Q. We can agree, though, can't we, that from this report
5 it appears that information was given to the
6 Legislature regarding the issues that are discussed in
7 the report?

8 MS. FRIGNOCA: Objection. The witness
9 just testified he doesn't know if this --

10 (Court reporter interruption.)

11 CMSR. HONIGBERG: I'm sorry. I couldn't
12 hear a word you just said.

13 MS. FRIGNOCA: I'm sorry. I'm
14 objecting, because the witness testified that he doesn't
15 know if this document went to the Legislature.

16 CMSR. HONIGBERG: I don't think that's
17 what he testified.

18 BY MR. GLAHN:

19 Q. Do you know -- let me ask the question differently.
20 First, do you know, Mr. Hachey, whether Mr. Colburn
21 testified in front of the Legislature?

22 A. I don't know.

23 Q. Okay. Well, I just want you to assume something for a
24 moment to speed this up. If Mr. Colburn testified in

[WITNESS: Hachey]

1 front of the Legislature, and if this report was
2 submitted to the Legislature, then the Legislature had
3 the information that's discussed in the report
4 available to it in early 2009. Would you agree with
5 that?

6 A. If he gave them the report, I guess.

7 Q. If he testified in front of the Legislature and gave
8 them the report, then the Legislature had the
9 information that's discussed in the report before it in
10 early 2009?

11 A. Well, the "Legislature" is a broad term. There's a lot
12 of people, as I recall. So, I don't know. I mean,
13 it's a fact issue, and it's not -- and you're not
14 giving me enough information.

15 Q. Okay. Take a look, if you would, at the Synapse Energy
16 Economics, Inc. PowerPoint. And, --

17 SP. CMSR. IACOPINO: Before you go on to
18 the next exhibit, would you please tell us what Exhibit 96
19 is and where it comes from? I mean, I understand the
20 witness doesn't know, but do you know?

21 MR. GLAHN: Yes. It's a Compendium of
22 Concerns that was prepared for Stonyfield and others, and
23 submitted to the Legislature by Mr. Colburn in early 2009,
24 in connection with --

[WITNESS: Hachey]

1 SP. CMSR. IACOPINO: When you say
2 "submitted to the Legislature" --

3 MR. GLAHN: Submitted to a committee of
4 the Legislature. And, I can tell you which committee. If
5 you'd like to see this document, I'm happy to submit it as
6 an exhibit. There were hearings on Senate Bill 152. They
7 are reported in the Senate Calendar Notice before the
8 Energy, Environment and Economic Development Committee.
9 Mr. Colburn testified at that hearing, as did Gary
10 Hershburg, from the Commercial Ratepayer Group.

11 SP. CMSR. IACOPINO: And, at the top
12 right corner of Exhibit 96, there's a reference there
13 "Administrative Record 791". Is that from that committee?

14 MR. GLAHN: I'm sorry, I didn't --

15 SP. CMSR. IACOPINO: On the top right,
16 on Exhibit 96, top right corner, there's a handwritten
17 note "Admin. Rec. 791".

18 MR. GLAHN: I have no idea what that
19 means.

20 SP. CMSR. IACOPINO: Okay.

21 BY MR. GLAHN:

22 Q. Mr. Colburn also --

23 MR. GLAHN: Why don't I just mark this,
24 so that you have it.

[WITNESS: Hachey]

1 SP. CMSR. IACOPINO: Thank you.

2 MS. GOLDWASSER: Commissioner Iacopino,
3 just for your information, I Googled the document to find
4 it, and I found it on the EPA's website. I think that is
5 a cite to an EPA docket.

6 SP. CMSR. IACOPINO: Thank you.

7 MR. GLAHN: Denise, when you're done
8 with that, can I see that document for a minute? So that
9 I think we want to tear -- we'll mark this, they really
10 should be two exhibits, because attached to the back of
11 this is that Senate Calendar Notice that I mentioned a
12 moment ago.

13 CMSR. HONIGBERG: I'm sorry. Mr. Glahn?

14 MR. GLAHN: Yes, I apologize. But this
15 exhibit actually should be two exhibits. The first part
16 of it is Mr. Colburn's testimony, and the second is the
17 Senate Calendar Notice for the hearing on March 13, 2009.
18 So, let's mark it as two separate exhibits.

19 (The documents, as described, was
20 herewith marked as **Exhibit 98** and
21 **Exhibit 99**, respectively, for
22 identification.)

23 MR. PATCH: Mr. Chairman, it seems like
24 the kind of information that could have been put in with

[WITNESS: Hachey]

1 their rebuttal case or attached to testimony. Mr. Hachey
2 keeps answering questions that he doesn't know, and yet
3 this is -- I mean, they're attempting to put it in the
4 record in this manner. It just seems to me like --

5 MR. GLAHN: Mr. Hachey testified at --
6 Mr. Hachey testified at length about what PSNH -- well,
7 whether at length or not, Mr. Hachey's testimony is that
8 information wasn't provided to the Legislature. I'm not
9 going to dwell on this much longer. But I just want to
10 show, and if Mr. Hachey doesn't remember this, he doesn't
11 remember it, but I want to show some of the information
12 that was, in fact, submitted to the Legislature in the
13 Spring of 2009, or in the Winter of 2008 and '09.

14 MR. PATCH: But, Mr. Chairman, Mr.
15 Hachey filed testimony on December 23rd of last year.
16 PSNH filed the rebuttal testimony in July of this year.
17 So, they had six months within which they knew what he had
18 filed and in which they could respond to it. And, so, to
19 now ask him questions about things he doesn't know about
20 as a way to try to get something in the record, just
21 doesn't -- I don't think it's appropriate.

22 MR. GLAHN: I think it's fair
23 cross-examination. And, Mr. Hachey certainly can say that
24 he doesn't know.

[WITNESS: Hachey]

1 CMSR. HONIGBERG: Do you have something
2 else? I heard another voice just before I was going to
3 talk?

4 (No verbal response)

5 CMSR. HONIGBERG: No? Okay. No, I
6 think he can answer these questions.

7 BY MR. GLAHN:

8 Q. So, Mr. Hachey, we've marked the exhibits, and someone
9 will give me the numbers of the Testimony Outline of
10 Kenneth Colburn in March 13 of 2009, and the testimony
11 before the Energy, Environment and Economic Development
12 Committee on that same date.

13 CMSR. HONIGBERG: The testimony outline
14 is "98" and the Senate Calendar Notice is "99".

15 MR. GLAHN: Okay.

16 BY MR. GLAHN:

17 Q. With respect to 98, were you aware of the information
18 that's contained in Mr. Colburn's testimony before you
19 filed your testimony?

20 A. Okay. I'm sorry. I missed the reference. Which is
21 98?

22 Q. Ninety-eight is the document that's entitled "Testimony
23 Outline Kenneth Colburn".

24 MR. SHEEHAN: I'm not sure, but I think

[WITNESS: Hachey]

1 we -- not a big deal, but I think we have a different
2 numbering. We had 97 is one Synapse report, 98 is a
3 second Synapse report, and these last two is 99 and 100.

4 CMSR. HONIGBERG: No. The second one
5 that you have as "98" is actually "29". That was what Mr.
6 Bersak was telling us.

7 MR. SHEEHAN: Okay. So, we got that in
8 as "29"?

9 CMSR. HONIGBERG: Yes.

10 MR. SHEEHAN: Okay.

11 MS. AMIDON: Okay.

12 MR. SHEEHAN: Thank you.

13 CMSR. HONIGBERG: We didn't mark it --
14 we didn't mark it again, since it appears already to have
15 been marked.

16 MR. SHEEHAN: Okay. Thank you.

17 BY MR. GLAHN:

18 Q. So, if I've got the number right, 98 is the testimony
19 outline. And, my question, Mr. Hachey, is were aware
20 of this testimony before you filed your report -- or,
21 your testimony?

22 A. I don't believe so.

23 Q. And, did you look at the hearings before the Senate,
24 some of which are described in Exhibit 99, before you

[WITNESS: Hachey]

1 prepared your testimony?

