

1 STATE OF NEW HAMPSHIRE  
2 SITE EVALUATION COMMITTEE

3 June 26, 2009 - 10:09 a.m.  
4 21 South Fruit Street  
5 Suite 10, Room 103 DAY 2  
6 Concord, New Hampshire

7 In re: SITE EVALUATION COMMITTEE:  
8 DOCKET NO. 2009-01: Public meeting  
9 and hearing regarding the Motion for  
10 Declaratory Ruling by Campaign for  
11 Ratepayers Rights, Conservation Law  
12 Foundation, Freedom Logistics, Granite  
13 Ridge Energy, Halifax-American Energy,  
14 TransCanada Hydro Northeast, and the  
15 Union of Concerned Scientists regarding  
16 modifications to Merrimack Station  
17 Electric Generating Facility.  
18 DOCKET NO. 2008-04: Public meeting  
19 regarding the Application of Granite  
20 Reliable Power.

21 PRESENT: SITE EVALUATION COMMITTEE:  
22 Thomas S. Burack, Cmsr. Dept. of Environmental Services  
(Chairman of SEC - Presiding Officer)  
23 Thomas B. Getz, Chrmn. Public Utilities Commission  
(Vice Chairman of SEC)  
24 Graham J. Morrison, Cmsr. Public Utilities Commission  
Clifton C. Below, Cmsr. Public Utilities Commission  
18 Harry T. Stewart, Dir. DES - Water Division  
Robert Scott, Dir. DES - Air Resources Division  
19 George Bald, Cmsr. Dept. of Resources & Econ. Dev.  
Glenn Normandeau, Dir. N.H. Fish & Game Department  
20 Ted Austin, Dir. Division of Parks & Recreation  
George Campbell, Cmsr. Dept. of Transportation  
21 Brook Dupee Dept. of Health & Human Services  
Michael Harrington Public Utilities Commission  
22 Donald Kent (re: 2008-04) Dept. of Resources & Econ. Dev.

23 COUNSEL FOR THE COMMITTEE: Michael Iacopino, Esq.

24 COURT REPORTER: Steven E. Patnaude, LCR No. 52

1 APPEARANCES: Reptg. TransCanada Hydro Northeast:  
2 Douglas L. Patch, Esq. (Orr & Reno)  
3 Reptg. Granite Ridge Energy:  
4 Maureen Smith, Esq. (Orr & Reno)  
Howard M. Moffett, Esq. (Orr & Reno)

5 SEC-0626.txt  
 Reptg. Conservation Law Foundation:  
 Melissa Hoffer, Esq.  
 6  
 Reptg. Campaign for Ratepayers Rights:  
 Robert Backus, Esq. (Backus, Meyer...)  
 7  
 Reptg. Public Service of New Hampshire:  
 Christopher J. Allwarden, Esq.  
 8  
 Barry Needleman, Esq. (McLane, Graf...)  
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| PSNH 2            | Two Committee Reports on HB-1673 (Reserved 05-08-09)   | premarked |
| PSNH 3            | Response to Data Request TS-01, Q-STAFF-002, in NH PUC Docket No. DE 08-145                          | premarked |
| PSNH 4            | Letter from Craig A. Wright of DES to William H. Smagula of PSNH (03-31-08)                          | premarked |
| PSNH 5            | Findings of Fact and Director's Decision   | premarked |
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1 P R O C E E D I N G S

2 CHAIRMAN BURACK: Good morning, Ladies  
3 and gentlemen. We are here today for a public meeting of  
4 the New Hampshire Site Evaluation Committee. The Site  
5 Evaluation Committee is established by RSA 162-H. The  
6 membership of this Committee includes the Commissioners or  
7 Directors of a number of State agencies, as well as  
8 specified key personnel from various State agencies. And,  
9 at this point, we will -- I will ask folks to introduce  
10 the members of the Committee who are present at the  
11 meeting. I will start with myself. I am Tom Burack. I  
12 am the Commissioner of the Department of Environmental  
13 Services, and, by statute, I serve as Chair of the Site  
14 Evaluation Committee.

15 And, I'm going to ask introductions to  
16 start here on my far right please.

17 DIR. SCOTT: Good morning. My name is  
18 Bob Scott. I'm the Director of the Air Resources Division  
19 with the New Hampshire Department of Environmental  
20 Services.

21 DIR. STEWART: Harry Stewart, Director  
22 of Water Division, Department of Environmental Services.

23 DIR. NORMANDEAU: I'm Glenn Normandeau,  
24 Executive Director of the New Hampshire Fish & Game

1 Department.

2 DIR. AUSTIN: Ted Austin, Director of  
3 State Parks.

4 CMSR. BELOW: Clifton Below, Public  
5 Utilities Commissioner.

6 VICE CHAIRMAN GETZ: Tom Getz. I'm  
7 Chairman of the New Hampshire Public Utilities Commission  
8 and Vice Chair of this Committee.

9 CMSR. MORRISON: Graham Morrison, Public  
10 Utility Commissioner.

11 CMSR. BALD: I'm George Bald, with the  
12 Department of Resources and Economic Development.

13 MR. HARRINGTON: Mike Harrington, the  
14 New Hampshire PUC.

15 MR. DUPEE: Brook Dupee, here on behalf  
16 of the Department of Health & Human Services.

17 CHAIRMAN BURACK: I might add that also  
18 here today are some designated members of the Subcommittee  
19 that was appointed in Docket Number 2008-004, Application  
20 of Granite Reliable Power, LLC. And, we'll ask if any  
21 members who are here just on that matter would introduce  
22 themselves.

23 DR. KENT: Don Kent, Department of  
24 Resources and Economic Development.

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1 CHAIRMAN BURACK: Thank you. The agenda  
2 for today's public meeting includes two matters. The  
3 first matter should be relatively brief, it involves  
4 Docket Number 2008-004, the Application of Granite  
5 Reliable Power. The second matter on today's agenda is a  
6 public hearing in Docket Number 2009-001, Motion of the  
7 Campaign for Ratepayers Rights, et al, for a declaratory  
8 ruling regarding modification of the Merrimack Station

9 electric generating facility. We're going to turn first  
10 to Agenda Item Number 1, the Application of Granite  
11 Reliable Power. Pursuant to RSA 162-H, Section 4, V(b), I  
12 appointed a subcommittee to consider this application for  
13 a renewable energy facility. And, at this point in time,  
14 I will turn the floor over to Thomas Getz, Chairman of the  
15 Subcommittee.

16 VICE CHAIRMAN GETZ: Okay. Thank you,  
17 Mr. Chairman. I'll just note for the record, members of  
18 the Subcommittee, there are seven members of the  
19 designated Subcommittee. Present this morning are Mr.  
20 Scott, from DES; Mr. Normandeau, from Fish & Game; myself;  
21 Dr. Kent, from Resources and Economic Development; and  
22 Mr. Harrington, from the PUC. That's five of the seven  
23 members. That represents a quorum of the Subcommittee.  
24 And, pursuant to previous actions taken by the

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1 Subcommittee, the deadline for issuance of a written order  
2 in the proceeding would be Tuesday, June 30. And, I would  
3 propose, in order to make sure that the written order is  
4 in sound final shape, and given the time we've devoted to  
5 the hearings, the time we devoted to the deliberations and  
6 discussion of all of the conditions, that we enlarge the  
7 time for issuance of a decision until July, July 15th, and  
8 we take that action pursuant to 162-H:6-a, IX. So, that's  
9 my motion. If I could get a second?

10 DIR. SCOTT: Second.

11 VICE CHAIRMAN GETZ: Mr. Scott seconds  
12 that motion. Is there any discussion about enlarging the  
13 time frame to July 15?

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14 (No verbal response)

15 VICE CHAIRMAN GETZ: Okay. Hearing no  
16 discussion -- oh, Dr. Kent.

17 DR. KENT: Yes, I agree with your  
18 proposal. I think it's in the public interest that we  
19 have a little more time to make sure we've got the  
20 language correct.

21 CHAIRMAN BURACK: All right. Thank you.

22 MR. HARRINGTON: And, just one question?

23 VICE CHAIRMAN GETZ: Mr. Harrington.

24 MR. HARRINGTON: Yes, Mr. Chairman.

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1 We're pretty sure that this will be the last extension,  
2 that we can finish this by the 15th?

3 VICE CHAIRMAN GETZ: I am hopeful, and  
4 optimistically hopeful.

5 MR. HARRINGTON: Okay.

6 VICE CHAIRMAN GETZ: If that's helpful?  
7 Okay. Any other discussion?

8 (No verbal response)

9 VICE CHAIRMAN GETZ: Okay. Hearing  
10 nothing, then all those in favor of enlarging the time  
11 frame to July 15, please signify by saying "aye"?

12 (Multiple Subcommittee members  
13 indicating "aye".)

14 VICE CHAIRMAN GETZ: Any opposed?

15 (No verbal response)

16 VICE CHAIRMAN GETZ: Hearing no opposed,  
17 the motion is unanimous and is carried. And, I think that  
18 takes care of that issue, Mr. Chairman.

19 CHAIRMAN BURACK: Very good. Thank you  
20 very much.

21 We're going to turn now to Agenda Item  
22 2, Docket Number 2009-001. This is a matter entitled  
23 Motion of the Campaign for Ratepayers Rights, et al, for  
24 Declaratory Ruling regarding modification to Merrimack  
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1 Station electric generating facility. And, I will open  
2 this matter with a brief summary.

3 On March 9, 2009, a pleading entitled  
4 "Motion for Declaratory Ruling regarding modification at  
5 Merrimack Station electric generating facility", which I  
6 will refer to hereafter as the "Motion", was filed with  
7 the Committee. The Motion was filed by the following  
8 entities: The Campaign for Ratepayers Rights, Halifax  
9 American Energy Co., LLC, the Conservation Law Foundation,  
10 TransCanada Hydro Northeast, Inc., Freedom Logistics, LLC,  
11 the Union of Concerned Scientists, and Granite Ridge  
12 Energy, LLC. I will refer to these entities as the  
13 "Moving Parties".

14 The Motion concerns the construction,  
15 installation, and operation of a wet flue gas  
16 desulfurization system, which we'll call a "Scrubber  
17 System", at the bulk power facility owned by Public  
18 Service Company of New Hampshire, PSNH, located in Bow,  
19 Merrimack County, New Hampshire, and known as "Merrimack  
20 Station". The Moving Parties asserted that they have  
21 standing to bring the Motion before the Committee and  
22 asked this Committee to make a declaratory ruling  
23 determining whether the construction, installation, and

24 operation of the Scrubber System and associated facilities  
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1 constitute a sizeable addition to Merrimack Station under  
2 162-H, Section 5, I, and whether the Scrubber System  
3 requires a Certificate of Site and Facility. The Moving  
4 Parties also ask the Committee to evaluate whether action  
5 should be taken against PSNH under RSA 162-H, Section 19,  
6 which provides for penalties for the willful violation of  
7 RSA 162-H.

8 On April 1, 2009, PSNH filed a formal  
9 objection to the Motion. In its objection, PSNH asserted  
10 that the Moving Parties lacked standing to bring the  
11 motion. PSNH also asserted that RSA 125-0, Sections 11  
12 through 18, that's 2006 New Hampshire Laws, Chapter 105,  
13 precludes the authority of the Committee to issue a  
14 Certificate of Site and Facility. Finally in its  
15 objection, PSNH also asserts that the Scrubber System and  
16 associated facilities do not constitute a "sizeable  
17 addition" to Merrimack Station. On April 13, 2009, the  
18 Moving Parties filed a response to the objection filed by  
19 PSNH.

20 On May 8, 2009, the Committee held an  
21 initial public hearing in this matter. At that hearing,  
22 after deliberation, the Committee determined that it did  
23 have jurisdiction to consider the Motion as brought by the  
24 Moving Parties. We also determined that we would schedule  
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1 an evidentiary hearing and noted that we would like the

2 parties to stipulate to as much of the factual record as  
3 possible. The May 8th, 2009 hearing was recessed until  
4 May 22, 2009. Thereafter, PSNH filed a Motion to Extend  
5 Time and Reschedule. That motion was assented to by all  
6 of the parties and the matter was rescheduled for today.  
7 In granting that motion, we also extended the time frame  
8 to issue a decision on this motion until July 8, 2009.

9 On June 9, 2009, we issued an Order and  
10 Notice of Reconvened Public Meeting and Hearing,  
11 reconvening the May 8, 2009 hearing to today. Notice of  
12 this meeting was posted, mailed and emailed to all parties  
13 and posted on the Committee's website. On June 25, 2009,  
14 the parties filed a Stipulation regarding certain factual  
15 matters.

16 Today's hearing is a reconvened public  
17 hearing. The authority for this hearing stems from our  
18 enabling statute RSA 162-H, Section 4, and from our  
19 administrative rules pertaining to requests for  
20 declaratory rulings, that is at Site 203.01.

21 Today we will proceed as follows:  
22 First, I will take appearances from the parties. We will  
23 then have the parties present the Stipulation, and it will  
24 be marked as the next exhibit in this docket. It is my

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1 understanding that, although the Stipulation contains much  
2 information, there is additional information to be  
3 supplied to the Committee through testimony. So, we will  
4 then hear the testimony of the witness or witnesses that  
5 may be presented.

6 The Moving Parties shall present their

7 witnesses, if any, first, followed by cross-examination by  
8 PSNH and any further questions from the Committee. PSNH  
9 will then present its witnesses, if any, followed by  
10 cross-examination, and then further questions from the  
11 Committee.

12                   Once all of the testimony has been  
13 received, we will hear legal arguments from counsel for  
14 the parties. I should note that there may be additional  
15 questions that members of the Committee may have for the  
16 parties to further flesh out any factual issues. It is  
17 also my understanding that there is one additional  
18 gentleman who has asked to present some brief testimony in  
19 connection with the trade unions that are working at the  
20 site.

21                   Once we have heard all of those matters,  
22 we will determine whether we should proceed directly to  
23 deliberations or take some other action. Given the hour,  
24 I think it's also reasonable to anticipate that we will

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1 take a lunch break probably in roughly two hours or so.

2                   But, at this point, let me begin by  
3 taking appearances from the Moving Parties, and then from  
4 PSNH.

5                   MR. MOFFETT: Good morning, Mr. Chairman  
6 and members of the Committee. I'm Howard Moffett, from  
7 Orr & Reno, here in Concord. I represent Granite Ridge  
8 Energy, which is one of the Moving Parties.

9                   MR. PATCH: Good morning, Mr. Chairman  
10 and members of the Committee. Doug Patch, from Orr &  
11 Reno, on behalf of TransCanada Hydro Northeast, Inc.

12 MS. HOFFER: Good morning, Committee  
13 members. Melissa Hoffer, on behalf of Conservation Law  
14 Foundation.

15 MS. SMITH: Good morning. Maureen  
16 Smith, Orr & Reno, representing Granite Ridge Energy.

17 MR. BACKUS: Good morning. Bob Backus,  
18 representing the Campaign for Ratepayers Rights.

19 MR. NEEDLEMAN: Good morning. Barry  
20 Needleman, from McLane, Graf, Raulerson & Middleton,  
21 representing PSNH.

22 MR. ALLWARDEN: Chris Allwarden, Public  
23 Service Company of New Hampshire.

24 CHAIRMAN BURACK: Thank you very much.

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1 Now, I'll now turn to the Moving Parties and ask if you  
2 have any witnesses to present?

3 MR. MOFFETT: Mr. Chairman, we do not  
4 have witnesses of our own. As we've discussed with PSNH  
5 and with the Committee's counsel, we do expect to have  
6 questions for Mr. Smagula, who we understand will be the  
7 principal witness for PSNH. So, I'm assuming that we  
8 would yield at this point to PSNH and let them put  
9 Mr. Smagula on, and then we would proceed with cross after  
10 that.

11 CHAIRMAN BURACK: Thank you very much.  
12 I think we should first, I'm sorry, mark the Stipulation,  
13 and before proceeding to witnesses, it may be helpful, and  
14 I don't know if counsel had discussed ahead of time how  
15 you would want to present the Stipulation to us.  
16 Certainly, we have it. Do you want to, either party, want

17 to walk us through the basics of the Stipulation?

18 MR. NEEDLEMAN: I'd be happy to do so.

19 CHAIRMAN BURACK: Would you be willing  
20 to do that, Mr. Needleman? Okay. Why don't we mark the  
21 Stipulation as the next exhibit here.

22 MR. NEEDLEMAN: I hope the Stipulation  
23 that you have in front of you is this copy which was  
24 recently submitted. The first, in the front, is simply a  
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1 recitation of the facts in this case that all parties have  
2 agreed to going forward. And, then, within the context of  
3 that, you have a series of Exhibits A through K. The  
4 parties met several times since the last hearing to work  
5 through these facts, to stipulate to them, and to agree on  
6 these exhibits. And, during the course of the testimony  
7 this morning, you'll hear more about each one  
8 specifically. But I just want to take a moment to thank  
9 the Moving Parties for their cooperation in helping us to  
10 get this prepared, and also for Mr. Iacopino's assistance  
11 in getting this done.

12 MR. IACOPI NO: Thank you.

13 CHAIRMAN BURACK: Do have a copy that we  
14 could mark as an exhibit at this time?

15 MR. NEEDLEMAN: Do you have an extra?  
16 Okay.

17 MR. IACOPI NO: And, does that have the  
18 correct Exhibit J attached to it?

19 MR. PATCH: Yes.

20 (Atty. Needleman handing document to the  
21 court reporter.)

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MR. IACOPI NO: Thank you.

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(The document, as described, was  
herewith marked as an exhibit as  
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1 "Stipulation 1" for identification.)

2 CHAIRMAN BURACK: Okay. Thank you.

3 And, just for the record, for the members of the  
4 Committee, you should note that the parties discovered,  
5 after circulating the initial copy to us, that they had  
6 provided an incorrect Stipulated Exhibit J. And, last  
7 evening, Jane Murray, Secretary to the Committee,  
8 circulated via e-mail the revised Stipulated Exhibit J,  
9 which is just a one-page document, whereas the original  
10 Stipulated Exhibit J was, I believe, a two- or three-page  
11 -- a three-page document. So, if we don't have complete  
12 copies of that, we can get copies available and make  
13 copies available to people.

14 CMSR. BELOW: Mr. Chairman, I, for one,  
15 printed the wrong one. So, if there's some extras of just  
16 that page, that would be helpful to circulate.

17 MS. HOFFER: Mr. Chairman, I have extra  
18 sets, if you would like that? And, I can certainly just  
19 pull out Exhibit J, if you'd like that?

20 MR. NEEDLEMAN: I actually have extra  
21 copies of the page.

22 CHAIRMAN BURACK: You do have extra  
23 copies of the page?

24 MR. NEEDLEMAN: Yes.

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[WITNESS: SMAGULA]  
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1 CHAIRMAN BURACK: If you would be kind  
2 enough to circulate those to all the members, Attorney  
3 Needleman, that would be most helpful.

4 MR. NEEDLEMAN: It's the 11.4 million,  
5 Doug.

6 MS. HOFFER: Yes.

7 CHAIRMAN BURACK: Okay. Thank you.  
8 Mr. Needleman, would you like to bring your witness  
9 forward and Mr. Patnaude can give the oath here.

10 MR. NEEDLEMAN: Yes. Thank you, Mr.  
11 Chairman. We call William Smagula.

12 (Whereupon William H. Smagula was duly  
13 sworn and cautioned by the Court  
14 Reporter.)

15 MR. NEEDLEMAN: Mr. Chairman, before I  
16 begin examining Mr. Smagula, I just want to outline where  
17 we're going to go with his testimony. It's my  
18 understanding that the Committee is focused on two issues  
19 in particular here today. The first is whether or not the  
20 Scrubber Project and the Turbine Project should be viewed  
21 as a single project for purposes of the "sizeable  
22 addition" analysis. And, the second issue is whether  
23 either of them, independently or together, are a sizeable  
24 addition from a factual perspective.

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[WITNESS: SMAGULA]

1 The purpose of bringing Mr. Smagula here  
2 today and the purpose of his testimony would be to develop  
3 facts related to both of those issues. And, my intention  
4 is to walk through them carefully and efficiently and try  
5 to get all the information that the Committee needs

6 related to those issues going forward.

7 WILLIAM H. SMAGULA, SWORN

8 DIRECT EXAMINATION

9 BY MR. NEEDLEMAN:

10 Q. So, Mr. Smagula, if you could state your full name and  
11 title for the Committee please.

12 A. My name is William Smagula. My title is "Director of  
13 Generation" for Public Service Company of New  
14 Hampshire.

15 Q. And, Mr. Smagula, could you briefly describe for the  
16 Committee your background and experience.

17 A. My background is that I have had the position I'm in  
18 now for eight years. Prior to that, I was responsible  
19 for Northeast Utilities' generating assets in both  
20 Connecticut and Massachusetts, and that was for a  
21 period of nine years. And, before that, I was  
22 responsible for Public Service Company's fossil  
23 generating assets for six years.

24 MR. NEEDLEMAN: Can everybody hear him?

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[WITNESS: SMAGULA]

1 BY MR. NEEDLEMAN:

2 Q. Did you ever work at Merrimack Station?

3 A. Yes. Before that fossil facility oversight position, I  
4 was the Station Manager at Merrimack Station for six  
5 years.

6 Q. And, in the Schiller Project a few years ago that  
7 converted one of the boilers from coal to wood, did you  
8 have any involvement with that project?

9 A. Yes. I had direct responsibility not only for the  
10 operating facility at Schiller Station, the power

11 plant, but also that project.

12 Q. And, could you briefly summarize your educational  
13 background.

14 A. I have a Bachelor of Science degree in Mechanical  
15 Engineering from the University of New Hampshire and a  
16 Master of Science in Mechanical Engineering from  
17 Northeastern University, in Boston.

18 CHAIRMAN BURACK: Just would like to  
19 note for the record that we've been joined now by George  
20 Campbell, Commissioner of the Department of  
21 Transportation. And, thank you for joining us,  
22 Commissioner Campbell. Mr. Smagula, the Director of  
23 Generation for Public Service of New Hampshire has just  
24 taken an oath and has described his background, but we

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[WITNESS: SMAGULA]

1 have not proceeded to any actual questioning of him other  
2 than just background, I believe.

3 So, if you're ready to continue, please  
4 do so.

5 MR. NEEDLEMAN: Thank you.

6 BY MR. NEEDLEMAN:

7 Q. Mr. Smagula, is it fair to say that there is nobody at  
8 PSNH that has more general knowledge about operations  
9 and management of Merrimack Station than you?

10 A. Yes, that's correct.

11 Q. Now, can you briefly describe for the Committee the  
12 personal involvement that you've had with what we've  
13 been calling the "Scrubber Project"?

14 A. Yes. The Scrubber Project initiated through  
15 legislative activity, and from that decision by that

16 regulatory body -- or, that legislative body, rather,  
17 we proceeded to develop some technical concepts, hire a  
18 large engineering company, and I was involved with some  
19 of the work that preceded that legislative activity and  
20 all of the work that was subsequent to that.

21 Q. So, you've been involved with the Scrubber Project  
22 since its inception?

23 A. That's correct.

24 Q. And, you continue to be involved today?

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1 A. I am, yes.

2 Q. And, are you the person at PSNH who's overseeing that  
3 project?

4 A. Yes. That project is one of my direct  
5 responsibilities.

6 Q. Then, is it correct to say that there is nobody at PSNH  
7 with more general knowledge about the Scrubber Project  
8 than you?

9 A. That's a factual statement, yes. That's correct.

10 Q. And, again, with respect to the Turbine Project, which  
11 we've also talked about here or the Replacement  
12 Project, can you briefly describe the personal  
13 involvement that you had with that?

14 A. I have, excuse me, overall responsibility for the  
15 operations and maintenance of our generating assets as  
16 a primary function also. And, because of that, I get  
17 involved with the maintenance of our equipment, as well  
18 as an assessment and any decisions relating to any  
19 capital involvement or capital projects. So, whether  
20 it's a repair of a turbine or replace of a turbine or

21 any other piece of equipment, I am involved with the  
22 technical aspects, as well as the budgeting aspects.

