

## STATE OF NEW HAMPSHIRE

## PUBLIC UTILITIES COMMISSION

December 13, 2011 - 10:10 a.m.  
Concord, New Hampshire

NHPUC JAN06'12 PM 3:10

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

PRESENT: Chairman Thomas B. Getz, Presiding  
Commissioner Amy L. Ignatius  
Sandy Deno, Clerk

APPEARANCES: Reptg. Public Service Co. of New Hampshire:  
Sarah B. Knowlton, Esq.  
Robert A. Bersak, Esq.

Reptg. the Sierra Club:  
Zachary M. Fabish, Esq.  
Josh Stebbins, Esq.  
Catherine Corkery

Reptg. TransCanada:  
Douglas L. Patch, Esq. (Orr & Reno)

Reptg. New England Power Generators Assn.:  
Maureen D. Smith, Esq. (Orr & Reno)  
Sandi Hennequin, Vice President (NEPGA)

Reptg. the Conservation Law Foundation:  
N. Jonathan Peress, Esq.

COURT REPORTER: STEVEN E. PATNAUDE, LCR No. 52

ORIGINAL

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

**Reptg. Residential Ratepayers:**

Meredith Hatfield, Esq., Consumer Advocate

Rorie E. P. Hollenberg, Esq.

Office of Consumer Advocate

**Reptg. PUC Staff:**

Suzanne G. Amidon, Esq.

Edward N. Damon, Esq.

Steven E. Mullen, Asst. Dir./Electric Div.

# **I N D E X**

## **PAGE NO.**

### ***STATEMENTS OF PRELIMINARY POSITION BY:***

Ms. Knowlton	7
Mr. Fabish	24
Mr. Patch	27
Ms. Smith	29
Mr. Peress	30
Ms. Hatfield	37
Ms. Amidon	37

### ***STATEMENTS REGARDING PETITIONS TO INTERVENE BY:***

Ms. Knowlton	38
Mr. Fabish	42
Mr. Patch	44
Ms. Smith	49
Mr. Peress	54
Ms. Hatfield	57
Ms. Amidon	59

### ***QUESTIONS BY:***

Chairman Getz	21, 23, 33, 34, 45
Cmsr. Ignatius	22, 33, 48, 51

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

CHAIRMAN GETZ: Okay. Good morning, everyone. We'll open the prehearing conference in Docket DE 11-250. On October 14, 2011, in Docket DE 11-215, PSNH's 2012 Energy Service Rate proceeding, the Company filed testimony that proposed to begin recovery of costs associated with the Scrubber Project in ES rates effective January 1, 2012. On November 15, the Commission issued a secretarial letter stating that it would open a separate docket for the purpose of considering Scrubber Project issues. And, on November 18, PSNH filed a Motion for the Establishment of Temporary Rates. We filed an order of notice on December 1 setting the prehearing conference for this morning, and noting that the statements of positions will be considered this morning, as well as Petitions to Intervene, and positions on scope and schedules, but making clear that a hearing on temporary rates would be something that would occur at another time.

Note that we have, my records show, Petitions to Intervene by the Conservation Law Foundation, Sierra Club, TransCanada, and the New England Power Generators Association. And, we received this morning we have an objection by Public Service Company of New Hampshire to the Petitions from TransCanada and New

{DE 11-250} [Prehearing conference] {12-13-11}

1 England Power Generators Association. And, we also have  
2 the notice of participation from the Consumer Advocate.

3 So, let's handle the issues this way. I  
4 think I'd like to go around and -- well, let's do it in  
5 three rounds. Let's first just get the appearances on  
6 who's here, so I'll know who's arguing and who's present.  
7 Second, then we'll go around and hear the statements of  
8 the parties on their positions with respect to the  
9 substance of the proceeding. And, then, third, we'll deal  
10 with the Petitions to Intervene. We already have the  
11 Petitions to Intervene and have read those. So, in that  
12 third round, we'll start with Public Service Company of  
13 New Hampshire to, since we haven't had a lot of time to  
14 look at the objections, to state its position with respect  
15 to the objections. And, then, we'll give opportunity for  
16 a response to the objections.

17 So, well, let's get appearances on. If  
18 anybody has any concerns about process, they can let me  
19 know after we get the appearances.

20 MS. KNOWLTON: Good morning, Chairman  
21 Getz and Commissioner Ignatius. My name is Sarah  
22 Knowlton. And, I'm Senior Counsel at Public Service  
23 Company of New Hampshire. Appearing with me today for the  
24 Company is Robert A. Bersak, the Company's Assistant

1 Secretary and Assistant General Counsel.

2 CHAIRMAN GETZ: Good morning.

3 MR. BERSAK: Good morning.

4 MR. FABISH: Hi. My name is Zach  
5 Fabish. I'm with the Sierra Club Environmental Law  
6 Program. I'm here representing --

7 (Court reporter interruption.)

8 MR. FABISH: I'm here representing the  
9 Sierra Club, both in a national capacity and the New  
10 Hampshire Chapter. With me also are Catherine Corkery,  
11 head of the New Hampshire Chapter, and Josh Stebbins,  
12 another attorney with the Environmental Law Program.

13 CHAIRMAN GETZ: Okay. Good morning.  
14 And, I think, for the rest of the presentation, if there's  
15 a -- so, the court reporter can hear, you can probably sit  
16 and just speak into the mike.

17 MR. FABISH: Will do.

18 CHAIRMAN GETZ: Okay. Thank you.

19 MR. PATCH: Good morning. Doug Patch,  
20 Orr & Reno, for TransCanada.

21 CHAIRMAN GETZ: Good morning.

22 MS. SMITH: Good morning. Maureen  
23 Smith, of Orr & Reno, for the New England Power Generators  
24 Association. And, with me today is Sandi Hennequin, Vice

1 President for NEPGA.

2 CHAIRMAN GETZ: Good morning.

3 MR. PERESS: Good morning. Jonathan  
4 Peress, on behalf of the Conservation Law Foundation.

5 CHAIRMAN GETZ: Good morning.

6 MS. HATFIELD: Good morning,  
7 Commissioners. Meredith Hatfield, for the Office of  
8 Consumer Advocate, on behalf of residential ratepayers.  
9 And, with me for the Office is Rorie Hollenberg.

10 CHAIRMAN GETZ: Good morning.

11 MS. AMIDON: Good morning. Suzanne  
12 Amidon, for Commission Staff. And, with me today also  
13 representing Staff is Ed Damon, Director of the Legal  
14 Division. To his left is Steve Mullen, the Assistant  
15 Director of the Electric Division. Thank you.

16 CHAIRMAN GETZ: All right. Good  
17 morning. Okay. Before we hear statements of positions,  
18 is there any concerns with the process I've laid out so  
19 far?

20 (No verbal response)

21 CHAIRMAN GETZ: Okay. Hearing nothing,  
22 then, Ms. Knowlton.

23 MS. KNOWLTON: Thank you. We are here  
24 today to establish a process for rate recovery of the wet

1 flue gas desulphurization system, otherwise known as the  
2 "scrubber", in operation at the Company's Merrimack  
3 Station in Bow. As the Commission is aware, in 2006, RSA  
4 Chapter 125-O was amended to mandate by law that the  
5 Company install scrubber technology at Merrimack Station.  
6 This was based on multiple legislative findings that  
7 installation and operation of scrubber technology at  
8 Merrimack Station is in the public interest. At the time  
9 the scrubber law was passed, the Department of  
10 Environmental Services determined that the scrubber  
11 technology "best balances the procurement, installation,  
12 operation and plant efficiency costs with the projected  
13 reductions in mercury and other pollutants from the flue  
14 gas streams of Merrimack Units 1 and 2. Scrubber  
15 technology achieves significant emissions reduction  
16 benefits, including, but not limited to, cost-effective  
17 reductions in sulfur dioxide, sulfur trioxide, small  
18 particulate matter, and improved visibility (regional  
19 haze)." This determination by DES is expressly stated in  
20 RSA 125-O:11.

21 As a result, this is not a proceeding to  
22 determine whether installation of the scrubber was  
23 prudent, nor whether a wet flue gas desulphurization  
24 system was the proper technology, nor whether Merrimack



1 Station was the proper location for the scrubber. In its  
2 Order denying rehearing dated November 12th, 2008, in  
3 Docket Number DE 08-103, this Commission found: "Given  
4 the Legislature's specific finding in 2006 that the  
5 installation of scrubber technology at the Merrimack  
6 Station is in the public interest, the statute's rigorous  
7 timelines and incentives for early completion, and the  
8 statute's requirement of annual progress reports to the  
9 Legislature, the Commission found that the Legislature did  
10 not intend that the Commission undertake a separate review  
11 pursuant to RSA 369-B:3-a."