2 A. Excuse me, which is Exhibit 99?

3 Q. It's the one that's entitled "Senate Calendar notice".

4 CMSR. HONIGBERG: Mr. Hachey, if it will
5 help. The testimony -- the document that had "Testimony
6 Outline" as the first page has been separated into two
7 separate documents. If you go about, oh, I don't know,
8 six or seven pages in --

9 (Witness Hachey showing document.)

10 MR. GLAHN: That's right, Mr. Hachey.
11 That's the second document.

12 WITNESS HACHEY: So, we're calling that
13 "99"?

14 CMSR. HONIGBERG: Yes.

15 WITNESS HACHEY: And, what's the
16 question?

17 BY MR. GLAHN:

18 Q. The question was, had you seen that before you filed
19 your testimony?

20 A. I can't be certain whether I did or not.

21 Q. Okay.

22 A. I looked at a lot of documents over several years.
23 And, whether I saw this or not, I can't be sure.

24 Q. All right. You weren't here for Dr. Stanton's

[WITNESS: Hachey]

1 testimony, were you?

2 A. I was here for some of her cross-examination.

3 Q. Okay. Dr. Stanton works for Synapse Energy Economics,
4 correct?

5 A. That's my understanding.

6 MR. PATCH: Mr. Chairman. Mr. Chairman,
7 it took us a minute to figure out what the two Exhibits 98
8 and 99 are, because they were attached together, as you
9 noted. Ninety-nine (99), on the front page, says "Senate
10 Calendar Notice". And, then, the next page has a number
11 "5" at the top, and then it goes from 5 to 10. But that's
12 not part of the Senate Calendar notice. So, I don't know
13 exactly what that is.

14 CMSR. HONIGBERG: And that is --

15 MR. GLAHN: Let me try to -- I'll try to
16 correct that document and see what we can find. I
17 recognize that it is not all of the testimony, but some of
18 the testimony before the Senate.

19 CMSR. HONIGBERG: So, I think we all
20 agree there is a problem with Exhibit 99 right now that
21 needs to get sorted out.

22 MR. GLAHN: We'll correct it. We'll
23 correct it.

24 BY MR. GLAHN:

[WITNESS: Hachey]

1 Q. Mr. Hachey, were you aware of either -- of this
2 PowerPoint presentation by Synapse before you prepared
3 your testimony?

4 A. I have a memory of Synapse doing something relative to
5 the Scrubber. The specifics of which, at the moment,
6 escapes me.

7 BY MR. GLAHN:

8 Q. Okay. Just turn over to Page 4 of this document, if
9 you would. Would you agree with me that Page 4
10 describes the issues that -- the key questions that
11 Synapse is going to address to the Legislature? Or,
12 more accurately, to the Senate Energy, Environment and
13 Economic Development Committee?

14 A. I see three items there, sir. Three --

15 Q. Okay.

16 A. -- under the title "Key Questions".

17 Q. All right. Let's go to a different topic, Mr. Hachey.
18 I know that you don't have any information about --
19 information that TransCanada had in its position -- in
20 its possession on gas prices and on the issue of
21 fracking. But we have some, and I'd like to show it to
22 you. First of all, let me see if I can just talk about
23 some areas for a moment. You're, and would you agree
24 on this, you are critical of PSNH for relying on NYMEX

[WITNESS: Hachey]

1 futures or using NYMEX to determine gas prices,
2 correct?

3 A. I pointed out some frailties in the use of NYMEX in my
4 testimony.

5 Q. Would, in your view, would any reliance on NYMEX prices
6 to forecast future gas prices be imprudent?

7 A. Well, it's a -- I want to -- I'm going to try to avoid
8 an immediate "yes" or "no". The use of NYMEX is to
9 lock in prices. So, for example, if a retailer were to
10 sell power, let's say, for calendar year 2015, it
11 would -- could lock in gas, could lock in power to
12 backstop the transaction. So, I'm using that as an
13 example to say that's the purpose or the use of NYMEX.
14 To call it a "forecasting tool" then is -- you know, in
15 the immediate next year, it's forecasting isn't even an
16 issue. You can look it in, you can nail it, you can
17 secure it. And, I believe that that's the --
18 consistent with what Mr. Reed said.

19 So, in terms of its use as a forecasting
20 tool, as you go out in the future, it's getting less
21 and less meaningful, because, as pointed out in the
22 U.S. Senate Report that, after about a year, the
23 trading is very thin and it's speculative. So, that's
24 a longer answer probably than you wanted, but it's kind

[WITNESS: Hachey]

1 of a complete answer for me.

2 Q. That's fine. You would not then expect a prudent
3 utility to use NYMEX prices to forecast what gas prices
4 would look for, say, seven, ten years in the future?

5 A. I think it's fair to look at it. But, in terms of
6 making -- vetting a major capital investment, I would
7 think that's not a very good course of action.

8 Q. Okay. And, another area where you were critical of
9 PSNH is for projecting that gas prices would increase
10 when, in the Fall of 2008, gas prices had fallen,
11 right?

12 A. Gas prices had fallen in 2008. And, I think, you know,
13 my issue would be that that was a caution sign.

14 Q. Okay. And, then, third, and maybe these two go
15 together, that you are critical of PSNH for ignoring
16 the supply-related information concerning
17 unconventional gas exceeding on-shore conventional gas
18 production, correct?

19 A. I think, in my testimony, on Page 21, I make it clear
20 what I said, Page 21, going over into 22. It's clear
21 what I said, I should say.

22 Q. Okay. And, I think in your testimony on Friday what
23 you said is that sort of demarc -- a point of
24 demarcation was that there was a report that the

[WITNESS: Hachey]

1 government issued on July 4th, 2008. And, as of that
2 date, the fracking, the effect of fracking for shale
3 gas production was generally known. Do you recall
4 that?

5 A. I think I heard you say "the government issued"? That
6 wasn't issued by the government.

7 Q. Who was it issued by?

8 A. Navigant issued it on behalf of the Clean Skies
9 Foundation, if I got that correct, which were a group
10 of natural gas producers.

11 Q. Okay.

12 A. Producers of the people, just to be clear, who actually
13 own the resource and provide the resource into the
14 market.

15 Q. So, TransCanada has been involved in, do you know this
16 or not, TransCanada has been involved in proceedings
17 before the National Energy Board in Canada? Do you
18 know that?

19 A. I believe the NEB is one of the regulators --

20 Q. Yes.

21 A. -- of our business.

22 Q. And, when -- and I'm going to get back into this topic,
23 Mr. Hachey, but can we agree that, in terms of looking
24 for documents, you didn't look for documents that

[WITNESS: Hachey]

1 TransCanada had produced in public fora, like the
2 National Energy Board in Canada?

3 A. Well, in my -- I believe I've made very clear
4 repeatedly that what I was looking for were documents
5 that were available to PSNH, and the information that
6 was publicly available and would have been available to
7 PSNH.

8 Q. Okay.

9 A. What -- and, to the extent that TransCanada had public
10 information out there that could have been available to
11 PSNH, I guess that would have been relevant.

12 Q. Well, it might have been relevant, would you agree, to
13 know, too, whether TransCanada had information out
14 there that contradicted your testimony?

15 A. Well, my testimony is really all about what PSNH knew.

16 Q. Well, your testimony is, in part, about the fact that
17 PSNH was imprudent because it didn't act on information
18 that was known in the marketplace. Wouldn't you have
19 wanted to know whether TransCanada had information in
20 its possession that contradicted the opinion you were
21 giving?

22 A. Well, I think I told you what the intent of my search
23 was, which was to find what information was out there
24 that was available to PSNH.

{DE 11-250} [Day 5/Morning Session ONLY] {10-21-14}

[WITNESS: Hachey]

1 MR. GLAHN: Okay. Denise, you can go
2 ahead and pass that out and please give Mr. Hachey a copy.

3 (Ms. Frazier distributing documents.)

4 CMSR. HONIGBERG: And, we hit the
5 century mark with this one. This is "100".

6 (The document, as described, was
7 herewith marked as **Exhibit 100** for
8 identification.)