23 Q. And, with respect to the Turbine Replacement Project  
24 that is the subject of this proceeding, were you

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[WITNESS: SMAGULA]

1 involved with that from its inception?

2 A. I was, yes.

3 Q. And, were you responsible for overseeing that  
4 replacement?

5 A. It was under my responsibility, yes.

6 Q. Is it fair to say that there's nobody at PSNH with more  
7 general knowledge about that Turbine Replacement  
8 Project than you?

9 A. That's correct.

10 Q. What I'd like to do now is focus in particular on  
11 the turbine replacement. You've had an opportunity to  
12 review the Stipulation that we gave to the Committee  
13 today, is that correct?

14 A. Yes.

15 Q. Can you describe for the Committee the role you played  
16 in preparing that Stipulation and the exhibits that are  
17 attached to it?

18 A. I participated --

19 MS. HOFFER: I'd like to object to the  
20 characterization of the work as a "replacement" of the  
21 turbine and the generator.

22 CHAIRMAN BURACK: Your objection is  
23 noted, but I'm going to allow him to proceed. Thank you.

24 WITNESS SMAGULA: Could you repeat the

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1 question?

2 MR. NEEDLEMAN: Yes.

3 BY MR. NEEDLEMAN:

4 Q. Could you describe for the Committee the role that you  
5 personally had in the preparation of the Stipulation  
6 that was given to them this morning and the exhibits  
7 attached to it?

8 A. Yes. The data that was submitted for the Stipulation  
9 and generated by Public Service was developed either in  
10 part by my own activities or by people who work for me,  
11 and I oversaw all of that information.

12 Q. Now, what I want to do is orient the Committee to what  
13 we're talking about when we refer to the "Turbine  
14 Replacement Project". Can you very briefly describe to  
15 the Committee what this turbine is?

16 A. The turbine at Merrimack Station is a large device that  
17 takes steam from our boiler, transforms that  
18 thermodynamic energy, heat energy, into rotational  
19 energy. So, the turbine has inlets for steam and  
20 blades that then, not unlike a fan or a pinwheel, takes  
21 the steam and turns a rotating shaft, which then, in  
22 turn, rotates a generator, and a generator then  
23 produces the electricity. So, the turbine really is an  
24 energy transformation device that takes thermodynamic

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1 energy in the form of high temperature, high pressure  
2 steam, and transforms it into electricity. The turbine  
3 has a number of different elements in it, one of which

4 is the HP/IP turbine.  
5 Q. And, it's this HP/IP turbine element that was replaced  
6 in 2008?  
7 A. That's correct.  
8 Q. The replacement that occurred in 2008 was part of  
9 what's referred to as the "April/May 2008 Outage", is  
10 that right?  
11 A. Yes.  
12 Q. And, when PSNH has an outage at the Station, which I  
13 understand is a routine event, you go through a variety  
14 of maintenance, is that correct?  
15 A. Yes, that is correct.  
16 Q. I'm handing you a copy of a letter that is already in  
17 the record, it's Movants' Exhibit Number 6, which was  
18 marked at the last hearing. It's the June 7, 2006  
19 letter that you wrote to Director Scott at the Air  
20 Resources Division. And, I just wanted to direct your  
21 attention to Page 2. On Page 2, in the section on  
22 "Regulatory Review", it talks about, beginning in 2002,  
23 PSNH began the process of meeting with the Air  
24 Resources Division to discuss these outages. Is it  
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1 correct that PSNH met with Air Resources in advance to  
2 discuss the capital projects to be done during the  
3 outage?  
4 A. Yes. Starting in 2002, we meet routinely, every year,  
5 with the Air Resource group at the Department of  
6 Environmental Services. We discuss any of our  
7 significant capital projects, in order to make sure  
8 they're aware of them and they have an opportunity to

9 ask questions as clarification, in order to ensure that  
10 some of the work we're doing is considered what we  
11 believe to be routine work.

12 Q. Did you meet with Air Resources Division in advance of  
13 the 2008 outage work?

14 A. Yes, we did.

15 Q. Now, there was a great variety of work done during the  
16 2008 outage, including the turbine replacement, is that  
17 correct?

18 A. That's correct.

19 MR. NEEDLEMAN: Mr. Chairman, we've  
20 marked beforehand a new exhibit, Exhibit Number 3, which  
21 is a response to a PUC data request. And, I'm handing a  
22 copy to Mr. Smagula. And, I have copies for the  
23 Committee, if you'd like me to distribute them?

24 CHAIRMAN BURACK: If you would please.

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[WITNESS: SMAGULA]

1 (Atty Needleman distributing copies to  
2 the Committee members.)

3 BY MR. NEEDLEMAN:

4 Q. Mr. Smagula, are you familiar with this document I just  
5 handed to you?

6 A. I am, yes.

7 Q. What is it?

8 A. It's a response to a data request, which asks to list  
9 the work done during the Merrimack Unit 2 outage that  
10 took place in the April and May time frame this year.

11 Q. And, I want to direct your attention to the first page,  
12 and there's a heading "Capitalized Projects".

13 A. Correct.

- 14 Q. And, the first thing under that heading is the "HP/IP  
15 turbine replacement". Do you see that?
- 16 A. Yes.
- 17 Q. Is that the turbine replacement that we're referring to  
18 in this proceeding?
- 19 A. Yes.
- 20 Q. This continues on for two and a half pages. Is there  
21 any other work listed here that was conducted during  
22 that 2008 outage that relates to that turbine  
23 replacement?
- 24 A. No. All of the work that was done on these other pages  
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- 1 are either other capital projects, where we either  
2 replaced a piece of equipment or added a piece of  
3 equipment, or we did repairs to segments of the unit.  
4 But none of them have any relationship with regard to  
5 the HP/IP Turbine Project.
- 6 Q. And, these two and a half pages contain a summary of  
7 all the work that was done during that outage?
- 8 A. They contain a summary of some of the major work. But  
9 I believe at the end of some of these phrases they --  
10 we talk about the fact that there are much other  
11 miscellaneous, small work that's included, which has to  
12 do with valve repair, motor inspections and motor  
13 repairs, piping inspections, and there are many  
14 hundreds and hundreds of other jobs. So, I would  
15 characterize this as a listing of some of the more  
16 significant tasks performed. But in no means at all a  
17 listing intending to show the full scope of the outage.  
18 It is a segment of the outage of some of the bigger

19 items.

20 Q. And, again, focusing on that first entry, the "HP/IP  
21 turbine replacement".

22 A. Right.

23 Q. If that replacement had not occurred during this  
24 outage, would all of this other work still have been  
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1 done?

2 A. Yes. And, that's correct. All of it would have taken  
3 place.

4 Q. Can you describe for the Committee the purpose of the  
5 turbine replacement?

6 A. Well, the turbine -- the purpose of the turbine  
7 replacement was to provide customer value. And, as we  
8 manage our generating facilities, we continue to try to  
9 strive to keep our costs low. And, to do that, we try  
10 to make our equipment more efficient and more reliable.  
11 This project was undertaken to achieve both of those  
12 purposes.

13 Q. Well, let's just break them up for the Committee.

14 A. Yes, I will. Go ahead.

15 Q. With respect to efficiency, can you describe how it  
16 made them more efficient?

17 A. Right. This steam turbine was installed in 2068, went  
18 into service in 2068 -- 1968. I'm sorry. Excuse me.  
19 Getting ahead of myself. And, it was optimum design of  
20 steam turbine technology at that time. Since then, the  
21 industry has changed, designs have changed, design  
22 techniques have changed, and the manufacturer was able  
23 to give us some options, other than just repair,

24 options of replaci ng, whi ch wou ld then modi fy the steam  
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1 path through the turbine, and that would be more  
2 effici ent, and the bladi ng wou ld be of a suffi ci ent  
3 materi al and desi gn so that the turbine wou ld produce  
4 energi more effici ently than the older one.  
5 Q. So, for us nontechnical people, it sounds like what  
6 you're saying is, that you could get more energy from  
7 the same amount of fuel, is that right?  
8 A. You could either get more energy from the same amount  
9 of fuel or you could get the same amount of energy  
10 using less fuel. And, I guess you have that option.  
11 And, in our case, we were going to use the same amount  
12 of fuel and get more output out of the turbine  
13 generator.  
14 Q. And, the other purpose had something to do with reduced  
15 mai ntenance?  
16 A. Yes. The installation of this piece of equipment saved  
17 some expense money immedi ately, because we were going  
18 to spend a few million dollars opening up this large  
19 piece of equipment. It has some big bolts and a big  
20 piece of steel, opening it up, making repairs, and  
21 putting it back together. We avoided that expense and  
22 -- by installing a new HP/IP turbine. So, much of the  
23 ini tial cost was offset by the avoidance of some  
24 expense. But, furthermore, the turbine comes with  
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1 warranti es, whi ch -- and guaranti es, whi ch resul t in  
2 the fact that the turbine will not be required to be  
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3 opened and inspected and repaired on a five year cycle,  
4 which has been the case in recent years, but, in fact,  
5 will go and not need to be opened for ten years. So,  
6 in that fifth year, we will avoid an expense of  
7 opening, inspecting, and making repairs, and consistent  
8 with the guarantees we've received from the  
9 manufacturer. So, you avoid expense right away, and  
10 you avoid future expense, in addition to the efficiency  
11 savings.

12 Q. So, is it fair to say then that the primary purposes  
13 for the turbine replacement were increased efficiency  
14 and cost savings for your customers?

15 A. Yes.

16 Q. Let's talk about the timing of the turbine replacement.  
17 Can you describe to the Committee the first point that  
18 PSNH began contemplating this turbine replacement?

19 A. Merrimack Station Unit 2 has a planned annual outage  
20 every year. And, based on the periodicity or the  
21 frequency of certain repairs, that dictates pretty much  
22 what we do every year, other than new projects or new  
23 needs that crop up during the preceding year. So, we  
24 know that every year we do certain tasks of repair or

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1 replacement. Every over year we do other tasks, in  
2 addition to some of those common annual tasks. Every  
3 fifth year is when we do our turbine inspection and  
4 maintenance. The preceding time we opened it and  
5 inspected it was in 2003. At that time, we made  
6 necessary and reasonable, appropriate repairs. And,  
7 immediately after those HP/IP turbine inspections and

8 repairs, we worked with the manufacturer to identify  
9 "what's the condition of what we put back together?"  
10 Will certain blading last five years or ten years? We  
11 try to immediately start planning and getting some  
12 ideas for "what's the next step for this turbine?"  
13 And, in our case, it's every five years. So, after the  
14 outage in the second quarter of 2003, we started  
15 talking about what we were going to do next. And, this  
16 is routinely done every year with our turbine  
17 manufacturer.

18 At that time, they indicated that our  
19 model of turbine, and there were a number of,  
20 throughout the country, of this model. There had been  
21 other customers who had expressed interest in modifying  
22 their design. So, they were thinking about not only  
23 new repair approaches, but rather a replacement  
24 approach with a new and improved steam path design. We

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1 fostered that discussion, because we thought, as we  
2 always do with all of our equipment, look at options  
3 for what's the best, what's the most economic and  
4 favorable decision on equipment for our customers?  
5 Repair it periodically? Replace it? What's the  
6 efficiency gains? So, these are challenges we do with  
7 ourselves continuously on all of our equipment at all  
8 of our facilities.

9 So, when we saw there was an opportunity  
10 for potential replacement with a value to that, of  
11 efficiency and increased output, we continued to  
12 inquire with the manufacturer to pursue that. So, the

13 thinking began in the third and fourth quarters of  
14 2003. And, then, in early 2004, we received  
15 correspondence as a result of these discussions from  
16 our manufacturer, indicating that there was an upgrade  
17 design that was going to be available. And, they gave  
18 us some ideas as to what the pricing may be, but they  
19 didn't really have a good firm price available as yet,  
20 because they hadn't gone through all their rigorous  
21 engineering and design and get bids for some of their  
22 subcomponents.

23 So, that's a long answer, but I tried to  
24 explain the basis for it. And, we started in 2003.

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1 Q. And, when was the point where you actually decided you  
2 were going to replace the turbine? Was that somewhere  
3 shortly after that?

4 A. Well, I think it became clear to us, that looking at  
5 the numbers on a simple basis, of looking at the  
6 ongoing maintenance versus the replacement investment,  
7 and the savings and expenses on maintenance, that it  
8 seemed logical, and the numbers, even on a simple  
9 assessment, indicated that the replacement was making  
10 sense. So, when we got an indication in 2003, we  
11 started considering it favorably. And, then, as we  
12 went into 2004, we did further analysis and had  
13 internal discussions. And, it looked at that point as  
14 though this was a likely path for us to follow.

15 Q. So, it was some point in 2004 when you decided to  
16 replace the turbine?

17 A. Yes.

- 18 Q. Can you pinpoint when in 2004 roughly?
- 19 A. Based on our knowledge of the economics of operating  
20 the facility, I would say, once we got an indication  
21 that it was going to be available, we started looking  
22 -- thinking about it favorably. So, I would say 2004.
- 23 Q. Any point during that year?
- 24 A. When we got the correspondence, probably in the second  
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- 1 quarter.
- 2 Q. Second quarter of 2004.
- 3 A. Right. That triggered a positive train of thinking.  
4 It hadn't yet to prove itself out, but I think we were  
5 favorably inclined to pursue it to the end. And, as it  
6 turned out, it did end up being the path we took.
- 7 Q. And, the turbine replacement ultimately occurred in  
8 April and May of 2008, is that right?
- 9 A. That's right.
- 10 Q. And, that outage lasted from April 1st to May 22nd, is  
11 that right?
- 12 A. That's correct.
- 13 Q. When was the turbine, at the conclusion of that outage,  
14 when was the turbine put back into service?
- 15 A. The turbine, on start-up from that outage, which was,  
16 as I said, we worked on a lot of pumps and heaters and  
17 valves and things. And, with all of the extensive  
18 work, that start-up went very well. And, the turbine  
19 rolled up and went into service and started producing  
20 electricity on that -- the end of that outage date, on  
21 the 22nd.
- 22 Q. So, at the conclusion of the outage on May 22nd, the

23 turbine went back into service?

24 A. It went back into service, yes.

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1 Q. What happened to the turbine after it went back into  
2 service?

3 A. When the turbine went into service, after it had been  
4 running for a short period of time, we were watching a  
5 lot of data from our computers and from gauges and  
6 other things. And, it seemed evident at that time that  
7 we were not getting the extra output from this turbine  
8 that we had expected. And, that caused us and our  
9 technical team and the manufacturer's technical team to  
10 try to do an assessment as to "Was all the equipment  
11 working properly? Was there a steam valve that had  
12 stuck partially closed? What was going on?"

13 And, it seemed, after a few days, that  
14 there was no -- no thing we could point our finger at,  
15 but rather we had to do a more thorough analysis of  
16 looking at more of the steam conditions on the steam in  
17 and the various extraction steam flows coming out, in  
18 order to understand what was going on. And, at that  
19 point, it looked as though the turbine was not operating  
20 quite as efficiently as we had hoped, and it wasn't  
21 able to pass as much of the steam flow that we had  
22 hoped. And, from then, we triggered a number of  
23 technical assessments primarily by the manufacturer, to  
24 review the design details, review their manufacturing

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1 details, review all of their data taken in the shop  
2 where the blades were made, in order to make sure we  
3 had the right design as was originally intended. And,  
4 that was very exhaustive and was done very quickly by  
5 teams of engineers in the United States and in Germany.  
6 And, the conclusion was they could not identify  
7 anything that was done wrong, built wrong.

8 We went through a number of other  
9 exercises to try to pinpoint what could have been the  
10 source of this, and we couldn't. So -- And, that took  
11 the course of about two or three weeks.

12 Q. And, I don't want to cut you off, but I just --

13 A. No, no.

14 Q. -- I want to try to keep us focused and brief, so we  
15 can keep moving forward.

16 A. Yes.

17 Q. So, ultimately, what you determined during that June  
18 outage was that there was a problem with the turbine  
19 after restart that required additional work, is that  
20 correct?

21 A. Yes. Yes, that's right.

22 Q. And that work was done?

23 A. When you say "required additional" --

24 Q. Required --

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[WITNESS: SMAGULA]

1 A. Repeat, I don't know what --

2 Q. You determined that there was a problem with the  
3 turbine after it had been restarted, and you needed to  
4 fix that problem, is that correct?

5 A. Well, we needed to define the problem. So, while we

6 could n' t define it externally, we had to -- we  
7 concluded, and with the recommendation of the  
8 manufacturer, decided that the best thing and only  
9 thing remaining was to open up the turbine and look at  
10 it to see what was going on.

11 Q. And, you did that?

12 A. We did do that. The unit was removed from service in  
13 June. And, we found that there was some damage to the  
14 steam path, to the blading. The blading as originally  
15 is installed is very shiny and has very specific  
16 contours. The blading was roughed up, it wasn't  
17 smooth. And, there were some of the contours that had  
18 some very small areas that was misshapen. So, this  
19 creates a source of inefficiency and resistance of  
20 steam flow. So, we were able to identify that, through  
21 some foreign object, material had found its way into  
22 the turbine. And, we concluded, we cleaned it, and put  
23 it back into service, and it's operating now since  
24 then.

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[WITNESS: SMAGULA]

1 Q. In the Stipulation that we filed, Exhibit J, which has  
2 now been substituted, is a response to a PUC data  
3 request. Are you familiar with that?

4 A. Yes.

5 Q. Okay. And, in that response, it indicates that the  
6 cost accrued for the turbine replacement were  
7 "11.4 million", is that right?

8 A. That's correct.

9 Q. Does that "11.4 million" refer only to the costs  
10 associated with the turbine replacement during the

- 11 April/May outage?
- 12 A. That's all it is, yes.
- 13 Q. Do those costs in any way take into account the work  
14 that was done in June or any work that may have been  
15 done afterwards?
- 16 A. No. We budget for each project separately. So, this  
17 is -- these costs are accumulated only on the turbine,  
18 HP/IP turbine work.
- 19 Q. The Moving Parties in this proceeding have asserted  
20 that there was work that was done on the turbine after  
21 May 22nd, which was part of the HP/IP turbine  
22 replacement. Is that assertion correct?
- 23 A. No.
- 24 Q. Why?

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- 1 A. Because, as I tried to explain, the turbine was  
2 replaced, it was put into service, and it started  
3 producing energy. And, it's producing right now energy  
4 in its existing state at its normal rated output  
5 conditions.
- 6 Subsequent to start-up, there was some  
7 damage that was incurred, and that is a secondary  
8 element or secondary item, which we are dealing with  
9 separately.
- 10 Q. With respect to the budgeting for the turbine  
11 replacement, I assume that PSNH had a specific budget  
12 for this replacement, is that correct?
- 13 A. That's correct.
- 14 Q. And, jumping ahead a little bit, I assume that PSNH  
15 also has a specific budget for the Scrubber Project, is

16 that correct?  
17 A. That's correct.  
18 Q. Is there any overlap at all between those two budgets?  
19 A. None. They were developed on -- for different reasons,  
20 at different times.  
21 Q. Do you have a copy of the Stipulation?  
22 A. I do. I have a lot of copies.  
23 Q. Could you look at Exhibit K. There was initially some  
24 confusion about what additional generating capacity the  
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1 turbine would provide. And, we've worked with the  
2 Moving Parties and we've been able to resolve that, and  
3 we presented that in this attached Exhibit K. And, we  
4 agree to this now, but I wanted you to just briefly  
5 describe to the Committee what the expected increase in  
6 generating capacity would be from this turbine  
7 replacement.  
8 A. Okay. The expected increase is as stated here,  
9 337.175 megawatts.  
10 Q. Well, no, let me -- I'm just focusing on the actual  
11 increase. What was the actual --  
12 A. Oh, the actual.  
13 Q. Yes, the increase of capacity in that second column,  
14 "expected capacity increase" --  
15 A. Well, it depends on what the turbine produces. I  
16 guess, if you're talking about what we're doing with  
17 ISO, I guess I was answering the wrong question. The  
18 turbine manufacturer has said that they will produce an  
19 additional output due to the efficiency of the turbine.  
20 And, we negotiated an agreement that resulted in the

21 fact that, if they produce some extra megawatts, they  
22 would get extra payment. And, if they produced more  
23 and more megawatts, we'd give them a little bit more  
24 payment, up to a certain limit. So, there is an

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1 expectation that this turbine will produce between 6  
2 and 13 megawatts more.

3 Q. And, it says "potential high of 17.178" [17.175?]?

4 A. Yes. Yes.

5 Q. And, I assume that's if you can gain the added  
6 efficiencies?

7 A. Well, beyond the 13 megawatts, the manufacturer said  
8 "The unit may even do more." We said "well, we'll  
9 consider paying you a little bit more, but we're not  
10 going to continue paying you to a high amount." So, we  
11 have the potential expectation of an additional a  
12 little over 17 megawatts.

13 Q. Let's talk about the footprint of this new turbine.  
14 Where was the new HP/IP turbine installed?

15 A. Well, it was installed where the original HP/IP turbine  
16 goes, because that's the only place it could possibly  
17 go.

18 Q. So, it was in the exact same location as the old one?

19 A. It was precisely within millimeters of where the old  
20 one goes, because it had to fit between the LP turbine  
21 coupling and the fluid drive. It had to fit on the  
22 same structural foundations. So, there was no place  
23 else for it to go.

24 Q. And, when you replaced this HP/IP turbine, did you add

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1 any other devices to the facility or increase the  
2 square footage of the facility in any way to  
3 accommodate this turbine replacement?

4 A. No.

5 Q. You have a copy of Movants Exhibit Number 7, which is  
6 your January 31st, 2008 letter to the Air Resources  
7 Division, is that correct?

8 A. Yes, somewhere in here.

9 Q. And, I think the purpose of that letter was to report  
10 PSNH's --

11 A. Which letter is that?

12 Q. The January 31st, 2008 letter. It's Movants Exhibit  
13 Number 7, which was marked last time.

14 A. I have it.

15 CHAIRMAN BURACK: Do you have copies for  
16 the Committee, Mr. Needleman?

17 MR. NEEDLEMAN: Yes.

18 (Atty Needleman distributing documents.)

19 MR. IACOPINO: Thank you, sir.

20 BY MR. NEEDLEMAN:

21 Q. And, this is your letter to the Air Resources Division,  
22 is that right?

23 A. Uh-huh. Yes. Yes.

24 MR. IACOPINO: You said it's already  
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1 marked as an exhibit?

2 MR. NEEDLEMAN: Yes, it's Movants  
3 Exhibit 7, which was marked last time.

4 BY MR. NEEDLEMAN:

5 Q. And, the first sentence of the letter said that "In  
6 response to your letter dated June 12, 2006, Public  
7 Service Company of New Hampshire submits baseline  
8 emissions data and projected actual emissions for  
9 Merrimack Unit 2." So, you were providing to the Air  
10 Resources Division information they requested about  
11 emissions associated with the turbine, is that right?

12 A. Well, emissions associated with our boiler, in concert  
13 with the new turbine, yes.

14 Q. I'm sorry. What we don't have marked yet, but we  
15 premarked, is the Air Resources Division response to  
16 that letter, which is a letter to you, dated March  
17 31st, 2008, from the Air Resources Division.

18 A. Yes.

19 CHAIRMAN BURACK: What's the number on  
20 this exhibit?

21 WITNESS SMAGULA: This is Exhibit --

22 MR. NEEDLEMAN: Four, I believe.

23 WITNESS SMAGULA: Four.

24 CHAIRMAN BURACK: PSNH Exhibit 4. Thank

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1 you.

2 MR. NEEDLEMAN: And, I don't want to go  
3 through this letter in great detail, but I just want to  
4 hit one or two points.

5 MR. PATCH: Do you have copies for us?

6 MR. NEEDLEMAN: Yes, I'm sorry.

7 (Atty. Needleman distributing

8 documents.)