12 Similarly, in a 2009 financing docket,  
13 the Commission observed that "the Legislature, not PSNH,  
14 made the choice, required PSNH to use a particular  
15 pollution control technology at Merrimack Station, and  
16 found that installation is in the public interest of the  
17 citizens of New Hampshire and the customers of the  
18 affected sources." This is set forth in Order 24,979.

19 Not only did the Legislature mandate the  
20 installation of the scrubber itself, it required that it  
21 be installed and operational as soon as possible, but no  
22 later than July 1st, 2013. The Commission expressly  
23 recognized this in Order Number 24,898 dated  
24 September 19th, 2008 in Docket Number DE 08-103, where it

1 held that "the Legislature has made the public interest  
2 determination and required the owner of the Merrimack  
3 Station, viz., PSNH, to install and have operational  
4 scrubber technology to control mercury emissions no later  
5 than July 1st, 2013."

6 The Legislature made it clear by  
7 including precise early incentives that it would be  
8 environmentally beneficial if the scrubber could be  
9 completed earlier than the middle of 2013. RSA 125-O:16  
10 provides early emission reduction credits if the scrubber  
11 is completed before July 1st, 2013; credits that would  
12 inure to the benefit of PSNH's customers. Indeed, the  
13 Commission, in its September 19th, 2008 Order, also  
14 recognized that "the legislative history supports a  
15 conclusion that the Legislature viewed time to be of the  
16 essence. This conclusion is consistent with the economic  
17 performance incentives that PSNH can earn, pursuant to RSA  
18 125-O:16, if the Scrubber Project comes on line prior to  
19 July 1st, 2013."

20 We are here today because, on  
21 September 28th, 2011, the Company met the law's mandate  
22 and goal when it placed the scrubber into service. That  
23 occurred when Unit 1 at Merrimack Station was physically  
24 connected to the scrubber, placed into service, and

1 demonstrated successful operation with the scrubber and  
2 all its support systems in operation. Continuous  
3 emissions monitors at Merrimack Station, which have been  
4 certified in accordance with federal regulations and  
5 monitored by the Department of Environmental Services,  
6 show the scrubber is achieving SO2 reductions of  
7 90 percent or greater. The scrubber's effectiveness at  
8 removing mercury is subject to a legal determination by  
9 DES. As I will discuss later, there is an ongoing legal  
10 process relating to that determination.

11 On October 14th, 2011, shortly after the  
12 scrubber came on line, in accordance with past Energy  
13 Service Rate Adjustment dockets, the Company filed  
14 testimony and schedules establishing the scrubber's rate  
15 impact and requesting that the costs of the scrubber be  
16 included in energy service rates as of January 1st, 2012.  
17 The testimony noted that 344.7 million in capital  
18 investments had been placed in service as of September 28.  
19 On November 14th, Unit 2 was tied into the scrubber,  
20 bringing the total capital investment of scrubber plant  
21 serving customers at this time to \$359.1 million. These  
22 figures are contained in reports filed with the Commission  
23 in Docket Number DE 08-103 on November 10th, 2011 and  
24 November 18th, 2011, and attached to the Company's Motion

1 for Establishment of Temporary Rates filed in this docket.

2 The Company is asking that, similar to  
3 past capital investments in its generation assets, the  
4 Commission immediately begin cost recovery of the  
5 investment and associated O&M expense related to the  
6 scrubber in its default service rates under RSA 378:27 and  
7 RSA 125-O:18. What the Company is seeking is consistent  
8 with the other significant capital investments it has made  
9 in its generation fleet subsequent to restructuring. Both  
10 the Northern Wood Power Project, where Schiller 5 was  
11 modified to allow the burning of wood chips, and the  
12 Merrimack 2 HP/IP turbine replacement were put into the  
13 energy service rate upon their completion, with subsequent  
14 prudent -- subsequent prudence reviews and rate  
15 reconciliations as necessary. The same process should be  
16 followed here.

17 The Commission has repeatedly recognized  
18 the similarity of the process used in PSNH's default  
19 service rates to the temporary rate process. For example,  
20 in December 2010, in Order 25,187, the Commission observed  
21 that: "The energy service proceeding is somewhat  
22 analogous to a temporary rate proceeding or a cost of gas  
23 proceeding. In a temporary rate proceeding, the rate is  
24 set employing a standard that is less stringent than the

1 standard for permanent rates because of the reconciliation  
2 mechanism. In a cost of gas proceeding, the rate is set  
3 based on forecasts and estimates and is subject to  
4 reconciliation in the next cost of gas proceeding. In  
5 both temporary rates and cost of gas proceedings, the  
6 reconciliation process allows the Commission to apply a  
7 more stringent standard and look closely at the  
8 reasonableness of costs and the prudence of decisions."

9 The Company asks that the Commission  
10 treat this capital addition as it has all others in the  
11 past; to put into effect a temporary rate for this  
12 investment while the parties undertake a review of it, and  
13 to ultimately reconcile that rate once the review is  
14 complete.

15 RSA 378:27, the temporary rate statute,  
16 provides that the Commission, if it is of the opinion that  
17 the public interest so requires, may "immediately fix,  
18 determine and prescribe for the duration" of the rate  
19 proceeding "reasonable temporary rates." RSA 125-0:18 is  
20 unambiguous on cost recovery. It states that the Company  
21 "shall be allowed to recover all prudent costs of  
22 complying with this subdivision in a manner approved by  
23 the Public Utilities Commission."

24 In this case, the Company did exactly

1        what it was required to do. It built exactly what the law  
2        required it to build. It also completed the scrubber  
3        early, and the benefits of reducing sulfur oxide emissions  
4        by 90 percent immediately began. Now it's time to begin  
5        cost recovery. It's the Company's legal right, it is the  
6        Commission's duty under RSA 125-O:18, and it's also in the  
7        customers' interest.

8                        Placing the scrubber into rates at this  
9        time does not pre-judge the prudence of the Company's  
10       compliance with the law. As with the Northern Wood  
11       Project and the HP/IP turbine, the Staff and other parties  
12       will be able to undertake a review of the prudence of the  
13       construction of the scrubber. The Commission's  
14       consultant, Jacobs Consultancy, has already undertaken a  
15       significant effort in that regard.

16                       I suspect that you will hear today from  
17       some participants in this proceeding that it's too early  
18       to start cost recovery and that we should not rush into  
19       this. They may argue that, because there is no final  
20       legal determination from DES on the amount of mercury  
21       reductions, the scrubber can't be used and useful. This  
22       position would be misplaced and contrary to both the  
23       mercury reduction law and Constitutional precepts.

24                       In *LUCC versus PSNH*, at 119 NH 332,

1 decided in 1979, the New Hampshire Supreme Court noted,  
2 "the United States Supreme Court long ago established the  
3 rule that a public utility is entitled to a return upon  
4 the fair value of the property being used by it for the  
5 convenience of the public." As noted in the Company's  
6 scrubber progress reports filed with the Commission, the  
7 certified continuous emissions monitors at Merrimack  
8 Station demonstrate that the scrubber is significantly  
9 reducing SO2 emissions. And, those emissions were  
10 specifically referenced in RSA 125-0:11 as one of the  
11 emissions reductions benefits associated with installing  
12 the scrubber technology. In fact, in RSA 125-0:1, the  
13 Legislature specifically found "that aggressive further  
14 reductions in emissions of sulfur dioxide (SO2) must be  
15 pursued."

16 The mercury reduction portion of RSA  
17 Chapter 125-0 also specifically recognizes that it will  
18 take a "period of operation" to "establish a consistent  
19 level of mercury removal." And, that's found at RSA  
20 125-0:11, III. Hence, by law, the scrubber's prior  
21 placement into service and operation is required before  
22 the law's mercury compliance requirements can be  
23 calculated.