9 MR. GLAHN: Let's hope we don't hit a
10 double century.

11 CMSR. HONIGBERG: It's totally within
12 control of those out there. Well, not totally, but --

13 BY MR. GLAHN:

14 Q. So, Mr. Hachey, this is a data request that TransCanada
15 responded to in a docket in Canada. And, it's six
16 pages long. Have you seen this document before? And,
17 I'll note for the record that the highlighting on the
18 document is mine.

19 A. Not to my knowledge.

20 Q. Okay. Go over to Page 3, if you would. Let me read
21 you a statement. "TransCanada became increasingly
22 aware of the risk of material throughput reductions by
23 2009, as the REX pipeline was commissioned and began to
24 serve markets that were previously served..., and as

[WITNESS: Hachey]

- 1 shale development took hold in the U.S." You see that?
- 2 A. You read it correctly.
- 3 Q. And, were you aware of this statement before you filed
- 4 your testimony?
- 5 A. No.
- 6 Q. If you had known that, would you still take the
- 7 position that "a prudent utility had to know about the
- 8 impact of fracking on July 4th, 2008"?
- 9 A. I don't know. I think the fact of the matter is that,
- 10 and you keep referring to "fracking", I think the fact
- 11 of the matter is that, on July 4, 2008, a very large
- 12 group of producers released a report, or Navigant, on
- 13 their behalf, released a report that talked about a
- 14 very significant increase in natural gas reserves in
- 15 the U.S.
- 16 Q. Okay. Let's just assume --
- 17 A. That's a fact. And, I think the report details and
- 18 speaks for itself, in terms of the amount of and the
- 19 widespread nature of that resource.
- 20 Q. Okay. But, apparently, TransCanada didn't know that,
- 21 because they "became increasingly aware" of the issue
- 22 of reductions in throughputs. And "throughputs" is how
- 23 much gas they sell through the pipeline, right? Is
- 24 that right?

{DE 11-250} [Day 5/Morning Session ONLY] {10-21-14}

[WITNESS: Hachey]

1 A. I believe so.

2 Q. So, TransCanada represented in 2011 that they "became
3 aware of the risk of material throughput reductions in
4 2009, as shale development took hold in the U.S." Do
5 you agree with that?

6 A. You're reading the statement. I don't know what else
7 to do with it. It's the first time I've seen this
8 document.

9 Q. Okay.

10 A. The statement speaks for itself. I'm not quite sure
11 what else I can do with it.

12 Q. All right. Let me show you another document,
13 Mr. Hachey.

14 (Ms. Frazier distributing documents.)

15 CMSR. HONIGBERG: "101".

16 (The document, as described, was
17 herewith marked as **Exhibit 101** for
18 identification.)

19 BY MR. GLAHN:

20 Q. Your testimony in this case is that Clear documentation
21 existed as early as 2006 on the looming issue of the
22 potential of unconventional gas sources increasing over
23 conventional gas sources, correct?

24 A. Well, the testimony speaks for itself. And, what I

[WITNESS: Hachey]

1 said was "Clear documentation existed as early as 2006
2 indicating that production of unconventional natural
3 gas was exceeding production from conventional natural
4 gas sources. A chart showing this was prepared" -- I'm
5 sorry if I'm going too fast, I apologize -- "A chart
6 showing this was prepared by the U.S. Energy
7 Information Agency in their Annual Energy Outlook that
8 was published in June 2008." And, that's --

9 Q. And, the fact --

10 A. That's what my testimony said.

11 Q. Okay. And, in your testimony, you referred to a couple
12 of articles, one in the Wall Street Journal that was
13 published in 2009, right?

14 A. I believe there's only one article.

15 Q. So, --

16 A. And, it was an Op/Ed piece.

17 Q. Okay. So, let's talk about what TransCanada knew in
18 2007. What is a "TTF meeting", do you know?

19 A. I don't.

20 Q. Well, I'll represent to you that it's a meeting of the
21 "Tolls Task Force", does that sound familiar to you?

22 A. No.

23 Q. And, do you know what "TSO" is?

24 A. No.

[WITNESS: Hachey]

1 Q. Well, I'll represent to you that it's the
2 "Transportation Supply Outlook", and this is prepared
3 by an internal group at TransCanada. But there's no
4 question that this is a TransCanada document?

5 A. It's a PowerPoint with our logo on it.

6 Q. Okay. And, it was prepared on June 7th, 2007. You see
7 that?

8 A. That's what the date is.

9 Q. And, in this document, TransCanada indicates "Forecast
10 Cases - Key Messages: Higher oil and gas prices will
11 continue over near term." Do you see that?

12 A. I see that.

13 Q. And, that there will be "No growth in L48 supply
14 despite higher prices." Do you understand that to mean
15 the "Lower 48"?

16 A. That would have been my guess before you said it, but
17 it would have been a guess.

18 Q. And, that "new sources of supply [would be] needed to
19 meet the growing North America demand." Do you see
20 that?

21 A. I see that.

22 Q. Okay. Let's go over on Page 2. This is a projection,
23 is it not, for Henry Hub in gas prices going forward
24 into the future. You see that?

{DE 11-250} [Day 5/Morning Session ONLY] {10-21-14}

[WITNESS: Hachey]

1 A. The title of the page is "Range for Henry Hub Gas
2 Prices", correct.

3 Q. Right. And, these are NYMEX prices, would you agree?

4 A. Henry Hub, which is generally -- if it's a NYMEX Henry
5 Hub, it's a NYMEX Henry Hub.

6 Q. Okay.

7 A. It's a variety of NYMEX prices, correct.

8 Q. Okay. And, these are probably not delivered-to-New
9 England prices, right?

10 A. Henry Hub is a location, as we discussed the other day,
11 in Louisiana.

12 Q. Okay. Go over to Page 3 of this document. But, first,
13 let me ask you a question about Page 2. If TransCanada
14 was aware of the looming issue of unconventional gas
15 prices, it isn't reflected in this chart on Page 2, is
16 it?

17 A. Which chart?

18 Q. The chart that's called "Range of Henry Hub Gas
19 Prices". It shows gas prices increasing from 2010 up
20 to 2020.

21 A. I don't know what's reflected in the chart.

22 Q. Okay. Because you haven't seen it before?

23 A. Correct.

24 Q. And, over on Page 3, there's a "North American Gas

[WITNESS: Hachey]

1 Supply" chart. Do you see anyplace in that chart where
2 unconventional U.S. gas sources are referenced?

3 A. I don't know whether unconventional is contained within
4 any of those bars. I don't know.

5 Q. Well, could we agree that the only place where it
6 arguably might be contained is in "U.S. Other"?

7 A. Well, I don't know the answer to that question.

8 Q. Well, let's just assume, for the sake of this argument,
9 that unconventional U.S. sources are contained in "U.S.
10 Other", no matter what one of these charts other than
11 liquid natural gas you look at, there is essentially no
12 increase in the gas supply from those sources shown on
13 this chart. Would you agree?

14 A. U.S. Rockies is increasing. It depends what point in
15 time you're looking at.

16 Q. I see. So, maybe there's an increase in U.S. Rockies,
17 but that's not shale gas, is it?

18 A. Mexico -- it's hard to tell. LNG is clearly
19 increasing. U.S. Rockies is increasing. Looks like
20 Mexico may be increasing.

21 Q. Well, we can agree, can we not, that "U.S. Other" looks
22 pretty flat over that 10-year -- or, 15-year period,
23 from 2005 to 2020?

24 A. The band is, from beginning to end, fairly

{DE 11-250} [Day 5/Morning Session ONLY] {10-21-14}

[WITNESS: Hachey]

1 consistently.

2 MR. GLAHN: Commissioner Honigberg, will
3 the next two documents be "102" and "103"?

4 CMSR. HONIGBERG: Yes, they will.

5 (Atty. Frazier distributing documents.)

6 MR. GLAHN: So, for the record, 102 is a
7 "Presentation to the Tolls Task Force" by TransCanada, on
8 October 1, 2008; 103 is a "TSO 2009: Overview & Results",
9 dated June 3rd, 2009.

