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STATE OF NEW HAMPSHIRE

PUBLIC UTILITIES COMMISSION

October 14, 2008 - 10:11 a.m.  
Concord, New Hampshire

RE: DE 07-108  
PUBLIC SERVICE CO. OF NEW HAMPSHIRE:  
PSNH's 2007 Least Cost Integrated  
Resource Plan.

PRESENT: Chairman Thomas B. Getz, Presiding  
Commissioner Graham J. Morrison  
Commissioner Clifton C. Below  
  
Connie Fillion, Clerk

APPEARANCES: Reptg. Public Service Co. of New Hampshire:  
Gerald M. Eaton, Esq.  
  
Reptg. Bridgewater Power Company:  
David Shulock, Esq. (Brown, Olson & Gould)  
  
Reptg. TransCanada Hydro Northeast, Inc.  
and TransCanada Power Marketing, LTD.:  
Douglas L. Patch, Esq. (Orr & Reno)  
  
Reptg. Constellation NewEnergy and  
Constellation Energy Commodities Group:  
Steven V. Camerino, Esq. (McLane, Graf...)  
  
Reptg. Freedom Logistics, LLC & Halifax  
American Energy Company, LLC:  
James T. Rodier, Esq.  
N. Jonathan Peress, Esq. (Downs, Rachlin...)

Court Reporter: Steven E. Patnaude, LCR No. 52

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APPEARANCES: (C o n t i n u e d)

Reptg. Residential Ratepayers:  
Meredith Hatfield, Esq., Consumer Advocate  
Kenneth E. Traum, Asst. Consumer Advocate  
Stephen Eckberg  
Office of Consumer Advocate

Reptg. PUC Staff:  
F. Anne Ross, Esq., Esq.  
Suzanne G. Amidon, Esq.

## I N D E X

	PAGE NO.
1	
2	
3 WITNESS PANEL:	
4                   STEPHEN R. HALL	
5                   TERRANCE J. LARGE	
6                   GILBERT E. GELINEAU	
7                   GEORGE R. McCLUSKEY	
8	
9 Direct examination by Mr. Eaton	10, 23
10 Direct examination by Ms. Ross	22
11 Cross-examination by Mr. Patch	24
12 Cross-examination by Mr. Rodier	28
13 Cross-examination by Ms. Ross	34
14 Cross-examination by Ms. Hatfield	36
15 Interrogatories by Cmsr. Below	48
16 Cross-examination by Mr. Camerino	53
17 Redirect examination by Mr. Eaton	55
18 Redirect examination by Ms. Ross	56
19 CLOSING STATEMENTS BY:	
20                   Mr. Shulock	59
21                   Mr. Patch	59
22                   Mr. Camerino	62
23                   Mr. Rodier	64
24                   Mr. Peress	65
Ms. Hatfield	75
Ms. Ross	78
Mr. Eaton	79

1

2

## E X H I B I T S

3

EXHIBIT NO.

D E S C R I P T I O N

PAGE NO.

4

1

PSNH's Least Cost Integrated  
Resource Plan filing (09-28-07)

10

5

2

PSNH filing of supplements to  
Least Cost Plan (03-28-08)

10

6

7

3

PSNH's filing of revised pages to  
Least Cost Plan (05-02-08)

10

8

4

Redacted Direct Testimony of  
George R. McCluskey (06-06-08)

10

9

10

5

PSNH Rebuttal Testimony of Messrs.  
Large, Gelineau and Hall

10

11

6

Partial Settlement Agreement  
(10-10-08)

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Commission Staff's and Public  
Service Company's Proposed  
Resolution of Unresolved Demand  
Side Issue in the Partial  
Settlement Agreement

23

14

15

16

8

Letter from TransCanada regarding  
issues to be raised at hearing  
(10-10-08)

27

17

18

9

Response to Data Request  
FREEHAL-01, Q-FL&HAEC-004

28

19

20

10

Letter submitted from Freedom  
Logistics and HAEC (10-09-08)

58

21

22

23

24

{DE 07-108} (10-14-08)

1 P R O C E E D I N G S

2 CHAIRMAN GETZ: Okay. Good morning,  
3 everyone. We'll open the hearing in docket DE 07-108. On  
4 September 28, 2007, Public Service Company of New  
5 Hampshire filed its 2007 Least Cost Integrated Resource  
6 Plan pursuant to RSA 378:38 and Order Number 24,695 issued  
7 on November 8, 2006 in Docket Number 04-072. An order of  
8 notice was issued on January 4 of this year setting a  
9 prehearing conference that was held on January 31.  
10 Subsequently, a secretarial letter was issued on April 18  
11 noting that the pending Motions to Intervene were granted  
12 and approving a procedural schedule in this docket. And,  
13 we have most recently a filing on October 7 of a Partial  
14 Settlement Agreement for this docket.

15 Can we take appearances please.

16 MR. EATON: For Public Service Company  
17 of New Hampshire, my name is Gerald M. Eaton.

18 CMSR. BELOW: Good morning.

19 CMSR. MORRISON: Good morning.

20 CHAIRMAN GETZ: Good morning.

21 MR. EATON: Good morning.

22 MR. SHULOCK: Good morning. David  
23 Shulock, from the law firm of Brown, Olson & Gould, PC,  
24 for Bridgewater Power Company, LP.

{DE 07-108} (10-14-08)

1 CMSR. MORRISON: Good morning.

2 CHAIRMAN GETZ: Good morning.

3 CMSR. BELOW: Good morning.

4 MR. PATCH: Good morning. Douglas  
5 Patch, from the law firm of Orr & Reno, for TransCanada  
6 Hydro Northeast, Inc.

7 CHAIRMAN GETZ: Good morning.

8 CMSR. MORRISON: Good morning.

9 CMSR. BELOW: Good morning.

10 MR. CAMERINO: Good morning,  
11 Commissioners. Steve Camerino, from McLane, Graf,  
12 Raulerson & Middleton, on behalf of Constellation  
13 NewEnergy and Constellation Energy Commodities Group.

14 CMSR. BELOW: Good morning.

15 CMSR. MORRISON: Good morning.

16 CHAIRMAN GETZ: Good morning.

17 MR. RODIER: Good morning. Jim Rodier,  
18 for Freedom Logistics and that the Halifax American Energy  
19 Company, along with Jonathan Peress, of Downs, Rachlin &  
20 Martin, also appearing for these two entities today.

21 CHAIRMAN GETZ: Good morning.

22 CMSR. MORRISON: Good morning.

23 CMSR. BELOW: Good morning.

24 MS. HATFIELD: Good morning,

{DE 07-108} (10-14-08)

1 Commissioners. Meredith Hatfield, for the Office of  
2 Consumer Advocate, on behalf of residential ratepayers.  
3 And, with me today is Ken Traum and Steve Eckberg of our  
4 office.

5 CHAIRMAN GETZ: Good morning.

6 CMSR. MORRISON: Good morning.

7 CMSR. BELOW: Good morning.

8 MS. ROSS: Good morning, Commissioners.

9 Anne Ross, with the Commission Staff, and with me today is  
10 George McCluskey, an analyst with the Electric Division,  
11 and Suzanne Amidon, an attorney in our Legal Division.

12 CHAIRMAN GETZ: Good morning.

13 CMSR. MORRISON: Good morning.

14 CMSR. BELOW: Good morning.

15 CHAIRMAN GETZ: And, what's the pleasure  
16 of the parties on how to proceed? Do we have a panel for  
17 the Partial Settlement Agreement?

18 MR. EATON: Yes. We have a panel of  
19 three witnesses from Public Service Company of New  
20 Hampshire and George McCluskey, from the Staff. The three  
21 witnesses sponsored the rebuttal testimony, Mr. Gilbert  
22 Gelineau, Terrance Large, and Stephen Hall.

23 CHAIRMAN GETZ: Is there any other  
24 issues we need to address before we hear from the panel?

{DE 07-108} (10-14-08)

1                   MR. EATON: We will address the Partial  
2 Settlement Agreement, and then offer the witnesses for  
3 cross-examination. There is an additional settlement  
4 issue, the one we -- the disputed issue that was in the  
5 Partial Settlement Agreement has been resolved between  
6 PSNH and the Staff, and we will present an exhibit that  
7 outlines that. Then, there will be cross-examination on  
8 that. And, then, following that, there are some disputed  
9 issues, which Mr. Rodier and Mr. Patch have submitted  
10 letters concerning, and we could go onto that after the  
11 settlement discussion is offer.

12                   CHAIRMAN GETZ: Are there other  
13 witnesses, in addition to the panel? Are we going to  
14 address these other issues through argument?

15                   MR. EATON: I think through argument,  
16 Mr. Chairman.

17                   MR. RODIER: Well, I have a few  
18 questions I'd like to -- just a few questions to ask the  
19 panel.

20                   CHAIRMAN GETZ: Of course, you'll get  
21 your opportunity for cross.

22                   MR. RODIER: Yes.

23                   CHAIRMAN GETZ: I was wondering if there  
24 are other witnesses?



[WITNESS PANEL: Hall|Large|Gelineau|McCluskey]

1 MR. RODIER: No.

2 CHAIRMAN GETZ: Okay. Please proceed.

3 MR. EATON: I'd like to call to the  
4 Stephen Hall, Terrance Large and Gil Gelineau, and George  
5 McCluskey.

6 (Whereupon Stephen R. Hall, Terrance J.  
7 Large, Gilbert E. Gelineau, and George  
8 R. McCluskey were duly sworn and  
9 cautioned by the Court Reporter.)

10 MR. EATON: Mr. Chairman, I circulated a  
11 list among the parties of six exhibits to be premarked.  
12 I'll provide that list to the Commission, provide it to  
13 the Clerk and to the court reporter as well. Exhibit 1  
14 would be the Least Cost Plan filing of September 28, 2007.  
15 That was filed almost a year ago or a little more than a  
16 year ago. On March 28th, by agreement with the parties,  
17 we submitted some supplements to the plan, Supplements 1  
18 through 4, that we would propose that be marked as  
19 "Exhibit 2". Exhibit 3 was a filing made on May 2nd,  
20 2008, which were corrected and revised pages to the Least  
21 Cost Plan. Exhibit 4 would be the redacted Direct  
22 Testimony of George McCluskey, which was filed on June 6th  
23 2008. Proposed Exhibit 5 would be PSNH's Rebuttal  
24 Testimony, which was filed on August 15th, 2008. And

{DE 07-108} (10-14-08)

[WITNESS PANEL: Hall|Large|Gelineau|McCluskey]

1 Exhibit 6 would be the filing of a Partial Settlement  
2 Agreement, which was filed with the Commission on October  
3 7th, 2008.

4 CHAIRMAN GETZ: Exhibits 1 through 6, as  
5 described by Mr. Eaton, will be marked for identification.

6 (The documents, as described, were  
7 herewith marked as Exhibit 1 through  
8 Exhibit 6, respectively, for  
9 identification.)

10 STEPHEN R. HALL, SWORN

11 TERRANCE J. LARGE, SWORN

12 GILBERT E. GELINEAU, SWORN

13 GEORGE R. McCLUSKEY, SWORN

14 DIRECT EXAMINATION

15 BY MR. EATON:

16 Q. Mr. Gelineau, would you please state your name for the  
17 record.

18 A. (Gelineau) My name is Gilbert Gelineau.

19 Q. For whom are you employed?

20 A. (Gelineau) Public Service Company of New Hampshire.

21 Q. What are your duties and what is your position?

22 A. (Gelineau) My position is Manager of Marketing Support.

23 And, in that function -- in that capacity, I'm

24 responsible for the -- I was responsible for developing

{DE 07-108} (10-14-08)

[WITNESS PANEL: Hall|Large|Gelineau|McCluskey]

1 the demand-side sections of the Least Cost Plan.

2 Q. Did you participate in technical sessions and  
3 discussions with the parties?

4 A. (Gelineau) I did.

5 Q. Did you also author a portion of the rebuttal testimony  
6 that was filed on June 6th, that's been marked as  
7 "Exhibit 4" for identification?

8 A. (Gelineau) Yes, I did.

9 Q. And, did you also confer with Staff concerning  
10 resolution of the remaining disputed issue in the  
11 Partial Settlement Agreement?