9 BY MR. NEEDLEMAN:

- 10 Q. At the end of the first paragraph in that letter, --  
11 A. Which letter?  
12 Q. It's the March 31st, 2008 letter that I just passed  
13 around.  
14 A. Okay.  
15 Q. It says, "In particular, Public Service Company of New  
16 Hampshire submitted its assessment of projected future  
17 actual emissions from MK2 of pollutants regulated under  
18 various programs", I'm paraphrasing, "and associated  
19 with the steam turbine and generator." Do you see  
20 that?  
21 A. Yes.  
22 Q. And, then, the second paragraph then talks about why  
23 the information was submitted. And, at the end of the  
24 second paragraph, it says "Subject to these

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- 1 requirements and for the reasons discussed below, DES  
2 has conditionally determined that NSR permitting  
3 requirements do not apply to PSNH's modifications to  
4 MK2." Do you see that?  
5 A. I do.  
6 Q. And, then, at the bottom of the third paragraph, it  
7 says "In its January 31st, 2008 letter, PSNH provided  
8 DES with a demonstration that future actual emissions  
9 will not increase as a result of the work scheduled for  
10 the April 2008 outage." Is that correct?  
11 A. That's correct.  
12 Q. So, this letter is DES's determination that the turbine  
13 work would not result in an emissions increase and  
14 would not require a permit, is that correct?

15 A. That's correct.

16 Q. All right. Let's shift over to the Scrubber Project  
17 now. And, again, what I'd like to do, before we get  
18 into the details, is just have you orient the Committee  
19 --

20 MR. HARRINGTON: Mr. Chairman?

21 CHAIRMAN BURACK: Yes.

22 MR. HARRINGTON: Could I interrupt just  
23 for a second with a question.

24 CHAIRMAN BURACK: For a clarification?

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1 MR. HARRINGTON: Yes.

2 CHAIRMAN BURACK: Yes. Go ahead.

3 MR. HARRINGTON: It would seem to me as  
4 if we've decided we've got two issues here. One was,  
5 should we combine -- or, is the turbine modification part  
6 of the scrubber modification? And, should we put them  
7 together for the purposes of determining whether it  
8 constitutes a "sizeable addition" to the facility as a  
9 whole? It would seem to me as if we would go stick with  
10 the -- let's look at the turbine and modification, and is  
11 it part of the scrubber modification? And, I don't know  
12 if this is where counsel is going. And, then make that  
13 decision before we get into the whole description of the  
14 scrubber or is he just attempting to tie the two together  
15 at this point?

16 CHAIRMAN BURACK: Well, I think it will  
17 be helpful for us as a Committee to hear all of the  
18 testimony on both of these issues, before we actually  
19 start deliberating on any of these matters. I think it

20 will be important for us to get a full factual record set  
21 out first, and then we'll make our decision. That's the  
22 way I would prefer to proceed here.

23 MR. NEEDLEMAN: That's fine. And, if  
24 it's helpful, I will tell you exactly where I'm going.

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1 The purpose of that first part of the testimony was to  
2 develop information both to show that the turbine was a  
3 separate project unrelated to the scrubber, and also to  
4 show that applying the criteria that the Committee has  
5 previously applied, it's not a "sizeable addition".

6 I'm going to go through the same sort of  
7 analysis now with the scrubber. And, then, in the end,  
8 we're going to use some evidence and tie them both  
9 together to show how they're unrelated as well.

10 BY MR. NEEDLEMAN:

11 Q. So, turning to the scrubber then, Mr. Smagula, can you  
12 describe for the Committee just generally what the  
13 purpose of the Scrubber Project is?

14 A. Well, in simple terms, the scrubber takes combustion  
15 gases from both Unit 1 and 2, that would normally go up  
16 their individual chimneys, combines them into a large  
17 vessel, where they are mixed with a spray of water  
18 containing some lime. Chemical reactions take place,  
19 pollutants are removed, and the remaining gases  
20 continue up out of this large vessel into a new  
21 chimney.

22 Q. So, this is essentially a pollution control project, is  
23 that right?

24 A. It is, yes. It's a pollution control project.

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1 Q. And, in the stipulated exhibits that we provided to the  
2 Committee, there are actually blow-ups up these, which  
3 I believe the Moving Party has provided. But Exhibit D  
4 shows a visual rendering of what the Scrubber Project  
5 looks like, sort of overlaying over the existing plant,  
6 is that right?

7 A. That's correct.

8 Q. And, Stipulated Exhibit F is a chart that contained a  
9 summary of the main systems for that project, is that  
10 correct?

11 A. That's correct.

12 Q. Let me ask you about the timing of the Scrubber  
13 Project. There is an exhibit attached to the Movants'  
14 initial filing, it's Exhibit F-1 that was attached to  
15 their March 6th filing, and it's a January 12th, 2006,  
16 from then Commissioner Nolin, to the New Hampshire  
17 Science, Technology and Energy Committee.

18 MR. NEEDLEMAN: I'm passing out a copy  
19 of that, and giving you a copy.

20 (Atty. Needleman distributing  
21 documents.)

22 MR. IACOPI NO: Mr. Needleman, do you  
23 know what exhibit number this was given?

24 MR. NEEDLEMAN: This was Exhibit F-1 to  
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1 the Movants' March 6th filing in this matter.

2 MR. IACOPI NO: Thank you.

3 BY MR. NEEDLEMAN:

4 Q. And, in that letter, sort of about two-thirds of the  
5 way down the second paragraph, it says: "The results  
6 of this work led to the conclusion that, while carbon  
7 injection can produce quick mercury emission  
8 reductions, the installation of the wet scrubber  
9 technology produces superior environmental benefits."  
10 Do you see where I'm reading?

11 A. I am, yes.

12 Q. So, this is March -- or, January 12, 2006. What I'm  
13 trying to learn from you is, can you describe for the  
14 Committee when was the first point that PSNH understood  
15 that it was going to need to install the wet scrubber  
16 technology?

17 A. In the preceding year, in 2005, there had been much  
18 discussion about activated carbon being the solution  
19 for removing mercury. And, that technology does work  
20 in some boilers, with some fuels, but it doesn't work  
21 in all. So, we conducted tests in 2005, and also in  
22 2006, with activated carbon, and that was proven that  
23 the amount of mercury that could be removed was in the  
24 20 percent range. So, that wasn't nearly good enough.

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1 And, we started at that time looking into other  
2 technologies and designs, and came to the conclusion  
3 that a wet flue gas desulfurization system would be  
4 the vehicle that would provide the reduction amounts  
5 that was desired by the State.

6 Q. So, again, I'm sorry, I may have missed it. When --

7 A. 2005.

- 8 Q. When in 2005?
- 9 A. I think, as we started to see early results of the  
10 carbon injection, and the lack of high mercury removal,  
11 that was in the second or third quarter of 2005. We  
12 started being concerned and initiated an assessment of  
13 other technology approaches.
- 14 Q. So, late or third quarter of 2005?
- 15 A. Yes.
- 16 Q. Okay. And, you testified earlier that PSNH had decided  
17 to replace the turbine around the second quarter of  
18 2004, is that right?
- 19 A. That's correct.
- 20 Q. Okay. So, then, there was somewhere between a year, to  
21 possibly as much as a year and a quarter or so between  
22 the discussions to engage in these two projects, is  
23 that right?
- 24 A. That's correct.

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- 1 Q. Again, just with respect to budgeting, the budget for  
2 the Turbine Project and the budget for the Scrubber  
3 Project were entirely separate, is that right?
- 4 A. That's correct.
- 5 Q. Exhibit E to the stipulated -- to the Stipulation is --  
6 well, why don't you go to that and explain to the  
7 Committee what that exhibit is?
- 8 A. Let me see if I can find it. Exhibit E is a tabulation  
9 of the electrical loads of the Scrubber Project, the  
10 entire -- all the electrical equipment that would be  
11 needed to run the scrubber systems. And, this was  
12 compiled by our engineering company that's assisting us

13 with the overall engineering aspects of this project.

14 Q. And, in shorthand, what does this chart say about the  
15 electrical consumption of the Scrubber Project?

16 A. This chart says that, when two units are operating,  
17 Merrimack 1 and Merrimack 2 are both putting their flue  
18 gas emissions into the scrubber, that the normal  
19 operating load, the electrical load of all the motors  
20 and pieces of equipment necessary is a little over  
21 13 megawatts. The "13.6" number, which is titled  
22 "Running Load (with duty cycle)".

23 Q. So, in other words, the Scrubber Project standing on  
24 its own, separate from the Turbine Project, will

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1 actually not result in any generation increase at the  
2 station. It will actually result in a generation  
3 decrease at the station?

4 A. Yes, it will be a decrease.

5 Q. Let's talk about the footprint of the Scrubber Project.  
6 That's something's that's created a lot of discussion  
7 in this proceeding. Is it correct that the Scrubber  
8 Project is going to be located on land that's already  
9 in use at the facility?

10 A. That's correct.

11 Q. And, there's not going to be any new land acquired for  
12 this project?

13 A. No. That's correct.

14 Q. So, this project is entirely within the existing  
15 footprint of Merrimack Station?

16 A. Yes.

17 Q. Okay. What I want to do is very briefly try to walk

18 you through what the increase in square footage is  
19 going to be. We have stipulations about -- we have  
20 stipulations about various aspects of this, but we  
21 don't have a stipulation about what the actual increase  
22 in square footage is going to be. And, I was hoping  
23 you could help us to do that.

24 A. Okay.

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1 Q. So, I think that the simplest way is to start with the  
2 proposition that, if I'm correct, you couldn't simply  
3 take the scrubber and install it on unused portions of  
4 the site, is that correct?

5 A. No. In order for it to be done efficiently and  
6 economically, we wanted to place it as close as  
7 possible to the existing generating plant.

8 Q. Okay. And, that required certain structures to be  
9 taken down in certain areas that were previously used  
10 to now be used for the Scrubber Project, is that right?

11 A. Yes. That's correct.

12 Q. And, we have a stipulated exhibit, which is Exhibit I,  
13 that describes to the Committee the dimensions of the  
14 razed and replaced structures, is that right?

15 A. That's correct.

16 Q. And, it divides it into two categories. The top is  
17 structures that were razed and ultimately not replaced,  
18 and the bottom is structures that were razed and then  
19 were going to be replaced, is that correct?

20 A. Yes.

21 Q. But is it correct to say that the entire page  
22 represents all of the structures and other areas that

23 were cleared to make room for the scrubber?

24 A. That's correct, yes.

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1 Q. So, when you add those two up, the total square  
2 footage, if we do the math right, is 228,414 square  
3 feet. So, in other words, at the very beginning of the  
4 project, we actually lose 228,414 square feet.

5 A. Yes.

6 Q. Is that right?

7 A. Yes.

8 Q. Then, the next thing that you do is, in Stipulated  
9 Exhibit H, you actually add all the components that  
10 we've agreed on that make up the Scrubber Project, is  
11 that right?

12 A. That's correct.

13 Q. And, what I'll do is just break this up, so the  
14 Committee understands clearly. But, on Exhibit H, at  
15 the top, beginning with the "FGD System", and going all  
16 the way down to the "Truck Wash Facility", those are  
17 the components that we've agreed are the major  
18 components of the scrubber, is that right?

19 A. Yes. Those are all the new items, correct.

20 Q. Okay. And, if you add up the square footage of those  
21 new items, you get 160,392 square feet making up the  
22 components of the Scrubber Project, is that right?

23 A. Yes. That's right.

24 Q. Okay. So, when you put that back onto the site now, we

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1 have 68 -- we still have a loss of 68,000 square feet,  
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2 is that right?

3 A. That's correct.

4 Q. We had an original loss of 228, and then we add the  
5 scrubber components in?

6 A. Right.

7 Q. Now, we also, at the bottom of that page, --

8 MR. HARRINGTON: Excuse me, Mr. Chair?

9 CHAIRMAN BURACK: Yes.

10 MR. HARRINGTON: Just can he give us  
11 where on Exhibit H that figure of 160,392 comes from? I'm  
12 looking at the bottom of the page and I see a total of  
13 "314,618".

14 MR. NEEDLEMAN: Yes.

15 MR. HARRINGTON: I don't see the 160  
16 anywhere.

17 MR. NEEDLEMAN: The 160 is the  
18 combination of the flue gas system, down through all those  
19 materials, up to the "Truck Wash Facility".

20 MR. HARRINGTON: And stops there, okay.

21 CHAIRMAN BURACK: I'm sorry. The items  
22 that would be included would be the FGD system, material  
23 handling system, chimney, waste water treatment, booster  
24 fans and ductwork, FGD transformer for the substation,

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1 main transformer yard, that's the 115 kilovolt switchyard  
2 expansion, the service water pump house, and the truck  
3 wash facility?

4 MR. NEEDLEMAN: Correct.

5 CHAIRMAN BURACK: Okay. So, if you add  
6 up all of the square footages for those, we would come to

7 160,392?

8 MR. NEEDLEMAN: Correct.

9 CHAIRMAN BURACK: Thank you.

10 BY MR. NEEDLEMAN:

11 Q. And, when you add that back in, you still have minus  
12 68,000 or so. But what we also have to do is add the  
13 rest of the things on this chart, because we knocked  
14 certain things down, but you also rebuilt them  
15 elsewhere, is that correct?

16 A. That's correct.

17 Q. All right. So, when you add those in, that's another  
18 154,226 square feet.

19 CHAIRMAN BURACK: And, again, just to be  
20 clear, is that the remaining, one, two -- seven items  
21 there at the bottom of the page?

22 MR. NEEDLEMAN: Yes.

23 WITNESS SMAGULA: Yes.

24 MR. NEEDLEMAN: Right. I'm just

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1 breaking it up so you can see where it comes from. But,  
2 actually, to answer Mr. Harrington's question, if you took  
3 the 160 and the 154 that I just added in, it would equal  
4 the 314 at the bottom. So, you could also just add the  
5 314 back in.

6 BY MR. NEEDLEMAN:

7 Q. And, the number you come up with is 86,204 square feet.  
8 So, is it correct then that 86,204 square feet is the  
9 additional footprint of the Scrubber Project on this  
10 site?

11 A. Yes. That's the net of it, yes.

- 12 Q. Okay. Now, let me ask you one other question.  
13 Stipulated Exhibit G, if you could look at that. What  
14 is that?  
15 A. G is a listing of all of the existing facilities that  
16 comprise the generating station. This is a list of all  
17 items needed to run the plant.  
18 Q. Okay. And, if you could turn to Page 4 of that  
19 exhibit.  
20 A. Four.  
21 Q. What's the total square footage of those existing  
22 facilities that we've stipulated to here?  
23 A. 4,780,024.  
24 Q. 4,780,024.

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- 1 A. Correct.  
2 Q. So, we did work this out in advance. Is it correct  
3 then that, as a percentage basis, the additional square  
4 footage added by the scrubber of 86,204, in relation to  
5 the existing facility, is 1.8 percent?  
6 A. That's correct.  
7 Q. And, then, one last question. In our objection that we  
8 filed in this matter, we also talked about the entire  
9 site, because the Committee in the past has focused on  
10 the whole site, and not just on the structures on the  
11 site. And, the entire site is 13.35 million square  
12 feet, is that correct?  
13 A. That's correct.  
14 Q. And, so, on a percentage basis, an addition of 86,204  
15 square feet I believe we worked out to be 0.65 percent,  
16 is that correct?

17 A. Yes, it is.

18 Q. So, then, the increase on a percentage basis on this  
19 site is somewhere, depending on how you do the math,  
20 between 0.65 and 1.8 percent, is that correct?

21 A. It is, yes.

22 Q. Okay. Let me now try to focus on the two projects  
23 together just for a couple of minutes. Would the  
24 turbine work have been done, the turbine replacement

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1 work, have been done even if the Scrubber Project never  
2 occurred?

3 A. Yes. We already made our decision to do that before we  
4 knew anything about scrubbers, even knew how to spell  
5 it.

6 Q. Why would that have been done separate from the  
7 scrubber?

8 A. Because, as I said initially, every time we look at a  
9 repair of our equipment, we always consider replacement  
10 and what is the most economical solution for us to  
11 continue to generate low cost energy for our customers.  
12 That is our -- Our customer cost is our focus.

13 Q. Would the Scrubber Project have been done if the  
14 Turbine Project was not done?

15 A. The Scrubber Project was mandated by law. It would  
16 have been done either way. Each one is totally  
17 independent of the other.

18 Q. Was there, at PSNH, was there ever any linkage between  
19 the two projects from a planning perspective?

20 A. No.

21 Q. Was there ever any linkage between the two projects

22 from an engineering perspective?

23 A. No.

24 MS. HOFFER: If I may, can I ask the  
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1 reporter to read back the response to the last question  
2 please?

3 (Whereupon the court reporter read back  
4 the last answer given by the witness.)

5 MR. NEEDLEMAN: Mr. Chairman, I've given  
6 to Mr. Smagula another exhibit that we've had premarked  
7 and passed out copies to the Committee. This is the  
8 "Findings of Fact and Director's Decision" pertaining to  
9 the Temporary Air Permit that was issued for the Scrubber  
10 Project by the New Hampshire Air Resources Division.

11 CHAIRMAN BURACK: And, what's the number  
12 we've assigned to this? Is this --

13 MR. NEEDLEMAN: I believe it's 5, is  
14 that correct?

15 MR. PATNAUDE: Yes.

16 CHAIRMAN BURACK: PSNH Exhibit 5? Thank  
17 you.

18 BY MR. NEEDLEMAN:

19 Q. And, Mr. Smagula, I wanted you to turn your attention  
20 to Page 10 of this exhibit. And, I'm looking at the  
21 second paragraph from the bottom on Page 10, that  
22 begins with the words "The Application". And, I'm  
23 looking at the last sentence of that paragraph, that  
24 begins "however". Could you read that sentence please.

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- 1 A. Second sentence?
- 2 Q. "However".
- 3 A. "However, both projects are technically independent of  
4 each other because each of the projects is not  
5 technically limited in the absence of the other  
6 project, that is the MK -- the Unit MK2 turbine  
7 modifications are not required to operate the FGD  
8 system."
- 9 Q. So, then, it was ARD's conclusion that these two  
10 projects were technically independent of each other, is  
11 that correct?
- 12 A. Yes.
- 13 Q. And, then, going down to the last paragraph on that  
14 page, the third line from the bottom, that begins  
15 "however", that reads: "However, the turbine  
16 modifications are not necessary for Unit MK2 to achieve  
17 the operational level that justifies the financial  
18 investment of the larger project (i.e., the FGD system).  
19 The FGD project is required by law and Applicant is  
20 authorized to recover the costs of the FGD system. The  
21 modification to maintain the original net electrical  
22 output of Unit MK2 is optional in that Unit MK2 would  
23 still be economical to operate without the turbine  
24 modifications." And, I won't read the whole thing, but

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- 1 it's there for anyone to look at. In the end, "DES  
2 concluded that the two projects are not strictly  
3 dependent on each other and should not be aggregated  
4 for purposes of NSR", for that air permit. So, Air

5 Resources Division is also making the determination  
6 here that the projects are economically separate from  
7 each other, is that correct?

8 A. Yes.

9 Q. And, then, in that final paragraph, that begins  
10 "Lastly", and, again, I won't read it, but you've gone  
11 over it. It says "Lastly, and most importantly", and  
12 to paraphrase that, is it correct that the Division  
13 also concluded that, by treating the Turbine Project  
14 and the Scrubber Project separately, PSNH was actually  
15 subject to more stringent air permitting as a  
16 consequence?

17 A. That's correct.

18 Q. Okay. Now, let me turn your attention to Page 9 of the  
19 Director's Decision. And, I'm in the middle of the  
20 page, right under the heading "DES Response". Can you  
21 read that first sentence?

22 A. "DES agrees that the turbine modifications were made to  
23 address the increased power consumption requirements of  
24 the FGD system, although it should be noted that the

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1 modifications are not necessary to operate the FGD  
2 system from a technical standpoint.

3 Q. Okay. So, despite the other statements we just looked  
4 at, this statement in here seems to link the two  
5 projects, is that right?

6 A. Yes.

7 Q. Can you describe your understanding of why DES made  
8 that statement?

9 A. Well, at that point in time, --

10 MS. HOFFER: I'm going to object,  
11 because I'm not sure that having Mr. Smagula testify about  
12 what DES's knowledge or intent was with respect to this is  
13 relevant.

14 MR. NEEDLEMAN: I didn't ask for his  
15 knowledge or intent about -- his understanding of their  
16 intent. I asked for his understanding of why this is  
17 there.

18 MS. HOFFER: I'm going to still object,  
19 because I think you're asking him to characterize what DES  
20 was doing. I'm not sure he's the appropriate witness to  
21 testify as to what DES intended.

22 CHAIRMAN BURACK: I'm going to allow him  
23 to answer the question. I think his response will just go  
24 to the weight of his knowledge of the matter.

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1 MR. NEEDLEMAN: If you could answer the  
2 question please.

3 BY THE WITNESS:

4 A. When I read sentences like that, it I think stems from  
5 the fact that, as the details of the Turbine Project  
6 unfolded, and we understood what the extra output of  
7 that machine was going to be, in the range of 6 to  
8 13 megawatts, we also, as we said separately,  
9 identified what the increased electrical consumption of  
10 the scrubber would be. And, in many ways, we looked at  
11 that in a favorable light, being engineers, being  
12 responsible to do a good job for our customers. And,  
13 we talked about them often together on that topic.  
14 And, I believe that, when we discuss it amongst various

15 groups, that some of that information tended to be  
16 heard and understood, and I think some of that thinking  
17 that we had internal to our company kind of rubbed off,  
18 if you would, where that's why people would say that  
19 the turbine was made to do that. I don't think that's  
20 a proper characterization. But, I mean, I can see how  
21 some could come to that assessment. But I don't think  
22 it's correct.

23 BY MR. NEEDLEMAN:

24 Q. Well, Movants Exhibits 6 and 7 are a pair of letters  
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1 that are in the record that were written by you --  
2 A. Yes.  
3 Q. -- to the Air Resources Division.  
4 A. Yes.  
5 Q. And, you have copies of both those documents. And, in  
6 both those documents, you make a variety of statements  
7 that seem to link the two projects together that talk  
8 about the projects being "necessary for each other",  
9 that sort of thing. Can you speak to that?  
10 A. Yes. And, I guess that's what I was starting to talk  
11 about just a second ago. The Turbine Project was  
12 separate, the Turbine Project had some value in  
13 increased output. Separate, and on a different  
14 timetable, the Scrubber Project had some load that it  
15 was going to consume. And, as we identified what that  
16 was, at a later date, it tended to be about the same.  
17 And, as I said, being a plant manager and an engineer,  
18 and also conscious of our customers' needs, we started  
19 saying "Well, that's great. This extra load, which

20 takes away value from our customers, we're going to be  
21 able to offset it with something through a very  
22 positive efficiency project on the turbine." So, in  
23 our minds, we often thought about them as offsetting,  
24 and talked about them together often. And, I think in  
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1 the letters, as I've re-read them, I would have,  
2 knowing what I know now, clearly made a distinct  
3 separation and talked about those facts in separate  
4 paragraphs, not in the same sentence. Because I think  
5 it gives the impression that there was a strategic plan  
6 to pull them together and we designed it that way.  
7 And, that was not the case at all.

8 So, I think, in retrospect, I would have  
9 rephrased those letters to keep them separate. But,  
10 frankly, I'm proud of the fact that we're able to  
11 offset this extra electric load that would have been  
12 taken away from the generation of the plant and reduce  
13 our customer benefit.

14 Q. So, just then, the bottom line, for purposes of this  
15 discussion, the Scrubber Project would have gone  
16 forward without the turbine and the turbine would have  
17 gone forward without the scrubber, is that accurate?

18 A. That's accurate. They were totally separate.

19 Q. And, from a technical, timing, budgeting, planning, and  
20 engineering standpoint, these two projects were  
21 separate, is that correct?

22 A. That's correct. They were totally separate.

23 MR. NEEDLEMAN: I have nothing further  
24 at this time, Mr. Chairman.

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1 CHAIRMAN BURACK: Thank you very much.  
2 Now, I'll ask the Moving Parties if they have  
3 cross-examination for the witness? Just before you start,  
4 Steve, are you okay, Steve?