10 (The documents, as described, were
11 herewith marked as **Exhibit 102** and
12 **Exhibit 103**, respectively, for
13 identification.)

14 SP. CMSR. IACOPINO: Which one were you
15 going to use first, Mr. Glahn?

16 MR. GLAHN: I'm sorry, Commissioner
17 Honigberg? Oh, Commissioner?

18 SP. CMSR. IACOPINO: Which --

19 MR. GLAHN: 2000 -- or, I'm sorry, 102
20 is the October 1, 2008 document.

21 SP. CMSR. IACOPINO: Thank you.

22 BY MR. GLAHN:

23 Q. So, again, this is a report by TransCanada to the Tolls
24 Task Force. Do you see that?

[WITNESS: Hachey]

1 A. It's titled "Presentation to the Tolls Task Force
2 Supply and Flow Forecast Update".

3 Q. Okay. And, we won't spend a lot of time, but, if you
4 look over on Page 2, there's a couple of -- do you know
5 what "WCSB" means?

6 A. I believe it means "Western Canadian Sedimentary
7 Basin".

8 Q. Thank you. And, what this report shows is that
9 TransCanada is projecting "significant gas price
10 volatility/Royalty impact", and the "Producers are
11 cautious". Do you see that?

12 A. I see that.

13 Q. And, that the "Current financial market turmoil will
14 impact the industry but it's difficult to quantify what
15 that means." You see that?

16 A. It doesn't say that. It says "Current --

17 Q. Well, it says "difficult to quantify", right?

18 A. "Difficult to quantify".

19 Q. Okay. And, this is right in the heart of when -- it's
20 a few days or a few weeks after Lehman Brothers filed
21 for bankruptcy, right? If you know when Lehman
22 Brothers filed for bankruptcy.

23 A. I wasn't sure whether I provided a date in my testimony
24 or not.

[WITNESS: Hachey]

1 Q. Well, let's see if we can agree on this. The financial
2 crisis in this country that was caused, it was maybe
3 precipitated by Lehman Brothers generally occurred in
4 the Fall of 2008, started in the fall of 2008. Can we
5 agree on that?

6 A. You said "The financial crisis was precipitated by
7 Lehman Brothers"?

8 Q. Let me go back and ask the question a different way, if
9 you're going to quarrel on that issue. The financial
10 crisis in the U.S. generally began in the Fall of 2008.
11 Would you agree with that?

12 A. I had testimony to that effect.

13 Q. Well, in fact, your testimony, at Page 9, Line 15,
14 talks -- I'm sorry, Page 17, Line 15, talks about the
15 Lehman Brothers collapse. Do you remember that?

16 A. I'm going to my testimony. I'm sorry, you're kind of
17 rushing my -- I'm trying to find the reference in my
18 testimony. I mean, if you can -- if you've already
19 found it, you can, so I don't have to find --

20 Q. I gave it to you. Seventeen, -- Page 17, Line 15.

21 A. The nation's -- the testimony reads "the nation's
22 economy was in significant disarray with the financial
23 collapse of Lehman Brothers and overall concern about
24 the economy."

[WITNESS: Hachey]

1 Q. Okay. Let's stick with that statement. This report
2 was issued at about the same time in October of 2008,
3 right?

4 A. We're talking about information that was available in
5 the September '08 time frame. So, yes, this is in
6 the --

7 Q. Okay. Turn to Page 10 of this report.

8 A. Page 10 of 12?

9 Q. Yes.

10 A. Okay.

11 Q. Okay. You see the green line there and the purple
12 line? At the -- I'm sorry. In the chart on that page
13 called "TransCanada Eastern Exports to US Northeast".

14 A. I see the chart.

15 Q. Okay. Would you agree with me that TransCanada is
16 projecting that their exports will increase in the Fall
17 of 2008 over what they estimated in May of 2008?

18 A. You're asking me about a -- oh, wait a minute. I see.
19 "May 2008 TSO", it says "Fall 2008 Update". So, I'm
20 not trying to interpret the chart. All I'm saying is,
21 as a factual matter, I see a green line that seems to
22 refer to May, and a purple -- or, a purple line that
23 refers to Fall. That's at a higher --

24 Q. Okay. And, we can agree --

{DE 11-250} [Day 5/Morning Session ONLY] {10-21-14}

[WITNESS: Hachey]

1 A. That's at a higher level.

2 Q. Okay. So, that means that, as of October 2008,
3 TransCanada was projecting more exports to the eastern
4 U.S. than they had projected in May of 2008 over the
5 next year, that is, from 2009 to 2010?

6 A. Well, I've never seen the chart. So, if that's the
7 interpretation, I don't know.

8 Q. I'm asking you if you agree with my interpret -- I know
9 you've never seen it before. I'm just asking you
10 whether you agree that that's what the chart shows?

11 A. I told you what the chart shows. If I'm to try to
12 interpret it, it's something I'm not familiar with, and
13 I think I'm on speculative ground trying to interpret
14 it.

15 Q. Okay. Go to 103.

16 A. What is 103?

17 Q. 103 is the "TSO 2009: Overview & Results". It's a
18 TransCanada document, right?

19 A. It has the TransCanada logo on the PowerPoint
20 presentation throughout.

21 Q. And, you see on that page that, on Page 2 of the --
22 which is actually contained on the first page of 103,
23 "TransCanada's Outlook: North America". "Gas prices:
24 7 dollars US per million Btu flat long term (NYMEX

[WITNESS: Hachey]

1 Henry Hub)." You see that?

2 A. I see that.

3 Q. TransCanada was projecting, in June of 2009, that gas
4 prices at \$7 were going to remain flat over the long
5 term. Agree?

6 A. That's what the line says.

7 Q. Turn to the chart on the next page. And, we can agree,
8 can we not, Mr. Hachey, that TransCanada was using
9 NYMEX gas prices to forecast the price of gas beginning
10 in January of 2009?

11 A. Say that again.

12 Q. From the chart that's in the bottom of this next page,
13 Page 2 of Exhibit 103, which is entitled "NYMEX Gas
14 Prices", I'm sorry, "January 2009 Forecast". You'll
15 see that at the bottom of that PowerPoint page there's
16 a TransCanada logo. And, it says "Source:
17 TransCanada, January 2009 Forecast". Do you see that?

18 A. I see that.

19 Q. So, TransCanada was using NYMEX gas prices to forecast
20 the price of gas from 2009 through 2020. Would you
21 agree?

22 A. I don't think it says that at all.

23 Q. What do you think it says?

24 A. It looks like a forecast of Henry Hub prices, I guess.

[WITNESS: Hachey]

1 It's not --

2 Q. What it says on the chart is "NYMEX Gas Prices", right?

3 A. It's says "NYMEX Gas Prices".

4 Q. And, NYMEX is a futures exchange, isn't it?

5 A. Well, it could be a trade at Henry Hub.

6 Q. Well, we saw the chart before, when TransCanada
7 referred to "Henry Hub prices". But this chart's
8 different. This chart says "NYMEX Gas Prices:
9 January 2009 Forecast". Agree?

10 A. That's what the chart says.

11 Q. And, can we also agree that, as we said a few moments
12 ago, you're very critical of PSNH for relying on NYMEX
13 gas prices. It's a forecast, right?

14 A. We've gone over that and I've testified to that.

15 Q. Okay. We can agree on this chart that what this chart
16 shows is that, in nominal dollars, TransCanada, in
17 January of 2009, was projecting that gas prices would
18 continue to increase in nominal dollars, and in actual
19 dollars, at least through about 2015, and, in nominal
20 dollars, would continue to increase through 2020,
21 correct?

22 A. That's what it looks like, yes.

23 Q. All right. Turn to the next page, if you would, Page 3
24 of this document. Can we agree that this document

[WITNESS: Hachey]

1 shows U.S. shale gas production actually declining a
2 bit from 2008 to 2010, and then remaining relatively
3 flat?