12 A. (Gelineau) That's correct.

13 Q. Mr. Hall, would you state your name for the record.

14 A. (Hall) Stephen R. Hall.

15 Q. For whom are you employed?

16 A. (Hall) I am employed by PSNH as Rate and Regulatory  
17 Services Manager.

18 Q. And, what are your duties in that position?

19 A. (Hall) I'm responsible for pricing, rate design, and  
20 regulatory interface.

21 Q. Did you assist in the preparation of the Integrated  
22 Resource Plan?

23 A. (Hall) Yes, I did.

24 Q. And, did you author part of the rebuttal testimony that

{DE 07-108} (10-14-08)

[WITNESS PANEL: Hall|Large|Gelineau|McCluskey]

1 was filed on August 15th?

2 A. (Hall) Yes, I did.

3 Q. And, did you participate in any technical sessions and  
4 settlement discussions among the parties?

5 A. (Hall) Yes, all of them.

6 Q. Is there any corrections that need to be made to the  
7 rebuttal testimony?

8 A. (Hall) None that I'm aware of.

9 Q. Mr. Large, would you please state your name for the  
10 record.

11 A. (Large) Certainly. My name is Terrance J. Large.

12 Q. For whom are you employed?

13 A. (Large) I am the Director of Business Planning and  
14 Customer Support Services for Public Service Company of  
15 New Hampshire.

16 Q. What are your duties in that position?

17 A. (Large) Particularly as pertains to this docket, I'm  
18 responsible for the overall preparation, filing, and  
19 care of the Integrated Least Cost Planning process and  
20 its consideration before the Commission.

21 Q. Mr. McCluskey, would you please state your name for the  
22 record.

23 A. (McCluskey) My name is George McCluskey.

24 Q. For whom are you employed and what is your position?

{DE 07-108} (10-14-08}

[WITNESS PANEL: Hall|Large|Gelineau|McCluskey]

1 A. (McCluskey) I'm employed by the New Hampshire Public  
2 Utilities Commission as an Analyst in the Electric  
3 Division.

4 Q. And, did you prepare the direct testimony or was it  
5 prepared under your supervision that was filed on  
6 June 6th, 2008, that's been premarked as "Exhibit 4"  
7 for identification?

8 A. (McCluskey) I did.

9 Q. Do you have any corrections to make to that testimony?

10 A. (McCluskey) No, I don't.

11 Q. And, is it true and accurate to the best of your  
12 knowledge and belief?

13 A. (McCluskey) Yes, it is.

14 Q. And, did you participate in technical sessions and  
15 settlement discussions among the parties?

16 A. (McCluskey) I did.

17 Q. Mr. Large, would you briefly summarize the Partial  
18 Settlement Agreement that was filed on October 7th.

19 A. (Large) Yes, I'd be happy to do so. This Partial  
20 Settlement Agreement is entered into amongst each of  
21 the parties that has served notice today, with one  
22 exception. Though involved in the settlement  
23 negotiations that Mr. Eaton referred to, the Office of  
24 Consumer Advocate has chosen not to sign on as a

[WITNESS PANEL: Hall|Large|Gelineau|McCluskey]

1 settling party at this time. The Settlement pertains  
2 to Docket DE 07-108. The particulars of this  
3 Settlement Agreement are as follows: In the "General  
4 Settlement Terms", we discuss the fact that each  
5 utility company must have on file with the Commission  
6 at least biennially a Integrated Least Cost Plan. That  
7 is what PSNH submitted September a year ago. That it  
8 is necessary for this plan to be on file such that  
9 provisions of RSA 378:38 and 378:39 are fulfilled.

10 There have been a variety of data  
11 requests and settlement discussions and technical  
12 sessions, in which the parties have discussed issues  
13 where we agree and disagree about a variety of  
14 different things. But this settlement identifies that,  
15 whether we agree or disagree on every issue, with  
16 regard to the Least Cost Plan, that, from a  
17 Commission's perspective, we view that the filing is  
18 adequate as required by 378:38 and 378:40 such that the  
19 Commission can approve rate changes as necessary going  
20 forward.

21 We identified that each of the parties  
22 and Staff note that, while this least cost planning  
23 process has been undertaken and many options, both  
24 supply-side and demand-side options, have been

{DE 07-108} (10-14-08)

[WITNESS PANEL: Hall|Large|Gelineau|McCluskey]

1 considered. We recognize that a review and  
2 consideration by the Commission does not grant PSNH the  
3 approval authority to go forward and implement any of  
4 these changes. So that it is really contained within  
5 the cost planning process, any judgment that's rendered  
6 in this case.

7 We've identified that, in our next Least  
8 Cost Plan, that we will agree and fulfill the terms  
9 laid out in this Settlement Agreement, as far as  
10 additional documentation and data are concerned, as  
11 well as comply with all of the data requirements as  
12 specified both in the law and in previous orders from  
13 the Commission. And, the parties agree that, with the  
14 Commission's approval, our next Least Cost Plan filing  
15 would be made one year following final approval by the  
16 Commission.

17 With regard to specific issues on  
18 demand-side resources, we've agreed that we will  
19 utilize -- PSNH has agreed that it will utilize the  
20 results of the Commission-sponsored energy  
21 efficiency/demand analysis that's currently underway as  
22 the basis for examination of demand-side potential. We  
23 will base our assessment on those results. And, to the  
24 extent that we have any disagreements with those

{DE 07-108} (10-14-08)

[WITNESS PANEL: Hall|Large|Gelineau|McCluskey]

1 results, we will be responsible for providing  
2 documentation and support for those disagreements.

3 With regard to analysis of Demand  
4 Response programs, we will continue to utilize and  
5 include ISO-New England Demand Response Program and  
6 capital costs and incremental administrative expenses  
7 that are truly incremental to the process, none that  
8 are in base costs associated with providing those  
9 programs. In addition, we will perform an assessment  
10 to utilize transmission or distribution cost savings  
11 that are associated with Demand Response programs in  
12 our next Least Cost Plan filing.

13 Regarding the supply-side resources, for  
14 biomass and wind units, we will include costs of land,  
15 capital additions and transmission costs associated  
16 with proposed biomass or wind opportunities that the  
17 Company views as providing least cost options. A  
18 biomass fuel price forecast will include a range of  
19 values from low to high. And, potentially, a range of  
20 land or transmission cost estimates such that the  
21 recognition is that to specify a fixed cost for any of  
22 the generic options that might be considered will be  
23 difficult to do, so a range of costs will be  
24 considered.

{DE 07-108} (10-14-08)



[WITNESS PANEL: Hall|Large|Gelineau|McCluskey]

1                   With regard to solar photovoltaic  
2 options, if they are proposed in the next Least Cost  
3 Plan filing by the Company, we will utilize the then  
4 existing law concerning any potential tax advantages.  
5 We provided two scenarios, a with and without tax  
6 advantage. In this filing, we will use whatever the  
7 pertaining law is at that time associated with  
8 potential tax advantages.

9                   In our supply-side resource option  
10 ranking, that ranking will be based solely on a revenue  
11 requirements analysis. And, in a case where a revenue  
12 requirements analyses are tied or very close to one  
13 another, other factors will be considered, including  
14 fuel diversity, price stability, transmission system  
15 stability, or statewide or local economic benefit, but  
16 only in the case where economic -- the revenue  
17 requirements analyses provide a very close comparison  
18 of those alternatives.

19                   With regard to Newington Station  
20 operation, we've agreed that we will utilize a forward  
21 price forecast for fuel oil. And, that our wholesale  
22 price forecast, which is largely based on natural gas  
23 costs, will include an analysis of not only the forward  
24 price for natural gas, but the difference, the historic

{DE 07-108} (10-14-08)

[WITNESS PANEL: Hall|Large|Gelineau|McCluskey]

1 difference that exists associated with the commodity  
2 and the transportation costs into an appropriate New  
3 England market spot.

4 I'll now ask Mr. Gelineau if he would be  
5 so kind as to speak of the work that's gone on in the  
6 last week to resolve, we believe, the unresolved  
7 demand-side issues that was noted in our filing made  
8 last week.

9 A. (Gelineau) This unresolved demand-side issue dates back  
10 to an order that the Commission issued in November of  
11 2000, in which they approved a formula or a method for  
12 determining cost-effectiveness of demand-side programs.  
13 And, in that order, we have -- since that order was  
14 issued, Public Service has used the cost-effectiveness  
15 test for all of its Core programs, as well as for  
16 analyzing demand-side issues in the Least Cost Plan.

17 What we -- What all the parties had no  
18 trouble agreeing on is it should only be one test. We  
19 shouldn't use one test in the Core programs and another  
20 test in the Least Cost Plan. The area of focus came  
21 about from one component of the test, and that  
22 component was -- is called the "non-quantified  
23 benefits, including environmental and other benefits".  
24 So, this "non-quantified benefits" component was the

[WITNESS PANEL: Hall|Large|Gelineau|McCluskey]

1 area where there was initially some concern or  
2 misunderstanding. The history on this particular  
3 component is that, initially, it had been -- it had  
4 been assigned a 15 percent value. I'm not going to say  
5 it's "arbitrary", but it was an agreed upon  
6 collaborative result of the Energy Efficiency Working  
7 Group that that particular non-quantified benefits,  
8 including environmental benefits and other unquantified  
9 benefits, would be assigned a 15 percent adder, and  
10 that 15 percent was of the avoided costs.

11 What's happened over time, and what was  
12 recognized at the time that the Commission approved  
13 this test, and, in fact, was incorporated into the  
14 Energy Efficiency Working Group report, was that it was  
15 recognized that at some time in the future we might  
16 actually have some market-based values associated with  
17 some environmental benefits, for example. And, it  
18 turns out that in -- there was a study done in 2007,  
19 which was used in the 2008 Core Programs filing, which,  
20 in fact, did incorporate all of the environmental  
21 benefits, identified environmental benefits, into the  
22 avoided costs. And, so, at that point in time, in the  
23 2008 filing, Public Service discontinued the use of an  
24 adder, and essentially used just the avoided cost,

{DE 07-108} (10-14-08)

[WITNESS PANEL: Hall|Large|Gelineau|McCluskey]

1 which included the environmental benefits embedded in  
2 that avoided cost.

3 What was at issue was whether or not  
4 some additional -- how you deal with environmental --  
5 excuse me, overall, this component again was defined as  
6 the "non-quantified benefits, including environmental  
7 and other benefits". So, if you identify -- if you  
8 cover just the environmental, have you covered  
9 everything?

10 At issue is that no one today is able to  
11 point to specifically what these "other benefits" might  
12 be. And, the Company, in its 2008 Core Programs filing  
13 and in the Least Cost filing set these other benefits,  
14 undefined benefits, equal to zero. It turns out that,  
15 upon examination of the details, Staff and the Company  
16 came to an agreement that, if we were to pursue this,  
17 whereby we would use market-based proxies or  
18 market-based values for the environmental benefits, and  
19 not include any other benefits unless ordered by the  
20 Commission, that we would be both on the same page,  
21 everybody could agree to that. And, that's what --  
22 that's the essence of the proposal that we've put in  
23 front of the Commission this morning to resolve this  
24 unresolved issue.

{DE 07-108} (10-14-08)

[WITNESS PANEL: Hall|Large|Gelineau|McCluskey]

1                   In summary, we've agreed that we're  
2 going to use the same cost-effectiveness test in both  
3 the Core Programs and in the Least Cost proceeding, and  
4 that we would use market-based environmental benefits  
5 as a preferable approach to the use of an adder. And,  
6 we would do that in our next Least Cost Plan filing, as  
7 well as in the Core Energy Efficiency Programs filings,  
8 and that there would be no additional benefits that we  
9 would include arbitrary adders, unless so ordered by  
10 the Commission.

11 Q. Does that conclude your summary of --

12 A. (Large) I'd just like --

13                   MS. ROSS: Jerry, could I do a follow-on  
14 with George, just to clarify a little further?

15                   MR. EATON: Okay.

16 BY THE WITNESS:

17 A. (Large) And, I just wanted one last, "Miscellaneous  
18 Provisions", noted on Page 7 and 8 of the Settlement  
19 are predominantly the disclaimers associated with --  
20 with respect to what the Settlement Agreement does not  
21 bind or cause to happen. All of the information  
22 previously provided identifies what PSNH will do and  
23 what we will follow in submitting the next plan. This  
24 identifies the areas where people are not bound by any

{DE 07-108} (10-14-08)

[WITNESS PANEL: Hall|Large|Gelineau|McCluskey]

1 actions specified in the document herein.