24 As you consider the manner in which the

1 Commission implements the legislative mandate that PSNH  
2 "shall be allowed to recover all prudent costs of  
3 complying with the requirements" of the scrubber law, I  
4 urge you to consider the consequences of the following  
5 scenarios:

6           What happens if the Commission's action  
7 results in no immediate recovery? As mandated by law, the  
8 Company has invested over \$359 million in property that is  
9 being used by it for the convenience of the public. Once  
10 that capital addition was placed in service, the Company  
11 stopped accruing AFUDC. If the Commission were to  
12 determine that no temporary rate proceeding should occur  
13 and that the scrubber cannot be deemed "used and useful"  
14 until there are legally final determinations by the DES on  
15 the mercury reductions, we could be waiting well over a  
16 year and possibly longer. The mercury reduction  
17 calculation is presently pending appeal before the state's  
18 Air Resource Council in Docket Number 11-10. Hearings  
19 aren't scheduled in that proceeding until March of next  
20 year. The ARC's decision might result in a remand to the  
21 DES. The decision might also be appealed to the New  
22 Hampshire Supreme Court. Under any scenario, it is clear  
23 that a final determination by DES of mercury reduction  
24 under the law will not be possible for an extended period



1 of time. If the Commission decided not to implement a  
2 cost recovery mechanism in the near term, and instead  
3 indicated that the scrubber's "used and useful" date must  
4 await the DES's determination, the Company would be  
5 required to go back to accruing AFUDC on the hundreds of  
6 millions of dollars it has invested, at significant cost  
7 to customers. The Company estimates that AFUDC costs  
8 would accrue at about \$2 million a month, or \$24 million  
9 over the course of one year. Additional costs that  
10 ultimately would have to be borne by the citizens of this  
11 state.

12 That result is not in the public  
13 interest. It does not benefit customers; it does not take  
14 into account the shareholders' interests; it is contrary  
15 to this Commission's past precedent for investments made  
16 by PSNH in its generation assets; and, it ignores RSA  
17 125-O:18. The Company's shareholders have spent a  
18 significant amount of their capital to comply with a  
19 mandate imposed by the state and they are entitled to be  
20 paid back for the use of their money in a timely fashion.  
21 Customers should not be forced to pay more for the  
22 scrubber by delaying recovery, necessitating more AFUDC  
23 expense when it is already providing known benefits to  
24 them.

1           The next scenario is "What happens if  
2     the Commission approves immediate temporary rates? This  
3     is the request -- this is the result that is requested by  
4     the Company. The Commission should put into effect  
5     temporary rates immediately. The Commission has  
6     sufficient information to make a temporary rate  
7     determination. The Company has filed testimony and  
8     reports on the status of the scrubber. The Commission  
9     also has independent reports provided by its expert  
10    consultant's review of the Scrubber Project.

11           It is long-standing law in New Hampshire  
12    that the Commission applies a less stringent standard when  
13    setting temporary rates than when it sets permanent rates.  
14    In the Commission's own words, that is because "temporary  
15    rates are determined expeditiously and without such  
16    investigation as might be deemed necessary to a  
17    determination of permanent rates."

18           In this case, the Commission has  
19    sufficient information to demonstrate that the scrubber is  
20    providing benefits to customers, and that delaying cost  
21    recovery will only be to the detriment of those customers.  
22    Even if the Commission accepts the Company's determination  
23    that the scrubber became "used and useful" when it was  
24    placed into service in late September, but does not act

1 expeditiously in implementing recovery of the investment,  
2 both customers and shareholders will be harmed. As noted  
3 in the Company's Motion for Establishment of Temporary  
4 Rates and supported by Mr. Baumann's affidavit, "PSNH has  
5 estimated that for every month that recovery of the  
6 Scrubber Project costs are delayed, \$5 million to  
7 \$6 million will be deferred and will have to be recovered  
8 from customers through rates in the future." All of those  
9 costs ultimately flow to rates.

10 If temporary rates are not put in effect  
11 promptly, the Company is very concerned that this process  
12 will result in rate instability for customers. Rate  
13 stability is an important principle in ratemaking. As  
14 recently as April of this year, Commission Staff cited  
15 rate stability as one reason why the Unitil rate case  
16 settlement should be approved. On January 1st of 2012, if  
17 no scrubber costs are included in rates, energy service  
18 rates will go down. The latest forecast to be filed with  
19 the Commission tomorrow, in Docket Number DE 11-215,  
20 indicate that energy service rates may decrease on  
21 January 1st by over 11 percent, to 7.90 cents per  
22 kilowatt-hour. Then, when rates for the scrubber  
23 eventually go into effect, rates will jump up to recover  
24 the 1.18 cent per kilowatt-hour cost of the scrubber, plus

1 any additional deferred costs and carrying costs incurred  
2 as a result of delayed recovery. The Company is concerned  
3 not only about rate shock to customers, but a yo-yo effect  
4 with rates bouncing up and down.

5 Should the Commission determine that it  
6 will not immediately fix temporary rates as allowed by RSA  
7 378:27, as an alternative, the Company has proposed  
8 leaving the energy service rate at its present level of  
9 8.89 cents per kilowatt-hour, without any reduction on  
10 January 1st, in order to promote rate stability. That  
11 would mitigate many of the harmful effects of delay and it  
12 would protect customers against additional carrying  
13 charges and deferrals while providing rate stability.  
14 Under the standard energy service reconciliation process,  
15 Staff and parties could then undertake the time necessary  
16 to review the prudence of the scrubber's construction, and  
17 then reconcile the energy service rate to effect the  
18 Commission's final determinations.

19 In closing, the Company is proud of the  
20 effort of its generation team and its contractors that has  
21 resulted in the Clean Air Project coming on line more than  
22 a year and a half before the statutory mandate, at a cost  
23 below the estimated construction budget, and with  
24 demonstrated reductions of emissions of sulfur oxides of

1 90 percent or more. We look forward to working with the  
2 Staff and parties to this docket to demonstrate this high  
3 level of success, and ask that the Commission take  
4 immediate action based on Commission precedent and under  
5 RSA 125-O:18 to allow PSNH to recover its costs of  
6 complying with the requirement of this legal mandate.  
7 Thank you.

8 CHAIRMAN GETZ: Thank you. A couple of  
9 questions, Ms. Knowlton. When you say "take immediate  
10 action" with respect to temporary rates, prior to having a  
11 hearing on temporary rates, based on what's put forward  
12 today?

13 MS. KNOWLTON: I think what the  
14 Company's view is is that, you know, we ask that the rates  
15 take effect January 1st. We recognize that the Commission  
16 has not, you know, set a date for a hearing on temporary  
17 rates. We would ask that the Commission set a date very  
18 promptly, in early January, so that we can begin the  
19 process.

20 CHAIRMAN GETZ: And, then, you had  
21 mentioned the potential rate decrease, 11 percent rate  
22 decrease in the energy service rate in 11-215. Were you  
23 suggesting that, in the context of that docket, in those  
24 hearings that are, you have to remind me, there's so many

1       hearings coming up, --

2                   MS. KNOWLTON:   December 19th.

3                   CHAIRMAN GETZ:   -- they're coming up,  
4       that we basically keep -- you're going to make a proposal  
5       possibly there that we keep that rate from reducing?

6                   MS. KNOWLTON:   Yes.   I mean, I think,  
7       certainly, the Commission could do it either, you know, in  
8       that docket or in this docket.   But the Company will be  
9       filing an update in DE 11-215 tomorrow, the hearing is  
10      December 19th.   And, certainly, the Commission could allow  
11      the current rate in that docket to remain in effect for  
12      some period of time.

13                  CHAIRMAN GETZ:   Okay.   Thank you.

14                  CMSR. IGNATIUS:   And, one other  
15      clarification.   It sounds as though you recited costs that  
16      were in the \$349 million range, perhaps, and then an  
17      additional installation that brought it up to 359 million.  
18      Is that the total that you're seeking recovery for or is  
19      that simply where we are as of today?

20                  MS. KNOWLTON:   That's where we are as of  
21      today.   There will be some other investments for which the  
22      Company seeks recovery.   But that is the substantial  
23      portion of it.

24                  CMSR. IGNATIUS:   And, the reason that

1 the full amount isn't here today is what?

2 MS. KNOWLTON: It's, you know, I would  
3 argue that it's akin to when you build a house, and, you  
4 know, maybe everything is done, but the driveway isn't  
5 paved. You know, the vast majority of the investment is  
6 completed, it's in operation. You know, it's all tied in,  
7 you know, providing electricity out into the grid. And,  
8 there are some aspects of the Project that, you know, will  
9 be that are in the process of completion. But they don't  
10 impact the ability of the plant in service that's in  
11 service today to operate.