4 A. U.S. shale? No.

5 Q. Yes.

6 A. U.S. shale significantly widens from 2000 --

7 Q. Oh, it significantly widens. But it, in terms of how
8 much it widens, first of all, would you agree there
9 isn't much of that chart -- of showing on that at all
10 in 2006, 2007, and 2008? By that, I mean --

11 A. It is what it is. I mean, it's a significantly growing
12 percentage. So, I don't know what --

13 Q. We'll come back to just what TransCanada said about
14 shale gas in a minute. Mr. Hachey, let me ask you a
15 question before we get to that. If you had known when
16 you prepared your testimony that TransCanada was using
17 NYMEX gas prices to forecast the price of gas into the
18 future, would it have affected your testimony?

19 A. As I said, I'm not sure that that's what that chart
20 shows. That may be cash prices. Those aren't futures.
21 They may be cash prices.

22 Q. How do you know they're not futures? It's a NYMEX
23 price.

24 A. I don't. I didn't prepare the chart.

[WITNESS: Hachey]

1 Q. Well, isn't NYMEX, by definition, when you project it
2 into the future, a futures price, because NYMEX is an
3 exchange price? It's the -- it's an exchange, right?
4 A traded price?

5 A. I don't know. I didn't prepare the chart. I'm
6 thinking it could be a projection of cash prices.

7 Q. Okay. Let me ask the question again. New York --
8 "NYMEX" stands for the "New York Mercantile Exchange",
9 right?

10 A. Yes.

11 Q. And, if what you're doing is projecting prices into the
12 future using that exchange, aren't you using futures
13 prices?

14 A. I don't know what this chart shows.

15 Q. I'm not -- that's not the question. I'm not asking you
16 what the chart shows.

17 A. Okay.

18 Q. I'm asking you what you know.

19 A. Try again. Could we try the question again.

20 MR. GLAHN: Could you please read it
21 back to the witness.

22 (Whereupon the court reporter read back
23 the last question asked by Mr. Glahn.)

24 **BY THE WITNESS:**

[WITNESS: Hachey]

1 A. Again, I'm having difficulty between the clarity of
2 whether these are cash prices or future prices --
3 futures prices.

4 MR. GLAHN: Could you read the question
5 to the witness again. I'm not asking -- please
6 understand, Mr. Hachey, I'm not asking you about the
7 chart. I'm asking you for your knowledge of this NYMEX
8 issue.

9 (Whereupon the court reporter re-read
10 the last question asked by Mr. Glahn.)

11 **BY THE WITNESS:**

12 A. Not necessarily. In that I'm back to, if I'm using
13 NYMEX futures to project gas prices, then I'm using
14 NYMEX futures to project gas prices. If I'm using a
15 NYMEX cash price, then that's a different thing.

16 MR. GLAHN: Okay. Take a look at what
17 we've marked -- what we'll mark as "104", is a document --
18 is a "Presentation to the Tolls Task Force September 2009
19 Forecast Update" from TransCanada. It's dated October 7,
20 2009. That will be "104".

21 "105" will be a "Presentation to the
22 Tolls Task Force" in March of 2010. It's entitled
23 "February Forecast Update".

24 (Atty. Frazier distributing documents.)

[WITNESS: Hachey]

1 CMSR. HONIGBERG: So, "104" is
2 October 7, 2009?

3 MR. GLAHN: Correct.

4 (The documents, as described, were
5 herewith marked as **Exhibit 104** and
6 **Exhibit 105**, respectively, for
7 identification.)

8 BY MR. GLAHN:

9 Q. So, 104, October 7, 2009, if you look at Page 2 of the
10 document, and Page 4 of the PowerPoint, what
11 TransCanada said is that the "Western Canadian
12 Sedimentary Basin supply was lower than expected due to
13 unprecedented market conditions", including "gas
14 prices". You see that?

15 A. I see that.

16 Q. So, the market conditions of gas prices, at least
17 according to TransCanada, was "unprecedented", correct?

18 A. The sentence is "WCSB supply lower than expected due to
19 unprecedented market conditions."

20 Q. That's what TransCanada said in October of 2009, right?

21 A. That's what it appears on this chart with the
22 TransCanada logo.

23 Q. Okay. And, on Page 3, in the first PowerPoint chart on
24 that page, it says "Supply Forecast for Western

[WITNESS: Hachey]

1 Canadian Sedimentary Basin coal" -- or, "gas", rather.
2 And, what TransCanada said in October of 2009 was that
3 "Post 2010, the supply to flatten and possibly increase
4 depending on shale success." Correct?

5 A. That's what it says.

6 Q. So, at that point, would you agree that TransCanada
7 didn't know whether the production of shale gas was
8 going to be successful to the extent that it affected
9 gas prices?

10 A. It seems to say "depending on shale success". So, you
11 know, one of the issues in natural gas is the -- how
12 much gas is available, it depends on how much the price
13 is. So, in other words, it's a complicated --

14 Q. Sorry.

15 A. Gas supply is complicated, because you have a lift cost
16 associated with getting the gas out of the ground.
17 And, depending on what the market price is, it may or
18 may not be -- make any sense to bring the gas out of
19 the ground. So, that's the perspective I'm trying to
20 bring to these charts. And, the first time I've seen
21 the charts. So, I don't really -- can't really reach
22 conclusions like you are.

23 Q. Okay. Could we also agree that one factor that would
24 affect how much shale gas production would increase was

[WITNESS: Hachey]

1 whether environmental issues over shale gas prevented
2 continuing shale gas fracking or drilling?

3 A. There have been a number of people who have raised
4 environmental issues related to shale gas production,
5 that's correct.

6 Q. And, that's one of them, right?

7 A. What is one of them?

8 Q. Whether environmental groups or concerns of environ --
9 ah, I apologize. One of the considerations is whether
10 environmental issues relating to shale gas will slow
11 the production of shale gas down?

12 A. That is something that has been raised, that there are
13 environmental issues associated with the production of
14 shale gas.

15 MR. GLAHN: Okay. Let's take a look at
16 the next document, which is "106", and it is a "2011 TSO
17 Overview". And, as I said before, it represents -- that
18 "TSO" stands for "Transportation Supply Outlook".

19 (ATty. Frazier distributing documents.)

20 (The document, as described, was
21 herewith marked as **Exhibit 106** for
22 identification.)

23 BY MR. GLAHN:

24 Q. If you look at the first page, it's actually Page 2 of

[WITNESS: Hachey]

1 the PowerPoint, you see that TransCanada is noting that
2 "Growth in supply due to unconventional production in
3 the Marcellus region, Mid-continent and B.C.
4 unconventional gas." Do you see that?

5 A. You said "Page 2"?

6 Q. It's on Page 2 of the PowerPoint, Page 1 of the
7 document.

8 A. Oh, I'm sorry. Try me -- try me once more.

9 Q. I just read that what TransCanada was noting as the
10 outlook was that there would be a "Growth in supply due
11 to unconventional production in the Marcellus region,"
12 and "Mid-continent", and I assume that stands for
13 "British Columbia unconventional gas." That's what
14 they were saying in 2011, right?

15 A. In 2011, which is the date of this presentation, it
16 says "Growth in supply due to unconventional production
17 in the Marcellus region, Mid-continent and B.C.
18 unconventional gas." That's what it says.

19 Q. Okay. But they were also saying that liquid natural
20 gas supply would still be needed to meet a growing
21 North American demand, right?

22 A. There's a sentence there that says "LNG supply still
23 needed" -- "still needed to meet North America demand."

24 Q. Can you agree with me, Mr. Hachey, that the documents

[WITNESS: Hachey]

1 that I've shown you, start with 100, and go through
2 this document, 105 -- or, 106, rather, are all
3 documents that you didn't see before you prepared your
4 testimony?

5 A. That's correct.

6 Q. And, they're all TransCanada documents, agree?

7 A. They are all TransCanada logo PowerPoints.

8 Q. And, if you go to the second page of Exhibit 106. Once
9 again, we see a January '11 -- we see a forecast using
10 NYMEX gas prices. Do you see that?