2 BY MS. ROSS:

3 Q. Mr. McCluskey, good morning.

4 A. (McCluskey) Good morning.

5 Q. I just wanted to ask you a follow-up. I believe that  
6 Mr. Gelineau referred to "quantified environmental  
7 costs" or "market-based price proxies". Could you just  
8 explain to the Commission some examples of what those  
9 price proxies are?

10 A. (McCluskey) I think he actually said "non-quantified",  
11 is that what you're referring to?

12 Q. No, I'm actually referring to the environmental costs,  
13 which we have now determined can be quantified and  
14 added to the avoided costs.

15 A. (McCluskey) The market-based determinations --

16 Q. Yes.

17 A. (McCluskey) -- of the environmental impacts?

18 Q. Right. Can you just indicate what some of those are or  
19 I can read them and ask you to agree?

20 A. (McCluskey) Yes. The major environmental emissions  
21 that are concerning us here, with what used to be the  
22 adder and now we're proposing to do on a market basis,  
23 are NOx emissions, SO2 emissions, mercury, and CO2.  
24 Even though the CO2 program is not currently effective,

{DE 07-108} (10-14-08)

[WITNESS PANEL: Hall|Large|Gelineau|McCluskey]

1 Synapse, who did the 2007 avoided cost study, which is  
2 the basis of the 2008 Core Programs, actually made  
3 estimates of the allowance prices that would result  
4 from the Cap and Trade Program. So, even a  
5 market-based estimate of the cost of CO2 emissions is  
6 included in the avoided costs.

7 MS. ROSS: Thank you.

8 BY MR. EATON:

9 Q. Mr. McCluskey, did you and Mr. Gelineau commit your  
10 understanding to writing, as far as resolving this  
11 issue?

12 A. (McCluskey) Yes, we did. And, I believe you said that  
13 was going to be submitted as one of the exhibits. Yes,  
14 that's the copy that I have.

15 Q. You have a copy?

16 A. (McCluskey) Yes.

17 Q. Is that document that I just handed you, Mr. McCluskey,  
18 is the agreement between the Staff and PSNH on  
19 resolving this final issue?

20 A. (McCluskey) It is.

21 MR. EATON: Could we have that marked as  
22 Exhibit 7 for identification.

23 CHAIRMAN GETZ: So marked.

24 (The document, as described, was

{DE 07-108} (10-14-08)

[WITNESS PANEL: Hall|Large|Gelineau|McCluskey]

1                                   herewith marked as Exhibit 7 for  
2                                   identification.)

3 BY MR. EATON:

4 Q.   Do you have anything further to explain about this  
5       document or does it speak for itself?

6 A.   (McCluskey) Well, I think Mr. Gelineau's summary of the  
7       history of the adder and the resolution that we, at  
8       least PSNH and Staff, have come to was adequately  
9       summarized. And, the text of the agreement is in this  
10      document.

11 Q.   Thank you. Do you gentlemen have anything to add to  
12      your testimony?

13 A.   (Large) I do not.

14 A.   (Hall) No.

15                                   MR. EATON: The panel is available for  
16      cross-examination.

17                                   CHAIRMAN GETZ: Mr. Shulock?

18                                   MR. SHULOCK: Bridgewater has no  
19      questions.

20                                   CHAIRMAN GETZ: Mr. Patch?

21                                   MR. PATCH: Thank you, Mr. Chairman. I  
22      just have a couple of questions.

23                                   CROSS-EXAMINATION

24 BY MR. PATCH:

{DE 07-108} (10-14-08)



[WITNESS PANEL: Hall|Large|Gelineau|McCluskey]

- 1 Q. Actually, excuse me, Mr. McCluskey, good morning.
- 2 A. (McCluskey) Good morning.
- 3 Q. Have you had a chance to review the letter dated
- 4 October 10th, 2008, which TransCanada submitted in this
- 5 docket?
- 6 A. (McCluskey) Yes. I reviewed it the day that you sent
- 7 it, which I believe was at the end of last week,
- 8 October 10th.
- 9 Q. Would it be helpful if you had a copy in front of you?
- 10 A. (McCluskey) I've got a copy.
- 11 Q. Thanks. Do you have any particular reaction?
- 12 Obviously, TransCanada's letter addresses the scope of
- 13 supply-side analysis or evaluation that TransCanada
- 14 believes ought to be done in the next least cost
- 15 integrated resource planning docket. And, I wonder if
- 16 you have any particular reaction to what TransCanada
- 17 has suggested in that letter?
- 18 A. (McCluskey) Well, I believe your suggesting, in
- 19 summary, that, if the Commission is going to have
- 20 utilities or PSNH address supply-side issues in its
- 21 LCIP -- IRP, then it should address all issues,
- 22 including divestiture, I believe is the primary issue
- 23 that you're concerned with in this letter.
- 24 Q. Yes, I think that's fair.

{DE 07-108} (10-14-08)

[WITNESS PANEL: Hall|Large|Gelineau|McCluskey]

- 1 A. (McCluskey) I can understand that. But, as I'm sure  
2 you know, Staff's position, Staff argued in the last  
3 PSNH IRP proceeding for the inclusion of divestiture,  
4 and the Commission decided against us on that  
5 particular issue. And, for that reason, Staff did not  
6 address the divestiture issue in its testimony in this  
7 filing.
- 8 Q. Assume for a minute that the Commission had not ordered  
9 that in the last docket, do you see any reason why you  
10 wouldn't have taken a similar position in this docket?
- 11 A. (McCluskey) If the Commission hasn't decided against  
12 Staff's position?
- 13 Q. Yes.
- 14 A. (McCluskey) Well, if the Commission decided in favor of  
15 Staff, I would have expected divestiture to be part of  
16 the Company's filing, and we would have commented on  
17 the details of that component of its filing. The fact  
18 that they took the Company's position explains why  
19 there's nothing in the filing. So, there's nothing to  
20 discuss, as far as we're concerned.
- 21 Q. Let me ask you this question. In the letter we point  
22 out a couple of provisions from Commission orders that  
23 talk about how there should be basically a  
24 comprehensive analysis of supply-side options. Do you

{DE 07-108} (10-14-08)

[WITNESS PANEL: Hall|Large|Gelineau|McCluskey]

1 think an analysis that does not include divestiture as  
2 one of the supply-side options is a comprehensive  
3 analysis?

4 A. (McCluskey) Well, to go back to the prior proceeding,  
5 Staff did argue that, in order to have a comprehensive  
6 analysis, they needed to include all resource options  
7 available to the Company from a supply-side standpoint,  
8 including divestiture. And, so, yes, a comprehensive  
9 analysis would include divestiture.

10 MR. PATCH: Okay. I have no further  
11 questions, Mr. Chairman. I'd like to ask that the letter  
12 dated October 10th be marked as the next exhibit, which  
13 would be "Exhibit Number 8".

14 CHAIRMAN GETZ: I'm not sure it really  
15 needs to be marked as an exhibit. It's filed in this  
16 proceeding, it's in the docket. But is there any  
17 objection to marking it as an exhibit?

18 (No verbal response)

19 CHAIRMAN GETZ: Okay. We'll mark it for  
20 identification as "Exhibit Number 8".

21 (The document, as described, was  
22 herewith marked as Exhibit 8 for  
23 identification.)

24 MR. PATCH: Do you need extra copies?

{DE 07-108} (10-14-08)

[WITNESS PANEL: Hall|Large|Gelineau|McCluskey]

1 CHAIRMAN GETZ: No. I mean, it's really  
2 argument, not testimony, but we'll include it as an  
3 exhibit. Anything further, Mr. Patch?

4 MR. PATCH: No. Thank you.

5 CHAIRMAN GETZ: Mr. Camerino?

6 MR. CAMERINO: No questions. Thank you.

7 CHAIRMAN GETZ: Mr. Rodier.

8 MR. RODIER: Thank you, Mr. Chairman. I  
9 want to start off, Mr. Chairman, by marking a data  
10 response as an exhibit, and then asking a few questions  
11 about it.

12 CHAIRMAN GETZ: Sure.

13 (Atty. Rodier distributing documents.)

14 (The document, as described, was  
15 herewith marked as Exhibit 9 for  
16 identification.)

17 BY MR. RODIER:

18 Q. Good morning, Mr. Large.

19 A. (Large) Good morning, Mr. Rodier.

20 Q. Do you recognize this data request and data response?

21 A. (Large) I do.

22 Q. Okay. This was prepared, your response was prepared on  
23 April 18th, 2008?

24 A. (Large) It was submitted on that date, yes.

{DE 07-108} (10-14-08)

[WITNESS PANEL: Hall|Large|Gelineau|McCluskey]

- 1 Q. Okay. You had -- You said "Public Service has no  
2 documents relating to the retirement of Merrimack  
3 Station" -- not just "Merrimack Station", "any  
4 generating units", is that right?
- 5 A. (Large) That is correct.
- 6 Q. As we're here today, is there any documents that exist  
7 now that you have?
- 8 A. (Large) Relating to?
- 9 Q. Retirement of PSNH's existing generating units.
- 10 A. (Large) We have performed an analysis that compares  
11 assessment of continued operation of Merrimack,  
12 including the required by law scrubber versus purchases  
13 from the market to replace Merrimack. I don't know if  
14 that agrees fully with an "analysis of generating units  
15 that should be mothballed or retired", but --
- 16 Q. Okay. I guess you're referring to what you submitted,  
17 PSNH submitted on September 2nd, you had a study in  
18 there "Effect of Retirement of Merrimack Station on  
19 PSNH's Rates"?
- 20 A. (Large) It's an analysis of comparisons, yes.
- 21 Q. Okay. So, that's all that exists. There are no other  
22 documents, there is no scraps of paper, no e-mails,  
23 there's nothing else. That's it. That one study is  
24 all that exists?

{DE 07-108} (10-14-08)

[WITNESS PANEL: Hall|Large|Gelineau|McCluskey]

- 1 A. (Large) That's correct.
- 2 Q. Okay. At the time that you made your least cost  
3 filing, why hadn't you studied the -- let's just  
4 confine this to Merrimack Station, why hadn't you  
5 studied or analyzed, as you say, the retirement of  
6 Merrimack Station?
- 7 A. (Large) For a variety of reasons. First of all, it's  
8 not required of us as part of the least cost planning  
9 process. And, as identified in the Commission's last  
10 order, we --
- 11 Q. Can I stop you right there please?
- 12 A. (Large) I believe you're going to, so --
- 13 Q. Okay. Well, I'll tell you what. I'll let you finish,  
14 and I'll come back to that.
- 15 A. (Large) And, as well as our assessment that the  
16 operation of Merrimack Station continues today to be  
17 lower cost than marketplace, and, therefore, seems  
18 reasonable to us that continued operation need not be  
19 questioned.
- 20 Q. Okay. What was the second reason? You stated your  
21 what, your analysis or your opinion?
- 22 A. (Large) Yes, we have data of what the existing costs of  
23 operating Merrimack Station are. And, we know what  
24 that is and compared to the marketplace today.

{DE 07-108} (10-14-08)

[WITNESS PANEL: Hall|Large|Gelineau|McCluskey]

- 1 Q. Okay. But, even though that data exists, you formed a  
2 conclusion on that basis, I guess you would say there's  
3 no documents that relate to whether it should be  
4 retired?
- 5 A. (Hall) Those are documents with regard to retirement.
- 6 Q. Okay.
- 7 A. (Hall) The information is presented every year as part  
8 of our Energy Service proceeding, and you're a party to  
9 those proceedings, and you have the same data.
- 10 Q. Okay. The first reason was then, Mr. Large, you  
11 weren't -- did you say you weren't required to include  
12 this analysis in your Least Cost Plan? Was that your  
13 first part of your answer?
- 14 A. (Large) That's our position, yes.
- 15 Q. Okay. And, why aren't you required?
- 16 A. (Large) We identify in our rebuttal testimony submitted  
17 on August 15th, on Page 24 of that testimony is a  
18 discussion of both the law under which 369-B:3 provide,  
19 as well as the Commission's order in Order 24,695.
- 20 Q. Okay. So, can I summarize -- And, would it be fair to  
21 say that, as was just discussed earlier today, the  
22 Commission I guess in an earlier proceeding had said  
23 "we're not going to look at divestiture as part of  
24 least cost planning." So, by extension, you're saying

[WITNESS PANEL: Hall|Large|Gelineau|McCluskey]

1 that the Commission has also ruled that they're not  
2 going to look at retirement as part of least cost  
3 planning, is that correct?