12 CMSR. IGNATIUS: Thank you.

13 CHAIRMAN GETZ: And, with respect to --  
14 I'm trying to get an understanding of order of magnitude  
15 or proportionality. If you were -- obviously, you're  
16 seeking for 100 percent in temporary rates, and the  
17 Commission can do from zero to 100 percent, I think it has  
18 wide discretion in what it sets for temporary rates. But  
19 how would you compare forgoing the 11 percent decrease in  
20 the energy service rate to the full increase in temporary  
21 rates? Is that --

22 MS. KNOWLTON: My understanding is that  
23 it roughly would be, if we left the energy service rate  
24 where it is today, that that would cover approximately

1 5/6ths of the costs of the scrubber that are proposed in  
2 the Motion for Temporary Rates.

3 CHAIRMAN GETZ: Okay. Thank you. Okay.  
4 Thank you. Mr. Fabish.

5 MR. FABISH: Sure.

6 CHAIRMAN GETZ: Is that the correct  
7 pronunciation?

8 MR. FABISH: Yes. That will work.

9 CHAIRMAN GETZ: Close enough? Okay.

10 MR. FABISH: Thank you for this  
11 opportunity to address the Commission. So, the Sierra  
12 Club has basically some concerns with the prudence  
13 determination. And, as a preliminary matter, just we're  
14 concerned about the impacts to Sierra Club members as  
15 ratepayers, but also what the prudence determination  
16 means, in terms of environmental quality and the success  
17 and efficacy of the Scrubber Project as implemented at  
18 this station.

19 So, just to outline four categories of  
20 concerns that we have. The first is, obviously, the  
21 initial cost of the Scrubber Project was much less than  
22 what it's clocking in at. Originally, it was -- my  
23 understanding it was estimated to be about \$250 million;  
24 today we're hearing numbers of 359 million, with some



1       undetermined amount still to come. And, so, that sort of  
2       large increase does raise some concerns for us as to the  
3       prudence of the overall project.

4                       More substantively, we're very concerned  
5       about the sufficiency of the Scrubber Project. As PSNH  
6       has said, it is not yet determined whether or not the  
7       Scrubber Project has met the statutory mandate of an  
8       80 percent reduction in mercury emissions, and it's not  
9       clear -- so, it's not clear whether the Project is  
10      actually sufficient under the state law.

11                      Third, we have concerns about whether or  
12      not the Project incorporated reasonably foreseeable  
13      further regulations. In the scrubber law, RSA 125-O:16,  
14      I(c), there is discussion of further federal controls as  
15      relates to mercury. And, so, within the statute itself --  
16      I'm sorry, am I speaking into this incorrectly? Within  
17      the statute itself, there is formulated the idea that  
18      federal controls requiring further reductions in mercury  
19      emissions may be in the offing. And, it's not clear to  
20      what extent the Scrubber Project took that into  
21      consideration.

22                      Similarly, there are additional federal  
23      regulations, such as the One-Hour Sulfur Dioxide National  
24      Ambient Air Quality Standard, which was discussed and

1 implemented during the course of the Scrubber Project.

2 And, so, the Sierra Club is concerned with the extent to  
3 which the Scrubber Project took these further reductions  
4 into consideration.

5 Similarly, with the treatment, the water  
6 treatment project that is incorporated as part of the  
7 scrubber facility, to deal with the liquid waste that  
8 comes off of the scrubbers. EPA, in releasing its recent  
9 draft NPDES permit --

10 (Court reporter interruption.)

11 MR. FABISH: I'm sorry. Recent draft  
12 permit, the National Pollution Discharge Elimination  
13 System Permit, stated that PSNH did not fully consult with  
14 EPA concerning the water treatment systems required. And,  
15 EPA actually has stated that the water treatment  
16 facilities, as part of the Scrubber Project, are  
17 insufficient to deal with the waste stream associated with  
18 the Scrubber Project. So, the prudence inherent in the  
19 design and execution of the Project on this point is,  
20 again, something that the Sierra Club is very concerned  
21 with.

22 Finally, the Sierra Club is concerned  
23 with, basically, which aspects of the Scrubber Project  
24 should be included as being considered prudent. And, this

1 includes which parts are directly relevant to the  
2 construction of scrubbers as dictated by the scrubber law,  
3 and how the financing is broken down, and whether or not  
4 that was the most efficacious way for PSNH to fund the  
5 Project and thereby protect the interest of ratepayers.

6 So, those are the four main categories  
7 of concerns that Sierra Club has identified at this point.

8 On the topic of recovering rates before  
9 a prudency determination has been made, I mean, I think  
10 that the law is fairly clear that the utility is allowed  
11 to recover prudent expenses in furtherance of the Scrubber  
12 Project. I'm not sure what can trigger the ability to  
13 recover aside from a prudency determination. That  
14 obviously hasn't been made yet, and, you know, in many  
15 ways, can't be made yet, because we don't know to what  
16 extent the Scrubber Project actually fulfills the  
17 requirements of the law.

18 So, that is essentially our statement of  
19 concerns.

20 CHAIRMAN GETZ: Okay. All right. Thank  
21 you. Mr. Patch.

22 MR. PATCH: TransCanada, at this point  
23 in time, does not have a preliminary position. We, for  
24 reasons that we put in the Petition to Intervene,

1 obviously would like to participate in the docket. As the  
2 docket unfolds and information is made available, you  
3 know, our position presumably would evolve. But,  
4 obviously, as a competitive supplier, we have concerns  
5 about recovery of rates, we have some concerns about  
6 prudence issues. When I say "recovery", over what period  
7 of time, impact on default service rates, and issues  
8 related to that. But, at this point in time, we don't  
9 have a position on whether those costs are prudent or not.  
10 We think that's -- that will be the subject of discovery  
11 and information that will be provided as part of the  
12 docket.

13 And, with regard to the prudence issue,  
14 the only other thing I would point out is the provisions  
15 in RSA 125-O:17, you know, which gave PSNH the opportunity  
16 to seek a variance for a variety of reasons. And,  
17 presumably, that would be a portion of the prudence review  
18 that would be conducted, some evaluation of that. And,  
19 the Commission's order of notice I think pretty clearly  
20 indicated that the prudent -- whether the costs of the  
21 Scrubber Project were prudently incurred pursuant to the  
22 statutes is clearly one of the issues here.

23 So, again, we don't have a preliminary  
24 position at this point. But, for reasons that I assume

1 I'll get into in the third round of going around this  
2 morning, you know, TransCanada believes that it can be a  
3 contributor to the process.

4 CHAIRMAN GETZ: Okay. Thank you.  
5 Ms. Smith.

6 MS. SMITH: Yes. Good morning. NEPGA  
7 is here today for a number of reasons, as set forth in our  
8 Motion to Intervene. As far as a statement of position,  
9 like TransCanada, we are not at a stage yet of stating our  
10 position. Although, NEPGA does have an interest in many  
11 of the issues that the PUC will address in this  
12 proceeding. Primarily, those issues pertaining to rates.  
13 Because NEPGA does represent regional -- competitive  
14 suppliers in the region, approximately 27,000 megawatts of  
15 generating capacity in the region; New Hampshire alone, it  
16 adds up to about 2,600 megawatts of generating capacity.  
17 So, NEPGA does have a very strong interest in any, you  
18 know, rate changes that are made as a result of the  
19 scrubber-related determinations. And, it would range from  
20 the legal conclusions made by the PUC, on whether cost  
21 recovery is appropriate at this time for any demonstration  
22 of mercury reduction, percentage of mercury reduction is  
23 made by PSNH, to the economics of the equipment installed,  
24 the economics of the entire decision to install the

1 equipment, based on NEPGA's members' experience with  
2 similar issues.

3 So, NEPGA has a lot to offer in this  
4 proceeding, in terms of experience and knowledge of many  
5 of the same issues that the PUC will be reviewing. It has  
6 participated in a number of other dockets, including the  
7 migration, the LCRIP [LCIRP?] docket, the Laidlaw docket,  
8 and has been able to offer some information to inform the  
9 PUC and other parties, and so that a good judgment can  
10 come from this proceeding before you.

11 We will clarify our statement of  
12 position on all of these issues as this proceeding moves  
13 forward. Thank you very much.