5 MR. PATNAUDE: Yes.

6 CHAIRMAN BURACK: Do you need a break?  
7 Go ahead, Mr. Moffett.

8 MR. MOFFETT: We do. And, thank you,  
9 Mr. Chairman. Good morning, Mr. Smagula.

10 WITNESS SMAGULA: Good morning.

11 MR. MOFFETT: Nice to see you again.

12 WITNESS SMAGULA: You too.

13 MR. MOFFETT: Mr. Chairman,  
14 Mr. Needleman has identified the two issues that I think  
15 are before the Committee this morning. And, he led with  
16 the question of "whether or not the Turbine Project is or  
17 is not to be considered apart of the Scrubber Project or  
18 whether those two are together?" And, the second issue  
19 that he dealt with had to do with the size of the Scrubber  
20 Project.

21 With the Committee's permission, I'd  
22 like to flip the order in which we deal with those two  
23 issues. And, I'm going to ask Mr. Smagula some questions  
24 relating to the size of the addition that is represented

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1 by the Scrubber Project. And, Ms. Hoffer is going to then  
2 follow with some questions relating to whether or not the  
3 Turbine Project should be linked with the Scrubber

4 Project. But I want to stress that the questions I'm  
5 asking, having to do with the size of the Scrubber  
6 Project, don't really have anything to do -- they do not  
7 depend on whether or not the Turbine Project is considered  
8 a separate project from the Scrubber Project.

9 So, with that background, I'd like to --  
10 I'd like to just proceed to ask some fairly  
11 straightforward questions about the Scrubber Project.

12 CROSS-EXAMINATION

13 BY MR. MOFFETT:

14 Q. Mr. Smagula, you testified earlier that you are  
15 generally familiar with the Stipulation, and, in fact,  
16 the stipulated exhibits were either prepared by you or  
17 under your direction, is that correct?

18 A. Yes.

19 Q. So, you're quite familiar with those stipulated  
20 exhibits, as well as with the text of the Stipulation?

21 A. I am.

22 Q. I'd like to ask first about the cost of the Scrubber  
23 Project, what we might call the size of the financial  
24 addition to Merrimack Station, if you will. Can we

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1 agree that PSNH currently estimates that the cost of  
2 the Scrubber Project is going to be \$457 million?

3 A. That's correct.

4 Q. Okay. Now, just to be clear, in Stipulated Exhibit --  
5 excuse me, Stipulation Part II, I, on Page 3, says  
6 "PSNH anticipates that the cost of the Scrubber Project  
7 will not exceed 457 million." Does that suggest that  
8 PSNH actually believes that the cost of the scrubber

- 9           may be less than 457 million?
- 10 A.    I think it says that -- what it says, that it won't
- 11        exceed it. So, whether it's on that dollar amount or
- 12        less, I think that's what it means, yes.
- 13 Q.    But you don't have a better estimate today than the
- 14        457 million?
- 15 A.    No, I don't.
- 16 Q.    Okay. And, similarly, can we agree that the cost of
- 17        the Turbine Project is expected to be 11.4 million?
- 18 A.    That's what we spent on the Turbine Project, yes.
- 19 Q.    All right. And, we reviewed where that came from in
- 20        the Stipulation?
- 21 A.    Yes.
- 22 Q.    Now, am I right, Mr. Smagula, that for purposes of
- 23        ratemaking, PSNH is entitled to a return on the value
- 24        of its various assets that are used and useful in the
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- 1        production and transmission and distribution of
- 2        electric power?
- 3 A.    That's correct, yes.
- 4 Q.    So, should the Committee understand that, when the
- 5        Scrubber Project is completed, you would expect that
- 6        there would be an additional 457 million put into
- 7        PSNH's rate base?
- 8 A.    Well, the amount that would be allowed would be the
- 9        amount of actual cost, and it would be subsequent to a
- 10       review by the Public Utilities Commission. But, in the
- 11       end, yes.
- 12 Q.    Fine. But, roughly speaking, order of magnitude, the
- 13       Company would be hoping to increase its rate base by

- 14 approximately 450 million?
- 15 A. Or whatever the actual cost is.
- 16 Q. Thank you. Now, can you tell us what the net book  
17 value for rate base purposes of Merrimack Station was  
18 on January 1, 2008?
- 19 A. There was a data request previously with that question.  
20 I don't seem to recall exactly what it was.
- 21 Q. Would you accept subject to check that it was roughly  
22 on the order of \$90 million?
- 23 A. That sounds about right. I would say I agree, subject  
24 to check.

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- 1 Q. Okay. So, would it be fair to say that, from a  
2 financial point of view, in terms of the increase in  
3 the rate base on which PSNH shareholders would be  
4 entitled to a return from ratepayers, the value, the  
5 net book value of Merrimack Station, following the  
6 completion of the Scrubber Project, and the  
7 incorporation of those costs into rate base, would be  
8 increased by roughly five times?
- 9 A. Yes, based on those numbers.
- 10 Q. Okay. I'd like to turn now to the question of the  
11 physical size of the addition.

12 MR. MOFFETT: And, I'm going to be  
13 referring, Mr. Chairman and members of the Committee, to  
14 Exhibit -- Stipulated Exhibit B, which is here, and  
15 Stipulated Exhibit D. I'm wondering if we could get those  
16 raised a little bit, so that the members of the Committee  
17 can see them easily. Could we get some help on that?

18 (Short pause.)  
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19 MR. MOFFETT: All right. Well, you get  
20 the idea.

21 BY MR. MOFFETT:

22 Q. This, Mr. Smagula, is Stipulated Exhibit B?

23 A. Yes.

24 Q. Am I correct?

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1 A. Yes.

2 MR. MOFFETT: And, just so there's no  
3 confusion among members of the Committee, this exhibit was  
4 introduced originally by the Moving Parties as "Moving  
5 Parties Exhibit 1", at the time of the May 8th hearing.  
6 So, it's the same exhibit.

7 BY MR. MOFFETT:

8 Q. And, am I right, Mr. Smagula, that this is basically a  
9 rendering by PSNH of the major features, the major  
10 structures of Merrimack Station as it existed in early  
11 2008?

12 A. I would say it's an illustration of the major  
13 structures in the immediate powerhouse area.

14 Q. Okay. Fine. Now, I'd like to refer, if I may, to  
15 Stipulated Exhibit G.

16 A. G.

17 MR. MOFFETT: And, in order to make it  
18 easy for the Committee members to follow this, I'm going  
19 to be flipping back and forth -- I'm going to be flipping  
20 back and forth between Page 1 of Exhibit G and Page 6 of  
21 Exhibit G.

22 BY MR. MOFFETT:

23 Q. But, before we go there, Mr. Smagula, let me just ask  
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24 you, would you agree that -- we've heard a lot of talk,  
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1 a lot of testimony about the footprint of the various  
2 features of Merrimack Station, existing and proposed.  
3 And, my question to you is, would you agree that, when  
4 we're talking about three-dimensional structures, that  
5 the height dimension is relevant, as well as the square  
6 footage of the base area, the height -- excuse me, the  
7 length versus the width? Would you agree that height  
8 is also a significant consideration, if we're talking  
9 about the size of a three-dimensional structure?

10 A. Well, when you want to develop the size of a  
11 three-dimensional structure, you have to look at the  
12 length and the width and the height --

13 Q. Right. Okay. Thank you.

14 A. -- of all of the various elements.

15 Q. All right. Now, I'd like to just, without going  
16 through Exhibit G line-by-line, at least not more than  
17 the first page or so, I'd like to just focus us on the  
18 major existing structures here that the Committee can  
19 see in orange on this Exhibit B. And, I'd like to  
20 start with the "turbine island". Am I right that the  
21 turbine island is this long, low building that stands  
22 in front of the coal stacks?

23 A. Yes. That's correct.

24 Q. Okay. And, am I right that Exhibit G, on Page 1,  
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1 indicates that the footprint or the base area in square

2 feet of the turbine area -- of the turbine island is  
3 15,504 square feet?

4 A. Yes, that's correct.

5 Q. Okay. Now, would you turbine to Page 6 of Exhibit G.

6 A. Okay.

7 Q. And, down about halfway, there is a height listed for  
8 the turbine island building, and that's "56 feet", is  
9 that correct?

10 A. That's correct.

11 Q. All right. So, would it be fair to say that, to get  
12 the volume, the total volume of that structure, you  
13 would multiply roughly the 15,504 square feet times the  
14 height? Is that basically accurate?

15 A. Yes. You can do that, yes.

16 MR. NEEDLEMAN: Mr. Chairman, I want to  
17 object. It seems to me that we're going in a direction  
18 where we're going to start to calculate the volume of  
19 these buildings. And, to my knowledge, there has never  
20 been a proceeding of this Committee where the "sizeable  
21 addition" determination was dependent on the volume of the  
22 structures. That has never been a criteria before. And,  
23 now, to make it a criteria is of significant concern here,  
24 because, first of all, it's never been used before, and,

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1 second of all, in a proceeding where the Moving Parties  
2 are seeking penalties for failure to comply, it raises due  
3 process concerns about our ability to even know what the  
4 criteria could have been that we were subjected to.

5 So, I object to any sort of volume-based  
6 determination.

7 MR. MOFFETT: If I may, Mr. Chairman?  
8 CHAIRMAN BURACK: Please.  
9 MR. MOFFETT: I simply don't agree that  
10 it's accurate that the Committee has never considered  
11 height, the height of structures in an addition before.  
12 There are several proceedings of this body in which the  
13 height of various structures that were part of a proposed  
14 addition to a generating facility have been considered.  
15 The FPL Seabrook addition was one. Height was considered  
16 in testimony between -- excuse me, in discussion between  
17 Mr. Smagula and Mr. Iacopino, as part of the Schiller  
18 Project. I have copies of that testimony here, if you'd  
19 like? I'm happy to pass them out.

20 CHAIRMAN BURACK: I'm not sure that you  
21 necessarily need to pass those out.

22 MR. MOFFETT: All right. But they're  
23 here, and we're happy to make them available, if it's  
24 helpful. But I'll just summarize by saying Mr. Smagula

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1 testified in answer to a question in that hearing about  
2 how large the boiler building. He said "Right now, we are  
3 negotiating with three boiler supply vendors, and I do not  
4 have a specific volume or square footage of that  
5 building."

6 So, I just think it's not accurate to  
7 say that "the Committee has never considered the height or  
8 the volume of an addition." And, I guess I would just  
9 say, in answer to Mr. Needleman, I think the Committee  
10 should be entitled to make a judgment as to whether or not  
11 that's a relevant criteria.

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CHAIRMAN BURACK: Thank you both,

12  
13 gentlemen. I think that it is fair to say that we have,  
14 in prior proceedings, looked at the height issue. The  
15 questions that you're asking are really asking him to make  
16 some calculations or not, based upon height, as well as  
17 footprint. So, I'm going to overrule the objection and  
18 allow you to proceed.

19 MR. MOFFETT: Thank you.

20 BY MR. MOFFETT:

21 Q. Mr. Smagula, I'd like to draw your attention on Page 1  
22 of Exhibit G to the "MK2 Boiler Island".

23 A. Okay. I see it.

24 Q. Now, the boiler island for MK2 is composed of four  
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1 different specific pieces. There's the "MK2 plus the  
2 original Precipitator"; secondly, the "MK2 SCR" unit;  
3 there is the "MK2 Supplemental Precipitator"; and then  
4 there's the "stack". Now, if we turn to Page 6 of  
5 Exhibit G, there is a reference about five -- four or  
6 five lines down, to "MK2 Structure". And, the height  
7 of that is listed at "181 feet". "181 feet", is that  
8 correct?

9 A. Yes, that's correct.

10 Q. Okay. Now, just to help the Committee, could I get you  
11 to approach Exhibit B here, and just show them  
12 generally where the MK2 structure is, perhaps in  
13 relation to the MK1 structure, because we'll want to  
14 consider that, too.

15 A. The MK2 structure is a group of structures that begins  
16 with the coal silo area, goes over into the boiler

17 area, goes back into some ductwork and other structures  
18 behind the boiler. So, it's a large part of the  
19 dominant portion of this structure, what's in the front  
20 of the picture. Unit 2 is kind of a little bit tucked  
21 in behind -- Unit 1 is tucked in behind Unit 2.

22 Q. Okay. Thank you. So, and am I right that, in terms of  
23 the Committee's understanding of the dimensions given  
24 in Stipulated Exhibit G, in order to -- in order to

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1 understand what the height of the MK2 structure at  
2 181 feet would apply to, that would apply to the first  
3 three of these four individual features on Page 1 of  
4 Exhibit G, namely, the "MK2 plus from original  
5 Precipitator", the "MK2 SCR", and the "MK2 Supplemental  
6 Precipitator", is that correct?

7 A. No.

8 Q. All right. Could you just qualify and explain it.

9 A. Well, as I explained, the boiler island is comprised of  
10 the coal silo area, which is at one height, which we  
11 identify in the Page 6 as the tallest height. All the  
12 other structures, the boiler, the Precipitator, the  
13 SCR, the boiler is lower, the SCR and the Precipitator  
14 are significantly lower. So, applying what we provided  
15 as the tallest height of the tallest structure to all  
16 of the structures is incorrect.

17 Q. Okay. Let me just pursue that with you a little bit  
18 here, okay?

19 A. Yes.

20 Q. The coal stacks are part of the MK2 structure?

21 A. Yes.

22 Q. Okay. And, a large part of the building that is shown  
23 just behind it here is part of the MK2 structure?

24 A. That's the boiler.

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1 Q. What would that be?

2 A. I don't know.

3 Q. You don't know.

4 A. It's less than the tallest dimension.

5 Q. I'm not talking about the height.

6 A. Oh. That's the boiler structure.

7 Q. Let's acknowledge that it might be a little lower than  
8 181, --

9 A. Yes.

10 Q. -- if 181 is the highest figure?

11 A. The tallest one, yes.

12 Q. Okay?

13 A. Yes.

14 Q. But, basically, does that include either the MK2 plus  
15 the original Precipitator or the MK2 SCR?

16 A. No.

17 Q. Those are --

18 A. Behind it. They're behind it.

19 Q. Those are behind it. Okay. That's fine. And, then,  
20 finally, the stack is shown here. And, that has a base  
21 area on Page 1 of "3,390 square feet", is that right?

22 A. That's right.

23 Q. And, if we turn to Exhibit -- excuse me, Page 6 of  
24 Exhibit G, the height of the MK2 stack is shown as

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- 1 "317 feet", is that correct?
- 2 A. That's correct.
- 3 Q. And, am I right that the MK2 stack is this larger of
- 4 the two stacks shown in Exhibit B?
- 5 A. Yes.
- 6 Q. Okay. So, again, in order to find the volume of the
- 7 stack, you'd multiply the base area times the height?
- 8 A. Yes. To find the volume of any specific element, you
- 9 do the base times the height.
- 10 Q. Okay. All right. A couple of other -- A couple of
- 11 other questions, on the warehouses, this is on Page 2
- 12 of Exhibit G.
- 13 A. Yes.
- 14 Q. The indication is that Warehouses A, B, C, and D have a
- 15 total square footage of "26,000 square feet", is that
- 16 right?
- 17 A. That's right.
- 18 Q. Okay. And, just so we're clear, am I right that the
- 19 warehouses are these buildings down here [indicating]?
- 20 A. That's correct, yes.
- 21 Q. In the lower right-hand corner?
- 22 A. Yes.
- 23 Q. And, then, there's a fifth, one of those is a larger
- 24 warehouse. And, it has a base area square footage of

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- 1 "5,175 feet"?
- 2 A. That's correct, yes.
- 3 Q. And, then, on Page 6, of Exhibit G, if we go down about
- 4 a third of the way, the height of Warehouses A, B, C,
- 5 and D is "25 feet", is that right?

- 6 A. That's the height to the peak of the high point.  
7 Q. The peak of these pitched roofs [indicating]?  
8 A. That's correct.  
9 Q. Right. And, the height of the high point, the peak of  
10 the roof on the E Warehouse is "30 feet"?  
11 A. That's correct.  
12 Q. A few feet higher?  
13 A. That's correct.  
14 Q. Okay. All right. Now, I want to talk a little bit  
15 about another feature that isn't as clear here. And,  
16 that's what's called, on Page 1 of Exhibit G, the  
17 "Transmission High Yard and Jets", this is -- I'm  
18 focusing you now on the second major block of features,  
19 including the "Transmission High Yard and Jets", the  
20 "Jet Fuel Storage Area", and the "Gantry Cranes", okay?  
21 A. Okay.  
22 Q. Now, am I right that the Transmission High Yard is this  
23 large brown-orange shaded area right here [indicating],  
24 to the west of the major structure?

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- 1 A. Yes, that's correct.  
2 Q. Okay. And, the jet fuel storage area, is that shown  
3 here on Exhibit B?  
4 A. That's the smaller segment to the north.  
5 Q. This one right here [indicating]?  
6 A. Correct.  
7 Q. Okay.  
8 A. Yes.  
9 Q. And, the Gantry cranes, am I right that that's these,  
10 the sort of frame -- I'm sorry, I need to refer you to

11 Exhibit 6. If you'll look at Exhibit 6 -- excuse me,  
12 Page 6 of Exhibit G, the Gantry crane bays, those are  
13 these, what look like empty frame structures right here  
14 at the north end of the turbine island, is that right?

15 A. Would you repeat the question please?

16 Q. Yes. I'm asking about the Gantry crane bays, the  
17 places where you store the Gantry cranes.

18 A. You don't store the Gantry cranes in the Gantry crane  
19 bay. The Gantry crane is the device that you've been  
20 pointing to, trying to describe.

21 Q. These are the Gantry cranes [indicating]?

22 A. There is one Gantry crane.

23 Q. Okay.

24 A. And, it is a crane that is a structural element that  
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1 has a crane in it, and it moves on rails.

2 Q. Uh-huh.

3 A. So, the Gantry crane area is the area in which the  
4 rails exist, but it's not a structure.

5 Q. All right. Thank you for the clarification.

6 A. You're welcome.

7 Q. You clearly know a lot more about this plant than I do,  
8 and I'm happy to be corrected on that. Am I right,  
9 though, that the item that is identified as the "Gantry  
10 Crane Bays", on Page 6 of Exhibit G, about two-thirds  
11 of the way down, with a height of "88 feet", am I right  
12 that that's this structure right here [indicating]?

13 A. It's the height of that steel structure.

14 Q. Yes. Okay. So, again, for purposes -- well, let me  
15 back up a minute. I'd like to -- I'd like to go back

- 16 and focus on each of these three items, just so that  
17 the Committee has as clear --
- 18 A. Which items are you talking about, sir?
- 19 Q. I'm talking about the three items in the second major  
20 block on Page 1, starting with the "Transmission High  
21 Yard and Jets".
- 22 A. Okay.
- 23 Q. Okay? And, now, this, the "Transmission High Yard", is  
24 shown here as this large orange feature, which looks
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- 1 kind of flat here.
- 2 A. Yes. Yes.
- 3 Q. But, on Page 6, about halfway down, there's a height  
4 providing for the High Yard, which is "56 feet"?
- 5 A. That's correct, yes.
- 6 Q. Am I correct in understanding that what that "56 foot"  
7 height refers to really is the height of towers in the  
8 High Yard?
- 9 A. There are a couple of structural elements that do go up  
10 off the ground, and the highest one is 56 feet. That's  
11 correct.
- 12 Q. Okay. So, the Committee should understand that there  
13 are structures on this High Yard. It's a --
- 14 A. There are steel -- There are steel elements.
- 15 Q. Yes.
- 16 A. It's not a --
- 17 Q. And, the tallest of them is 56, the tallest of them are  
18 about 56 feet high?
- 19 A. That's correct.
- 20 Q. Okay. Now, a couple of other just very small ones, and

21 then we'll be through with Exhibit B.

22 A. Okay.

23 Q. About two-thirds of the way down Page 1 of Exhibit G,  
24 you have a collection of three buildings called the  
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1 "Admin. Building", the "New Maintenance Shop", and the  
2 "Screen Houses".

3 A. Yes.

4 Q. Can you see those on Exhibit B?

5 A. You cannot see the Administration Building or the new  
6 machine shop, and I'm not sure about the screen houses.

7 Q. All right. But, basically, they would be in this  
8 general area, and perhaps hidden by some of the larger  
9 structures in front of them?

10 A. That's correct.

11 Q. Am I correct? All right. And, again, we have -- we  
12 have figures for the square footage, the base area of  
13 the Admin. Building, the new maintenance shop, and the  
14 two screen houses on Page 1 of Exhibit G.

15 A. Page 1. Yes.

16 Q. And, we have heights for those four buildings, the  
17 Admin. Building, the new maintenance shop, and the  
18 screen houses, about two-thirds of the way down on Page  
19 6 of Exhibit G. Okay?

20 A. That's correct.

21 Q. Okay. Now, Mr. Smagula, I'd like to show you now an  
22 exhibit, I'd like to have it marked as an exhibit, that  
23 the Moving Parties have developed.

24 MR. MOFFETT: And, Mr. Chairman, I'd

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1 like to have this marked, and I'm not sure what we should  
2 mark it as. It would be a Moving Parties exhibit.

3 CHAIRMAN BURACK: Okay. Thank you.  
4 Just a moment, we will -- Okay. I'll review the  
5 transcript here.

6 MR. IACOPI NO: This would be "Moving  
7 Parties 8". And, I'm going off the transcript from May  
8 8th, the last exhibit there being Moving Parties Number 7.

9 MR. NEEDLEMAN: Mr. Chairman, I'm going  
10 to object to this exhibit for the same reasons as  
11 mentioned earlier.

12 CHAIRMAN BURACK: Your objection is  
13 noted.

14 (The document, as described, was  
15 herewith marked as Moving Parties 8 for  
16 identification.)

17 BY MR. MOFFETT:

18 Q. Mr. Smagula, this exhibit was late in coming together.  
19 It based on information that we were still collecting  
20 from PSNH as late as earlier this week. I will  
21 represent to you and to the Committee that it is --  
22 that it includes the three-dimensional structures that  
23 are shown in orange on Exhibit B and listed on Exhibit  
24 G in the order that they are listed on Exhibit G. So,

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[WITNESS: SMAGULA]

1 if, for example, you compared Page 1 of Exhibit G with  
2 the first page of the exhibit that I've just provided  
3 you, we should be able to go down and just check that

4 the figures that are listed here for each of these  
5 features, starting with the "Turbine Island" and the  
6 "MK1 Transformer" and "MK2 Transformer", and going down  
7 through the various features connected with the  
8 "Transmission High Yard", and the "MK2 Boiler Island"  
9 the "MK1 Boiler Island", and the "Admin. Building",  
10 those figures are taken straight from Exhibit G, a  
11 combination of Page 1 and Page 6 of Exhibit G, okay?  
12 And, all we've done to get a cubic foot measurement is  
13 multiply the area in square feet times the height of  
14 those various buildings.

15 Now, I will -- I should go on and say  
16 that this exhibit does not pretend to include any flat  
17 two-dimensional structures. It really -- it doesn't  
18 include any of those. It really focuses on the  
19 three-dimensional structures that are shown here as the  
20 major existing structures of Merrimack Station. It  
21 also does not include a couple of things that are  
22 listed on Exhibit G. For example, the coal yard, which  
23 is listed at the bottom of Page 1 --

24 A. Uh-huh.

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[WITNESS: SMAGULA]

1 Q. -- of Exhibit G, and has a height shown on Exhibit --  
2 on Page 6 of plus or minus 40 feet. We haven't  
3 included that. And, the reason is simply that that's  
4 consumable inventory. And, you can argue about whether  
5 it is a part of the existing structures at Merrimack  
6 Station or not. But, for our purposes, we have not  
7 included it in this exhibit. I want to be sure the  
8 Committee understands that. Nor have we -- Nor have we

9 included in this exhibit two-dimensional features like  
10 paved parking areas or roads or, you know, water bodies  
11 that are shown here on the map. And, that's a judgment  
12 call. You know, I understand that we could argue about  
13 to what extent those should be included. But this  
14 exhibit does not include anything that isn't  
15 three-dimensional basically.

16 Now, you've already qualified for me,  
17 and I appreciate, that the MK2 boiler structure, the  
18 height of the MK2 boiler structure, is not a consistent  
19 181 feet as shown on Page 6 of Exhibit G. Okay? And,  
20 I think we could stipulate and agree that that may be  
21 true also for some of the -- some of the parts, the  
22 constituent parts of the MK1 boiler island. Would the  
23 same apply to that?