11 A. I see that.

12 Q. And, that forecast goes out, since this is a 2011
13 document, another nine years, right?

14 A. Forecast goes out to 2020.

15 Q. Okay.

16 A. I'd just point out, while we're on this chart, "NYMEX
17 Gas Prices" that alludes to my confusion -- or, goes
18 back to my confusion, the interpretation you were
19 trying to give, these are NYMEX gas prices, which I'm
20 taking as "cash prices". So, it may will be that the
21 prior chart, where you were trying to say that those
22 were "futures", they're really cash prices. These
23 aren't "futures", these are described here as "cash
24 prices".

{DE 11-250} [Day 5/Morning Session ONLY] {10-21-14}

[WITNESS: Hachey]

1 Q. You don't know --

2 A. There's some confusion about that. But I interpret
3 from this that we're talking "cash prices".

4 Q. Can you tell me where it says "cash prices"?

5 A. "NYMEX Gas Prices".

6 Q. Okay.

7 A. So, it's the cash price at Henry Hub. Perhaps. I
8 don't know, I didn't prepare the chart. I'm just
9 saying that there's -- you're asking me to make a
10 statement that you wanted me to, and I couldn't,
11 because I'm not clear on what these documents are.

12 Q. Okay. One thing we do know is that, in 2011,
13 TransCanada was projecting that gas prices, in nominal
14 dollars, would increase pretty dramatically after 2010,
15 and, even in actual dollars, would increase from 2010
16 to 2015. Agree?

17 A. Well, what it's showing is they're going up from \$4, if
18 I start with 2011, they're at \$4, and they're going up
19 to a steady state of maybe 6.50.

20 Q. Okay. And, if the production of unconventional gas was
21 going to drive gas prices down, you wouldn't have
22 expected TransCanada to be projecting increases out the
23 next five to fifteen years, would you? Or, five to ten
24 years, would you?

{DE 11-250} [Day 5/Morning Session ONLY] {10-21-14}

[WITNESS: Hachey]

1 A. The issue on natural gas that you have to think about
2 is the forecasts, like the EIAs, are sophisticated
3 supply and demand curve projections. So, the supply
4 curve is really a curve of the marginal cost of various
5 elements of production. So, that's really what you're
6 doing. So, it -- the fact of shale gas being there,
7 you really have to know the lift cost of the shale gas,
8 in terms of trying to understand what it's impact on
9 the -- on the marginal production on the supply curve
10 and what the marginal overall cost of gas will be.

11 Q. Let me try my question again. If the production of
12 shale gas was going to drive prices down because of
13 increased supply, you would not have expected
14 TransCanada, in 2011, to be projecting a steady
15 increase in gas prices in the future, would you?
16 Answer it "yes" or "no", and then qualify it any way
17 you want.

18 A. I'm sorry, I can't answer it "yes" or "no". It really
19 relates to "what's the lift cost of the shale gas?", in
20 terms of what its impact is going to be.

21 MR. GLAHN: Fine. We'll leave your
22 testimony there. Let's go to the next exhibit. This is
23 107.

24 (Atty. Frazier distributing documents.)

[WITNESS: Hachey]

1 (The document, as described, was
2 herewith marked as **Exhibit 107** for
3 identification.)

4 BY MR. GLAHN:

5 Q. I will undoubtedly pronounce his name wrong, but how do
6 you pronounce the name of the CEO of TransCanada?

7 "Kvisle"?

8 A. "Kwiz-lee".

9 Q. Say it again?

10 A. "Kwiz-lee".

11 Q. I'll never get that right. Anyway, let's just call him
12 the "CEO". So, hearings before the Legislature
13 occurred in March of 2009, and it's your testimony, is
14 it not, Mr. Hachey, that at any time between 2008 and
15 2009 PSNH should have stopped construction of the
16 installation of the Scrubber. Is that correct?

17 A. I believe what I said is that there was information
18 becoming available into the latter part of 2008, and
19 certainly 2009 gas prices were dropping substantially.
20 And, PSNH, knowing the sensitivity of the Scrubber to
21 the spread between coal and natural gas, no one else of
22 whom knew at that point in time what the specifics
23 were, without, you know, doing their own independent
24 analysis, that PSNH should have paused and certainly

[WITNESS: Hachey]

1 waited for more information, if not stopped.

2 Q. Because PSNH should have known that gas prices were
3 going to continue to drop into the future?

4 A. Well, gas prices had already dropped well before, well
5 below the necessary spread for there to be a customer
6 break-even.

7 Q. Okay. So, what I put before as 107 is the Final
8 Transcript of TransCanada Corporation's Earnings
9 Conference Call on May 1, 2009. Let's take a look at
10 what the CEO of TransCanada said about gas prices at
11 that time. And, I'm looking at the paragraph that
12 begins on the bottom of that page. So, if you'd read
13 that paragraph to yourself, I want to ask you about
14 something in it. Let me know when you're done,
15 Mr. Hachey.

16 (Short pause.)

17 **BY THE WITNESS:**

18 A. I've read the paragraph.

19 BY MR. GLAHN:

20 Q. Okay. So, PSNH, when it made its projection of gas
21 prices in 2008, projected that the price of natural gas
22 would be about 12 in 2000 -- I'm sorry, would be 11 in
23 2012, is that correct?

24 A. \$11, escalating at two and a half percent per year.

{DE 11-250} [Day 5/Morning Session ONLY] {10-21-14}

[WITNESS: Hachey]

1 Q. Okay. And, we talked about that in the ESI document
2 the other day. But what Mr. Kvisle said, or however --
3 what the CEO said is that "Gas prices are obviously
4 volatile and we look at them today and we would say
5 that our gas price outlook for the longer term is
6 somewhere in the 6 to 10 range. You could see" --
7 "And you could see over that period, gas prices going
8 well above 10 and you can see them going down into the
9 3 or 4 range, as we're seeing right now. But we don't
10 think gas prices are going to remain below", I assume
11 that's "Canadian dollars \$4 because you actually can't"
12 -- "because you can't actually offset the annual
13 decline that occurs in the supply base." And, then, he
14 goes on in the last sentence to say "And, if the price
15 is below 4, that simply can't occur. So, we expect gas
16 prices to move back up into that 6 to 10 range." Did I
17 read that correctly?

18 A. Yes.

19 Q. So, can we agree that, in May of 2009, TransCanada's
20 CEO is telling the investment community that
21 TransCanada expected gas prices to go back up into the
22 6 to 10 range?

23 A. That's what the words say, yes.

24 Q. Okay. And, you didn't know that when you prepared your

[WITNESS: Hachey]

1 testimony in this case, did you?

2 A. I wasn't aware of this document or these statements,
3 no.

4 Q. And, this is just not some representative of
5 TransCanada, is it? This is the CEO of TransCanada?

6 A. That's who Hal Kvisle is, yes.

7 Q. And, you understand that, although you can draw all the
8 conclusions you want to about the future nature of
9 statements that are made to the investment market, you
10 want to be very careful what you say to the investment
11 market, isn't that true?

12 A. You know, it's a call on the corporation earnings.
13 And, if that's the investment market, if you want to
14 call that the investment market that he's speaking to,
15 then, so be it.

16 Q. All right. Let's go away from gas prices for a moment
17 and talk about things that TransCanada said in general
18 about fracking.

19 MR. GLAHN: So, Denise, would you hand
20 me 97 and 98 please.

21 CMSR. HONIGBERG: Let's go about another
22 15 minutes or so.

23 MR. GLAHN: Okay. That would be fine.

24 And, I expect -- I'm hoping to get through this part of

[WITNESS: Hachey]

1 that, and then maybe less than an hour after the break.

2 (Atty. Frazier distributing documents.)

3 MR. GLAHN: Denise, let's not go to 98
4 right now.

5 MS. FRAZIER: All right.

6 MR. GLAHN: Our designation "98", I've
7 got to find something in it first, and I don't want to
8 slow this down.

9 CMSR. HONIGBERG: This is "108".

10 (The document, as described, was
11 herewith marked as **Exhibit 108** for
12 identification.)