14 CHAIRMAN GETZ: Thank you. Mr. Peress.

15 MR. PERESS: Thank you, Mr. Chair. The  
16 Conservation Law Foundation and its approximately 350  
17 members in the State of New Hampshire have a substantial  
18 and significant interest in this proceeding, for several  
19 reasons. First and foremost, this is the largest capital  
20 project that's been sought to be placed into the rate base  
21 in many, many years in New Hampshire. And, it is  
22 expressly an environmental emissions control project. As  
23 you know, CLF's purpose and objectives are to ensure that  
24 the environmental impacts from the electric industry, that

1 is the generation, transport, and use of electricity are  
2 minimized. As you're also aware, CLF was -- CLF's  
3 Petition to Intervene in Docket 11-215 was granted by the  
4 Commission.

5 While we're not going to take a  
6 preliminary position, *per se*, pending discovery, we think  
7 that there are two distinct aspects of this proceeding  
8 that we do have an initial what I'll describe as a  
9 "procedural" position on. The first one is the extent to  
10 which the equipment is used and useful. And, as counsel  
11 for PSNH noticed -- noted, the standard for placing used  
12 and useful equipment in rates is less stringent than the  
13 prudence standard. But CLF would add that there is still  
14 a standard. That is, it's not a *carte blanche* entitlement  
15 to place equipment into rates. And, the parties to this  
16 proceeding have not had the opportunity to undertake  
17 discovery and to review the claims made by PSNH with  
18 respect to the Scrubber Project being physically  
19 connected, placed into service, functionally operating as  
20 expected. The one point that we would add with respect to  
21 that "used and useful" determination and the proceedings  
22 that are required in order to render it, is that, further  
23 elaborating on the comments of Sierra Club, PSNH at this  
24 point in time is not legally entitled or authorized to

1 discharge the wastewater from the Scrubber Project. And,  
2 it would be premature for us to make -- to pass judgment  
3 on what the implications of that are to the "used and  
4 useful" determination. But those are the sorts of issues  
5 that require some discovery before they are entitled to  
6 recover the cost of this project in rates.

7 Furthermore, under the Clean Air Act,  
8 and this is reflected in the permit for the Scrubber  
9 Project that was issued to Public Service Company of New  
10 Hampshire by the DES Air Resources Division, the law  
11 provides for a 180-day shakedown period before equipment  
12 is considered operational. And, under that permit, DES  
13 plans to undertake extensive testing with respect to the  
14 emissions that are being emitted, what the appropriate  
15 emissions rate level is, etcetera.

16 Now, that's not to dispute PSNH's  
17 assertion that the equipment is being used. The question  
18 is, "whether it should be determined to be "used and  
19 useful" at this time?" And, we, CLF, believes there is a  
20 threshold inquiry that needs to be undertaken, with  
21 stakeholder input and discovery, prior to these costs  
22 going into rates.

23 This is not analogous to a cost of gas  
24 proceeding and a gas ratemaking proceeding -- cost of gas



1 aspect of a gas ratemaking proceeding. So, that would be  
2 the first procedural issue.

3 Then, the second --

4 CHAIRMAN GETZ: Well, let's deal with  
5 that one then first, then. Are you taking a position that  
6 these are issues that cannot be addressed through  
7 discovery in the expedited version of a temporary rate  
8 proceeding?

9 MR. PERESS: No. We are not. What we  
10 are suggesting is that it would be appropriate for us to  
11 essentially have a bifurcated process here. Whereby the  
12 parties agree to a discovery process prior to that  
13 temporary rate proceeding, and before any costs get placed  
14 into rates.

15 CMSR. IGNATIUS: Mr. Peress, another  
16 question. When you said that "the Company is not legally  
17 entitled to discharge waste from the scrubber", are you  
18 saying that the equipment installed should not be in  
19 service right now? That the Company should not be  
20 operating it?

21 MR. PERESS: It would be speculation on  
22 our part to -- with respect to how they are operating the  
23 equipment that has been installed. But what I think we  
24 can say with a reasonable level of certainty is that the

1 equipment, which was installed, was installed for the  
2 purpose of treating the wastewater discharge, the  
3 wastewater for discharge, and that discharge is not  
4 authorized under law currently. I can't, because we have  
5 not had discovery, take a position on whether that  
6 equipment is being used and whether it's adding ratepayer  
7 benefit at this time. What's clear, though, however, is  
8 that it's not being used in the way that it was envisioned  
9 by PSNH when they built it, if it is being used, because  
10 the EPA has not authorized the discharge from that  
11 facility and, in fact, in its draft permit, has expressly  
12 stated that -- that that facility was not designed to the  
13 level of control that it is requiring in its draft permit.

14 CHAIRMAN GETZ: Is there any debate  
15 about whether the scrubber is currently in operation?

16 MR. PERESS: CLF has no knowledge, other  
17 than the assertions made by PSNH, as to whether the  
18 scrubber is in operation, other than occasionally seeing  
19 steam coming out of the large stack from the scrubber.  
20 But we have no independent knowledge. And, that's exactly  
21 the nature of the review that we think is appropriate  
22 before this is reflected in rates at all.

23 CHAIRMAN GETZ: Because I'm wondering,  
24 you draw the distinction between "used and useful"

1       versus --

2                       MR. PERESS: Prudent.

3                       CHAIRMAN GETZ: -- "prudent", whether  
4       there's a further distinction between "in operation"  
5       versus "used and useful". But I guess we can let that  
6       develop. So, why don't you move onto your second  
7       procedural point.

8                       MR. PERESS: So, then, our second  
9       procedural point deals with the independent and related  
10      question of the extent to which the costs have been  
11      prudently incurred. And, as the Commission is likely  
12      aware, Public Service Company of New Hampshire currently  
13      has the highest energy service rates in the state, and  
14      it's not even close. For a 500 kilowatt load, according  
15      to a recent report by DES, with the help of PUC Staff,  
16      PSNH's rates are approximately \$30 more per month than the  
17      rates being charged by National Grid for a 500 kilowatt  
18      service. The Scrubber Project, obviously, will  
19      substantially increase the rates that PSNH is providing,  
20      they have estimated by approximately 1.2 cents per  
21      kilowatt-hour. That's, obviously, not calculating in any  
22      decrease that they might be proposing currently in 11-215  
23      or might be subject to a subsequent prudence review.

24                      The Commission bears a risk here that

1 the statute might be used by Public Service Company of New  
2 Hampshire as somewhat of a carte blanche invitation to  
3 spend the ratepayers' money. As I think has been well --  
4 significantly addressed in 08-103, the original estimate  
5 for the scrubber was \$250 million in costs, and, at some  
6 point, inflated to about \$450 million in costs, the most  
7 recent estimates that we've heard from the Company are  
8 somewhere around \$430 million in costs.

9 In light of what the effects on the rate  
10 base are, we would strongly suggest that the ratepayers,  
11 CLF, many of the intervenors here have a very strong  
12 interest in assuring that this -- that the engineering,  
13 the construction, and the operation of this facility are  
14 undertaken with the ratepayers' interests in mind. That  
15 it's not gold-plated, for example, as there might be  
16 incentives to gold-plate it, with respect to PSNH's almost  
17 10 percent rate of return on equity. We're not suggesting  
18 that's the case. We're suggesting that this proceeding  
19 deserves a very detailed, lengthy, discovery-rich process  
20 for determining those three functions, that is the  
21 engineering, the construction, and the operation of this,  
22 with respect to the ratepayers' interests, and to ensure  
23 that all of those things were undertaken in a prudent  
24 fashion.

1 CHAIRMAN GETZ: Okay. Thank you.

2 MR. PERESS: Thank you.

3 CHAIRMAN GETZ: Ms. Hatfield.

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

5 The OCA has no position at this time. We look forward to  
6 working with the parties and Staff to develop a schedule  
7 and to engage in discovery. And, we would note that the  
8 OCA and several parties did begin discovery in 11-215.  
9 PSNH objected to a fair amount of the discovery related to  
10 the scrubber, and the parties reached an agreement to move  
11 that, that discovery and those issues over to this docket.  
12 And, I'm sure we'll discuss that during the technical  
13 session.

14 CHAIRMAN GETZ: Thank you. Ms. Amidon.

15 MS. AMIDON: Thank you. At this point,  
16 Staff has no position on this proceeding, but intends to  
17 conduct an investigation to look at the issues, which the  
18 Commission outlined in its order of notice, and to make  
19 appropriate recommendations to the Commission. And, to  
20 follow whatever instruction the Commission has with  
21 respect to establishing a date for a temporary rate  
22 hearing or any other instruction that you may have.

23 We do plan to conduct a technical  
24 session after this prehearing conference.

1 CHAIRMAN GETZ: Okay. Thank you.

2 (Chairman Getz and Commissioner Ignatius  
3 conferring.)