24 A. That's correct.

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[WITNESS: SMAGULA]

1 Q. Yes. Okay. But, for purposes of giving the Committee  
2 a rough sort of order of magnitude idea about the  
3 three-dimensional size of these buildings, would you  
4 agree that, subject to the qualifications that you've  
5 given me about separate pieces of the MK1 structure and  
6 the MK2 structure here, that this is -- this is  
7 basically a straightforward attempt to arrive at, in a  
8 rough order of magnitude at least, the  
9 three-dimensional sizes of these major features of the  
10 existing Merrimack Station as it was in 2008?

11 A. No.

12 Q. You wouldn't. Okay. You want to explain that a little  
13 bit more?

14 A. Sure, I'd be happy to elaborate. I think, as I  
15 indicated, it seems as though the person who developed  
16 this chose the worst case situation. Where they took  
17 the highest point of a grouping of structures, and  
18 created a larger volume, a much larger volume than is  
19 factual. I think an example would be the warehouses.  
20 If you want to look at the volume of the warehouses,  
21 you do a simple mathematical calculation, and you don't  
22 include the peak, the highest point of any structure.  
23 If you look at the High Yard, there are no large  
24 structures there. You've got some pieces of steel that  
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[WITNESS: SMAGULA]

1 go into the air. You comprise some air.  
2 Q. Right.  
3 A. But it is not a volumetric structure as I think you're  
4 trying to characterize.  
5 Q. Let me --  
6 A. Well, I need to finish, because I think maybe there's  
7 more information that you don't understand about this  
8 facility. The coal pile is not a piece of earth that  
9 has piles of coal on it. This is a very critical  
10 aspect of plant operation, as critical as the  
11 maintenance shop or the Administration Building; even  
12 more so, I would say. And, that pile of that coal yard  
13 is roughly three or four times larger than is indicated  
14 on this sketch. And, the piles of coal there are there  
15 continuously. We are receiving coal and burning coal  
16 all the time. And, the heights of that coal pile are  
17 40 feet in the air. And, we have bulldozers that groom  
18 them daily. It's an active fatality that has volume to

19 it. And, you can't operate the plant without it.

20 You've talked about the cooling canal as  
21 just a flat piece of water. And, when it's -- it  
22 operates with very important equipment mounted in it  
23 that have spray modules and motors that are mounted on  
24 floats that are in the air over 8 feet. So, if you

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[WITNESS: SMAGULA]

1 want to start looking at volume, I think you have some  
2 data that you've made an attempt, a good attempt at  
3 trying to calculate, but I'm not sure, other than a few  
4 of these that I could say are correct. And, if you  
5 look at the coal yard and you look at other things that  
6 are essential for the operation of the plant, the  
7 railroad tracks, they have height, if you want to  
8 become specific and talk volume, they have height, and  
9 railroad trains go down them. If you want to look at  
10 the cooling canal, and you add up some of these, it  
11 takes your total, which is 20 million, and, you know, I  
12 think, if you look at these different things, you could  
13 double or triple or quadruple that, as part of what I  
14 think as the MK --

15 Q. If you --

16 (Multiple people talking at the same  
17 time.)

18 BY THE WITNESS:

19 A. -- is what I believe, and I firmly believe, is part of  
20 what the volume and the structures are that are  
21 essential to run the plant. So, I think it's an  
22 attempt at looking at some data. But, in my opinion,  
23 it's an attempt at looking at some of the data.

24 MR. MOFFETT: Okay. That's fair enough.

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[WITNESS: SMAGULA]

1 And, I appreciate the clarification. I would just say on  
2 the record to the Committee, Mr. Chairman, that we did ask  
3 PSNH for specific height measurements of all of the  
4 existing features of Merrimack Station, and were told that  
5 that was too burdensome to do. So, we were left trying to  
6 tease out the height of specific structures. And, PSNH  
7 did provide some of them. But, obviously, a lot of them  
8 require much more full -- much more complete elaboration  
9 than we were able to elicit from PSNH, much less provide  
10 to the Committee this morning.

11 MR. NEEDLEMAN: Mr. Chairman, if I may?  
12 The Moving Parties did request all that information from  
13 us. We took the position then, as we've taken today, that  
14 it's not relevant, that volume has never been a basis for  
15 a "sizeable addition" analysis. We were not in agreement  
16 that height is relevant, but, nevertheless, in the  
17 interest of being cooperative, we did provide the height  
18 information, which is part of the stipulated exhibit.

19 CHAIRMAN BURACK: Thank you.

20 MR. MOFFETT: Okay.

21 CHAIRMAN BURACK: Yes, we're going to  
22 have a clarifying question here from Mr. Getz.

23 VICE CHAIRMAN GETZ: Yes. Mr. Smagula,  
24 I just want to understand your response to this Exhibit 8.

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[WITNESS: SMAGULA]

1 Were you saying, on the one hand, that some of the  
2 heights in this exhibit appear to be too high, --

3 WITNESS SMAGULA: Yes.

4 VICE CHAIRMAN GETZ: -- so it's

5 overestimating --

6 WITNESS SMAGULA: Yes.

7 VICE CHAIRMAN GETZ: -- overestimating  
8 the cubic feet? But, on the other hand, there were  
9 certain things that weren't included, so it would be  
10 underestimating the cubic feet of the structures?

11 WITNESS SMAGULA: Certain numbers are  
12 too large that are printed. And, there are a number of  
13 other numbers that are quite large that, in my opinion,  
14 are omitted. So, yes, I agree with you.

15 VICE CHAIRMAN GETZ: Thank you.

16 WITNESS SMAGULA: Yes.

17 MR. MOFFETT: Okay. All right.

18 BY MR. MOFFETT:

19 Q. I would like to turn now, if we can, to Exhibit D.

20 CHAIRMAN BURACK: Mr. Moffett, if I may,  
21 how much more do you think you have before you would turn  
22 things over to Attorney Hoffer?

23 MR. MOFFETT: I would guess a half an  
24 hour, Mr. Chairman. And, I'm happy to break now or

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[WITNESS: SMAGULA]

1 continue working as you see fit.

2 CHAIRMAN BURACK: Why don't we see if we  
3 can get through this piece of your cross-examination, and  
4 then I think we'll take a break after that.

5 BY MR. MOFFETT:

6 Q. Mr. Smagula, this is Stipulated Exhibit D, am I  
7 correct?

8 A. You are correct, yes.

9 MR. MOFFETT: And, just for the  
10 Committee's reference, this is an updated version of what  
11 had been marked at the May 8th meeting as "Moving Parties  
12 Exhibit 2". The difference is that this rendering by PSNH  
13 was done sometime in 2008, when not all of the features  
14 had been fleshed out as fully or as completely designed as  
15 they are now. And, rather than proceeding using this  
16 exhibit [indicating], we agreed with PSNH that we would  
17 essentially move to a consideration of Exhibit D and  
18 substitute -- as a substitute for what had been Moving  
19 Parties Exhibit 2. Much of it is similar, although the  
20 colors are different. I'd like, if I may, to walk through  
21 the major features of the Scrubber Project that are shown  
22 here.

23 BY MR. MOFFETT:

24 Q. But let's establish, first of all, that what, correct  
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[WITNESS: SMAGULA]

1 me if I'm wrong, Mr. Smagula, but basically the  
2 elements that are shown in orange on this Exhibit D are  
3 structures or features that are associated with the  
4 original existing Merrimack Station project as it  
5 existed in 2008, is that correct?

6 A. Yes.

7 Q. Basically, what we saw in Exhibit B?

8 A. Yes.

9 Q. Okay. Just quickly, --

10 A. Except that there are a number of structures that were  
11 removed in order to provide the new equipment.

12 Q. Right.

- 13 A. So, some of the structures are missing.
- 14 Q. Right. And, let's go now to Stipulated Exhibit H, --
- 15 A. H.
- 16 Q. -- and look at that in connection with the -- with
- 17 Exhibit D. And, I'm going to take the liberty of
- 18 pointing out what I understand to be the location of
- 19 the major features that are shown here on Stipulated
- 20 Exhibit H. But, if you disagree with what I'm pointing
- 21 to on the chart, I'll invite you to correct me and set
- 22 the Committee straight on that, okay?
- 23 A. I will.
- 24 Q. Okay. The first item that is shown on Stipulated
- {SEC 2009-01} [Day 2] {06-26-09}

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[WITNESS: SMAGULA]

- 1 Exhibit H, and this is under the heading "FGD System",
- 2 the first actual structure that is identified is the
- 3 "FGD Building". It has a base area in square feet of
- 4 "19,623 feet", and a height of "125 feet". And, I'll
- 5 stipulate, because I know where you're going to go with
- 6 this, that I understand that the 125 feet is the height
- 7 of the highest piece of this. But, basically, the FGD
- 8 building is the building shown in light green here on
- 9 Exhibit D, am I right?
- 10 A. Yes. That's correct.
- 11 Q. Okay. The "Absorber Tower", which has a base area --
- 12 A. It's the taller -- It's the taller components of that
- 13 structure, not the lower level building in the
- 14 forefront.
- 15 Q. I'm sorry. You want to show us?
- 16 A. The FGD facility is this grouping of taller structures,
- 17 not this structure here [indicating].

- 18 Q. Okay. Is there a reason why this lower structure is  
19 colored the same as the rest of the FGD building?  
20 A. It's supplied by the FGD supplier, but it performs  
21 another function other than FGD processing.  
22 Q. Is it included within the base area here?  
23 A. It is.  
24 Q. Okay. So, in terms of what PSNH has presented to us,  
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[WITNESS: SMAGULA]

- 1 --  
2 A. Uh-huh.  
3 Q. -- the base area at least is part of the --  
4 A. It is. Yes.  
5 Q. -- FGD building?  
6 A. Right.  
7 Q. Then, the second item shown here under "FGD System" is  
8 the "Absorber Tower". And, this is a little harder to  
9 see, but am I right that it's this white, sort of light  
10 gray, topped with a white sort of the slanted top, just  
11 north of the FGD building?  
12 A. You're correct.  
13 Q. Okay. And, then, we have "Process Storage Tanks",  
14 including the "Reclaim Water Tank", the "Absorber Hold  
15 Tank", and the "Filter Feed" and "Reagent STG Tanks".  
16 And, am I right that they are basically this collection  
17 of white circular tanks lying south of the FGD  
18 building?  
19 A. Yes, that's correct.  
20 Q. And, am I right that -- well, let's just clarify. It  
21 looks, again, it looks like the 51-foot height is going  
22 to be the taller of those five storage tanks, is that

23 right?

24 A. Six. Yes.

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[WITNESS: SMAGULA]

1 Q. Six. Okay. One, two, three, four, five, six. Fine.

2 Now, if you skip down, I want to come back to the  
3 "Material Handling System", but let's skip down for the  
4 moment to the "chimney". And, am I right that that's  
5 what's identified on Exhibit D as the "New Chimney"  
6 here [indicating]?

7 A. Yes.

8 Q. The large dark gray cylindrical structure that sticks  
9 up immediately behind the FGD building?

10 A. That's correct.

11 Q. And, the booster fans and ductwork, am I right that  
12 those are this sort of, I don't know how to describe  
13 it, it's a turquoise blue structure that starts north  
14 of the FGD building and runs along the river, and then  
15 back in a little bit behind the Merrimack Unit 1 and 2  
16 structures?

17 A. That's correct.

18 Q. Okay. The "FGD Transformer Substation" is this smaller  
19 white area, with the turquoise blue structure shown on  
20 it here [indicating], sort of southwest of the FGD  
21 building?

22 A. What item did you say? That's the substation. That's  
23 correct.

24 Q. It's identified here as the "FGD Substation"?

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[WITNESS: SMAGULA]

- 1 A. Yes.
- 2 Q. Okay. Then, we have the "115 kV Switchyard Expansion"  
3 at the main transformer yard. Now, this is the main  
4 transformer yard, what was called the "High Yard" when  
5 we were talking about Exhibit B.
- 6 A. Uh-huh.
- 7 Q. And, this is a rendering of what the expansion of that  
8 switchyard might look like?
- 9 A. Yes.
- 10 Q. Am I right? And, again, it's much easier to see here  
11 for the Committee. We've got a similar situation here  
12 to what we had on the main switchyard proper. That is,  
13 it's generally a flat base area, with some metal  
14 structures that are standing up. And, the high point  
15 is these towers that are shown here [indicating], kind  
16 of in the middle, is that right?
- 17 A. Yes.
- 18 Q. Okay. So, in some fair sense, if you talk about the --  
19 however you want to measure the volume, if you will, of  
20 the 115 kV switchyard expansion and the FGD substation,  
21 as long as they're treated the same as the main  
22 switchyard, the main 115 kV switchyard, that would be a  
23 fair comparison?
- 24 A. I suppose, if you wanted to consider those as having  
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[WITNESS: SMAGULA]

- 1 volume, you would have to develop a methodology and  
2 apply it equally.
- 3 Q. I understood, I understand and I agree. But,  
4 basically, they are comparable to the kinds of  
5 structure or structures that would appear on the High

- 6 Yard here [i ndi cati ng]?
- 7 A. Yes, you' re correct.
- 8 Q. Okay. The "Service Water Pump House" is this little  
9 small gray building down here in the right-hand corner?
- 10 A. Yes.
- 11 Q. And, the "Truck Wash Facility" is this slightly larger  
12 gray building up here in the upper left?
- 13 A. Yes.
- 14 Q. Okay. Now, I want to come back a little bit and talk  
15 about the "Material Handling System", which is up  
16 toward the top of Stipulated Exhibit H.
- 17 A. Uh-huh.
- 18 Q. The "Material Handling System" consists of four  
19 elements. There is the "Gypsum Storage Building",  
20 which is this dark brown, this proposed new dark brown  
21 structure right here [i ndi cati ng]?
- 22 A. Yes.
- 23 Q. Immediately west of the FGD building. The "Gypsum  
24 Conveyor Shadow", let's talk about that for a moment.

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[WITNESS: SMAGULA]

- 1 Am I right that that's this tubular structure that is  
2 running from one end of the FGD building, up into the  
3 gypsum storage facility?
- 4 A. Well, the shadow would be -- that is the gypsum  
5 conveyor. But the shadow is the -- if you were to look  
6 directly as to putting the Sun above it, so it would be  
7 the shadow of it on the ground. So, we're trying to  
8 take a three-dimensional item in the air, and create a  
9 relatively simple to understand image of what it would  
10 be if it were on the ground.

11 Q. Basically, it's fair to say that, if this were lying on  
12 the ground, the shadow would be the height -- excuse  
13 me, the width times the length?

14 A. Times the -- yes, that's correct. The width times the  
15 length, yes.

16 Q. And, then, let's just look at that. Because, if you  
17 focus on the gypsum conveyor shadow, under "Material  
18 Handling System" on Exhibit H, the shadow itself,  
19 meaning the length times the width, if you will, is  
20 "1,760 feet". And, then, under height, there's an  
21 indication that it's ten and a half feet in diameter?

22 A. Yes.

23 Q. Which is a fair way of describing the height of what is  
24 essentially a tube.

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[WITNESS: SMAGULA]

1 A. It's the diameter of it, not the height.

2 Q. So, between the height of the tube and the shadow, with  
3 allowing for the fact that there's -- it's not a  
4 square, and you can't just multiply the base area times  
5 the diameter, we'll get to that later, but allowing for  
6 that, it's a rough way of indicating volume?

7 A. I'm not -- I didn't understand what you said, so --

8 Q. Okay. Never mind.

9 A. Okay.

10 Q. I'll come back to it.

11 A. Okay.

12 Q. I'll come back to it later. Now, then, the "limestone  
13 storage silo area", am I right that that's these two  
14 large dark brown silos over here, in the upper, left  
15 limestone storage silos?

16 A. Yes.

17 Q. And, the "limestone conveyor shadow", am I right that  
18 that's the dark brown tube that is shown running from  
19 the limestone storage silo, all the way up behind the  
20 large MK1 and MK2 structures on the river side of the  
21 chimneys, and ultimately turning the corner into what  
22 looks like the top of the FGD building, the green  
23 structure, is that right?

24 A. Yes.

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[WITNESS: SMAGULA]

1 Q. Okay. And, again, what has been presented here is the  
2 shadow, so the 13,563 square feet, we should understand  
3 that, given that this is a structure that's up in the  
4 air, if it were lying on the ground that would be the  
5 length times the width, if you will, and the diameter  
6 of 8 feet 9 inches would be a rough surrogate for the  
7 height?

8 A. Right.

9 Q. If it were lying on the ground?

10 A. If it were. But it's cylindrical, so you couldn't  
11 multiply the three.

12 Q. Right. Absolutely. I agree with you.

13 A. Okay. Good.

14 Q. Okay. All right. If you will, now, I'd like to show  
15 you a second exhibit that's been prepared by the Moving  
16 Parties that deals with these structures.

17 MR. MOFFETT: And, again, Mr. Chairman,  
18 if I may, I'd like to get these marked, this exhibit  
19 marked.

20 MR. NEEDLEMAN: Same objection, Mr.

21 Chair man.

22 CHAIRMAN BURACK: Your objection is  
23 noted. Thank you. This would be Moving Parties Exhibit  
24 9.

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[WITNESS: SMAGULA]

1 (The document, as described, was  
2 herewith marked as Moving Parties  
3 Exhibit 9 for identification.)

4 BY MR. MOFFETT:

5 Q. Okay. Now, again, Mr. Smagula, I will represent to you  
6 and to the Committee that this is based on -- this  
7 exhibit, which is entitled "Size of Scrubber Project  
8 Major Component Structures - 2013" is an effort to  
9 track the structures that are identified on Stipulated  
10 Exhibit H in the order that they are listed here.

11 A. Uh-huh.

12 Q. And, these structures are basically shown on Exhibit D.  
13 So, we're going to be going -- we're going to be  
14 referring to Exhibit H, and to this new Moving Parties  
15 Exhibit 9. And, I want to start by asking you to focus  
16 on the "FGD System", Section 1. And, we'll talk first  
17 about the "FGD Building". Now, unlike the heights that  
18 were given to us for the MK2 structure on Page 6 of  
19 Exhibit G, we were able to tell, from looking at this  
20 Exhibit D, that the height of the FGD building is  
21 variable, that is different sections of it have  
22 different heights. So, just in an effort to try to be  
23 a little bit fair, and not overstate the volume of this  
24 FGD building, we took an arbitrary guess that, if you

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[WITNESS: SMAGULA]

- 1 averaged the variable heights of these various sections  
 2 of the FGD building, it might come out to about  
 3 80 feet, as opposed to the 125 feet, which is the  
 4 height that PSNH gave us for the FGD building on  
 5 Stipulated Exhibit H. So, my question to you is, would  
 6 you take issue that, as a rough order of magnitude, an  
 7 average 80 feet height would be a fair way of sort of  
 8 indicating, in a rough order of magnitude, what the  
 9 average height of the FGD building would be?
- 10 A. I don't -- I can't. I understand the methodology. I  
 11 think the thinking is correct. I don't know whether  
 12 that's a reasonable number. I'd have to know more  
 13 about the various heights of the buildings in there and  
 14 their square footage. But, I mean, at least there's an  
 15 acknowledgment here that's it's not the worst case.  
 16 So, that's as much as I could agree to here today.
- 17 Q. Okay. Then, on the "Absorber Tower", we've got a base  
 18 area in square feet of 3,190 feet -- 190 (3,190) square  
 19 feet and a height of 140 square feet. Would you allow  
 20 that that makes the cubic foot measurement roughly  
 21 446,600 cubic feet?
- 22 A. I don't have a calculator, but I --
- 23 Q. Here.
- 24 A. -- I assume that math is -- I'll assume the math is  
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[WITNESS: SMAGULA]

- 1 correct.
- 2 Q. Yes, you can --
- 3 A. Want me to check it for you?
- 4 Q. Please do.

- 5 A. Okay. (Witness using calculator) Yes, that's correct.  
6 The math is correct.
- 7 Q. Okay. Thank you. Now, then we look at the "Process  
8 Storage Tanks". And, we've already established that  
9 51 feet is the -- is the height of the taller -- the  
10 tallest of these tanks, which means that the others are  
11 going to be lower. So, we're going to need to take  
12 something off the height on the -- well, let me ask  
13 you, which is the big tank? Is it the -- Is it the  
14 reclaim water tank or the absorber hold tank?
- 15 A. The absorber hold tank.
- 16 Q. Okay. So, the large tank is the absorber hold tank.  
17 That would be 51 feet. But the reclaim water tank and  
18 the two filter feed tanks and the two reagent STG tanks  
19 are going to be a little bit less than 51 feet. You  
20 want to give me just a guess as to how tall they might  
21 be, compared to the 51?
- 22 A. I'm not going to speculate.
- 23 Q. Okay.
- 24 A. I mean, we -- many of us could sit down here and make a  
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[WITNESS: SMAGULA]

- 1 judgment. The one in the foreground is bigger than the  
2 four in the back.
- 3 Q. Yes.
- 4 A. So, I think -- I don't know whether -- they're in  
5 pairs.
- 6 Q. Yes.
- 7 A. They may each be different. I don't know, sir. I'm  
8 sorry.
- 9 Q. Okay. But we'll concede that those numbers are going

10 to be a little bit high for purposes of the volume of  
11 the process storage tanks, at least the four -- the  
12 five smaller ones.

13 A. Yes.

14 Q. I want to go to Item 3 here, the "New Chimney". We've  
15 talked about that. Any reason to think that it  
16 wouldn't have a cubic foot volume of approximately  
17 2,479,985 cubic feet?

18 A. No. I assume that's correct.

19 Q. Okay. The "Waste Water" -- moving down to Number 4,  
20 the "Waste Water Treatment Building", that's shown  
21 here. It has a base area of 10,751 [10,755?] feet, a  
22 height of 51 feet. But I'll concede that that has a  
23 very slight peaked roof.

24 A. Yes.

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1 Q. So, we'd shave a little bit off of that. It's not an  
2 exact measurement. So, that cubic foot measurement of  
3 "548,500" feet is going to be a tad high.

4 A. Okay.

5 Q. The "Equalization & Sludge Tanks", am I right that  
6 those are the four yellow tanks standing behind the  
7 waste water treatment facility?

8 A. Yes.

9 Q. And, they look like they're all about the same height,  
10 is that right?

11 A. It seems that way from the depiction, yes.

12 Q. Okay. So, could we agree that probably the total  
13 volume of those four tanks is somewhere on the order of  
14 112,000 cubic feet? Subject to doing the math?

- 15 A. That seems reasonable, yes.
- 16 Q. Okay. Now, the "Booster Fans and the Ductwork", for  
17 the Committee's benefit, this is a structure that looks  
18 like it might be a solid structure. I'm not sure that  
19 it is. Is it a solid structure or not?
- 20 A. Which structure, sir?
- 21 Q. The booster fan and ductwork. The booster fans and  
22 ductwork.
- 23 A. The booster fan area and the ductwork are steel  
24 equipment and ductwork.

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- 1 Q. Okay.
- 2 A. Solid. They're not on the -- The ductwork is not on  
3 the ground, but they're solid.
- 4 Q. Okay. Can you just quickly show us here where the  
5 booster fans are and where the ductwork is?
- 6 A. The booster fans are located immediately adjacent to  
7 the absorber tower. And, the remaining --
- 8 Q. Okay. So, right here [indicating]?
- 9 A. The remaining portion -- right there. And, the  
10 remaining --
- 11 Q. This one right here?
- 12 A. Yes.
- 13 Q. The one that connects the green building with the  
14 larger turquoise blue structure?
- 15 A. That's correct.
- 16 Q. And, when we start with the larger turquoise blue  
17 structure, we're getting into the ductwork?
- 18 A. Correct.
- 19 Q. Okay. Now, the Unit 1 fan has dimensions that are

20 shown here that are taken straight from Stipulated  
21 Exhibit H. Do you have any reason to quarrel with that  
22 cubic foot measurement?

23 A. No, I don't.

24 Q. And, the same for the Unit 2 fans?

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1 A. No, I don't.

2 Q. Okay. Now, on the ductwork, we have another situation  
3 where there's a shadow. So, should the Committee  
4 understand that, starting here with the major -- the  
5 first of the major segments of the ductwork, that may  
6 be an elevated structure?