13 BY MR. GLAHN:

14 Q. Okay. So, let's take a look at what we've marked as
15 "108". In your testimony, you say that "Clear
16 documentation existed as early as 2008 indicating that
17 production of unconventional natural gas was exceeding
18 production from unconventional [conventional?] natural
19 gas sources." Do you recall that?

20 A. Yes. And, I provided a chart that documented that.

21 Q. Okay. But what we know is that this is a document that
22 TransCanada submitted to the National Energy Board in
23 June of 2006. Let me read you what TransCanada said
24 about shale gas in June of 2006. "Shale gas represents

[WITNESS: Hachey]

1 another potential source of unconventional gas from the
2 WCSB. At the present time, however, there is no
3 commercial production associated with shale gas and all
4 drilling to date has been of a research and development
5 nature. Relatively small contributions from shale gas
6 can be expected over a long time frame." You see that?

7 A. You've read it correctly.

8 Q. And, you didn't know that when you prepared your
9 testimony, did you?

10 A. I wasn't aware of this document. But what --

11 Q. Okay. And, this --

12 A. But, if I can just finish my answer, we're talking
13 about the Western Canadian Sedimentary Basin, but
14 that's Alberta.

15 Q. Okay. Agreed. Agreed. Shale gas, though, right?
16 Unconventional gas?

17 A. From the WCSB, correct.

18 Q. Okay.

19 MR. GLAHN: Denise, can you pass around
20 number 98 now.

21 (Atty. Frazier distributing documents.)

22 CMSR. HONIGBERG: Thanks. This is
23 "108".

24 MS. DENO: No, 109.

[WITNESS: Hachey]

1 CMSR. HONIGBERG: "109", sorry.

2 (The document, as described, was
3 herewith marked as **Exhibit 109** for
4 identification.)

5 BY MR. GLAHN:

6 Q. And, I just want to ask you about a statement in 109 on
7 Page 22 that the CEO of TransCanada made.

8 A. Which page?

9 Q. Twenty-two. This is in the third quarter 2007, an
10 earnings call. It occurred on October 30, 2007. So,
11 let me read you a statement that Mr. -- that the CEO
12 made, because I won't get his name right. "We see
13 roughly flat line production in Alberta and significant
14 growth in demand, which sets the stage for a higher
15 price in Alberta. We frankly see a similar scenario
16 unfolding all the way across North America with flat
17 production at best over time. I see lately some people
18 have come out with a quite bullish forecasts" -- "with
19 quite bullish forecasts of gas production growth in
20 North America. I think those forecasts overlook the
21 inexorable decline from our base producing sources in
22 parts of Canada and the U.S. So, our scenario would be
23 flat production at best out of existing areas in North
24 America, setting the stage for higher prices and demand

[WITNESS: Hachey]

1 on both LG and Northern Gas sides." Do you see that?

2 A. You've read it correctly.

3 Q. You didn't know about that statement when you prepared
4 your testimony either, did you?

5 A. I hadn't reviewed this document in preparation of my
6 testimony, that's correct.

7 Q. Okay. And, you know that, in June of 2008, FERC issued
8 a report on projected gas prices, and indicated that
9 the market -- markets anticipate continuing high gas
10 prices. That report was submitted to the PUC with --
11 by PSNH in September of 2008. Do you recall that?

12 A. I recall a FERC document that was submitted as part of
13 your report to the PUC.

14 Q. But you don't consider the FERC Enforcement Division to
15 be an expert in gas prices or projected gas prices,
16 right?

17 A. Right. And, I believe we answered a interrogatory to
18 that effect.

19 Q. That's what you said in answer to a data request,
20 right?

21 A. Right.

22 Q. So, you've got the Clean Skies Report, which is
23 July 4th, 2008, which you say is an important report.
24 But a report from FERC, within eight days of that

[WITNESS: Hachey]

1 report or twelve days of that report, you don't give
2 any credence to?

3 A. I didn't know the basis for the FERC report. The basis
4 for the Clean Skies Report was the producers that
5 actually sat on the reserves, owned the -- owned the
6 resource base, and were prepared to get it to market.

7 MR. GLAHN: Okay. Denise, can I see
8 number 100 and 102. Don't hand them out -- okay. Yes.
9 Go ahead.

10 MS. FRAZIER: Both of them or just one?

11 MR. GLAHN: Both are fine.

12 (Atty. Frazier distributing documents.)

13 CMSR. HONIGBERG: This is two separate
14 exhibits?

15 MR. GLAHN: Yes. The answer to Number
16 74(b) will be -- is this "110"?

17 CMSR. HONIGBERG: "110".

18 MR. GLAHN: And, the Final Transcript of
19 the earnings call will be "111".

20 (The documents, as described, were
21 herewith marked as **Exhibit 110** and
22 **Exhibit 111**, respectively, for
23 identification.)

24 BY MR. GLAHN:

[WITNESS: Hachey]

1 Q. And, Mr. Hachey, on 110, this is a report by
2 TransCanada's CEO to the Trilateral Commission, which I
3 thought was some conspiratorial group headed up by a
4 bunch of rich Americans, but it appears to be a North
5 American Regional Meeting of that group on
6 November 22nd, 2008. Do you see that? On the first
7 page of the PowerPoint?

8 A. Yes.

9 Q. Okay. If you would turn to the -- the pages aren't
10 numbered on this document. So, if you could go to the
11 very back, and come about four pages -- five pages
12 forward, there is a page that says "North American
13 Natural Gas Resources". Let me know when you find it.

14 A. I see it.

15 Q. Okay. And, --

16 A. It's titled "North American Natural Gas Resources".

17 Q. Right. And, it's got a map with a bunch of -- showing
18 shale gas basins and natural gas basins, --

19 A. Yes.

20 Q. -- in looks like basically North America and United --
21 well, Canada and the United States, right?

22 A. Yes.

23 Q. And, what TransCanada is saying in this to the
24 Trilateral Commission, whoever that is, is that

[WITNESS: Hachey]

1 "Emerging shale natural gas basins (marked in brown) in
2 North America may add significant supply."

3 A. Right.

4 Q. So, do you agree with that?

5 A. That's what it says.

6 Q. Yes. So, let's take a look at 111. So, this is a
7 transcript of TransCanada statements to the Credit
8 Suisse Group Energy Summit in February of 2010. And,
9 if you turn over to Page 3. I've highlighted some
10 language in yellow on that page. So, can we agree,
11 Mr. Hachey, that in February of 2010 the Chief
12 Operating Officer, Mr. Girling, of TransCanada told the
13 Credit Suisse Group that "shale gas is going to play a
14 larger and larger role, but it's not going to be able
15 to fill the whole gap of 15 billion cubic feet a day of
16 lost gas every year that needs to be replaced. So, we
17 are still going to be heavily dependent upon liquid
18 natural gas or conventional gas, perhaps the North in
19 the future, and LNG." You see that?

20 A. That's you read it accurately.

21 Q. And, if you go over to Page 8 of that same document.
22 So, Mr. Girling there says "So, basically what happened
23 in 2009 as everybody" -- "is, as everybody knows, that
24 the markets melted everywhere and gas prices fell,

[WITNESS: Hachey]

1 drilling fell."

2 And, then, he goes on to say "The
3 primary driver of our toll, it's a cost of service
4 toll, as I said. As volume goes up, our toll goes
5 down, and vice versa. When volume goes down, our toll
6 goes up. Our revenues remain steady" -- "remain rather
7 steady."

8 "We believe there will be a return to
9 conventional drilling because you have to continue to
10 drill to meet the demands in the marketplace."

11 Correct?

12 A. That's what it says.

13 Q. Some of the statements he made. Who's -- what's
14 Mr. Girling's title now?

15 A. He's the CEO.

16 Q. Okay.

17 MR. GLAHN: Just a couple of more,
18 Mr. Hachey.

19 (Atty. Frazier distributing documents.)

20 CMSR. HONIGBERG: This is "112".

21 (The document, as described, was
22 herewith marked as **Exhibit 112** for
23 identification.)