4 A. (Large) The divestiture and retirement requirements in  
5 369-B are --

6 Q. Okay.

7 A. (Large) -- are linked together. So, we made a natural  
8 extension, a natural conclusion that both were cared  
9 for.

10 Q. Okay. So, would it be fair to say that, as a matter of  
11 -- well, you're saying it's the Commission's decision  
12 that precluded including the retirement of Merrimack  
13 Station in this last filing, is that correct? This  
14 last least cost filing?

15 A. (Large) That's the basis on which the Company chose not  
16 to include a discussion about it.

17 Q. Okay. Well, again, let me ask a hypothetical. Let's  
18 say that -- Let's just put that to the side for a  
19 minute. Is there an issue of law here? Now, let's get  
20 to the point here. Does the Company have the position  
21 that -- take the position that this Commission has no  
22 authority to require PSNH to include the retirement of  
23 Merrimack Station in a Least Cost Plan?

24 A. (Hall) You're asking for a legal conclusion that we're



[WITNESS PANEL: Hall|Large|Gelineau|McCluskey]

1 not prepared to respond to.

2 Q. Okay. So, --

3 A. (Hall) You're asking us to interpret the law.

4 Q. Okay.

5 A. (Hall) And, we're not the witnesses to interpret the  
6 law.

7 Q. Okay. Mr. McCluskey, in your prefiled testimony in  
8 this proceeding I think you said that "a Merrimack  
9 Continuing Operation Study", which I think we also  
10 could refer to as a "Retirement Study", "should be  
11 included in the Least Cost Plan", did you not?

12 A. (McCluskey) I did.

13 Q. Okay. And, in this proceeding you said that?

14 A. (McCluskey) I did.

15 Q. Okay. And, it didn't end up in the Settlement  
16 Agreement, did it?

17 A. (McCluskey) That's correct.

18 Q. All right. Let me ask you a question, similar to the  
19 one that Attorney Patch asked you. Do you think that  
20 retirement of Merrimack Station is a matter that should  
21 be included in a least cost plan and analyzed as part  
22 of a least cost plan?

23 A. (McCluskey) Yes, I do.

24 Q. Okay. Let me just ask you one more question that you

{DE 07-108} (10-14-08)

[WITNESS PANEL: Hall|Large|Gelineau|McCluskey]

1 may or may not be able to answer. But why wasn't --  
2 why is there no sign or why isn't there no mention of  
3 Merrimack Station retirement in the Partial Settlement  
4 Agreement?

5 MS. ROSS: I object.

6 MR. RODIER: Okay.

7 MS. ROSS: The settlement discussions  
8 are confidential.

9 MR. RODIER: Okay.

10 MS. ROSS: And, the reasons behind the  
11 settlement are as well.

12 MR. RODIER: Okay. May I have one  
13 second, Mr. Chairman?

14 (Short pause.)

15 MR. RODIER: Thank you.

16 CHAIRMAN GETZ: Let's turn to Ms. Ross  
17 before -- Ms. Hatfield should go last, since she's I think  
18 the only one who is not a signatory. So, Ms. Ross,  
19 questions?

20 BY MS. ROSS:

21 Q. I would like to ask any of the witnesses actually this  
22 question, and it's just to clarify one aspect of the  
23 Partial Settlement that I don't think was highlighted  
24 in the summary. And, that's Paragraph 3, which deals

[WITNESS PANEL: Hall|Large|Gelineau|McCluskey]

1 with what a least cost plan indicates with regard to  
2 the future proposals for construction of generation  
3 facilities. And, if any of you want to just highlight  
4 that for the Commission, I know that it was certainly a  
5 concern to a number of parties signing the Partial  
6 Settlement Agreement.

7 A. (Large) I believe you're referring specifically to  
8 Paragraph 3, on Page 3?

9 Q. Yes, I am.

10 A. (Large) What was agreed is that the least cost planning  
11 docket is, in fact, a docket to submit plans, but a  
12 review and consideration by the Commission should not  
13 be viewed as an approval to implement those plans.  
14 That, if PSNH were to consider a supply-side option in  
15 the future, identified in the plan or not identified in  
16 the plan, based on circumstances that have changed  
17 since the time the plan was filed, that we would bring  
18 that proposal to the Commission for approval. And,  
19 that in and of itself a review of those options, those  
20 concepts in the least cost plan was not a granting of  
21 blanket approval to implement.

22 MS. ROSS: Thank you. I have no further  
23 questions.

24 CHAIRMAN GETZ: Ms. Hatfield.

{DE 07-108} (10-14-08)

[WITNESS PANEL: Hall|Large|Gelineau|McCluskey]

1 MS. HATFIELD: Thank you, Mr. Chairman.

2 BY MS. HATFIELD:

3 Q. Mr. McCluskey, do you have a copy of your testimony  
4 with you?

5 A. (McCluskey) Yes, I do.

6 Q. And, that has been marked as "Exhibit Number 4" in this  
7 case, I believe?

8 A. (McCluskey) I believe so.

9 Q. Would you please turn to Page 30.

10 A. (McCluskey) I'm there.

11 Q. Beginning on Line 1, there's a question that asks "If  
12 the fact that the Company is not currently in a  
13 position to quantify the rate impacts of its mercury  
14 compliance plan exposes customers to significant cost  
15 risks?" And, your answer begins with "yes". Is that  
16 still your answer today?

17 A. (McCluskey) Yes.

18 Q. And, why do you believe it exposes customers to  
19 significant cost risks?

20 A. (McCluskey) If I could just take a moment to reread my  
21 response?

22 Q. Absolutely.

23 A. (McCluskey) Yes. The argument that I'm making is that,  
24 absent updated information on the cost of installing

{DE 07-108} (10-14-08)

[WITNESS PANEL: Hall|Large|Gelineau|McCluskey]

1 the scrubber, the Company runs the risk of making that  
2 investment with the result that the production costs at  
3 Merrimack exceed the wholesale market price of power.  
4 As a result, customers would be in the position of  
5 paying higher power costs than if -- than the  
6 alternative, which would be retirement of Merrimack and  
7 the replacement of the output of Merrimack with  
8 purchases from the wholesale market.

9 Q. If we do not do that analysis now, when do you think we  
10 might do that analysis?

11 MS. ROSS: I object. I think this goes  
12 beyond the scope of Mr. McCluskey's testimony. And, I  
13 don't think he's actually prepared to answer those  
14 questions.

15 CHAIRMAN GETZ: Do you have a response,  
16 Ms. Hatfield?

17 MS. HATFIELD: Well, Mr. Chairman, Mr.  
18 McCluskey did include this in his testimony, stating that  
19 there is a significant risk, that the mercury compliance  
20 plan does expose customers to risk. And, I'd like to hear  
21 his thoughts, if the Commission, in their order, does not  
22 require a continued operation study for Merrimack Station,  
23 if he believes, say, for example, this should be covered  
24 in the next IRP that we do a year from when the order is

{DE 07-108} (10-14-08)

[WITNESS PANEL: Hall|Large|Gelineau|McCluskey]

1 issued in this docket or if he has other thoughts on when  
2 in a planning process it might be a time to look at those  
3 risks.

4 MS. ROSS: I'll allow the question as  
5 it's been rephrased.

6 CHAIRMAN GETZ: Well, actually, I'll  
7 allow it, but --

8 (Laughter.)

9 MS. ROSS: Excuse me.

10 CHAIRMAN GETZ: I think it is relevant.  
11 Mr. McCluskey.

12 BY THE WITNESS:

13 A. (McCluskey) It seems to me that, if such an analysis,  
14 such a cost/benefit analysis is to be useful, it would  
15 have to be done prior to the Company making the  
16 investment. The whole purpose of the analysis would be  
17 to determine what is the least cost option for  
18 ratepayers. If the analysis were done after the  
19 installation, particularly given that the law, I forget  
20 what it is now, Section 125-0:11 states that  
21 "installation would be viewed -- is viewed as in the  
22 public interest", the Company would be able to recover  
23 any stranded costs associated with the retirement from  
24 customers, which would essentially guarantee that the

{DE 07-108} (10-14-08)

[WITNESS PANEL: Hall|Large|Gelineau|McCluskey]

1 analysis would show that retirement is uneconomic. So,  
2 for the analysis to be at all useful, it would have to  
3 be done prior to significant costs of the installation  
4 being done.

5 Q. Thank you. Mr. McCluskey, do you have a copy of PSNH's  
6 Least Cost Integrated Resource Plan that was marked as  
7 "Exhibit 1"?

8 A. (McCluskey) Not with me.

9 (Document handed to Witness McCluskey.)

10 WITNESS McCLUSKEY: Yes, I do now.

11 MS. HATFIELD: Thank you.

12 BY MS. HATFIELD:

13 Q. Can you turn to Page 121 please?

14 A. (McCluskey) Yes, I'm there.

15 Q. This section is "PSNH's assessment of the plan's long  
16 and short term environmental, economic, energy price  
17 and energy supply impact on this state." Do you see  
18 that?

19 A. (McCluskey) I do.

20 Q. And, if you look through that page and the following  
21 pages, PSNH goes through each pollutant that is emitted  
22 from their different plants, including SO<sub>2</sub>, NO<sub>x</sub>,  
23 mercury, CO<sub>2</sub>, and then, beginning on Page 127, it also  
24 details compliance with the Clean Water Act. Has Staff

{DE 07-108} (10-14-08)

[WITNESS PANEL: Hall|Large|Gelineau|McCluskey]

1 reviewed this particular aspect of the submission?

2 A. (McCluskey) Which particular aspect, the Clean Water  
3 Act?

4 Q. I'm sorry. This whole Section 12, that begins on Page  
5 121, including both air and water emissions?

6 A. (McCluskey) Yes, I read the whole filing.

7 Q. And, does Staff believe that it complies with the  
8 requirements of RSA 378:38, with respect to the  
9 requirement that the plant include an assessment of the  
10 Company's compliance with the Clean Air Act amendments  
11 of 1990?

12 A. (McCluskey) I believe -- I think the answer is "yes".  
13 I know, in my testimony, I did address certain issues  
14 related to environmental costs that related to the  
15 requirements placed on the Company as a result of the  
16 Commission's order from the prior proceeding. The  
17 details escape me at the moment, but I certainly did  
18 have some comments on this section of their filing.

19 Q. I'd like now to ask you a question about the resolution  
20 of the demand-side issue that the Company and Staff  
21 came to. And, I believe that would be included in  
22 Exhibit 7. Do you have a copy of that with you?

23 A. (McCluskey) I do.

24 Q. I'd like to try to understand what the impact of this



[WITNESS PANEL: Hall|Large|Gelineau|McCluskey]

1 proposed resolution would be. Because, I believe, in  
2 the last -- the last sentence of the indented section,  
3 the Company and Staff are saying that "In determining  
4 demand-side cost-effectiveness in its next LCIRP and  
5 for the Core Energy Efficiency Programs, PSNH's avoided  
6 costs will reflect market-based environmental benefits  
7 and include no non-quantified benefits unless otherwise  
8 ordered by the Commission." So, am I to understand  
9 that to mean that, if the Commission accepted this  
10 resolution, it would apply both to PSNH's next IRP, as  
11 well as to the -- to PSNH's Core energy efficiency  
12 filing?

13 A. (McCluskey) That's correct. That's the intent of this  
14 agreement.

15 Q. And, Mr. Gelineau I believe discussed the agreement  
16 that "there should be just one test". Do you agree  
17 with that?