7 A. They're all elevated, yes.

8 Q. Yes. Okay. So, we have a similar situation to the  
9 conveyor belts on Exhibit B and the gypsum storage  
10 facility?

11 A. Uh-huh.

12 MR. MOFFETT: And, just so that the  
13 Committee understands what we've done here, again, we were  
14 not given exact measurements by PSNH, despite our requests  
15 for them. So, we did a little averaging and estimating.  
16 And, we took the difference between the height of the Unit  
17 1 ductwork on Exhibit H and the height of the Unit 2  
18 ductwork on Exhibit H, and simply averaged them, for what  
19 it's worth. That's a very rough estimation.

20 CHAIRMAN BURACK: Thank you.

21 BY MR. MOFFETT:

22 Q. Okay. I want to go back now to the "Material Handling  
23 System". We've talked about the "Gypsum Storage  
24 Building". Again, that's a peaked roof, and it's got a

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1 little cupola of sorts on top. And, I'm assuming that  
2 the 65 foot height that is shown for the gypsum storage  
3 building on Exhibit H is the peak of the little cupola  
4 here on top, is that correct?

5 A. Yes.

6 Q. All right. So, just to make it clear to you and the  
7 Committee, what we've done here is we've tried to allow  
8 for that, and we've suggested an average height for the  
9 gypsum storage building of 50 feet, rather than  
10 65 feet, okay? The "Limestone Storage Silos", I think  
11 speak for themselves. The gypsum conveyor -- excuse  
12 me, we talked about the gypsum conveyor structure. The  
13 "Limestone Conveyor Structure", again, it's tubular, so  
14 it's not a direct one-to-one square foot measurement,  
15 because it -- you have to apply a calculated --  
16 complicated pi times the square root of something to  
17 get to the area. But that was a rough attempt to come  
18 up with some numbers that would be ballpark.

19 Turning to Page 2 of Moving Parties  
20 Exhibit 9, the "FGD Transformer Station" has been  
21 treated essentially in the same way as we treated the  
22 High Yard for purposes of the former Moving Parties  
23 exhibit. We understand that it's mostly air, but there  
24 are iron structures sticking up there, and that's where

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1 that number comes from. The "115 kV Switchyard  
2 Expansion", same thing. It's treated exactly the way

3 we treated the existing switchyard, the High Yard, in  
4 Exhibit G. Then, there is the "Service Water Pump  
5 House", that appears to be a pretty rectangular  
6 building, where the base area and square feet times the  
7 height would give you a pretty good indication of the  
8 cubic feet, is that right?

9 A. That seems reasonable for that structure, yes.

10 Q. And, the "Truck Water Wash Facility", same thing, up  
11 here. Again, it's a fairly straightforward  
12 multiplication of the base area times the square feet,  
13 okay?

14 A. Yes. Yes.

15 Q. You agree?

16 A. Yes.

17 Q. All right.

18 MR. MOFFETT: All right. Mr. Chairman,  
19 I'm not going to -- I'm not going to do any more with this  
20 exhibit now, except to concede that, like Moving Party --  
21 the previous Moving Parties exhibit on the existing major  
22 structures, we didn't have accurate measurements. So, we  
23 will concede that the cubic foot figures on Stipulated --  
24 excuse me, on our previous Moving Parties exhibit about

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1 the existing major structures may be overstated.

2 WITNESS SMAGULA: Uh-huh.

3 MR. MOFFETT: We would also concede that  
4 there are a few places on Moving Parties Exhibit 9 where  
5 we may have overstated the size because of a lack of  
6 information about varying heights of certain pieces of the  
7 structure. But I will represent to you that this was a

8 good faith effort to allow the Committee to compare, at  
9 least in terms of rough orders of magnitude, what we might  
10 think of as the bulk or the volume or the size of the  
11 three-dimensional structures that comprise the Scrubber  
12 Project, compared to the bulk or the size of the major  
13 features of the existing Merrimack Station that are shown  
14 on Exhibit B. All right.

15 CHAIRMAN BURACK: Counsel, do you have  
16 much more? I think we're at a point where we really need  
17 to --

18 MR. MOFFETT: I think I'm within about  
19 three minutes of being finished. Okay?

20 CHAIRMAN BURACK: Thank you.

21 BY MR. MOFFETT:

22 Q. Mr. Smagula, you've already testified that, in terms of  
23 the capacity addition to Merrimack Station that will be  
24 represented by the Turbine Project, putting aside for  
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1 now whether the Turbine Project should be considered  
2 part of the Scrubber Project, you've agreed that the  
3 additional capacity that will be provided to Merrimack  
4 Station by the Turbine Project is fairly set out in  
5 Stipulated Exhibit K, is that right?

6 A. Yes.

7 Q. Okay. And, then, --

8 A. Yes.

9 Q. -- I want to ask about one more index, if you will, of  
10 the size of the addition. And, that's the question of  
11 the extension of the useful life of this facility. Am  
12 I right in understanding that PSNH estimates that, if

13 the Scrubber Project is completed, that Merrimack  
14 Station ought to be able to operate for another 15 or  
15 20 years?

16 A. Well, the Station will continue to operate as long as  
17 it's permitted to do so, and as long as it provides  
18 economic value to our customers. The law that requires  
19 us to install a scrubber is a predetermine for the  
20 continued operation. And, if we put a scrubber in  
21 place, we should be able to continue to operate it  
22 beyond 2013, for whatever period of time the plant  
23 still provides value to customers.

24 Q. Does that mean, incidentally, that, if, after  
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1 installing the scrubber, and including the cost of the  
2 scrubber in rate base, PSNH determined that, for  
3 whatever reason, whether market conditions or  
4 regulatory requirements or whatever, it was no longer  
5 economically feasible to run Merrimack Station, that  
6 you would at that point presumably shut it down?

7 A. Well, I didn't say that. What I said is, as long as  
8 the facility provides economic value to our customers,  
9 then it would continue to provide low cost energy to  
10 them. And, I guess, whether the facility continues to  
11 operate or not is determined on a number of factors;  
12 cost being an important criteria.

13 Q. And, PSNH is thinking or hoping that that might be  
14 somewhere on the order of 15 to 20 years?

15 A. I think 15 years is being used, because that is the  
16 depreciation life that this asset is being spread over.  
17 So, I'm not sure if that has relevance with regard to

18 its longevity of its use.

19 Q. I don't think we need to pursue that further. We  
20 understand that PSNH has proposed a 15 year  
21 depreciation life for these --

22 A. Right.

23 Q. -- facilities. And, as long as the -- as long as the  
24 Merrimack Station continued to be economical to

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1 operate, you would expect to continue operating it for  
2 15 years, at least to cover the depreciable life,  
3 right?

4 A. We would -- that's one way of putting it.

5 Q. Right. Okay. Now, finally, Mr. Smagula, I'm really at  
6 the end, Mr. Chairman, I want to show you a transcript  
7 of a video that appeared on the PSNH website, and that  
8 was downloaded approximately March 5 of this year,  
9 March 5, 2009.

10 CHAIRMAN BURACK: Will this be PS --  
11 sorry, Moving Parties Exhibit 10, is that correct? Thank  
12 you.

13 MR. NEEDLEMAN: Mr. Chairman, I want to  
14 object, only to the extent that we've had no opportunity  
15 to look at this or verify its accuracy.

16 CHAIRMAN BURACK: Your objection is  
17 noted for the record. Thank you.

18 (The document, as described, was  
19 herewith marked as Moving Parties  
20 Exhibit 10 for identification.)

21 MR. MOFFETT: Mr. Chairman, I'll just  
22 represent that, as far as we understand, this is a

23 transcript of a video that was produced by PSNH and was on  
24 their website, and taken down, downloaded at approximately  
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1 March 5th of this year.

2 BY MR. MOFFETT:

3 Q. Mr. Smagula, I'd like to just call your attention to  
4 the first paragraph, which appears to be the voice of  
5 Martin Murray, a PSNH spokesman talking. And, the  
6 third sentence in that first paragraph, starting four  
7 lines down, I'd just ask you to read that, read that  
8 sentence, if you will.

9 A. Third sentence.

10 Q. "Right now".

11 A. Third sentence is "It produces enough energy for about  
12 19 --

13 Q. I think that's the second sentence. Could you go two  
14 lines down, to line 4.

15 A. Well, no, there's a short sentence before that.

16 Q. Start with "Right now".

17 A. Oh. "Right now", okay. "Right now the plant is in the  
18 middle of a massive construction project called "The  
19 Clean Air Project", which will significantly lower  
20 emissions of sulphur and mercury."

21 Q. Okay. And, then, skip down three paragraphs, to the  
22 voice of Harold Keyes.

23 A. Yes.

24 Q. Who I understand is the current PSNH Station Manager  
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1 for Merrimack Station?

2 A. Yes.

3 Q. Would you just read the first sentence of that  
4 paragraph.

5 A. Sure. "The Clean Air Project dwarfs all other  
6 environmental projects both in size, complexity and  
7 cost."

8 Q. And, the next sentence.

9 A. Oh. "It [This] is probably the biggest environmental  
10 project in the State of New Hampshire's history."

11 MR. MOFFETT: Okay. Thank you. Mr.  
12 Chairman, I have nothing else for this witness.

13 CHAIRMAN BURACK: Thank you very much.

14 MR. MOFFETT: I would say -- excuse me.

15 CHAIRMAN BURACK: Yes.

16 MR. MOFFETT: I misspoke. I have  
17 nothing else for this witness. Ms. Hoffer would like to  
18 ask a few questions relating to whether or not the Turbine  
19 Project is or is not part of the Scrubber Project. And,  
20 I'm guessing that she's either prepared to do that now or  
21 when you come back after a break.

22 CHAIRMAN BURACK: I think we will take  
23 up Ms. Hoffer's opportunity to cross-examine after we  
24 return. I'm seeing Representative Mary Beth Walz here.

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1 REP. WALZ: Yes. Mr. Chairman, I'm  
2 wondering if there would be -- I don't want to stand  
3 between the Committee and lunch. I was wondering if there  
4 would be an opportunity for me to testify for less than  
5 five minutes, and then move on. It's a little bit  
6 different than the Dickens-like testimony going on in

7 here. I really wanted to talk a little more about policy.  
8 But I don't know, as a non-intervening party, if I have  
9 the opportunity to do that?

10 CHAIRMAN BURACK: Be happy to allow you  
11 to make a public comment. This would not qualify as  
12 "testimony", but we'd be happy to allow you to have an  
13 opportunity to make a public comment. We also have  
14 another individual who asked for an opportunity to do that  
15 as well, on behalf of the trade unions, one of the trade  
16 unions.

17 Having said that, I am very mindful of  
18 the time. Everybody has been sitting here for a long  
19 time. Would you be able to come back at 2:00 and do that  
20 with us then?

21 REP. WALZ: I promise I'll be less than  
22 five minutes, if you let me do this now. I came from  
23 another hearing this morning. I have a booked day, like  
24 many of you do.

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1 CHAIRMAN BURACK: I just need to make  
2 sure. Are folks all right here for five more minutes?  
3 Okay. Please, you have five minutes. Again, we're going  
4 to treat this as public comment. This is not going to be  
5 subject to cross-examination or necessarily questioning by  
6 the members of the Committee, but we'll see.

7 REP. WALZ: Thank you, Mr. Chairman.  
8 And, I will be under the time. I wanted to say, and may I  
9 introduce myself for those of you who don't know me, my  
10 name is Representative Mary Beth Walz. I represent  
11 Merrimack County District 13 in the Legislature, which

12 includes the Towns of Bow and Dunbarton --  
13 [Court reporter interruption]  
14 REP. WALZ: I represent Merrimack County  
15 District 13, which includes the Towns of Bow and  
16 Dunbarton, and includes this project within the District.  
17 I have been involved in the Legislature when they passed  
18 both what is now RSA 125, which was the initial law that  
19 required the Scrubber Project, as well as the activities  
20 this year of the Legislature addressing whether that  
21 should continue to be the law here in this state.

22 The Legislature had -- in passing 125,  
23 the Legislature found that it was in the best interest of  
24 the State of New Hampshire to have the Scrubber Project.

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1 There were two bills that came before the Legislature this  
2 year that challenged that assertion. There was a bill in  
3 the House that, among other things, tried to cap the rate  
4 of recovery on it that was overwhelmingly rejected by the  
5 House as unconstitutional and for other reasons. There  
6 was also a bill in the Senate that actually began to  
7 challenge more the public policy of this as to whether  
8 this was a good idea to continue this as a matter of  
9 public policy. The Senate, both in Committee and  
10 unanimous, or near unanimous, I think there was one vote  
11 in opposition, chose to reject that bill and find that it  
12 continues to be in the public -- best public interest of  
13 the state that this should be built.

14 So, to the extent that this proceeding  
15 has issues raised before it that address underlying public  
16 policy concerns, I would argue that those issues are not

17 truly before the Site Evaluation Committee. There's no  
18 doubt that there are things that -- there's a valid reason  
19 to be here before the Site Evaluation Committee. I know  
20 125-0:13 says that you have to go before all appropriate  
21 boards. I know that PSNH has been before the DES, it's  
22 been before the Bow Planning Board, it's been before the  
23 Bow Selectmen. It's done those kinds of things. And, I  
24 don't challenge that it should be here before the Site

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1 Evaluation Committee. But, to the extent that the issues,  
2 the underlying issues here really address the public  
3 policy as to whether this project should go forward, I  
4 would suggest that that issue has been decided by the  
5 Legislature. That this body is a creature of the  
6 Legislature, and that the Legislature has spoken. And,  
7 that's the extent of my testimony.

8 If there are questions, I'd be happy to  
9 take them. But I don't want to stand between you and  
10 lunch.

11 CHAIRMAN BURACK: Very good. Again, we  
12 appreciate your being here today to provide this public  
13 comment, and we will treat it as such and not ask you to  
14 take any questions.

15 REP. WALZ: Thank you very much.

16 CHAIRMAN BURACK: Thank you very much.  
17 What I'd like to do now is to just a moment here take a  
18 break. And, I think we will break until -- I think we'll  
19 take a break in just a moment here until 2:00. When we do  
20 return, Attorney Hoffer, if you don't mind, I might give  
21 an opportunity also for public comment to the other folks

22 who have been waiting since this morning, and then I'll  
23 ask you to proceed with your cross-examination, and then  
24 we'll have an opportunity for members of the Committee to

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1 ask their questions as well. So, we will stand adjourned  
2 now until 2:00.

3 (Whereupon a lunch recess was taken at  
4 12:49 p.m. and the public hearing  
5 reconvened at 2:07 p.m.)

6 CHAIRMAN BURACK: We will resume here  
7 with our proceedings on this matter, Docket Number  
8 2009-001, relating to Merrimack Station. A few just  
9 introductory points that I need to make here. First, I  
10 would ask folks, if they could, at least the members who  
11 are sitting, to turn over their cellphones kindly. And,  
12 secondly, I did promise Mr. Ed Foley, President of the New  
13 Hampshire State Building and Construction Trades Council,  
14 that he could have an opportunity to provide us with some  
15 brief public comment before we proceed to continue with  
16 our cross-examination.

17 Having said that, I learned, after we  
18 broke for lunch, that we have some people who have  
19 unavoidable conflicts in their schedule. Mr. Austin has  
20 not been able to return this afternoon. Commissioner  
21 Campbell should be returning, but will not be here,  
22 obviously wasn't here by 2:00. I also understand that  
23 Commissioner Bald must leave by 2:45. So, we have those  
24 constraints that we will be operating on here, and would

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1 respectfully request all counsel to understand that and  
2 work with us to try to move things along here.

3 Does anybody have any other schedule  
4 limitations that we should be aware of?

5 (No verbal response)

6 CHAIRMAN BURACK: Okay. Thank you.

7 Regardless, my hope would be that we -- we'll have to see  
8 where we end up, but roughly 4:00 or so we would probably  
9 end this process, at least for the day.

10 So, having said that, would like to ask  
11 Mr. Ed Foley, from the New Hampshire State Building and  
12 Construction Trades Council, if he'd like to come an  
13 provide a brief public comment.

14 MR. FOLEY: Thank you very much, Mr.  
15 Chairman and members of the Committee. I appreciate your  
16 indulgence in allowing me to speak, and I will be very  
17 brief.

18 My name is Ed Foley, and I'm President  
19 of the New Hampshire Building and Construction Trades  
20 Council. I represent over 5,000 men and woman in New  
21 Hampshire. We respect each of you and the role of this  
22 Committee, but the New Hampshire Building Trade strongly  
23 opposes the efforts by the opponents of the Scrubber  
24 Project at Merrimack Station to subject this project to

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1 oversight, further oversight and approval by the New  
2 Hampshire Site Evaluation Committee.

3 First, by this Committee accepting  
4 oversight of this project, you will be attempting to

5 supersede the authority of the New Hampshire Legislature,  
6 which has clearly determined that this project is in the  
7 public interest. The so-called "Scrubber Law", RSA  
8 125-0:11 through RSA 125-0:15 eliminates any requirement  
9 for this Committee to make a declaratory ruling or its own  
10 public interest review. It should also be pointed out  
11 that the Legislature had an opportunity to require the  
12 Scrubber Project to go before Site Evaluation, PUC, and  
13 other regulatory boards this past legislative session,  
14 when it considered the bill, Senate Bill 152, brought  
15 forward by many of the same opponents that sit here today.  
16 However, the Legislature overwhelmingly reaffirmed its  
17 decision that this project is in the public interest, and  
18 firmly rejected the effort to subject it to further  
19 regulatory review.

20 Second, PSNH has met all review and  
21 approvals that might be granted by this Committee. The  
22 Town of Bow, DES, EPA, FAA, and the Army Corps of  
23 Engineers have all granted their necessary approvals.  
24 Subjecting the Scrubber Project to Site Evaluation review

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1 would serve no purpose but to delay this project and grant  
2 its opponents another forum to attempt to derail it.

3 Finally, this Committee needs to fully  
4 understand that this project is well underway. This  
5 project is not a concept envisioned in a sketch. It is  
6 happening now. As we sit here today, approximately 150 of  
7 my New Hampshire brothers and sisters are out at that site  
8 working. In addition, several hundred more New Hampshire  
9 working families are depending on this project for future

10 work. And, it is critical that this project move forward  
11 on its current schedules.

12 As everyone in this room knows, these  
13 are not good times for families that depend on  
14 construction work for their livelihood. While the entire  
15 economy is struggling, the impacts on construction have  
16 been particularly hard. And, this project has come at a  
17 critical time for many New Hampshire workers.

18 While opponents of the Scrubber Project  
19 would like you to think you are simply making a legal  
20 decision, in reality, they have put you in the unfortunate  
21 position of having to make a real-life decision that could  
22 have immediate impacts on hundreds of families' s  
23 livelihoods.

24 And, just a little aside, during the  
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1 lunch break, I got a call from one of my members. His  
2 house is going into foreclosure. And, also, my other  
3 members -- many members are being forced to take their  
4 retirement funds out to pay for their homes, to pay for  
5 their living.

6 Each of you should understand that, if  
7 you subject this project to a duplicative approval  
8 process, you will cast a shadow over these workers and  
9 cast doubt on the permanence of their jobs. New Hampshire  
10 working families, who are now relishing the rare stability  
11 of a three to four year project will once again shift to a  
12 short-term, week-to-week mindset. This is not fair and it  
13 is not right. I simply ask that you put yourselves in the  
14 position of the hundreds of working families that I

15 represent here today and consider the potential impacts on  
16 them before you make your decision.

17 Again, I want to thank you for the  
18 opportunity to speak with you today. The 5,000 members of  
19 the New Hampshire Building and Construction Trades Council  
20 and I will be actively watching this proceeding and your  
21 decision. And, Mr. Chairman, I thank you again for your  
22 indulgence in allowing the New Hampshire Building Trades  
23 to be heard. If you need to ask me any questions, I will.  
24 But I know you folks got a busy, busy day, and thank you

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1 so much for your time, all of you.

2 CHAIRMAN BURACK: Thank you very much,  
3 Mr. Foley. As I said, we're going to treat your statement  
4 as a public comment, not subject to questioning or  
5 cross-examination.

6 MR. FOLEY: Thank you, sir. I have a  
7 couple of copies left. I can leave them, in case somebody  
8 -- there you go.

9 CHAIRMAN BURACK: You can leave them  
10 with the --

11 MR. FOLEY: Thank you again.

12 CHAIRMAN BURACK: Thank you. Attorney  
13 Hoffer.

14 MS. HOFFER: Good afternoon, Committee  
15 members. Good afternoon, Mr. Smagula.

16 WITNESS SMAGULA: Hello.

17 MS. HOFFER: My name is Melissa Hoffer,  
18 from Conservation Law Foundation. And, I'm here today  
19 with the Moving Parties. I'll be very brief, I just have

20 a few questions for cross-examination today.

21 CROSS-EXAMINATION

22 BY MS. HOFFER:

23 Q. And, I would like to begin with Moving Parties Exhibit  
24 6, which is a June 7th, 2006 letter to DES.

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1 Mr. Smagula, if you need a copy, I can provide one to  
2 you.

3 A. All right. I believe have it. Thank you.

4 Q. Thank you. On Page 1 of that letter -- actually, if  
5 you would begin by going to the last page of the  
6 letter.

7 CHAIRMAN BURACK: I'm sorry, Attorney  
8 Hoffer. Could you tell us again which document you're  
9 looking at?

10 MS. HOFFER: Of course. It's Moving  
11 Parties Exhibit 6. It's a June 7th, 2006 letter to  
12 Director Scott, from Mr. Smagula.

13 CHAIRMAN BURACK: Thank you.

14 BY MS. HOFFER:

15 Q. Mr. Smagula, is that your signature?

16 A. It is, yes.

17 Q. Thank you. If you would return to Page 1, Paragraph 2.  
18 Would you read that paragraph for us.

19 A. "As discussed at the May 16th, 2006 meeting, PSNH is  
20 preparing for the installation of a scrubber at  
21 Merrimack Station. As required by the recently enacted  
22 House Bill 1673-FN, the scrubber must be installed and  
23 operational at Merrimack Station no later than July 1,  
24 2013. In anticipation of a statutory requirement, PSNH

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1 retained Sargent & Lundy to complete a comprehensive  
2 and multi-phased engineering study to evaluate  
3 multi-point [multi-pollutant?] control technology  
4 options for Merrimack Station and to identify the most  
5 cost-effective and operationally feasible option for  
6 mercury control, as well as potential challenges. This  
7 evaluation included an assessment of the boiler,  
8 balance of plant equipment, turbine-generator systems,  
9 and site work. This assessment was done to ensure that  
10 the existing station equipment will perform reliably  
11 and the unit's cost will remain competitive, since the  
12 large investment necessary to install a scrubber  
13 necessity -- necessitates the continued operation of  
14 Merrimack Unit 2, that is MK2, well beyond 2013.  
15 Lastly, to maintain the generation output and value to  
16 customers, the large power consumption of a scrubber  
17 system, as much as 6 to 10 megawatts, justified the  
18 need to fully assess balance of plant improvements  
19 necessary to offset the additional load."

20 Q. Thank you. If you would turn to Page 2, there are just  
21 two other sections I'd like to ask you about.

22 A. Okay.

23 Q. The first paragraph, which continues from the prior  
24 page, the second sentence, beginning with "however", if

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1 you would read that for us please.

2 A. "However, the installation of a scrubber will require a  
3 new stack, material storage and handling system, waste

4 water treatment system, balance of plant work, MK2 high  
5 pressure/intermediate pressure turbine generator work,  
6 in addition to the installation of the scrubber  
7 vessel."

8 Q. Thank you. And, then, if you would just read the first  
9 sentence of the next paragraph.

10 A. "In order to meet the July 2013 deadline, it will be  
11 necessary for PSNH to complete as much of the balance  
12 of plant work as possible during planned outages in the  
13 years presiding 2013."

14 Q. Thank you, Mr. Smagula.

15 MR. HARRINGTON: Excuse me, Mr.

16 Chairman. Could you just -- Can you give us again what  
17 that document was? I don't seem to have a copy of it.

18 CHAIRMAN BURACK: Could you remind us?

19 MS. HOFFER: It's Moving Parties Exhibit  
20 6. It was entered during our last hearing.

21 CHAIRMAN BURACK: I'm sorry. Okay. I  
22 think you had previously told us "Movants Exhibit 7", but  
23 you're telling us now it is 6.