4 CHAIRMAN GETZ: Okay. Let's turn then  
5 to the Petitions to Intervene. And, as I noted before, we  
6 read the Petitions to Intervene. We've only had a chance  
7 to quickly look at the objections. So, we'll start with  
8 the Company. And, Ms. Knowlton, if you would like to  
9 summarize the Company's position vis-a-vis TransCanada and  
10 the New England Power Generators Association?

11 MS. KNOWLTON: Thank you. This morning  
12 the Company filed an objection to the intervention  
13 petitions filed by TransCanada Power Marketing, Ltd., and  
14 TransCanada Hydro Northeast, Inc., as well as the New  
15 England Power Generators Association. I'm going to base  
16 my comments on the petitions that were filed, as well as  
17 the comments that we just had from NEPGA and from  
18 TransCanada.

19 CMSR. IGNATIUS: And, Ms. Knowlton,  
20 before you go ahead, have the two entities the objections  
21 were filed against received copies of those in hand?

22 MS. KNOWLTON: I served those  
23 electronically, in accordance with the Commission's rules,  
24 this morning.

1 CMSR. IGNATIUS: Thank you.

2 MS. KNOWLTON: Around 8 o'clock. I have  
3 copies with me, if anyone needs them. As set forth in the  
4 Company's objection, both TransCanada and NEPGA seek to  
5 participate in this docket as competitive suppliers. And,  
6 this is, as we've heard from many of the speakers today, a  
7 case in which the Commission is going to be setting a  
8 rate, but it's also going to be reviewing decisions that  
9 the Company made in the construction process of the  
10 scrubber all along the way, and the ultimate efficacy of  
11 the scrubber.

12 I fail to see how competitive suppliers'  
13 interests are affected by those considerations. They're  
14 not regulated by the Commission, as you know, as this  
15 company is. Their members are not. They are essentially  
16 trying to bootstrap their status as intervenors in other  
17 proceedings as a basis to intervene here. Interestingly,  
18 one of the things that NEPGA stated this morning was that,  
19 you know, they feel that they should be able to  
20 participate because they have information that they can  
21 offer. Clearly, that does not meet the standard set forth  
22 in RSA 541-A:32, which requires that an intervenor have  
23 rights or duties or privileges or interests that are  
24 affected by the proceeding. If we were to follow that

1 argument put forth by NEPGA to its logical conclusion, you  
2 know, any engineer could come and try to participate in  
3 this proceeding because they might have some information  
4 that they could offer. Certainly, both NEPGA and  
5 TransCanada, if they have information that they want to  
6 offer, that they think is helpful, they can do that in the  
7 form of a public statement in this docket, which the  
8 Commission has offered many others the chance to do in the  
9 past.

10 So, I think they have not met the  
11 standard required by the law. There's no -- their  
12 petitions are written in a very conclusory way to say that  
13 they have an interest in the rates, but they don't give us  
14 any explanation as to why that is. I mean, do they have  
15 an interest in seeing the rates go up, so that they'll be  
16 able to compete better? Do they have interests in seeing  
17 rates go down? They don't connect any of the dots in  
18 their petition. And, I don't think that the petition sets  
19 forth the legal standard that's required.

20 As I've indicated in the objection, if  
21 the Commission were to determine that TransCanada and  
22 NEPGA should be allowed to participate in this docket, the  
23 Company would ask that the Commission require those two  
24 parties to combine their presentations of



1 cross-examination and evidence in this case, and that they  
2 combine their discovery to the Company, as the Commission  
3 is allowed to do under RSA 541-A:32.

4 (Chairman Getz and Commissioner Ignatius  
5 conferring.)

6 CHAIRMAN GETZ: This is just a minor  
7 procedural issue. I think we want to let TransCanada and  
8 the Power Generators go last. But does anybody else want  
9 to weigh in on the issue of supporting or opposing the  
10 Petitions to Intervene?

11 MS. KNOWLTON: I have a position on  
12 Sierra Club and CLF, but I don't know if you would like to  
13 complete consideration of the TransCanada petitions first?

14 CHAIRMAN GETZ: Oh. Okay. Well, it  
15 would be good to know that, because we have no objection  
16 filed.

17 MS. KNOWLTON: Right. We're not  
18 objecting to their participation. But I would ask is that  
19 the Commission, again, under RSA 541-A:32, require Sierra  
20 Club and the Conservation Law Foundation to combine their  
21 presentation of issues, evidence, discovery in this case,  
22 given the commonality of their interests. And, to the  
23 extent that they -- on the environmental side. And, to  
24 the extent that those two entities seek to raise rate

1 issues, they have both indicated in their Petitions to  
2 Intervene that they have members who are ratepayers, and  
3 we would ask that they combine their rate presentation of  
4 issues and discovery requests with the Office of Consumer  
5 Advocate that is representing residential ratepayers in  
6 this docket.

7 And, finally, I think it is important  
8 to, with regard to the environmental intervenors, that the  
9 Commission make clear that their participation in this  
10 docket is limited to the issues that are within the scope  
11 of this proceeding. As the Commission may be aware,  
12 Conservation Law Foundation has brought a case in federal  
13 court against the Company. And, we want to be very clear  
14 that this docket not become a forum for discovery in that  
15 other case, so that participation is limited to what this  
16 case is about.

17 CHAIRMAN GETZ: Okay. With that  
18 additional information, we will revise the procedural  
19 approach. Let's just go around the room, and anything  
20 anybody has to say, in response to the Company, say it.  
21 So, Mr. Fabish.

22 MR. FABISH: Sure. I mean, I think that  
23 it's an oversimplification to say that the Sierra Club's  
24 interests overlap perfectly with those of CLF and OCA.

1     Though, I -- again, we haven't seen a written objection or  
2     anything at this point. This is the first that I'm  
3     hearing about this in the past couple of minutes. And,  
4     so, I think that it would be advantageous for CLF, the  
5     Sierra Club, and OCA to discuss this a little bit in  
6     private, before we come up with some sort of position,  
7     unless CLF and OCA have strong positions that they want to  
8     air right now.

9                     CHAIRMAN GETZ: Okay. Well, what I  
10    think the proposal is, it's not an objection to  
11    intervening, but a proposal under the 541-A:32 that there  
12    be some combination of the proceeding among certain  
13    parties. So, I think that's something that can be  
14    discussed during the technical session.

15                    MR. FABISH: Okay. Good.

16                    CHAIRMAN GETZ: I want to turn to  
17    TransCanada, and I guess this applies as well to the Power  
18    Generators. But I think it is somewhat of a peculiar  
19    situation, Mr. Patch, pointed out by Ms. Knowlton. And, I  
20    guess I don't have a perspective at this point one way or  
21    the other, but you haven't taken a position, but it seems,  
22    to the extent that there is an interest, there may be an  
23    interest in supporting the Company's position for full  
24    recovery. I'll just give you the opportunity to respond

1 to the objection in a general way.

2 MR. PATCH: Okay. Thank you. First of  
3 all, I'd like to point out that PSNH's objection here is  
4 very similar to the one that they made in DE 11-216, which  
5 is the Alternative Default Energy Service Rate docket,  
6 when they objected to Freedom Logistics and Halifax  
7 American as aggregators and suppliers participating in  
8 that docket. And, the way that the Commission resolved  
9 that was in a secretarial letter dated October 20th, where  
10 it referred to the "granting of those petitions as a  
11 matter of discretion pursuant to 541-A:32, II." So, I  
12 just think that analogous situation is important to point  
13 out.

14 Secondly, the Commission has a  
15 long-standing practice of granting petitions to intervene  
16 to TransCanada, as well as a number of other suppliers.  
17 We cited to a number of dockets that TransCanada has  
18 participated in, and where the Commission has granted that  
19 intervention. And, I believe TransCanada has contributed  
20 to the process. And, I would cite specifically one of  
21 those, DE 10-121, which was a reconciliation docket that  
22 dealt with the prudence of PSNH's actions. And,  
23 TransCanada, after reviewing the information, concluded  
24 that it could not find anything imprudent in PSNH's

1 actions.

2 So, I think TransCanada tries very hard  
3 to take a responsible position in any docket that it  
4 participates in. But I think it has knowledge and  
5 experience and expertise that contribute to the process.  
6 And, so, I think it's in the interest of justice for the  
7 Commission to allow that intervention.