18 A. (McCluskey) Yes. The least cost planning is supposed  
19 to reflect the real planning that the Company does.  
20 It's not an academic exercise just for these  
21 proceedings. It's supposed to reflect the planning  
22 processes and decisions that the Company goes through,  
23 including the decisions with regard to demand-side  
24 management programs and their implementation. So, we

[WITNESS PANEL: Hall|Large|Gelineau|McCluskey]

1 believe it will make no sense to have one test for  
2 implementing demand-side resources and another test for  
3 determining whether, from a planning standpoint, they  
4 were economic or uneconomic.

5 Q. So, would you also expect that any new  
6 cost-effectiveness test or modified cost-effective test  
7 would apply to the other New Hampshire electric  
8 utilities who participate in the CORE energy efficiency  
9 programs as well?

10 A. (McCluskey) It's my understanding that all the  
11 utilities are represented on, I forget the title, but  
12 some committee to propose CORE programs, and that they  
13 use the same test regardless of which utility you're  
14 referring to.

15 Q. I believe, during cross-examination, you, in response  
16 to a question from Ms. Ross, you went through a list of  
17 the environmental costs that sounded like you believe  
18 have now been internalized into the cost-effectiveness  
19 test, and you listed NOx, SO2, mercury, and CO2, I  
20 believe, is that correct?

21 A. (McCluskey) That's correct.

22 Q. Can you explain how the costs of mercury compliance  
23 would be included, as you referred to earlier in your  
24 testimony, you said that those costs were not known at

{DE 07-108} (10-14-08)

[WITNESS PANEL: Hall|Large|Gelineau|McCluskey]

1 the time, and that there was a risk to consumers of  
2 those costs?

3 A. (McCluskey) Well, it's -- what we are talking about is  
4 the inclusion of costs in the avoided cost estimates  
5 that are prepared in the most recent case by Synapse.  
6 And, what Synapse is doing is making estimates over the  
7 long term of the avoided cost of wholesale power  
8 primarily, avoided cost of energy and capacity. And,  
9 so, to the extent that there are federal or state  
10 programs that require regional utilities to comply with  
11 environmental emissions requirements, then one would  
12 expect that those costs are reflected in those avoided  
13 cost estimates.

14 And, with regard to mercury, it's my  
15 understanding that that is controlled or regulated by  
16 the EPA's Clean Air Mercury Rule, which, by the way,  
17 does not prohibit states from proposing their own  
18 programs, which are more restrictive than the federal  
19 program. And, I believe that's the route that New  
20 Hampshire is going, that it will have a program that is  
21 far more restrictive, from a mercury emissions  
22 standpoint, than the EPA's Clean Air Mercury Rule. But  
23 it's that rule that applies to all utilities in the  
24 region. That's the mechanism which causes the costs of

[WITNESS PANEL: Hall|Large|Gelineau|McCluskey]

1 compliance to be reflected in the avoided costs.

2 Q. So, it sounds like you've reviewed that Synapse avoided  
3 cost study from 2007?

4 A. (McCluskey) I did.

5 Q. And, did you do that in this docket?

6 A. (McCluskey) To be honest, I began to review the  
7 contents of that as part of the technical discussions  
8 and settlement discussions in this proceeding, when I  
9 realized this issue of the adder was bigger than I  
10 anticipated.

11 Q. Do you recall Mr. Gelineau referring to the adder as  
12 being intended originally to account for both  
13 environmental and other benefits of energy efficiency  
14 and conservation programs?

15 A. (McCluskey) Yes, that's the language that is used in  
16 the Commission's Order 23,574.

17 Q. And, is it your belief that eliminating the adder and  
18 simply internalizing the environmental compliance costs  
19 means that we don't need any adder at all, even to  
20 account for non-environmental benefits?

21 A. (McCluskey) That's -- Until someone explains what these  
22 other benefits are and puts a dollar figure on those, I  
23 think it's inappropriate, given the internalization of  
24 the major impacts, what were external impacts, the

{DE 07-108} (10-14-08)

[WITNESS PANEL: Hall|Large|Gelineau|McCluskey]

1 internalization of those over the last decade, I  
2 believe it's inappropriate to have an adder on the  
3 assumption that there are some other benefits,  
4 unidentified benefits, and benefits, for that matter,  
5 that's unquantified, that it's inappropriate. And, I  
6 believe, in our agreement, we have the language, I'm  
7 referring to the agreement that was submitted today  
8 between PSNH and Staff, that we recommend that the --  
9 that no non-quantified benefits be included unless  
10 ordered by the Commission. If someone, in some future  
11 proceeding, whether it be an IRP proceeding or a CORE  
12 efficiency proceeding, can specify what these other  
13 benefits are and the cost impacts on society from not  
14 addressing those, then I believe it's appropriate to  
15 set the adder to zero.

16 Q. And, you previously referred to Order Number 23,574.  
17 And, I believe that's the Commission's order that  
18 Mr. Gelineau also referred to from November 1st, 2000  
19 approving the energy efficiency programs, is that  
20 correct?

21 A. (McCluskey) That's correct.

22 Q. And, it was that order in which the Commission adopted  
23 the 15 percent adder. And, I'm wondering if you're  
24 aware that there is language in that order stating that

[WITNESS PANEL: Hall|Large|Gelineau|McCluskey]

1 the Commission "will permit that mechanism until some  
2 material change occurs that would warrant the  
3 Commission's reconsideration of the adder or its  
4 magnitude." Are you aware of that language?

5 MS. ROSS: Could you please indicate  
6 where in the order that is?

7 MS. HATFIELD: Sure. That's on Page 14.

8 BY THE WITNESS:

9 A. (McCluskey) Yes, I am aware of that language.

10 BY MS. HATFIELD:

11 Q. So, are you asking, in your agreement with the Company,  
12 are you asserting that a material change has occurred,  
13 and that the Commission should reconsider the adder?

14 A. (McCluskey) Yes. I believe the material change is the  
15 internalization of the environmental costs that I  
16 referred to earlier. And, I would also add that, I  
17 believe Mr. Gelineau said this, that the filing by the  
18 electric utilities for the CORE programs, both the 2008  
19 and 2009 filing, has also set the adder to zero. So,  
20 apparently, the utilities also think it's proper to set  
21 it to zero. And, they apparently believe that some  
22 material change has happened since the Commission  
23 issued its order in November 2000.

24 Q. But isn't it true that the other utilities aren't

{DE 07-108} (10-14-08)

[WITNESS PANEL: Hall|Large|Gelineau|McCluskey]

1 parties to this case?

2 A. (McCluskey) Certainly, Unitil and Granite State are not  
3 parties. But, as I said, they are members of this  
4 committee that establishes the filing. If they had a  
5 concern with setting it to zero, I'm assuming they  
6 would not have agreed to do it.

7 Q. And, what about the other nine or so parties that  
8 usually participate in the CORE program docket each  
9 year? Do you know if any of those parties, other than  
10 the OCA and PSNH, were a part of this docket and  
11 participated in the consideration of what you're  
12 proposing?

13 A. (McCluskey) Well, I don't believe -- I'm not sure which  
14 other parties you're referring to, but, other than the  
15 parties that we have represented in this room, it seems  
16 to me that those other parties that you're referring to  
17 had notice of this issue. Presumably, they read the  
18 2008 filing submitted by the utilities and saw the  
19 paragraph where it states that they are discontinuing  
20 the 15 percent adder. If they had a concern with that,  
21 they could have raised the issue in the proceeding that  
22 the Commission had to review that 2008 filing.

23 Q. And, do you know if anyone did raise that issue in that  
24 docket or if anyone has raised it in the new 2009

[WITNESS PANEL: Hall|Large|Gelineau|McCluskey]

1 docket?

2 A. (McCluskey) I did review the transcript from the 2008  
3 proceeding and looked at the order that was issued.  
4 And, I don't believe that issue was raised by anyone.

5 MS. HATFIELD: One moment please.

6 (Atty. Hatfield conferring with Mr.  
7 Traum.)

8 MS. HATFIELD: Thank you, Mr. Chairman.

9 No further questions.

10 BY CMSR. BELOW:

11 Q. A question for the panel. On Page 6 of the Settlement,  
12 Paragraph C(4) states that "In its next LCIRP filing,  
13 PSNH's operational analysis of the Newington unit would  
14 be based on the forward price of fuel oil." My first  
15 question is, how far out are there relevant forward  
16 prices of fuel oil available? How far out into the  
17 future?

18 A. (Large) It's typically shorter than five years. And,  
19 my most recent experience is a three year forward  
20 price. Mr. McCluskey was indicating that he's seen  
21 numbers somewhat longer than that. But I think he  
22 would agree that they're not typically longer than five  
23 years forward.

24 Q. What would be used for years beyond the three to five

{DE 07-108} (10-14-08)



[WITNESS PANEL: Hall|Large|Gelineau|McCluskey]

- 1 year that there's market-based forward pricing  
2 available?
- 3 A. (Large) There would be an assumed escalation applied to  
4 that.
- 5 Q. How volatile is the forward price? I mean, how would  
6 -- if I was looking at three year forward prices today,  
7 how might that compare to three year forward prices six  
8 months ago or three months ago?
- 9 A. (Large) Substantially different.
- 10 A. (Hall) Would be different.
- 11 Q. Very volatile?
- 12 A. (Witness Hall nodding affirmatively.)
- 13 Q. On Page --
- 14 A. (McCluskey) If I could just add, Commissioner. Because  
15 of that volatility, and if you did use forward prices  
16 as the basis of the forecast, you would need to do some  
17 scenario analysis, where you could kind of bound the  
18 possible outcomes for that price stream. Otherwise,  
19 just using a single projection is going to provide  
20 little of value, I think.
- 21 Q. I think you anticipated my next couple of questions.  
22 Because, on Page 5, C(1), there's a statement about  
23 "bio fuel price forecast will include a base case with  
24 high and low scenarios." Just to be clear, the

[WITNESS PANEL: Hall|Large|Gelineau|McCluskey]

1 language in Paragraph (4) about the future "forward  
2 price of fuel oil" is not meant to preclude the  
3 possibility of doing that kind of scenario analysis  
4 that Mr. McCluskey just referred to, where there might  
5 be some sensitivity out, based on the volatility or  
6 other forecasts for future high and low scenarios, is  
7 that correct?

8 A. (Large) That's correct. What's identified in Paragraph  
9 (4) is not intended to preclude a scenario or a  
10 bounding/banding analysis be done.

11 Q. Okay. In the Paragraph C(3), the second paragraph of  
12 that at the top of Page 6, there's a statement that  
13 "the Parties and Staff agree that when CO2 emission  
14 costs are internalized in 2009, there's unlikely to be  
15 a need to develop a ranking process that treats  
16 environmental impacts separately from revenue  
17 requirements." Does that statement suggest that the  
18 Parties and Staff believe that the 2009 price for CO2  
19 emissions allowances under the Regional Greenhouse Gas  
20 Initiative are intended to be a proxy for future or  
21 forecast CO2 prices?

22 A. (McCluskey) No. Clearly, at that point, we would have  
23 some market information about the supply/demand  
24 characteristics of CO2 at that time. That doesn't mean

[WITNESS PANEL: Hall|Large|Gelineau|McCluskey]

1 to say that we'll use that same number for all future  
2 years. Some analysis would have to be done as to where  
3 we think the market price might go in the future. Much  
4 like Synapse did in its 2007 study. It started, it  
5 actually was very conservative, it started with a \$3  
6 figure, and I believe it rose over a 15 year period up  
7 to \$25, \$30, something like that. And, that's the kind  
8 of analysis that I think would have to be for the  
9 long-term avoided cost.

10 Q. So, like -- is it safe to conclude that this language  
11 again does not preclude the use of some bounding  
12 scenarios, some high and low scenario analysis done to  
13 understand potential risk or variability in  
14 assumptions, is that correct?

15 A. (Large) That is correct. It was only to -- the use of  
16 internalized in 2009 is to identify that that's when  
17 the market will take hold in terms of being an actual  
18 cost.

19 Q. As a part --

20 A. (Large) As a part of the cost, right.

21 Q. I think, similarly, in demand-side resources, and Mr.  
22 McCluskey was just referring to the Synapse avoided  
23 cost study or report, is it your understanding that  
24 that basically comes up with a single forecast out into

[WITNESS PANEL: Hall|Large|Gelineau|McCluskey]

1 the future of various environmental costs and fuel  
2 costs or is there some set of scenarios, a high cost  
3 scenario/low cost scenario? Do you recall?