24 MS. HOFFER: It is 6. It's a June 7th,  
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1 2006 letter.

2 CHAIRMAN BURACK: Thank you. I'm not  
3 sure if we all -- do you have copies of that available?

4 MS. HOFFER: I don't.

5 MR. HARRINGTON: Excuse me, the letter  
6 was from?

7 MS. HOFFER: It is from Mr. Smagula of  
8 PSNH, to Director Scott of the Air Resources Division at  
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9 the Department of Environmental Services.  
10 CHAIRMAN BURACK: You don't have any  
11 extra copies? Okay. And, again, the date on that letter  
12 is?  
13 MS. HOFFER: The date on the letter is  
14 June 7th.  
15 CHAIRMAN BURACK: June 7th.  
16 MS. HOFFER: 2006.  
17 CHAIRMAN BURACK: 2006.  
18 MS. HOFFER: Yes.  
19 CHAIRMAN BURACK: And, this is a letter  
20 from Mr. Smagula to Mr. Scott?  
21 MS. HOFFER: Director Scott.  
22 CHAIRMAN BURACK: Director Scott. Thank  
23 you.  
24 MS. HOFFER: Yes.

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1 CHAIRMAN BURACK: Thank you.  
2 MS. HOFFER: I'd like to mark as "Moving  
3 Parties Exhibit Number 10" a June 12th, 2006 letter, from  
4 Mr. Smagula to the Department. It is printed on both  
5 sides.  
6 CHAIRMAN BURACK: Okay. I think this is  
7 actually going to be your Exhibit 11.  
8 MS. HOFFER: Oh. Thank you. I have a  
9 few copies for the Committee.  
10 CHAIRMAN BURACK: Thank you. So, this  
11 is a June 12, 2006 letter?  
12 MS. HOFFER: This is a June 12th, 2006  
13 letter, which will be Moving Parties Exhibit Number 11.

14 (The document, as described, was  
15 herewith marked as Moving Parties  
16 Exhibit 11 for identification.)

17 BY MS. HOFFER:

18 Q. Mr. Smagula, if you could turn the page over.

19 A. I'm re-familiarizing myself with the letter.

20 Q. Okay. Please take your time.

21 A. All right. And, Page 2, yes.

22 Q. Is that your signature?

23 A. No, it's the signature of Mr. Scott.

24 Q. Of Mr. Scott. This is a letter from Mr. Scott to you.

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1 And, I'm hoping that you would be able to go to  
2 paragraph number three, the last sentence. And, if you  
3 would read that for us.

4 A. "The anticipated increased power output generated by  
5 this" --

6 Q. The last sentence. Oh, I'm sorry. If you could read  
7 the second to the last sentence, with the last  
8 sentence.

9 A. Oh. Okay.

10 Q. Beginning "finally".

11 A. All right.

12 Q. Excuse me.

13 A. Yes. "Finally, PSNH has noted that this project is in  
14 preparation for the installation of a scrubber at  
15 Merrimack Station required by HB 1673-FN. The  
16 anticipated increased power output generated by this  
17 project will offset the energy demands of the new  
18 scrubber which will be installed by 2013."

- 19 Q. Thank you. And, the subject of this letter was the  
20 Turbine Project, correct?  
21 A. Subject was "Planned 2008 Outage for Unit 2".  
22 Q. And, that work includes the MK2 high  
23 pressure/intermediate pressure section of the turbine  
24 and generator section that were the subject of the  
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- 1 turbine discussion this morning?  
2 A. Yes.  
3 Q. Thank you. I have a few questions for you on what was  
4 Moving Parties Exhibit 7, which is a January 31st, 2008  
5 letter. And, if you don't have a copy, I do have an  
6 extra of that for you.  
7 A. I think I do, yes.  
8 Q. On the first page, paragraph two, would you read the  
9 first sentence for us please.  
10 A. "As indicated in my letter to you dated June 7th, 2006,  
11 balance of plant projects plan to be completed during  
12 the 2008 Merrimack 2 outage, include the HP/IP project  
13 and associated generator repair work, other any  
14 necessary" -- excuse me -- "and associated generator  
15 repair work are necessary in order to maintain the  
16 output of MK2 and comply with RSA 125-0:13, which  
17 requires PSNH to install a wet scrubber at Merrimack  
18 Station no later than July 2013."  
19 Q. Thank you. And, if you would just turn to the second  
20 page, under the subheading "Merrimack Unit #2  
21 Operation"?  
22 A. Uh-huh.  
23 Q. If you would please read the second sentence, beginning

24 with the word "following".

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1 A. "Following the completion of the MK2 HP/IP Turbine  
2 Project and associated generator work, MK2 is expected  
3 per the contract guarantee to produce an additional  
4 6.5 megawatts of electricity."

5 Q. And, if you would please read the next sentence. Thank  
6 you.

7 A. "The actual net unit output will range between 6 and  
8 13 megawatts, an increase that is necessary to support  
9 the large power consumption of the future new scrubber  
10 system due to the increased efficiency of the turbine  
11 blades."

12 Q. Thank you. And, Mr. Smagula, if you could turn all the  
13 way to the last page, which is 4 of 4, is that your  
14 signature?

15 A. It is, yes.

16 Q. Okay. And, then, the last document was introduced this  
17 morning as "PSNH Exhibit 4". It's a March 31st, 2008  
18 letter to you, from Mr. Craig Wright at the Department  
19 of Environmental Services.

20 A. What was the date on that please?

21 Q. Sure. It's March 31st, --

22 A. Yes, I have it.

23 Q. -- 2008.

24 A. I have it, yes.

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1 Q. Okay. All right. So, I just wanted to direct your

2 attention to the beginning of paragraph two. And, if  
3 you would confirm that DES's position is that PSNH  
4 submitted the information with respect to the air  
5 emissions from the Turbine Project pursuant to the  
6 federal rules applicable to non-routine modifications?

7 A. I'm not sure I follow your question.

8 Q. Maybe an easier way would be to have you read into the  
9 record that first sentence of paragraph two, beginning  
10 with "PSNH".

11 A. All right. "PSNH submitted this information under the  
12 provisions of 40 C.F.R. 52.21(b)(21)(iv), commonly  
13 referred to as the "WEPCO rule", which allows utilities  
14 to make non-routine modifications that would otherwise  
15 be subject to NSR permitting if they demonstrate that  
16 future actual emissions will not be" -- "will not  
17 increase as a result."

18 Q. And, as far as you're aware, that's a true and accurate  
19 statement?

20 A. It's what I wrote or it's what -- yes, it's what I  
21 wrote. It was what was written to me, yes.

22 Q. Thank you. Just a few more questions. The Turbine  
23 Project modifications were not reviewed pursuant to RSA  
24 369-B:3-a, correct?

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1 A. I'm not sure I'm familiar with --

2 Q. Has that project received PUC review?

3 A. The Turbine Project?

4 Q. Yes.

5 A. It will -- "review" in what way?

6 Q. Has it been brought before the Public Utilities

7 Commission here for review pursuant to RSA 369-B:3-a,  
8 which governs modifications? Has there been any  
9 advance review of it by the PUC?

10 A. No.

11 Q. Thank you. Are you aware that PSNH has argued before  
12 the Public Utility Commission in Docket Number 08-145  
13 that the Scrubber Law, RSA 125-0, exempts the Turbine  
14 Project from review, because they're related?

15 MR. ALLWARDEN: If I may, Mr. Chairman,  
16 I have an objection to this line of questioning. We're  
17 asking questions about a docket pending before the PUC. I  
18 don't know what relevance that has to the "sizeable  
19 addition" determination that we're being asked to consider  
20 here today.

21 MR. MOFFETT: If I may respond?

22 CHAIRMAN BURACK: Please do.

23 MS. HOFFER: The relevance is that the  
24 Company today has taken the position that the Turbine  
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1 Project and the FGD system are unrelated for purposes of  
2 this proceeding. And, for purposes of the proceeding  
3 pending before the Commission in DE 08-145, the Company  
4 has taken the position that they are related to the extent  
5 that the Turbine Project is not reviewable because of the  
6 Scrubber Law. In other words, that the Scrubber Law  
7 shields the Turbine Project from review.

8 CHAIRMAN BURACK: Attorney Hoffer, do  
9 you have the document to actually present as an exhibit  
10 here?

11 MS. HOFFER: The pleadings in the

12 docket? You could probably take judicial notice of them.

13 MR. NEEDLEMAN: Mr. Chairman? I just  
14 want to say, --

15 CHAIRMAN BURACK: Yes.

16 MR. NEEDLEMAN: -- with respect to this  
17 objection, it's fine to take judicial notice to other  
18 documents that are before someone. But, if he doesn't  
19 have a document in front of him that he can look at and  
20 answer the questions from, I'm not sure it's fair ask him  
21 these questions.

22 CHAIRMAN BURACK: I think we will go  
23 ahead and take judicial administrative notice of the  
24 docket in the other matter. But, unless you do have an

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1 actual copy of the document, I'm not sure that we can  
2 really cross-examine on that document.

3 MS. HOFFER: Thank you.

4 CHAIRMAN BURACK: And, could you provide  
5 us again with the document number please? The docket  
6 number?

7 MS. HOFFER: DE 08-145.

8 (Administrative notice taken.)

9 BY MS. HOFFER:

10 Q. A final question for you, Mr. Smagula. The scrubber is  
11 currently not operational, correct?

12 A. That's correct.

13 Q. So, there is no parasitic load that would cause a net  
14 decrease in the output of the plant, correct?

15 A. At this point there is none.

16 Q. And, that won't occur until the scrubber is

17 operational?  
18 A. That's correct.  
19 Q. And, that could be upward of three to four more years?  
20 A. Current schedule is to try to adhere to the interests  
21 of the law, which encourages us to complete it before  
22 the required date of 2013. And, we're seeking to try  
23 to build the project to have it available online in  
24 2012.

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1 MS. HOFFER: Thank you very much.  
2 CHAIRMAN BURACK: Thank you. Attorney  
3 Needleman, did you have any recross?  
4 MR. NEEDLEMAN: I do have some redirect.  
5 CHAIRMAN BURACK: Redirect, I'm sorry.  
6 MR. NEEDLEMAN: I was expecting I might  
7 do it after the Committee was done asking questions, but I  
8 can do it now, if you want me to?  
9 CHAIRMAN BURACK: We'll go ahead and ask  
10 our questions, and then we'll come to you. Mr. Getz.  
11 VICE CHAIRMAN GETZ: Yes, I'd like to  
12 follow up, if I could --  
13 MR. HARRINGTON: Excuse me, Mr.  
14 Chairman, just a question on how we're pursuing this. Are  
15 we limiting ourselves in this next round of questions to  
16 whether the turbine should be classified as part of the  
17 Scrubber Project or are we also discussing that question,  
18 as well as, whether singly or combined, they constitute a  
19 sizeable addition to the project?  
20 CHAIRMAN BURACK: I think our questions  
21 to the witness can relate to either of those issues at

22 this point, because both of those have -- we've heard  
23 testimony on both of those issues at this point. So, we  
24 can speak to both of them.

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1 BY VICE CHAIRMAN GETZ:

2 Q. Mr. Smagula, --

3 VICE CHAIRMAN GETZ: I don't know if  
4 someone could put up the -- I think it was referred to as  
5 "Exhibit B", Merrimack Station as it looked in 2008.  
6 Thank you, Mr. Moffett.

7 BY VICE CHAIRMAN GETZ:

8 Q. Mr. Smagula, does this represent -- this exhibit  
9 represent Merrimack Station at any particular time in  
10 2008 or would it also represent Merrimack Station in  
11 2007?

12 A. I think it's pretty much the way the station was. The  
13 only change in the recent year or so may have been a  
14 warehouse that was added. But, other than that, it's  
15 pretty much the way it's been. And, as I mentioned  
16 earlier, that's kind of a view of the powerhouse proper  
17 area.

18 Q. I guess what I'm trying to get at specifically is, with  
19 respect to the Turbine Project, can you -- is there any  
20 physical differentiation in the core building structure  
21 of MK2 as a result of the Turbine Project?

22 A. No. It's a piece of equipment that is one of many  
23 pieces of equipment housed in the turbine enclosure.  
24 So, it's within one of those buildings.

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1 Q. So, all of the work that was done for the turbine  
2 replacement occurred within the buildings as they  
3 existed in 2007, --

4 A. Yes.

5 Q. -- 2008, up until the time scrubber construction  
6 started?

7 A. That's correct, yes.

8 VICE CHAIRMAN GETZ: Thank you.

9 CHAIRMAN BURACK: Are there other  
10 questions for Mr. Smagula? Mr. Harrington.

11 MR. HARRINGTON: Yes. You might want to  
12 go to somebody else. I have quite a few questions.

13 CHAIRMAN BURACK: Go ahead, Mr.  
14 Harrington, please.

15 BY MR. HARRINGTON:

16 Q. Dealing with the existing turbine, you stated that it  
17 was placed in service in 1968, is that correct?

18 A. That's correct, yes.

19 Q. Okay. So, it's been in for 40 years. It must be  
20 approaching pretty much near the end of its useful  
21 life. Is that correct as well?

22 A. Well, that's -- I'm not sure I would say it's at the  
23 end of its useful life. Because, with equipment that  
24 is in generating plants, we're continuing to try to

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1 look at methods and maintenance techniques in order to  
2 allow them to run reliably and safely. So, they're  
3 like a piece of equipment that many people may have in  
4 their home, that works well, and, with proper  
5 maintenance, it will continue to work well. So, I

- 6 don't know, when you say "end of useful life", that's a  
7 vague term in my mind.
- 8 Q. Okay. But -- So, you were able to keep it operating?
- 9 A. And, it has been operating well. As a matter of fact,  
10 in the last two or three years, Merrimack Station, and  
11 Merrimack Unit 2, in particular, has set operational  
12 records with regard to the amount of generation it's  
13 produced. So, I would say that, while it was built in  
14 '68, it is running as good as it ever has.
- 15 Q. With the replacement and the high pressure/intermediate  
16 stage turbine, would you anticipate a -- you said a  
17 "decreased cost in maintenance going forward"?
- 18 A. That's correct, yes.
- 19 Q. Now, you also said that the purpose of it was to  
20 improve costs by improving efficiency and reliability.  
21 But you didn't really comment on the reliability aspect  
22 of this. Could you comment on the reliability of the  
23 new turbine versus the older one?
- 24 A. Well, the older turbine, as I indicated, requires

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- 1 maintenance on a periodic basis. And, the new one  
2 requires maintenance on a much more infrequent basis.  
3 So, whenever we have -- ever five years we would have a  
4 shutdown, and it would be a lengthy shutdown. Usually  
5 the length of that shutdown was driven by the work on  
6 the turbine. With the avoidance of work on the  
7 turbine, five years from now that outage will likely be  
8 shorter, and we will spend less money on it. So, it  
9 will result in the unit being running -- it will just  
10 be run more reliably and hopefully provide that much

- 11 more value to our customers.
- 12 Q. Now, that was with regard to reliability having to do  
13 with scheduled outages. How about reliability between  
14 outages with the --
- 15 A. The reliability between outages is generally caused by  
16 forced outages, if you will, relating to boiler or  
17 other balance of plant equipment. The turbine, our  
18 turbines have been extremely reliable. And, we have a  
19 turbine engineer specialist who focuses primarily on  
20 this large rotating pieces of equipment. And, we have  
21 had very few losses of output due to our turbines. So,  
22 because Merrimack Station is a baseload unit, and it  
23 really runs all of the time, pretty much at full  
24 output, it only shuts down when we either have a

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- 1 planned outage or we have some issue that causes us to  
2 come off for a forced outage.
- 3 Q. So, very few forced outages associated with the  
4 previous turbine?
- 5 A. There are a -- with regard to the previous turbine, I  
6 can't recall one in recent years. But there are very  
7 few, yes.
- 8 Q. Now, you're saying it will improve efficiency through  
9 cost and reliability. Then, did you do any type of a  
10 cost-effectiveness evaluation on this?
- 11 A. There was a summary that was developed. But it was  
12 based on the fact that we would require less  
13 maintenance in 2008, because we wouldn't be repairing  
14 an old one. Those monies could be shifted over to  
15 offset some of the original investment cost, and that

16 we would not have to do an opening and closing and  
17 inspection and repairs in five years. So, there were  
18 some obvious large savings as a result of the  
19 investment, in addition to the increased efficiency,  
20 which resulted in more output of the unit.  
21 Q. So, those two, by themselves, made it cost-effective --  
22 A. Yes.  
23 Q. -- to do the replacement?  
24 A. Yes. The math was very simple, showing that this  
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1 project had value to our customers and a payback that  
2 was within a year or two.  
3 Q. Now, I guess, would it be fair to characterize the  
4 replacement as a drop-in? You basically took the old  
5 two stages of the turbine out and put these in where  
6 others came out of?  
7 A. Well, it was the replacement of the inner and outer  
8 cylinders, as well as the rotor. But, within that  
9 cavity of where the old machine was, it was designed to  
10 fit on the exact same foundation and meet the exact  
11 same end-to-end dimensions within thousandths of  
12 inches, because it had to fit there.  
13 Q. And, if you did need to replace the turbine, because  
14 of, say, catastrophic damage, excessive blade pitting  
15 that couldn't be repaired, could you have replaced it  
16 with the existing turbine or would you have to do some  
17 type of upgrade, given the fact the existing one was 40  
18 years old?  
19 A. I'm not sure I follow you, which turbine you're  
20 referring to, sir?

21 Q. The old one, I'm sorry.  
22 A. The old one. Would you repeat the question?  
23 Q. Sure. If the old one required replacement, due to some  
24 type of catastrophic failure, or just excessive pitting  
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1 that couldn't be repaired or whatever, so it was  
2 decided it needed to be replaced, not that it was just  
3 cost-effective, but it just had to be replaced. I'm  
4 assuming, since it's 40 years old, you probably would  
5 not be able to get an exact duplicate to drop in there?  
6 A. Well, no, we could always rebuild or have manufactured  
7 a replacement element to fit in the old machine. So,  
8 you look at, if you do have a problem, you look at your  
9 repair solutions, which are either full repair or a  
10 combination of repair and component replacement, in  
11 order to solve whatever problem you may have.  
12 Q. Now, did you --  
13 A. You look at options and pick the most cost-effective  
14 one.  
15 Q. Okay. In this case, you're saying the most  
16 cost-effective was continue the normal -- rather than  
17 continue the normal every five years series of repairs,  
18 was to put in the newer turbine that would allow you to  
19 limit that to once every 10 years?  
20 A. That's correct.  
21 Q. Okay. These questions may not be in any particular  
22 logic, --  
23 A. No, that's fine.  
24 Q. -- because they're kind of jumping around. There was a

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- 1 question on the book value of the Merrimack Station as  
2 a whole, which you said was at \$90 million. Now, when  
3 did the depreciation of that, how many years was that  
4 depreciated over to get to the \$90 million?
- 5 A. Well, when the unit went into service in 1968, it had a  
6 certain book value. And, I assume that value had a  
7 depreciation path for it. However, also in the period  
8 of time since it went into service, there have been  
9 other capital investments and other additions added to  
10 it. So, I think that amount of money that's currently  
11 on the books for its asset value is an accumulation of  
12 various streams of investments that are depreciated.  
13 So, that's the current value of multiple projects.
- 14 Q. But, given that 1968 was 40 years ago, I'm going to  
15 assume most, if not all, of the original cost has  
16 already been depreciated?
- 17 A. I'm not an accountant. So, I'm not sure I'm best to  
18 answer that. Sorry.
- 19 Q. What you are, though, apparently is an expert on power  
20 plants?
- 21 A. I try my best.
- 22 Q. And, one of the things that we've come across here is  
23 some of the changes that are being done here, and I  
24 wanted to ask a few questions on that. The new power

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- 1 plant, with the scrubber, I should say the plant,  
2 modified with the scrubber, will require additional  
3 materials to be moved in and out of the site.

- 4 Specifically, it looks like limestone in and the waste  
5 product out. What are we talking about? I have no  
6 concept. Is this like a ton a day or 50 tons or --
- 7 A. We currently anticipate receiving a 50-car train of  
8 limestone twice per month. So, we receive coal at  
9 Merrimack Station by rail from Appalachia, in 100-car  
10 trains, and they come periodically, once or twice a  
11 week. And, we also receive coal from South America,  
12 that is shipped into Schiller Station in Portsmouth,  
13 and then trucked to Merrimack Station. We will be  
14 receiving limestone by rail. And, it will come, rather  
15 than in a 100-car train, perhaps two 50-car trains per  
16 month. So, that's how that product will come in. The  
17 gypsum, which will be the watered material out of the  
18 scrubber vessel, will be put into vehicles, into  
19 trucks, and brought to companies that make wallboard.
- 20 Q. Any idea what the quantity of that will be? How many  
21 trucks a week or whatever?
- 22 A. I'm afraid I don't happen to have that. However, just  
23 to go a little further, the truck wash facility is part  
24 of the project, because we're going to take the coal  
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- 1 trucks and bring coal to the Station. We're going to  
2 rinse them down and put gypsum in them, and let them go  
3 back to the Seacoast, rather than empty, they will go  
4 back full of gypsum, because there are two wallboard  
5 manufacturers on the Piscataquog River; one in  
6 Portsmouth and one in Newington. And, we have had  
7 initial discussions with both of them with regard to  
8 their use of this product, rather than them bringing

9 gypsum that's mined in other countries to their  
10 facility by boat.

11 Q. So, then, some of the effect is on getting rid of the  
12 gypsum issue, just simply using the trucks that would  
13 otherwise drive back someplace empty?

14 A. Yes.

15 Q. And, on the coal cars, you mentioned about 100 once or  
16 twice a week, and then you said some trucks. How many  
17 trucks approximately on a monthly or weekly basis?

18 A. Well, that varies. I'm afraid I'm not the best expert  
19 on that. On some days it could be 10 or 20 or 30  
20 trucks a day. It depends on when a cargo comes in and  
21 how quickly we want to free up the yard at Schiller to  
22 wait for another cargo. So, it varies.

23 Q. So, it takes a fairly constant stream, though? Some  
24 days it's five, some days it's 20 or --

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1 A. Yes. I would say, there are some days when we don't  
2 get any coal delivered. So, I'm not sure I could say  
3 it's constant. But there's a fair amount of trucks  
4 over the course of a month's time.

5 Q. And, going to the cooling needs, I see there's a new --  
6 I think it's called a "Service Water Pump House" there?

7 A. Yes.

8 Q. And, that's being built, and that's to supply the  
9 additional cooling water needed for the scrubber or the  
10 mixing water, whatever it's called?

11 A. Well, no, it's to apply the process water, which will  
12 then be mixed with the crushed lime in the scrubber  
13 building, where they will make a slurry, which is a

14 water with some of these fine particles of lime in it.  
15 And, that will be the material that, when the gases  
16 come into the absorber vessel, it will travel upwards,  
17 toward the chimney, and then they will be sprayed on  
18 with this material, creating the chemical reaction to  
19 remove the sulfur and the mercury. So, that water is  
20 part of that process.

21 Q. And, how much -- what's the -- how many gallons per  
22 hour or whatever?

23 A. Approximately, 900 GPM, 900 gallons per minute.

24 Q. And, the Station as it exists now, obviously, has  
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1 cooling needs.

2 A. Yes.

3 Q. Could you describe the cooling system used at  
4 Merrimack?

5 A. For both, for either Unit 1 or Unit 2, there is a  
6 building on the river's edge called a "screen house",  
7 and it pulls some river water in, which provides  
8 cooling to the turbine exhaust steam in our large  
9 condenser, and it also provides cooling for other  
10 components in the facility and a component cooling  
11 system. So, those are the other cooling needs of the  
12 plant.

13 Q. And, do you know what's the -- do you have an  
14 approximate flow rate of water for the existing cooling  
15 system?