8 CHAIRMAN GETZ: But that goes more to  
9 the discretionary role or prong of the test for  
10 intervention, correct?

11 MR. PATCH: That's correct. And, the  
12 contribution, I would just, in terms of an argument that  
13 PSNH made of "well, TransCanada could contribute through a  
14 public statement." Well, I think the opportunity to  
15 participate in discovery and to know the right questions  
16 to ask is a significant -- makes a significant difference  
17 in terms of any potential intervenor's ability to  
18 contribute. Sure, TransCanada could just make a public  
19 statement. But that's -- that's far different than the  
20 ability to be able to participate in discovery. So, I  
21 don't think that's by any means sufficient.

22 TransCanada does have rights that would  
23 be affected by this docket. The hybrid situation that  
24 PSNH finds itself in, where it still owns generation,

1 creates a multitude of issues with regard to the  
2 competitive market in New Hampshire. And, I believe  
3 TransCanada and other suppliers have an interest in  
4 impacts of recovery of rates on those markets. What  
5 period of time are those rates recovered? You know,  
6 what's the impact going to be on the energy service rate?  
7 There are a number of issues related to that. So, New  
8 Hampshire has that unique situation, unlike any other  
9 state in New England, and probably any other in the  
10 country. Where we have the regulated utility still owning  
11 generation, and the impact that that has on competitive  
12 markets. So, I think that's an important distinction.  
13 And, I think that's what creates certain rights and  
14 privileges in TransCanada.

15 So, I think there's a discretionary --  
16 as a matter of discretion, the Commission ought to grant  
17 it. I think, as a matter of the impact on the rights of  
18 TransCanada, the Commission ought to grant it.

19 But, even beyond that, I believe it's  
20 important to note that, as a regulated utility, it's  
21 extremely important that there be a healthy scrutiny of  
22 the actions of that regulated utility, especially given  
23 the hybrid situation. And, I think that TransCanada's  
24 participation can help to make sure that regulation works

1 effectively, that there is a healthy scrutiny of actions  
2 taken. You know, it doesn't necessarily mean that they  
3 shouldn't be allowed to recover certain things, but that  
4 scrutiny that occurs as part of that, of the process the  
5 Commission goes through, I think it's extremely important  
6 that the Commission have the participation of a number of  
7 different points of view.

8 And, then, finally, PSNH suggests that  
9 NEPGA and TransCanada be essentially combined, in terms of  
10 their participation in the docket. TransCanada, by  
11 choice, is not a member of NEPGA. And, its interests,  
12 although sometimes align with NEPGA, and they may very  
13 well be aligned at some point in this proceeding, are not  
14 necessarily aligned. And, so, I think combining the two  
15 together would not be the wise thing to do. And, I'm not  
16 sure that it would add in any way to the orderly conduct  
17 of the proceeding.

18 So, we would urge that you grant  
19 TransCanada's petition. We would also urge that you not  
20 combine TransCanada's participation with NEPGA.

21 And, I guess, finally, to address the  
22 question that you raised, Mr. Chairman, I mean, certainly,  
23 there is, in some respects, you know, depending on how the  
24 expenses related to the scrubber are recovered, it would

1 be in TransCanada's interest to have an even wider margin  
2 between the market rate and the default service rate than  
3 what already exists. But the interests go far beyond  
4 that, because we're talking again about the competitive  
5 market, and impacts that are short-term and long-term.  
6 And, it's difficult to say, in every situation, that  
7 that's the only position that TransCanada or another  
8 competitive supplier might have. Because, as you well  
9 know, these issues tend to be very complex. And, there  
10 isn't often times a simple answer or a simple position.  
11 Thank you.

12 CMSR. IGNATIUS: Mr. Patch, your last  
13 comment about "short and long-term effects on the market"  
14 raise for me a concern that your interests really have to  
15 do with the state of the competitive market and not with  
16 the specifics of the costs and prudence of certain  
17 decisions made by PSNH in this installation. And, I think  
18 we're struggling with a docket that can get out of control  
19 in a whole lot of different directions. Competitive  
20 market issues being one, environmental issues, other  
21 proceedings in other forums. There are a lot of areas  
22 where this can take off.

23 And, so, do you have a comment on that?  
24 That how much should issues of what impacts there are on



1 competitive markets be an element of this proceeding?

2 MR. PATCH: I don't think that it should  
3 necessarily be an issue in this proceeding. But I'm not  
4 sure what PSNH might propose here, as it has done in some  
5 other dockets, that could have those kind of implications.  
6 I don't necessarily see that at this point, but there  
7 could be something that could come up.

8 And, to the extent that the docket, in  
9 the Commission's view or PSNH's view, starts to get out of  
10 control, there's certainly multiple mechanisms built into  
11 the rules and the procedures that the Commission has to  
12 try to limit the scope, to make sure that discovery  
13 doesn't go overboard. You know, objections to discovery,  
14 you know, that is filed. So, I think I -- I understand  
15 your concern, but I think there are many ways to address  
16 that.

17 CMSR. IGNATIUS: Thank you.

18 CHAIRMAN GETZ: Ms. Smith.

19 MS. SMITH: Thank you. As you know,  
20 NEPGA received the PSNH objection this morning and has not  
21 had a full opportunity to gather the arguments in  
22 response. But I will provide you with our thoughts so  
23 far. And, in hearing PSNH's further oral objection, I'd  
24 like to address some of the points raised this morning by

1 Attorney Knowlton.

2 First of all, NEPGA did set forth its --  
3 the direct interests, rights, and other interests that it  
4 has in participating in this proceeding in its Motion to  
5 Intervene. The primary driver is that NEPGA does have --  
6 it is the largest organization of competitive generators  
7 and wholesale suppliers. And, it sells into the same  
8 regional market that PSNH sells its power to. So,  
9 although Attorney Knowlton did reference that PSNH was a  
10 regulated utility, you know, did have a different status,  
11 in the end, we're all in this together in the region.  
12 And, NEPGA does have a direct interest in the outcome of  
13 this proceeding and in the issues that will be addressed  
14 in the proceeding, because it will impact costs, the costs  
15 in the region. And, the competitive market, as much as it  
16 sounds like it's different from the regulated utility  
17 world, is the regional market.

18 So, the scrubber is not a side issue.  
19 The scrubber was a huge investment by a regulated utility.  
20 The utility is now seeking cost recovery. That cost  
21 recovery and any decisions made by the PUC with regard to  
22 that will have an impact on the market. It will impact  
23 directly the competitive suppliers, the wholesale  
24 suppliers, the members of NEPGA, and others who are not

1 NEPGA members, but particularly NEPGA members, and many of  
2 which are located in New Hampshire.

3 So, we do meet the requirements of RSA  
4 541-A:32, (b) with regard to "direct impact". And, so, we  
5 disagree with PSNH on that point.

6 CMSR. IGNATIUS: Ms. Smith, before you  
7 move on, just take that a step further. What's the  
8 mechanism that you see that a determination on cost  
9 recovery for PSNH changes the costs that you see for your  
10 companies?

11 MS. SMITH: Well, any impact on rates is  
12 going to impact the market, the regional market. So, rate  
13 determinations made by this Commission do affect that  
14 market.

15 And, I will say, on the second point, as  
16 to "direct effect", it's important to keep in mind that,  
17 you know, NEPGA members as generators do have to meet the  
18 same types of environmental requirements that PSNH brings  
19 at issue here, and that is, you know, reducing mercury.  
20 And, to the extent that other generators in the region  
21 have installed similar equipment or have addressed those  
22 requirements, you know, it's important for that -- that to  
23 be brought to bear in this proceeding.

24 So, it's not that NEPGA members are, you

1 know, just offering information that could be helpful to  
2 the Commission. I mean, there's something at stake here  
3 and there are direct effects by any determination made  
4 here. And, although it is with regard to a scrubber, with  
5 regard to a particular installation, it's a large  
6 installation, and it is an important issue for this  
7 Commission and for the competitors.

8 With regard to the one -- RSA 541-A:32,  
9 II, the discretionary intervention, we did also address  
10 that in our Motion to Intervene. And, as the Commission  
11 knows, if it is in the interest of justice, and there  
12 would be no disruption of the proceedings, intervention  
13 can be granted. And, you know, we have set forth reasons  
14 why it would be in the interest of justice, and that goes  
15 to the offer of, you know, information that NEPGA members  
16 have on installation of similar equipment, on the costs,  
17 on the engineering, on some of the issues that Attorney  
18 Knowlton referenced, because the PUC will be reviewing the  
19 engineering and construction, it will be reviewing  
20 prudence. And, although the NEPGA members are not  
21 recovering costs from ratepayers when they install  
22 pollution control equipment, they're recovering it from  
23 their stockholders. So, although the payors were  
24 different on many of the issues --

(Court reporter interruption.)