4 A. (McCluskey) I believe they use the base case estimate  
5 to support the avoided cost projections that they were  
6 advocating in the various states in the region would  
7 use. I'm sure they did some scenario analysis, but I  
8 don't recall seeing alternative avoided cost streams in  
9 their filing.

10 Q. Is there anything in the language concerning  
11 demand-side resources that any of the witnesses would  
12 feel would preclude that kind of -- kind of bounding  
13 analysis, with some high/low base case forecast of  
14 different assumptions?

15 A. (Large) We do not.

16 CMSR. BELOW: Okay. Thank you. That's  
17 all.

18 CHAIRMAN GETZ: Mr. Camerino?

19 MR. CAMERINO: Yes, I just have a couple  
20 of follow-up questions on questioning that Ms. Ross asked  
21 Mr. Large.

22 CHAIRMAN GETZ: Okay.

23 MR. CAMERINO: Just to be clear, she's  
24 sponsoring the panel, and that was part of the direct.

{DE 07-108} (10-14-08)

[WITNESS PANEL: Hall|Large|Gelineau|McCluskey]

1 And, we got some different answers from Mr. Large than I  
2 had heard previously.

3 CHAIRMAN GETZ: Please proceed.

4 MR. CAMERINO: Thank you.

5 BY MR. CAMERINO:

6 Q. Mr. Large, I just want to clarify a response that you  
7 gave to Ms. Ross. I was struck by your word choice,  
8 and I don't believe it was intentional, but I just want  
9 to get the record clarified. She asked you about  
10 Paragraph -- Section A, on Page 3 of the Settlement,  
11 and you spoke in particular about Paragraph (3) and  
12 what it meant. Do you recall that?

13 A. (Large) Yes.

14 Q. Okay. And, in your response, you said, and I may be  
15 paraphrasing, but I just want to get the gist of it,  
16 that it was -- I think you said that "the intention of  
17 that was that it wouldn't constitute a blanket  
18 approval" -- "the Commission's acceptance of the IRP  
19 would not constitute a blanket approval of the resource  
20 choices that were analyzed here." Do you recall that?

21 A. (Large) Yes, I do.

22 Q. Okay. And, what concerned me was your limitation in  
23 terms of calling it that it "wouldn't constitute a  
24 blanket approval". Do you recall a concern expressed

{DE 07-108} (10-14-08)

[WITNESS PANEL: Hall|Large|Gelineau|McCluskey]

1 by Constellation during the course of this docket that,  
2 if the Commission accepted the IRP or found it to be  
3 adequate, that PSNH might take the IRP and go over to  
4 the Legislature or some other forum and say that "the  
5 Commission was endorsing the generation options or  
6 other resource choices in here." Do you recall that  
7 generally?

8 A. (Large) Yes, I do.

9 Q. And, is it fair to say that this provision, this  
10 section here called "General Settlement Terms" was  
11 intended to address that concern in part?

12 A. (Large) Yes.

13 Q. Okay. And, is it also fair to say that it was -- one  
14 of the things it's intended to do is to make it clear  
15 that, by accepting or finding the IRP to be adequate,  
16 that it is not an endorsement by the Commission to  
17 others outside of this forum of the resource choices?  
18 Not just approval, but it's not an endorsement of them?  
19 And, I want to point you to the words in the third  
20 line, just so you know I'm not trying to add something  
21 new here, of Paragraph (3).

22 A. (Large) That's correct.

23 Q. Okay. And, in addition, just to show that there were  
24 other concerns, PSNH had a concern that it needed, in

[WITNESS PANEL: Hall|Large|Gelineau|McCluskey]

1 my words, to get its ticket punched and have some kind  
2 of finding of adequacy, is that correct?

3 A. (Large) Yes.

4 Q. And, so, this section also addresses that concern,  
5 explains "what does it mean to be found to be  
6 adequate?" Is that a fair statement?

7 A. (Large) As a general --

8 Q. And, actually, let me just clarify. When I say "this  
9 section", if you look -- I'm actually referring to  
10 Paragraph (2) when I say that, not Paragraph (3)

11 A. (Large) Yes. Paragraph (2) identifies the needs that  
12 PSNH has and the Commission accepting our plan as  
13 filed.

14 MR. CAMERINO: Okay. Thank you.

15 CHAIRMAN GETZ: Redirect, Mr. Eaton or  
16 Ms. Ross?

17 MR. EATON: I have one, one line of  
18 questioning.

19 REDIRECT EXAMINATION

20 BY MR. EATON:

21 Q. Mr. Hall or Mr. Large, do you have a copy of the  
22 integrated plan up in front of you?

23 A. (Large) We do.

24 Q. And, do you remember some questions from Attorney

{DE 07-108} (10-14-08)

[WITNESS PANEL: Hall|Large|Gelineau|McCluskey]

1 Hatfield concerning the Clean Air Act Amendments of  
2 1990?

3 A. (Large) Yes.

4 Q. And, she referred you to Pages 121 and the following  
5 pages of the Least Cost Plan?

6 A. (Large) Yes.

7 Q. Would you turn to Page 107 of the Least Cost Plan. Are  
8 you there?

9 A. (Large) I have that.

10 Q. And, that Section IX specifically addresses the plan's  
11 integration and impact on state compliance of the Clean  
12 Air Act amendments of 1990, correct?

13 A. (Large) It does.

14 Q. So, reading those two sections together, the Company  
15 did address the Clean Air Acts of 19 -- Clean Air Act  
16 amendments of 1990 in its plan that was filed, correct?

17 A. (Large) We did.

18 MR. EATON: Thank you. That's all I  
19 have on redirect.

20 CHAIRMAN GETZ: Ms. Ross, did you have  
21 anything?

22 MS. ROSS: I have one question.

23 BY MS. ROSS:

24 Q. Mr. McCluskey, do you recall the line of cross from the

{DE 07-108} (10-14-08)



[WITNESS PANEL: Hall|Large|Gelineau|McCluskey]

1 Consumer Advocate earlier this morning?

2 A. (McCluskey) Yes, I do.

3 Q. And, there were some concerns expressed by the Consumer  
4 Advocate concerning other parties' ability to weigh in  
5 on the environmental adder issue in the CORE docket, do  
6 you recall those concerns?

7 A. (McCluskey) In the CORE docket or in this proceeding?

8 Q. Well, in both, actually. The argument is that those  
9 parties are not present in this proceeding?

10 A. (McCluskey) Yes, I recall that.

11 Q. Would it be fair to say that the Settlement language  
12 that indicates "unless otherwise authorized by this  
13 Commission" would give those parties, when they get to  
14 that issue in the CORE docket, the ability to argue to  
15 this Commission that it should do something differently  
16 with regard to adders?

17 A. (McCluskey) Yes.

18 MS. ROSS: Okay. That's all I have.

19 Thank you.

20 CHAIRMAN GETZ: Anything further for the  
21 panel?

22 (No verbal response)

23 CHAIRMAN GETZ: Hearing nothing, then  
24 you're excused. Thank you, gentlemen. Is there any

{DE 07-108} (10-14-08)

1 objection to striking the identifications and entering the  
2 nine exhibits into evidence?

3 (No verbal response)

4 CHAIRMAN GETZ: Hearing no -- is there  
5 an objection to striking identifications?

6 MR. RODIER: Mr. Chairman, I also  
7 submitted a letter like TransCanada. I'm not -- I just  
8 wanted to mention that, I don't really care whether it's  
9 marked or not, but if his is being marked, if we could  
10 mark that one as well?

11 CHAIRMAN GETZ: Sure.

12 MR. RODIER: Okay.

13 CHAIRMAN GETZ: We'll allow an equity in  
14 the marking of letters filed in this docket.

15 MR. RODIER: Okay. Thank you very much.  
16 I have no objections.

17 CHAIRMAN GETZ: Okay. Let me just talk,  
18 so Steve can get one conversation at least down on the  
19 transcript. So, we'll mark for identification as "Exhibit  
20 Number 10" the letter filed by Mr. Rodier on October 9th.

21 (The document, as described, was  
22 herewith marked as Exhibit 10 for  
23 identification.)

24 CHAIRMAN GETZ: And, I heard no

{DE 07-108} (10-14-08}

1 objections to striking identifications, so we'll admit the  
2 ten exhibits into evidence. Is there anything else to  
3 address before we provide an opportunity for closing  
4 statements?

5 (No verbal response)

6 CHAIRMAN GETZ: Hearing nothing, then  
7 let's start with Mr. Shulock.

8 MR. SHULOCK: We really have nothing to  
9 say, other than we support the Settlement Agreement and  
10 the comments filed by TransCanada.

11 CHAIRMAN GETZ: Thank you. Mr. Patch.

12 MR. PATCH: Thank you, Mr. Chairman.  
13 The comments -- TransCanada is a signatory, first of all,  
14 to the Partial Settlement Agreement. So, we do support  
15 the Partial Settlement Agreement. We have that additional  
16 comment included in our October 10th letter. And, I think  
17 the letter is self-explanatory. I guess there's just a  
18 couple of things about that letter that I'd like to  
19 highlight for the record.

20 And, part of this comes out from some of  
21 the testimony that was offered today. I think, first of  
22 all, to the extent that the least cost planning process is  
23 to be a meaningful process, and one in which there is  
24 actually going to be a comprehensive analysis done of, you

1 know, demand-side options, and, obviously, TransCanada's  
2 focus is probably more on supply-side options, then I  
3 think it really needs to be a comprehensive analysis.  
4 And, I think the situation has changed to some degree from  
5 what it was a couple of years ago when the Commission  
6 issued the order requiring PSNH, over its objection, to do  
7 an analysis of acquiring or constructing new generation,  
8 but made the decision not to require PSNH to do the  
9 analysis of the divestiture of existing generation. I  
10 think what's changed is that the provision, the 369-B  
11 provision, the April 30th date, which is included in  
12 there, which I know the Commission is very familiar with,  
13 when the original analysis was done in that prior docket,  
14 that date had not yet kicked in. When the Commission  
15 actually made the ruling on it, the date had kicked in.  
16 So, I think we're in a different situation two years later  
17 than we were two years ago.

18 I think some of the testimony today,  
19 though, points up the fact that, when Mr. McCluskey was  
20 testifying, he talked about how this least cost planning  
21 process is supposed to reflect decisions that the Company  
22 goes through. And, Mr. Large testified that Merrimack  
23 Station was clearly a lower cost option, the upgrades to  
24 Merrimack Station, than the marketplace. And, so, the

1 Company clearly goes through that kind of analysis. I  
2 think all we're asking is that, if the Commission  
3 continues to see value in the least cost planning process,  
4 then it really ought to be comprehensive. And, if the  
5 Company goes through that kind of analysis, then, and I  
6 think it should have to go through that kind of analysis,  
7 then it ought to be included.

8 I think, as we point out in our letter,  
9 we think it is illogical and contrary to the intent of the  
10 least cost planning process for PSNH to have to do an  
11 analysis of a supply-side option that they do not have  
12 authority to do, which is to build or to acquire new  
13 generation. But, at the same time, to not require them to  
14 do an analysis of a supply-side option that they do have  
15 the authority to do, and that is to divest or retire any  
16 existing generation.

17 We're not asking here that a final  
18 determination be made on any of those issues. We're just  
19 saying that, if this process is to have integrity, then it  
20 really ought to be comprehensive and ought to address both  
21 sides. And, I thank you for the opportunity to address  
22 the comments.

23 CHAIRMAN GETZ: Thank you. Mr.  
24 Camerino.

1 MR. CAMERINO: Mr. Chairman, this  
2 Settlement Agreement, I would point out, the very first  
3 portion of the substantive part of the Settlement  
4 Agreement, under III, Part A, entitled "General Settlement  
5 Terms", talks about the precedential impacts of this  
6 settlement and what it means to the parties. And, I think  
7 it's noteworthy that that comes at the beginning of the  
8 substantive terms of the Settlement, rather than in what  
9 you might consider the boilerplate portion toward the end.  
10 And, that's because it was important to the parties, and I  
11 think is more than just a rote recitation of lack of  
12 precedence. And, I would call that to the Commission's  
13 attention. And, in fact, through the questioning by  
14 Ms. Ross, I think she used the word "concern", that this  
15 was a concern of the parties. And, that's really what I  
16 want to speak to in my closing.