24 BY MR. GLAHN:

[WITNESS: Hachey]

1 Q. Mr. Hachey, 112 is a NewsRoom article from the
2 TransCanada Corp. Earnings Conference Call on
3 November 1, 2011. Do you know who, and probably my
4 French won't get this right, Alex Pourbaix is?

5 A. I know Alex Pourbaix, yes.

6 Q. He's the President of Energy and Oil Pipelines for
7 TransCanada, correct?

8 A. That may be his current title. I'm not quite sure.

9 Q. Well, what he says is, in this earnings call, is
10 "There's no question that the market has changed over
11 the last 24 months." "24 months" would mean going back
12 to November of 2009, do you agree?

13 A. Yes.

14 Q. "Shale gas has been determined" -- "has determined to
15 be in very abundant supply and economically accessed.
16 That said, our view continues to be that the lower 48
17 will continue to need gas going forward." That's what
18 Mr. Pourbaix told investors in the third quarter of
19 2011, right?

20 A. That's correct.

21 Q. And, what he says a couple -- the next paragraph is
22 that, although shale gas will make up a lot of the
23 market, that TransCanada's view "continues to be that
24 the lower 48 will need gas [going] forward." Right?

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[WITNESS: Hachey]

1 A. I'm sorry. Yes. "That said, our view continues to be
2 that the lower 48 will continue to need gas moving
3 forward." That's right.

4 Q. And, again, this is something that you didn't know
5 about when you prepared your testimony, right?

6 A. I didn't have these documents, that's correct.

7 MR. GLAHN: Denise, can I see 106, 106
8 and 107. These are the last two documents I'm going to
9 mark with Mr. Hachey, I believe.

10 (Atty. Frazier distributing documents.)

11 MR. GLAHN: So, "113" will be the
12 "Business and Services Restructuring Mainline 2012-2013 --
13 actually, let's make that "114". And, "113" will be the
14 September 2011 presentation by TransCanada to Business and
15 Services Restructuring Tolls Application.

16 (The documents, as described, were
17 herewith marked as **Exhibit 113** and
18 **Exhibit 114**, respectively, for
19 identification.)

20 BY MR. GLAHN:

21 Q. Okay. This document is a TransCanada document. I
22 believe this was submitted to the National Energy Board
23 in Canada. Let's go to the next page of this document,
24 which is 1 of 30. Tell me if I read this statement

[WITNESS: Hachey]

1 correctly.

2 A. I'm sorry, which --

3 MS. AMIDON: Which one are you --

4 MR. GLAHN: It's the document that the
5 front page is titled "TransCanada Pipelines Limited".

6 WITNESS HACHEY: Okay.

7 MR. PATCH: Could we just have the
8 exhibit number on this?

9 CMSR. HONIGBERG: That's 113.

10 MR. GLAHN: Yes. It's 113.

11 BY MR. GLAHN:

12 Q. And, on page -- on the first page of that document,
13 which is over on the next page actually, Section 3.0,
14 "Business Environment", tell me if I read this
15 statement correctly. "As recently as 2007 there was a
16 strong consensus that gas supply in the U.S. Lower 48
17 states was in long term decline. At the same time,
18 based on optimistic views of gas use in power
19 generation, demand forecasts were relatively robust.
20 The combination of declining domestic supply and
21 growing domestic demand led to the conclusion that
22 large increases in gas imports into North America would
23 be required. TransCanada's expectation for the North
24 American supply and demand balance in 2007 was

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[WITNESS: Hachey]

1 reflected in TransCanada's 2007 annual forecast, which
2 is shown in Figure 3-1." Did I read that correctly?

3 A. Yes.

4 Q. And, can we agree on this? There's nothing in that
5 chart that talks about "shale gas", is there?

6 A. In this chart, Figure 3-1?

7 Q. Yes.

8 A. Well, I don't know if there's shale gas within any of
9 those categories.

10 Q. What we do know is that TransCanada is saying that, as
11 of 2007, their -- their own projections was that there
12 would be large -- "that large increases in gas imports
13 into North America would be required", right?

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

15 Q. Okay. Go over to the next page of this, which is
16 actually Page 9 of the document. It's entitled "US
17 Shale Gas". "US shale gas production has quickly
18 emerged from being a virtually unnoticed supply source
19 to a major source of supply." This is in a 2011
20 document. As recently as 2007, North American supply
21 forecasts included an insignificant contribution from
22 US shale gas." Did I read that correctly?

23 A. Yes.

24 Q. And, then, there's a -- TransCanada talks about what

[WITNESS: Hachey]

1 the forecasts for shale gas production will be by 2020,
2 and says "Such rapid change is unprecedented." Agree?

3 A. That's what it says.

4 Q. You didn't know about this document when you prepared
5 your testimony either, did you?

6 A. No, I didn't know about this document.

7 Q. Okay. So, finally, take a look at number 114 with me.
8 These are a couple of pages from, again, a Tolls
9 Application made by TransCanada to the National Energy
10 Board in Canada, for their seeking a fair return for
11 2012-2013. And, if you go over to the second page,
12 Page 50, can we agree that looking at that chart, that,
13 and I apologize for this not being in color, but the
14 Marcellus production is in -- is in that light gray.
15 In this chart, TransCanada doesn't show any increase,
16 any significant increase of any kind in Marcellus
17 production until mid-2009. Do you agree?

18 A. I'm sorry, but I can't, without a good chart here, make
19 that assessment.

20 Q. Can you answer the question?

21 A. I did.

22 Q. Okay. And, your answer was?

23 A. I said "I'm sorry, I can't make that assessment without
24 a good chart."

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[WITNESS: Hachey]

1 Q. Okay. Fair enough. One last question before the
2 break. I want you to assume that TransCanada has in
3 its possession documents that directly contradict your
4 conclusion that "clear documentation existed as early
5 as 2006 indicating that production of unconventional
6 natural gas was exceeding production from conventional
7 natural gas sources." Do you understand my question?
8 I want you to assume that.

9 A. Assume what now?

10 Q. I want you to assume that TransCanada has in its
11 possession documents and information directly
12 contradicting the conclusion that you reach in the
13 sentence that begins on Page 21 of your testimony, and
14 goes through lines 15 to 17.

15 A. Well, it's getting a little convoluted, because the
16 sentence referred to that chart, and the chart was a
17 fact.

18 Q. Okay. I want you to assume that TransCanada has in its
19 possession documents and information that directly
20 contradict your testimony on Page 21, Lines 15 to 17,
21 including the chart.

22 A. Well, it doesn't contradict it. The chart is the
23 chart. That's a fact.

24 Q. I didn't ask you whether it contradicted it. I asked

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1 you to assume that the information did contradict it.

2 You got that?

3 A. I don't know. I don't know that, because the problem
4 is, we're talking about a fact. So, I don't know that
5 any of the information that you've been providing
6 contradicts a fact. And, that's what the testimony
7 was.

8 CMSR. HONIGBERG: Mr. Hachey, he didn't
9 say that it did. He's asking you to assume the existence
10 of documents, whether you control them or not --

11 WITNESS HACHEY: That contradict this
12 fact?

13 CMSR. HONIGBERG: Yes.

14 MR. GLAHN: Yes.

15 CMSR. HONIGBERG: That's what he's
16 asking you.

17 WITNESS HACHEY: Okay.

18 BY MR. GLAHN:

19 Q. If that were true, would it change your testimony in
20 this case?

21 A. No, because the chart is a fact.

22 MR. GLAHN: Is this a good place to
23 break?

24 CMSR. HONIGBERG: Yes. All right. So,

[WITNESS: Hachey]

1 let's go off the record for a second.

2 (Brief off-the-record discussion
3 ensued.)

4 CMSR. HONIGBERG: Let me go back on the
5 record, and say that we'll come back at 2:00 and close
6 this session. Now we're off the record.

7 (Whereupon the Morning Session of Day 5
8 recessed at 12:44 p.m. The Afternoon
9 Session of Day 5 is contained under
10 separate cover so designated.)
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