MS. SMITH: So, NEPGA's argument is that it meets both criteria under RSA 541-A:32 for intervention. NEPGA also objects to PSNH's suggestion to the Commission that its filings, its discovery, its participation in this proceeding be combined with other intervenors, and, in particular, TransCanada. Attorney Patch already mentioned that TransCanada is not a member of NEPGA. And, though our interests may be aligned, they are not identical. And, I echo that argument. NEPGA's members do consist of competitive generators and wholesale suppliers, but some of its members are one or the other. So that it is not the same exact role being played by all of NEPGA's members as is being played by TransCanada. And, that can make a difference in the end. NEPGA would like to participate as a party in and of itself. It believes that it is facilitating the orderly conduct of these proceedings by coming forth as a representative of many, many generators, including many New Hampshire generators, who might otherwise seek to intervene in the proceeding. Because it can represent all of their interests through one party, it is actually helping this proceeding to be conducted in a -- facilitate a quicker conducting of this proceeding.

1                   Therefore, we urge the Commission to  
2                   grant NEPGA's Motion to Intervene, and that it be allowed  
3                   to intervene as a full party, without being combined with  
4                   other parties. Thank you.

5                   CHAIRMAN GETZ: Okay. Thank you.  
6                   Mr. Peress.

7                   MR. PERESS: Thank you, Mr. Chair. If I  
8                   may, I would just like to add a couple of comments with  
9                   respect to the Petitions to Intervene of NEPGA and  
10                  TransCanada that have not been addressed to this point.  
11                  There are a couple of specific aspects of this proceeding  
12                  where CLF believes that their input would be very  
13                  informative and eliminate some of the issues before the  
14                  Commission. For example, TransCanada is a retail supplier  
15                  of electric power. And, as you know, attachment to an  
16                  Attachment 1 of PSNH's petition here, which is its energy  
17                  service rate calculation, entails as one of the  
18                  calculating factors the forecasted retail megawatt-hour  
19                  sales, which directly affects the potential amount of  
20                  ratepayer impact, as well as cost recovery. And, as the  
21                  Commission is also aware, the rate base -- that is PSNH's  
22                  customer base, excuse me, has been dramatically declining  
23                  over the last two years. We've already had several  
24                  dockets on that issue, that have addressed that issue.

1 And, so, to the extent that the forecasted retail  
2 megawatt-hour sales is a relevant consideration in this  
3 docket, CLF would suggest that hearing from other retail  
4 suppliers would provide helpful information and would  
5 inform the Commission's deliberations.

6 With respect to NEPGA, as the Commission  
7 has heard, NEPGA is made up of merchant generators and  
8 suppliers. Many of those generators, and counsel for CLF  
9 has direct experience having worked for one in the past,  
10 are often faced with the exact same circumstance that  
11 Public Service Company of New Hampshire was faced with in  
12 filing this petition. That is, the need to reduce  
13 emissions through the installation of a emissions control  
14 technology that entail large capital expenditures. This  
15 is the largest, as far as CLF is aware, this is the  
16 largest capital project for which any regulated utility in  
17 the state has ever sought a cost recovery. And, to have  
18 that expertise available to the Commission, as well as to  
19 the parties, that is the expertise involved with that  
20 decision, as well as how these controls are engineered,  
21 installed, and operated by other generators, we would also  
22 suggest would be informative and assist the Commission in  
23 making the determinations that it must make.

24 Not to be redundant, but, in the context

1 of a docket of this nature, where over \$54 million per  
2 year of cost recovery are being sought by Public Service  
3 Company of New Hampshire, we would suggest that taking a  
4 narrow perspective with respect to input and technical  
5 perspectives from the parties is not in the interest of  
6 ratepayers, and that a broader inclusive perspective to  
7 this docket will be in the interest of ratepayers.

8 PSNH's rates are more than \$100 million  
9 above market right now. This will add another \$50 million  
10 to those rates. This is an extremely important docket for  
11 the State of New Hampshire, for the state's economic  
12 vitality, for its environment. And, we would urge the  
13 Commission to be expansive in its rulings with respect to  
14 intervention.

15 With respect to several of the other  
16 assertions made by Public Service Company of New Hampshire  
17 as it relates to CLF's intervention, we do not believe  
18 it's necessary for the Commission to order CLF to  
19 cooperate and to avoid redundancy with respect to advocacy  
20 that is similar to or the same as what Sierra Club would  
21 be inclined or we would both be inclined to make. And, we  
22 can coordinate appropriately without an order from the  
23 Commission. I think an order would create some  
24 significant logistical difficulties for the parties.



1                   Lastly, with respect to the, at this  
2 point, tired, redundant request about CLF and other  
3 environmental intervenors staying within the scope of the  
4 proceeding, counsel for CLF will be addressing this off  
5 line with counsel for PSNH. But I did want to add that  
6 CLF, as far as I am aware, as far as I've been counsel,  
7 have been involved in six proceedings before this  
8 Commission, four of them addressing PSNH matters. There  
9 has not been a single discovery request for which there  
10 has ever been an objection upheld by this Commission as  
11 being irrelevant, overly broad, or unduly burdensome.  
12 There is simply no basis to here that request by PSNH in  
13 this proceeding. What's going on in another fora has  
14 nothing to do with this proceeding. And, CLF fully  
15 understands, and as this Commission knows, we fully  
16 understand what is relevant to this proceeding. So, thank  
17 you for the opportunity to be heard.

18                   CHAIRMAN GETZ: Thank you. Ms.  
19 Hatfield.

20                   MS. HATFIELD: Thank you, Mr. Chairman.  
21 The OCA supports the Motions for Intervention. We think  
22 -- we agree with especially one particular comment that  
23 Mr. Patch made about parties with different perspectives  
24 and different experience knowing the right questions to

1 ask in discovery. And, we think that, in the past, having  
2 these different perspectives and different levels of  
3 experience on different topics has certainly assisted the  
4 OCA in other cases.

5 One specific example of that includes  
6 the questions that Mr. Peress raised about the wastewater  
7 issue related to the scrubber. That's certainly an area  
8 that is outside the typical regulated utility arena before  
9 the Commission.

10 Related to that, we are hopeful that the  
11 Commission will work with DES as it sees fit and as it's  
12 authorized to do to ensure that the Commission fully  
13 understands the requirements, the environmental  
14 requirements related to the scrubber, to help develop the  
15 record and help understand how it's operating, for  
16 purposes of rate recovery.

17 With respect to a suggestion that the  
18 Commission require the OCA to work in specific ways with  
19 other parties, we object to that request. We certainly  
20 have different interests from all of the intervenors, and  
21 ours are prescribed by a statute. And, so, we would  
22 respectfully request the Commission not strictly require  
23 the OCA to combine all of its advocacy on behalf of  
24 ratepayers with other parties. Thank you.

1 CHAIRMAN GETZ: Thank you. Ms. Amidon.

2 MS. AMIDON: Thank you, Mr. Chairman.

3 Staff has no position on any of the Motions to Intervene.

4 CHAIRMAN GETZ: Thank you.

5 (Chairman Getz and Commissioner Ignatius  
6 conferring.)

7 CHAIRMAN GETZ: Okay. At this point,  
8 unless there's anything else that we need to address, my  
9 inclination is to take the matters under advisement, allow  
10 the opportunity for the parties to begin the technical  
11 session, and see if there is agreements/disagreements that  
12 come our way with respect to schedule, scope, or -- and  
13 we'll specifically take under advisement, obviously, the  
14 issues of the Petitions to Intervene. But I take it that  
15 not ruling on that at this point will not, you know, be an  
16 obstacle to going into the technical session. But I guess  
17 the only way to know that is to see if somehow things  
18 break down in the technical session.

19 But, those musings aside, is there  
20 anything else we need to address this morning?

21 (No verbal response)

22 CHAIRMAN GETZ: Okay. Hearing nothing,  
23 then we'll close the prehearing conference and we'll take  
24 the matters under advisement and await a report from the

1       technical session. Thank you, everyone.

2                       (Whereupon the prehearing conference  
3                       ended at 11:33 a.m., and a technical  
4                       session was held thereafter.)