17 Constellation has joined in this  
18 Settlement Agreement in this docket because the agreement  
19 includes that statement of the Staff and the Parties'  
20 understanding that the Commission's acceptance of PSNH's  
21 IRP in this docket does not constitute an endorsement of  
22 any particular resource option set forth in the plan.  
23 Throughout this proceeding Constellation has expressed its  
24 concern to the Staff and the Parties that the IRP process,

1 as currently implemented, does not provide an adequate  
2 basis on which to support a determination that PSNH should  
3 continue to own its own generation or should build or  
4 acquire new generation assets.

5                   Although PSNH and Constellation may not  
6 agree on the merits of that issue, that is whether PSNH  
7 should either continue to own or acquire generation  
8 assets, they do agree that the Commission's acceptance of  
9 the IRP in this docket should not have any precedential  
10 significance or constitute an endorsement with regard to  
11 determination of that issue. That's the purpose of this  
12 provision, as far as Constellation goes. There may be  
13 other reasons for it to be here as well, but that was  
14 critical to Constellation signing on.

15                   Constellation has agreed to sign onto  
16 the Settlement on that basis, and with the understanding  
17 that the fact that the Settlement does not preclude any  
18 party from arguing in its next IRP proceeding, nor does it  
19 preclude the Commission from determining, that information  
20 beyond that specified in the Settlement should be required  
21 as part of PSNH's IRP process. Constellation has not  
22 attempted to address in this proceeding whether PSNH  
23 should be permitted or even required to include  
24 information regarding generation resources in its IRP. In

1 fact, it has included that information, but we did not  
2 take a position on whether it need or need not be there.  
3 Rather, we are concerned with the issue of what weight of  
4 precedential effect should be given to the proposals for  
5 generation resources that were addressed. The Settlement  
6 in this case directly addresses that issue by clarifying  
7 that inclusion of particular resources in the IRP has no  
8 precedential value, and, therefore, Constellation supports  
9 the Settlement as presented.

10 CHAIRMAN GETZ: Thank you. Mr. Rodier.

11 MR. RODIER: Thank you, Mr. Chairman. I  
12 just have a couple of brief points to make. And, I'd like  
13 to have Attorney Peress just supplement briefly.

14 CHAIRMAN GETZ: Certainly.

15 MR. RODIER: Okay. Thank you very much.  
16 Mr. Chairman, Commissioners, I think the record is pretty  
17 clear here. There is nothing in this Least Cost Plan that  
18 pertains to retirement or mothballing of any PSNH  
19 generating stations, and that includes Merrimack Station.  
20 It's very, very difficult to see, to rationalize how a  
21 Least Cost Plan could be adequate, without looking at  
22 whether or not anything in the existing fleet should be  
23 retired. Unfortunately, PSNH seems to be interpreting a  
24 prior order of the Commission as saying that the



1 Commission said "we didn't have to do it." I really don't  
2 think that's the case.

3 Putting aside least cost planning, the  
4 Commission is going to do it in any event, a couple of  
5 statutes, I don't have the cites, says the Commission is  
6 going to keep informed on what's going on. There's no  
7 data out there. Now, at this point, there is the study  
8 that was submitted on I think it was September 7th. I'd  
9 suggest the Commission take administrative notice of that  
10 study in this proceeding. One reason would be that the  
11 estimated 15 year levelized busbar cost of Merrimack  
12 Station is estimated to be 9.928 cents per kilowatt-hour.  
13 That's higher than the current market price.

14 But, again, that's really all I wanted  
15 to say. I think there's a big glaring omission in this  
16 plan and in this proceeding. Attorney Peress.

17 MR. PERESS: Thank you, Mr. Chairman,  
18 members of the Commission. Freedom Energy had asked me if  
19 I would take a look at the implications of some of the  
20 upcoming environmental initiatives during the course of  
21 the least cost planning period, over the next five or six  
22 years, to the cost of supply and in support of their  
23 application regarding an examination into cost of supply  
24 issues. And, that issue, as you know, is preserved and

1 this is only a partial settlement that we're addressing.

2 By way of brief background, I've spent  
3 the past three years representing no less than eight  
4 coal-burning power plants on day-to-day environmental  
5 compliance issues. And, I looked through the IRP, I  
6 looked through the discovery in this matter, I've heard  
7 the testimony, and my conclusion, which I will explain in  
8 a minute, is that the cost of supply is dramatically  
9 underestimated, when considering the environmental  
10 initiatives and applicable requirements that will apply  
11 during the least cost planning period.

12 And, specifically, I'd like to address,  
13 for purposes of this discussion, three of those  
14 environmental cost elements that will be faced in the  
15 context of PSNH's supply as provided in their IRP. The  
16 first one is a matter that has been discussed to some  
17 extent today, and that relates to mercury control costs.  
18 As we've heard from PSNH and their panel, they did an  
19 estimate of the cost of supply based on the upgrades that  
20 are proposed for the plan pursuant to RSO -- I'm sorry,  
21 RSA 125-0:11, to determine whether the cost of their  
22 supply is advantageous in comparison to the market. Let  
23 me just suggest that, due to developments since the  
24 adoption of that statute, and the moving forward with the

1 scrubber project, it is highly likely, if not probable,  
2 that significant additional expenditures during the least  
3 cost planning period will be necessary to comply with  
4 mercury requirements under the Clean Air Act.

5 As you're aware -- As you're aware, the  
6 scrubber project entails essentially an 80 percent  
7 reduction through the use of scrubbers and selective  
8 catalytic reduction, which was proposed and ultimately  
9 enacted by the Legislature, consistent with, as Mr.  
10 McCluskey pointed out, the CAMR rules, the EPA rules  
11 regulating mercury. And, as Mr. McCluskey pointed out,  
12 there are some argument that perhaps even the New  
13 Hampshire requirements are more stringent than what had  
14 been required by CAMR. Unfortunately, what has not been  
15 pointed out in this hearing today is that CAMR was vacated  
16 on February 8th, 2008. The D.C. Circuit unanimously  
17 vacated, compared EPA's logic and promulgating it to "out  
18 of the Queen of Hearts in Alice in Wonderland", and  
19 summarily dismissed that rule, essentially finding that it  
20 wasn't adequately stringent under the Clean Air Act in  
21 order to comply with the requirements of the Clean Air Act  
22 for mercury control.

23 As a consequence, each individual  
24 coal-fired generating unit will be required to meet

{DE 07-108} (10-14-08)

1 maximum achievable control technology standards, which  
2 will be based, when they are promulgated in the next  
3 several years, on the emission levels that are currently  
4 -- that are achieved by the best performing 12 percent of  
5 coal-burning power plants. And, incidentally, if you'd  
6 like to take judicial notice of the D.C. Circuit decision,  
7 I can provide you with cites, and, likewise, I can provide  
8 you with cites to the Clean Air Act in support of what I  
9 am suggesting.

10 There are 93 coal-fired power plants  
11 that to date have either installed or are in the process  
12 of installing emissions controls that are more effective  
13 and more stringent than the scrubber project that is being  
14 implemented by PSNH. And, I am not at all, we, at Freedom  
15 Energy, are not at all questioning the Legislature's  
16 wisdom in adopting that statute. That was adopted based  
17 on a prior regulatory enactment that has now been vacated.

18 As a consequence, it is likely that,  
19 when the max standard is promulgated for coal-fired power  
20 plants, it will require more stringent mercury emission  
21 controls than will be achieved by the PSNH scrubber  
22 project. In the interim, under the Clean Air Act, while  
23 those -- while those regulations are being developed,  
24 there are various provisions of the Clean Air Act that

1 would require the state, in permitting this project, to  
2 impose what it estimates to be the more stringent limits  
3 under the max standards in granting this permit. Put  
4 another way, the scrubber project is not going to be  
5 enough.

6 And, that poses a risk, not only to the  
7 ratepayers, and therefore to the Commission, but also to a  
8 lot of the analysis that was undertaken by the  
9 Commission's Staff expert, because there is no  
10 quantifiable cost that can be -- that can be essentially  
11 incorporated to mimick the value of mercury reductions  
12 due to the vacature of CAMR. But the risk that you have,  
13 in light of 93 power plants going with more stringent  
14 emission controls in anticipation of Clean Air Act  
15 requirements, is that we might actually be squandering a  
16 460 plus investment that might not get the state to where  
17 it needs to get to under the Clean Air Act.

18 Now, Freedom Energy has made  
19 application, I mentioned that this is a partial  
20 settlement, for there to be a contested cast hearing on  
21 those specific issues. I mention this in support of that  
22 application.

23 Secondly, the Integrated Resources Plan  
24 does make some comments about 316-B of the Clean Water

1 Act. And, as you are probably aware, 316-B of the Clean  
2 Water Act requires cooling water intake structures at  
3 power plants to install the best technology available for  
4 minimizing and preventing adverse impacts to fish and  
5 wildlife in the waterways. As is pointed out in the IRP,  
6 there's been a recent Supreme Court decision on that, on  
7 that statutory provision and on EPA's rules, which, again,  
8 not surprisingly, vacated the EPA's rules implementing  
9 that program. Since that rule has been vacated, EPA  
10 Region 1, which is the permitting authority for Merrimack  
11 followed under the Clean Water Act, has required two power  
12 plants to implement closed cycle cooling, in other words,  
13 to dramatically reduce their impacts to the fish and biota  
14 in the waterways.

15 The first one was the Brayton Point  
16 decision. And, in December, they announced a settlement  
17 with Brayton Point, which is in Massachusetts, where  
18 Brayton Point is spending in excess of \$500 million in  
19 order to comply with the Clean Water Act, in order to  
20 install cooling towers and scrubbers.

21 Now, I think it's noteworthy that, in  
22 the IRP, you do see, when it comes to issues such as the  
23 RTS and other compliance considerations, you see a range  
24 of scenarios regarding what it may or may not cost for the

1 supply from PSNH, based on what happens with respect to  
2 those requirements and how the market treats them. We  
3 don't see that range of scenarios provided with respect to  
4 these environmental compliance costs. In fact, there is a  
5 statement in here that says "PSNH may be required to  
6 install cooling towers", and that's about all it says.  
7 There's no quantification of those costs.

8 If the experience at Mirant Canal and  
9 Brayton Point are any indication, we're talking 200 to  
10 \$300 million of extra compliance costs during the IRP  
11 planning period, which I think would have a substantial  
12 bearing, and Freedom Energy suggests would have a  
13 substantial bearing on the cost of supply for PSNH's  
14 generation assets.

15 It should be noted that under the  
16 relevant precedent -- under the relevant precedent of the  
17 Riverkeeper II case, there are essentially only two ways  
18 that the Merrimack Station can avoid having to put on  
19 cooling towers. The first one, which PSNH points out in  
20 their IRP, is if they are able to demonstrate that they  
21 are not having an adverse impact to biota within the  
22 river. And, the second one is if they are able to  
23 demonstrate that the most effective, best technology  
24 available is not available for that facility. Now, there

1 is an extensive amount -- an extensive record, it's  
2 referred to in the IRP document, between EPA and PSNH on  
3 this issue, however, none of that has been discussed in  
4 the context of "what are the potential high range costs  
5 for PSNH's supply during the relevant planning period for  
6 this IRP exercise?"

7 One more issue I wanted to discuss, and,  
8 really, I'm only just scratching the surface, there's  
9 plenty more. And, again, this is done in support of  
10 Freedom Energy's application, and TransCanada's  
11 application for that matter, to address these issues in  
12 terms of the cost supply and retirement within the IRP.  
13 Many people are aware of the Supreme Court's seminal  
14 decision in the Massachusetts versus EPA case in February  
15 of 2007. That decision essentially ruled that CO2 is an  
16 air pollutant that is regulated under the Clean Air Act or  
17 it can be regulated under the Clean Air Act. What happens  
18 when you do a scrubber project is you make your plant less  
19 efficient. The result being that you increase your CO2  
20 emissions in order to generate the same amount of power  
21 that you were generating before. There have been several  
22 state courts, most recently, I'll give you a cite on this,  
23 most recently, the state court in Georgia, which found, in  
24 the case of Friends of Chattahoochee versus Georgia



1 Department of Natural Resources, June 30th, 2008, that CO2  
2 is a regulated pollutant under the Clean Air Act, and  
3 facilities -- modifying a facility are subject to the  
4 Clean Air Act's pre-construction review requirements if  
5 there is an increase in CO2 that results from those  
6 modifications.

7                   There is an important case currently  
8 pending before the EPA Environmental Appeals Board, it's  
9 in the matter of Deseret Power Electric Cooperative, EPA  
10 Environmental Appeals Board Docket 07-03, which is looking  
11 at the same question in the context of EPA's issuance of  
12 PSD permits. If it is determined that CO2 is a regulated  
13 pollutant under the Clean Air Act, then the Merrimack Bow  
14 Station will be subject to best available control  
15 technology requirements as a consequence of its scrubber  
16 project, which would again add significant costs to the  
17 costs of supply from that facility. Again, those costs  
18 have not been addressed, quantified, or mentioned in the  
19 IRP.

20                   May I respectfully suggest, on behalf of  
21 Freedom Energy, what we're dealing with is a 40 year old  
22 coal plant that uses cyclone -- a cyclone design and  
23 technology that is not particularly well suited for  
24 environmental upgrades in a cost-effective manner. What's

{DE 07-108} (10-14-08)

1     happening over time, and we're seeing this, is that, as  
2     emission reduction requirements, as water quality  
3     requirements are implemented pursuant to the Clean Water  
4     Act and the Clean Air Act, additional requirements are  
5     being imposed on the Merrimack Bow Station. Our concern,  
6     Freedom Energy's concern here is that this docket has been  
7     conducted in somewhat of a vacuum. That is, the cost of  
8     PSNH's supply has been assessed based on one project,  
9     essentially, the scrubber project. These other potential  
10    costs, and there are several others that are out there,  
11    have not been discussed, have not been addressed in the  
12    context of this IRP proceeding, notwithstanding the fact  
13    that all of those costs are reasonably foreseeable within  
14    the IRP planning period. Again, that creates tremendous  
15    ratepayer risk, and, therefore, risks to the Commission in  
16    making a decision on this IRP without that information  
17    being elucidated and addressed in the context of this  
18    hearing.

19                    Nothing further from here. All of the  
20    cases and cites that I mentioned I think are entitled to a  
21    judicial notice by the Commission, because they are all  
22    reported cases and statutes.

23                    CHAIRMAN GETZ: Okay. Thank you.  
24    Anything further, Mr. Rodier?

{DE 07-108} (10-14-08)

1                   MR. RODIER: No. Thank you very much,  
2 Mr. Chairman.

3                   CHAIRMAN GETZ: Ms. Hatfield.

4                   MS. HATFIELD: Thank you very much, Mr.  
5 Chairman. I would like to begin by thanking the parties  
6 and Staff for allowing the OCA to participate fully in the  
7 settlement negotiations. And, my hope is that, although  
8 we didn't sign the Settlement, we helped to make it a good  
9 document. We don't oppose what is contained in the  
10 Settlement Agreement, but I thought it might be helpful  
11 for the Commission to hear why the OCA did not sign the  
12 Settlement.

13                   I think, really, the most fundamental  
14 reason is simply the OCA's lack of resources that limits  
15 our ability to really examine closely all of the issues  
16 that are contained in the IRP. And, I think that some of  
17 the issues that Freedom Energy just raised really point to  
18 those limitations that the OCA faces. Also, just the  
19 timing of this docket, and the fact that during this  
20 docket it was disclosed that Merrimack Station scrubber  
21 project, that the costs had almost doubled. And, so, all  
22 of these environmental issues, which, you know, aren't  
23 really within the jurisdiction of the PUC, but which  
24 clearly have an impact on ratepayers, really cause us to

{DE 07-108} (10-14-08)

1 continue to support Staff's testimony, in which they  
2 assert the position that the risk of the potential rate  
3 impact from the mercury compliance plan really does  
4 require a continued operation study for that plant.

5 In terms of the additional issue that  
6 the Company and Staff have reached agreement on, related  
7 to demand-side resources, we would strongly urge the  
8 Commission not to change the cost-effectiveness test in  
9 this docket, if it will have a broad application, which we  
10 agree with the Company and Staff it should. And, what I  
11 mean by that is that we should have one cost-effectiveness  
12 test that applies both in the planning docket and in the  
13 actual implementation of efficiency programs. But,  
14 because the Commission established that test in the order  
15 that we referred to previously in 2001, which approved the  
16 creation of the CORE Programs, we strongly believe that  
17 any changes to the test, which may be appropriate at this  
18 time, really should be done in a CORE docket. It's  
19 likely, in our view, that some of the parties in those  
20 dockets, the people who traditionally year after year have  
21 participated in those programs, such as New Hampshire  
22 Legal Assistance, Department of Environmental Services,  
23 the Office of Energy & Planning, and other nonprofit  
24 organizations, may have a strong interest in participating

1 in the Commission's determination of what the  
2 cost-effectiveness test should be for our efficiency  
3 programs. And, I don't think that we can make an  
4 assumption about those parties' positions based either on  
5 their participation in the 2008 docket or in the 2009  
6 docket, which, as the Commission knows, is just getting  
7 underway right now.

8 So, again, I would strongly urge the  
9 Commission to defer a decision on changing the  
10 cost-effectiveness test until it could be more broadly  
11 vetted by a wide range of parties who have an interest in  
12 that area.

13 CHAIRMAN GETZ: Excuse me, Ms. Hatfield,  
14 on that issue, is it your position that that could be done  
15 in the context of the current CORE Efficiency Program  
16 filing or would it take until next year?

17 MS. HATFIELD: I think that's an  
18 excellent question, Mr. Chairman, because we are just  
19 beginning that docket, and I believe the electric  
20 utilities need approval for the '09 programs by the end of  
21 2008, it may be a lot to do between now and December 31st.  
22 However, if there was broad agreement among the parties,  
23 perhaps we could do it. If not, perhaps it could be spun  
24 off into a smaller docket to look at that issue. I also

1 think that could be highly related to the forthcoming  
2 report that the Commission is doing on the energy  
3 efficiency potential remaining in this state. As  
4 stakeholders learn more about that study and the  
5 cost-effectiveness test and information used in that  
6 study, that could help people understand why it might be  
7 appropriate to change the test at this time. So, it would  
8 be my hope that we could do it quickly, but it might be  
9 something that warrants further investigation.

10 And, I have nothing further at this  
11 time. Thank you very much.

12 CHAIRMAN GETZ: Thank you. Ms. Ross.

13 MS. ROSS: Thank you. And, Staff also  
14 would like to thank the parties for working on a fairly  
15 contentious docket and at least reaching a Partial  
16 Settlement. The Staff does support the Partial Settlement  
17 and obviously also supports the settlement with regard to  
18 the cost-effectiveness test. We would urge the Commission  
19 to find an appropriate cost-effectiveness test for least  
20 cost planning purposes in this docket. It is a planning  
21 docket, and it is the appropriate place for a test to be  
22 decided. As I think we attempted to indicate during  
23 testimony today, it doesn't preclude parties in the CORE  
24 docket from arguing a different position, because that

{DE 07-108} (10-14-08)

1 docket involves the CORE programs and not a company's  
2 least cost planning processes, and it may have a slightly  
3 different application there. And, to the extent that  
4 parties feel they need to weigh in in that context,  
5 they're certainly free to do so. And, I would like to  
6 just remind the Commission that the CORE proceeding, which  
7 was fully participated in by all of the CORE parties last  
8 year reached exactly the same result with regard to this  
9 test. It set the adder at zero, because it had already  
10 included costs in the avoided cost component of the  
11 cost/benefit test. So, the parties actually did that last  
12 year, and are proposing to do the same thing this year.

13 But, again, the Commission does need to  
14 set the stage for planning purposes. This is a Least Cost  
15 Plan, and, therefore, I think Staff's recommendation that  
16 we not include adders that really can't be quantified and  
17 can't even at this point identify what possible benefits  
18 they're attempting to quantify, are just not appropriate  
19 in a least cost planning process. Thank you.

20 CHAIRMAN GETZ: Thank you. Mr. Eaton.

21 MR. EATON: Thank you, Mr. Chairman.  
22 First of all, I'd like to remind the Commission that  
23 Public Service Company needs to develop a Least Cost Plan  
24 and file it with the Commission. That means pretty much

1 ending our analysis and completing the writing and editing  
2 of a Least Cost Plan, and, therefore, that process ended  
3 on September 28th, 2007. We expect parties to participate  
4 in the analysis of that plan, but we cannot respond to  
5 cases that are brought up after our planning process is  
6 over. The Commission has to look at our plan with the  
7 information available to us at that time. And, the fact  
8 that a series of cases have been decided subsequent to the  
9 filing of that plan should not be introduced or be brought  
10 into the analysis of whether PSNH's planning process is  
11 adequate enough.

12                   There was a -- Mr. Rodier's colleague  
13 went into a long discussion of things that perhaps could  
14 have been raised before today and have not been raised  
15 until today. And, therefore, we don't think it's  
16 appropriate that such things be part of a -- of a snapshot  
17 of our planning process as of February 28th, 2007.

18                   With regards to the items raised by  
19 TransCanada and by Freedom/Halifax in Exhibits 9 and 10,  
20 we remind the Commission of the language that we used in  
21 the prehearing conference. We wondered why that the  
22 competitive suppliers were involved in this docket,  
23 because, if we're successful at least cost planning, and  
24 we provide a product to our customers at the lowest



1 reasonable cost, we're hurting the competitive suppliers.  
2 So, the fact that they want to improve our planning  
3 process to further reduce costs seems a bit disingenuous  
4 and their motives ought to be at least considered.

5 As far as divestiture is concerned, the  
6 Commission addressed that issue, and I don't believe that  
7 TransCanada has introduced anything new in that argument  
8 today. The Commission ruled that divestiture should not  
9 be part of a least cost plan, because the Commission  
10 recognized that the Legislature created RSA 369-B:3-a to  
11 specifically deal with divestiture of PSNH's generating  
12 assets. That law is still in effect. We do not have  
13 authority to divest our assets, because we have to go  
14 through a 369-B:3-a case in order to do that.

15 The logic is much the same for the  
16 Merrimack retirement issue, in that the statute addresses  
17 both divestiture and retirement. And, I quote "PSNH may  
18 modify or retire such generation assets if the Commission  
19 finds that it's in the public interest of retail customers  
20 to do so and provide for the cost recovery of such  
21 modification or retirement." So, the language and the  
22 ruling that the Commission had in the past proceeding is  
23 the same for retirement, and that's what Mr. Rodier  
24 addressed was not really continued unit operation, but he

1 characterized it as a "study of retirement".

2 Furthermore, the Commission recently  
3 ruled in docket DE 08-103 that a public interest  
4 determination of the scrubber project was probably  
5 precluded by the passage of RSA 125-0:11, and that the  
6 construction of the scrubber should go forward. And, we  
7 also believe implicit in that decision and in the  
8 legislation is that Merrimack Station would continue to  
9 operate. We don't believe that if you -- if you have an  
10 order of the Commission that cites the legislation of RSA  
11 125-0:11 as taking precedence over the RSA 369-B:3-a  
12 public interest determination, that you build the  
13 scrubber, but you retire the plant. That is an absurd  
14 result. And, we believe that it further emphasizes the  
15 fact that a continued unit operation study of Merrimack  
16 Station is not necessary, given the fact that the scrubber  
17 project will go forward as the Legislature has directed,  
18 and it is in the public interest. So, therefore,  
19 continued operation of Merrimack Station is also in the  
20 public interest and not part of a Least Cost Plan study.

21 We ask the Commission to approve the  
22 Settlement Agreement, and in that to evaluate and analyze  
23 our planning process as it was when we filed our Least  
24 Cost Plan, but not based upon many things that have

{DE 07-108} (10-14-08)

1       happened or issues that have been raised for the first  
2       time today in this hearing. And, we'd ask the Commission  
3       to issue an order that approves our Least Cost Plan under  
4       RSA 378:37 and the statutes that follow. Thank you.

5                       CHAIRMAN GETZ: All right. Thank you,  
6       everyone. We're going to close this hearing and take the  
7       matter under advisement.

8                       (Whereupon the hearing ended at 12:04  
9                       p.m.)

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