16 A. I'm sorry, I don't happen to have that number handy.

17 Q. Well, could you just -- could you compare it to the 900  
18 GPM required for that?

- 19 A. It would be significantly larger.
- 20 Q. One of the things we learned from our last SEC project
- 21 was that clearing land tends to endanger animals. How
- 22 much land is going to be cleared as a result of the
- 23 installation of the scrubber?
- 24 A. Well, the land, there is a couple small areas of land
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- 1 that require being cleared. One will be reclaimed upon
- 2 the project being built, and I think a second one,
- 3 they're relatively small.
- 4 Q. Are we talking hundreds of square feet? Thousands of
- 5 square feet?
- 6 A. Maybe a few thousand square feet. But the bulk of it,
- 7 a great majority of the land that is being used by the
- 8 scrubber is land that was in use, and I'll say it was
- 9 in active use as part of the ongoing operations and
- 10 maintenance of the plant, especially the area
- 11 immediately south of the powerhouse. That plot of land
- 12 where the bulk of this material goes, you know, is --
- 13 as a matter of fact, the land where all of the large
- 14 structures go associated with the scrubber is all land
- 15 that had been actively being used for years. Not only
- 16 on the ground, but cranes and all kinds of activity
- 17 there. So, we're using, to a greatest extent, an
- 18 active area.
- 19 Q. And, the land that is being cleared, what is it? Is it
- 20 brush? Trees?
- 21 A. There are some brush and a few trees. We had to create
- 22 a temporary structure to do some fabrication work.
- 23 That will be reclaimed and the building and the

24 foundation removed. And, that will be put back to  
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1 natural. And, then, where we -- we had a large field  
2 where we created some parking, and some of that went  
3 into an area that was not disturbed previously, and  
4 we'll probably reclaim some of that. So, it's pretty  
5 -- it's very modest. Very modest.

6 Q. And, this is all land that was already part of the  
7 site?

8 A. It was already part of the site. And, all of this work  
9 was all done in full agreement, and with the  
10 appropriate permits with the DES, whether it be an  
11 Alteration of Terrain Permit or a Wetlands Permit, or  
12 whatever was needed, all of those were identified,  
13 reviewed, modified, and then approvals given to us for  
14 all of the work we've done.

15 Q. And, with regards to access roads, you mentioned  
16 railroads. Would there have to be any additional roads  
17 built or changes to the railroad system?

18 A. No changes to the railroad system. There will be a  
19 reconfiguration of the entrance to the plant, in order  
20 to facilitate some of the heavy equipment coming in and  
21 out, but it's very small.

22 Q. Okay. And, the upgrade, due to the new -- of the new  
23 turbine, does that require any change in transmission  
24 lines on or off -- I would say off-site?

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1 A. No. I think the only thing we're doing is we are  
2 verifying with ISO-New England that the increased

3 output of the turbine is suitable for the transmission  
4 system. We have produced that much power out of the  
5 unit in prior years, with the old turbine at times.  
6 But, since we had an operated turbine over 220 -- over  
7 320 megawatt in the summer, and with the current ISO  
8 policies, we have to formally go back and ask them to  
9 verify once again that the system can absorb and handle  
10 that, the wires can take that extra load. And, that  
11 process is going on right now.

12 Q. Kind of changing gears here a little bit. One of the  
13 issues of this "sizeable addition" is the fact that  
14 there's very little guidance from the Legislature,  
15 other than those particular words. And, as you said,  
16 you were an expert in power plants. So, one of the  
17 things I wanted to try to ask a few questions on was,  
18 let me get to the right spot here, the statute exempts  
19 power plants under 30 megawatts from Site Evaluation  
20 Commission, unless it's requested by some of the people  
21 in the area, which hasn't happened in this case, or the  
22 Committee itself were to pursue jurisdiction. So, I'm  
23 just trying to get a handle on, let's just say we had a  
24 theoretical 29 megawatt thermal power plant. Now, I'm

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1 assuming that they would have boilers, turbines,  
2 condensers, cooling systems, feedwater heaters, fuel  
3 delivery systems, exhaust stack, pollution controls, a  
4 switchyard, fuel lay-down areas, control room, you  
5 know, transmission. All that would have to be there to  
6 be associated with a 29 megawatt plant? I'm talking a  
7 thermal plant.

- 8 A. You'd have to have most or all of those components,  
9 yes.
- 10 Q. Now, you mentioned you were familiar with the Schiller  
11 plant?
- 12 A. Yes.
- 13 Q. Okay. What's the size of the Schiller wood facility,  
14 the one that burns biomass?
- 15 A. It's approximately a 50 megawatt unit.
- 16 Q. Okay. And, do you have any idea of how much fuel goes  
17 in and out of Schiller over -- I mean, how much volume  
18 of wood is required to fire that at 50 megawatts?
- 19 A. If I recall, it's 450,000 tons a year. Now, Schiller  
20 was not an additional new unit. That was a new boiler,  
21 which provided steam to an existing turbine.
- 22 Q. Right. I'm just trying to get kind of a perspective  
23 on, if the 50 megawatt plant, and then we could kind of  
24 -- if I could compare that to a 29-megawatt plant
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- 1 using, you know, gross ratios?
- 2 A. It's a 50 megawatt plant, had a very special boiler,  
3 that was a fluidized bed boiler, required its own  
4 boiler, you know, structure. It required a large wood  
5 unloading facility, wood storage facility, and other  
6 aspects and other features that were unique to  
7 wood-fired generation.
- 8 Q. But, when you say "unique to wood-fired generation",  
9 if there was a 29 megawatt wood plant that someone  
10 proposed to build, they would need the large lay-down  
11 area for storing wood. And, you know, it wouldn't be  
12 450,000 tons a year, but it would be some proportional

13 ratio of that.

14 A. It would be something proportionally less. Because  
15 we're in a finite space at Schiller, our wood storage  
16 yard is very modest. So, I would say there would be a  
17 much more expansive wood storage facility at a typical  
18 new facility that had more land. So, we are very  
19 modest with regard to that.

20 Q. And, again, as an engineer, I'm asking you, would the  
21 29 megawatt -- our theoretical 29 megawatt wood burning  
22 plant would require a cooling system?

23 A. It would required some type of cooling system, if it  
24 was a thermal plant, yes.

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1 Q. Right. And, if it was to draw water for the cooling  
2 system, as you stated earlier, of course, this is quite  
3 a bit smaller than the Merrimack plant, but a 29  
4 megawatt plant, would that be drawing substantially  
5 more, about the same, or substantially less water than  
6 the 900 gallons per minute that the scrubber unit will  
7 require?

8 A. Well, you know, I'm not sure I would venture an  
9 estimate on that. I suspect it may be similar, you  
10 know, I don't know.

11 Q. Okay. There was one other question, going back to --  
12 this was the Exhibit 7, it's the January 31st letter  
13 from Director Scott -- no, from you, to Director Scott.  
14 It's labeled "Exhibit 7", January 31st, 2008.

15 MR. IACOPI NO: It's Moving Parties 7,

16 Mr. Harrington?

17 MR. HARRINGTON: Yes. Yes.

18 WITNESS SMAGULA: I have it, yes.

19 BY MR. HARRINGTON:

20 Q. Okay. In the stuff that says "Project Overview", in  
21 that first paragraph under that, it talks again, this  
22 has been brought up before, "including the HP/IP  
23 project and associated generator repair work are  
24 necessary in order to maintain the output of MK2 and  
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1 comply with RSA 125-0:13", which is what requires the  
2 scrubber to be installed. Now, you stated earlier that  
3 the decisions were made in 2004 to pursue the turbine  
4 upgrade due to cost efficiency reasons, is that  
5 correct?

6 A. Yes.

7 Q. And, that the Scrubber Project wasn't mandated by the  
8 Legislature until after, is that correct?

9 A. Yes, the mandate was required in 2006.

10 Q. So, I'm still a little bit confused, because, not only  
11 in this particular example, but in a few others that  
12 were brought up, especially in cross, it appears that  
13 you're linking the two things together. We have some  
14 statements where they were looked at separately for  
15 pollution reasons, and which apparently made the amount  
16 of pollution you were allowed to emit more strict than  
17 if you combined them together. But, other places, with  
18 your own words, you seem to be linking them together as  
19 one in the same.

20 A. Yes.

21 Q. And, I wonder if you could provide us with a little  
22 more information as to how that all came to be. If

23 2004, it was decided to go forward based on a cost  
24 basis and reliability basis to do this; 2006 comes

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1 along, the Legislature says "you need to do the -- you  
2 have to, you don't have any option but to put in the  
3 scrubber." And, then, all of a sudden the projects  
4 become linked in some documents and other documents  
5 they're not. Could you explain that?

6 A. Yes. I don't think there's any linkage in the two  
7 projects, in my view. And, I think what -- what I had  
8 indicated earlier in this morning's discussions in  
9 testimony was that, as you've outlined, the turbine --  
10 thinking on a new replacement turbine really began --  
11 initiated with questions in 2003, and became firmed up  
12 that this was a likely path for us, and this was the  
13 path we were going to pursue in 2004. As that work  
14 proceeded, we started getting a sense of what that  
15 extra output due to efficiency could be.

16 On the scrubber discussions, we started  
17 developing some ideas that, in late 2005, that a  
18 scrubber may be a better solution path to remove  
19 mercury, because activated carbon technology wasn't  
20 working. And, at the time the Scrubber Law was passed  
21 and developed by various groups of people working on  
22 that, we -- there was a sense then that the scrubber  
23 was the solution. And, there was some discussion about  
24 the fact that the load requirements or electrical

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1 consumption requirements of the scrubber was going to  
2 be large, and, in fact, might be very similar to the  
3 turbine. So, somehow they became viewed as related,  
4 and the turbine is actually referenced in the Scrubber  
5 Law.

6                   However, as I think we tried to point  
7 out very clearly, they were conceived and developed  
8 separately, other than the fact that their outputs were  
9 similar or you could say somewhat canceling of each  
10 other. That theme, later down in the discussions, as  
11 you can see from this correspondence in 2008 and  
12 perhaps 2007, that theme of similarity, that there was  
13 some symbiosis between the two, seemed to be, in my  
14 mind, make sense. I'm an engineer. And, we were going  
15 to take power away from our customers' value by the  
16 scrubber, but, on the other hand, we had this terrific  
17 project to improve the efficiency. So, we had a good  
18 project to improve efficiency and a good project that  
19 was good for the environment and important for the  
20 state, and for other reasons. And, we felt good about  
21 the fact that one was going to offset the other.

22                   So, it really was my -- when I wrote  
23 about them, often those two things created a linkage.  
24 And, the language I chose in various letters, many of

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1 which I was asked to recite a moment ago, the language  
2 I chose, in retrospect, knowing what I know now, I  
3 wouldn't have chosen that. I would have kept them  
4 separate and talked about them separate, because that's  
5 what they were. They were separate. But they did get

6 commingled in certain paragraphs and sentences. And, I  
7 can understand how a reader would look at them as  
8 related. But that was not the intent.

9 MR. HARRINGTON: Okay. Thank you.  
10 That's all the questions I have right now.

11 CHAIRMAN BURACK: Mr. Scott.

12 DIR. SCOTT: Good afternoon,  
13 Mr. Smagula.

14 WITNESS SMAGULA: Yes. Good afternoon.

15 BY DIR. SCOTT:

16 Q. A few moments ago you were talking about the Schiller  
17 Station Northern Wood Project?

18 A. Yes.

19 Q. And, if I heard you and I understand correctly, that  
20 that included a wood yard, storage facility for wood, a  
21 tipping yard for the trucks, --

22 A. Right.

23 Q. -- a conveyor, etcetera?

24 A. Yes.

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1 Q. Those are pretty big things?

2 A. Yes. As a matter of fact, we had to, at Schiller  
3 Station, we have a active coal pile. We also have a --  
4 and we had a reserve coal pile, which is a pretty large  
5 piece of property, where we would put our backup coal,  
6 if you would, our excess coal. The Public Utilities  
7 Commission requires us at our facilities to, or they  
8 did require us, and we continue to adhere to that  
9 program and that guidance, to have a certain supply of  
10 fuel on hand, in case there's a problem with delivery

11 or a strike at the mine. So, we have a reasonable  
 12 amount of coal in inventory at both Merrimack and  
 13 Schiller, and that's why we need that large reserve  
 14 pile. We had to forgo that reserve pile at Schiller  
 15 and modify the active pile to be bigger. And, we took  
 16 that big piece of property where we had a large pile of  
 17 coal, and we modified it and actually expanded it  
 18 further to be able to accommodate enough room for  
 19 trucks to come in, trucks to back up, to unload. We  
 20 have a large structure to store a lot of our wood fuel  
 21 away -- out of the elements. And, we also have another  
 22 reserve pile of wood. So, we took that piece of  
 23 property, actually expanded it, and used it as the fuel  
 24 depot for the Wood Project.

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1 Q. And, this Committee had ruled that that was not a  
 2 "sizeable addition", correct?  
 3 A. That's my -- yes, that's correct.  
 4 Q. And, this morning we've heard a lot of talk, and where  
 5 I understand from Attorney Needleman's objection that,  
 6 while PSNH doesn't agree that volume should be  
 7 considered, I guess my question to you is this: Would  
 8 you be willing to characterize the Northern Wood  
 9 Project, the project itself and that volume, compared  
 10 to what you anticipate with this project, using similar  
 11 --  
 12 A. Well, I'm not sure I could comment on volume. But, as  
 13 a percentage of use of -- the incremental percentage of  
 14 use at Schiller Station, that was a very large use of  
 15 the remaining land that was available for that project.

16 At Merrimack Station, the Scrubber Project is a  
17 significantly smaller use of existing resources at  
18 Merrimack Station. That's -- I mean, that's the best  
19 way I would characterize it.

20 DIR. SCOTT: Thank you.

21 CHAIRMAN BURACK: Thank you. Any other  
22 questions? Any other questions? Commissioner Below.

23 CMSR. BELOW: I guess I do have a  
24 question, Mr. Smagula.

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1 BY CMSR. BELOW:

2 Q. On the Movants Number 7, in the second paragraph, where  
3 you wrote that "the balance of plant projects planned  
4 to be completed during the 2008 MK2 outage, including  
5 the HP/IP project and associated generator repair work,  
6 are necessary", I'll just parse this, "are necessary in  
7 order to comply with RSA 125-0:13, which requires PSNH  
8 to install a wet scrubber at Merrimack Station." Why  
9 did you write it in that way? Why did you link the  
10 work that you needed to do in the 2008 MK2 outage to  
11 compliance with RSA 125-0:13?

12 A. Well, I think I tried to explain our thinking, and that  
13 we kind of looked at them together. And, the turbine  
14 was referenced in the Scrubber Law, the turbine work.  
15 So, there were some natural drivers to cause them to be  
16 considered together. But, as I indicated, in my  
17 history of working on all of these projects, they were  
18 never conceived or developed or crossed paths in any  
19 way, other than the turbine is mentioned in the  
20 Scrubber Law, what we refer to as the "Scrubber Law",

21 and their outputs are about the same. So, there were  
22 some drivers that kind of caused them to come together.  
23 And, as I said, in retrospect, knowing what I know now,  
24 I would have been more careful to keep these references  
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1 separate. So, I would probably have reworded a lot of  
2 the key sentences that I was asked to read earlier, if  
3 I could.

4 Q. And, so, the reference in 125-0 to the turbine upgrade,  
5 is that reference more in the nature of an optional  
6 opportunity, as opposed to something that was being  
7 mandated by the Legislature?

8 A. Yes, in my view.

9 Q. So, would it -- you're saying you would now say -- it  
10 would be a more fair characteristic to say that nothing  
11 that was done in the 2008 MK2 outage was necessary to  
12 comply with RSA 125-0?

13 A. No. That's correct.

14 CMSR. BELOW: Okay.

15 CHAIRMAN BURACK: Mr. Normandeau.

16 BY DIR. NORMANDEAU:

17 Q. Mr. Smagula, in 2003 and '04, when you were evaluating  
18 that turbine upgrade, --

19 A. Yes.

20 Q. -- was the scrubber on the horizon at that time?

21 A. I knew nothing about scrubbers.

22 Q. So, you were making that decision before that ever was  
23 even out there?

24 A. Yes, it was even before that. Right. Yes. That's

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1 correct.

2 DIR. NORMANDEAU: That's all.

3 CHAIRMAN BURACK: Thank you.

4 Mr. Harrington.

5 MR. HARRINGTON: Just a follow-up

6 question.

7 BY MR. HARRINGTON:

8 Q. I don't know, but are you familiar with the power  
9 upgrade that was done to Seabrook Station over the last  
10 couple of years?

11 A. I have read some documents and have some knowledge, but  
12 I wouldn't consider myself familiar with it.

13 MR. HARRINGTON: Okay. Well, I'm going  
14 to -- I'm reading through, and I don't know what number  
15 this is, Mr. Iacopino, if you could help me out. It's the  
16 Motion for Declaratory Ruling, dated March 6. Is that  
17 "Movants Exhibit 1" or that's not an exhibit at all?

18 MR. IACOPI NO: No, that's just the  
19 Motion.

20 MR. HARRINGTON: Okay, the Motion.

21 BY MR. HARRINGTON:

22 Q. Reading from the Motion then, on the Attachment D, and  
23 I'm just going to read this to you so you'll get --  
24 this an idea of what that upgrade was. It was -- the

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1 modification "includes moisture separator reheaters,  
2 high pressure turbine, condensate pump impellers,  
3 feedwater water heater control valves. All of this  
4 equipment is at the Seabrook site within the plant."

5 And, "No modifications to the Seabrook substation or  
6 any offsite locations are contemplated by the proposed  
7 upgrade."

8 And, in response to that, on January 26,  
9 '04, DES granted that declaratory judgment that it was  
10 non-jurisdictional to the Site Evaluation Committee,  
11 saying "The Committee further understands that any and  
12 all construction necessary to the proposed upgrade will  
13 occur within the footprint of the existing facility,  
14 thus there will be no impact on the orderly development  
15 of the region, there will be no adverse -- unreasonable  
16 adverse effects on aesthetics, historic sites, air,  
17 water quality, and the natural environment or the  
18 public health and safety."

19 So, as far as the turbine modification  
20 itself went, would you be able to state that "any and  
21 all construction necessary to the proposed upgrade  
22 occurs within the footprint of the existing facility"?  
23 We're talking just the turbine upgrade.

24 A. At Merrimack Station?

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1 Q. Yes.

2 A. Yes. We just replaced the turbine alone. I believe  
3 that project was more extensive. The moisture  
4 separator reheaters are large pieces of equipment  
5 located on the turbine deck, which are a second and a  
6 third element, well beyond just the turbine. And,  
7 those are pretty extensive. And, we did not do any  
8 other valve work or impeller work on any other pumps to  
9 accommodate it. So, I think that's a much more

10 expanded scope with regard to all the equipment that  
11 had to be worked on.

12 MR. HARRINGTON: Okay. Thank you.

13 CHAIRMAN BURACK: Other questions? Mr.  
14 Campbell.

15 CSMR. CAMPBELL: I don't have a  
16 question, but I wondered, as a point of privilege, we  
17 could just go off the record a minute?

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

20 CHAIRMAN BURACK: Commissioner Campbell,  
21 you can be assured that I had told folks that you had an  
22 important engagement that had detained you.

23 CSMR. CAMPBELL: Okay. Thank you.

24 CHAIRMAN BURACK: I do have a few

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1 questions for you, Mr. Smagula, if I may.

2 WITNESS SMAGULA: Yes. Sure.

3 BY CHAIRMAN BURACK:

4 Q. Looking at RSA 125-0:13, IX, there is a provision there  
5 that calls for PSNH to file some reports with the  
6 legislative committees. Are you familiar with that  
7 section?

8 A. I am, yes.

9 Q. Do you recall whether any such reports have been filed?

10 A. Yes. Reports -- Two reports have been filed as -- at  
11 this point, I believe. And, I think the next report is  
12 due next week.

13 Q. Very good. It does say "owner shall report by June 30,  
14 2007, and annually thereafter."

- 15 A. It will be there on Tuesday.  
16 Q. Very good. Okay. Thank you. Have either of those  
17 documents been submitted for the record in this matter?  
18 A. I don't believe so.  
19 Q. Okay. Again, I don't know if there would be anything  
20 in them of use to the Committee. But if you --  
21 A. We provide a summary of the work that's gone on and  
22 schedule and scope.

23 CHAIRMAN BURACK: If you would provide  
24 copies, I think that may be helpful.

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- 1 WITNESS SMAGULA: Okay.  
2 CHAIRMAN BURACK: Okay. We'll go ahead  
3 and reserve exhibit numbers for those now, if we could,  
4 and including if you would, go ahead and submit the one  
5 that will be filed this coming Tuesday as well please,  
6 just so we have those. Those would be Exhibits 12 -- I'm  
7 sorry. You can call them "Committee A", "B", and "C"  
8 would be fine.

9 (Committee Exhibits A, B, and C were  
10 reserved.)

11 BY CHAIRMAN BURACK:

- 12 Q. Another question for you here. Are you familiar with  
13 what permitting or certification processes may have  
14 occurred for the original Merrimack Station  
15 construction in the late '60s?  
16 A. I'm a long-time employee, but I'm afraid I don't go  
17 quite that far, sir.  
18 Q. So, I gather then you would not know whether or not  
19 Merrimack Station was certified pursuant to RSA 162-F

20 -- or 162-H, in their prior --

21 A. I'm sorry. I'm not aware of that information.

22 CHAIRMAN BURACK: Okay. Thank you. I  
23 might ask counsel, if you could advise the Committee of  
24 that, and I don't know if Mr. Allwarden would happen to  
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1 know whether this facility was certified or was not  
2 certified?

3 MR. ALLWARDEN: Well, Mr. Chairman, my  
4 understanding is it was not, because it came into  
5 existence and operation in '68, and I don't think the  
6 Scrubber Law in its first iteration -- or, the Siting Law  
7 in its first iteration was enacted until the early '70s,  
8 '71, '72, in connection with the Seabrook Project. So, my  
9 understanding is it has not been certified by the  
10 Committee previously.

11 CHAIRMAN BURACK: If I may, while you're  
12 standing, Mr. Allwarden.

13 MR. BACKUS: That is, in fact, correct.  
14 I think the Legislature passed the Site Evaluation Law  
15 that you're administering in 1969, and the first  
16 application was in 1972 for Seabrook.

17 CHAIRMAN BURACK: Thank you very much,  
18 Attorney Backus.

19 MR. BACKUS: And, I was there at that  
20 time.

21 CHAIRMAN BURACK: It's always --  
22 (Laughter.)

23 CHAIRMAN BURACK: I won't tell you how  
24 old I was at the time. But it's nice to have some good

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1 institutional memory here. Thank you. If I may, Attorney  
2 Allwarden, do you -- I know that when the letter that you  
3 signed to the Committee in I believe it was 2003 or 2004  
4 relating to the Schiller Station, you asserted in that  
5 letter that the Schiller Station was grandfathered, it was  
6 not subject to this statute RSA 162-H, because its  
7 construction predated the enactment of the statute. Am I  
8 correct in my understanding that you are not making that  
9 argument now, with respect to Merrimack Station?

10 MR. ALLWARDEN: That's correct. I did  
11 not raise that in our objection, in part, because of the  
12 reaction to that argument during the Schiller proceeding.  
13 I think there was -- the sentiment of the Committee at  
14 time, as expressed to me, was that that argument did not  
15 seem to carry much weight with the Committee, as what was  
16 being considered at that time was not the original  
17 construction, but, in fact, an addition to the facility  
18 which was under consideration.

19 So, based on that, you know, prior  
20 message from the Committee, we have not raised that issue  
21 here. And, we are, in fact, obviously, dealing with  
22 something new, as opposed to the original certification.  
23 If that answers your question?

24 CHAIRMAN BURACK: That's very helpful,  
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1 and I appreciate that, that clarification.

2 BY CHAIRMAN BURACK:

3 Q. Mr. Smagula, if I may ask you this. Were you involved  
4 in decision-making relating to what permits or  
5 approvals would be sought for this Scrubber Project?  
6 A. Yes. We spent a lot of time trying to make sure we had  
7 a plan to get all the necessary permits required to  
8 meet our schedule. And, we started with what we wanted  
9 to do and when we wanted to do it, and we backtracked  
10 ahead of that, determined when we would apply for a  
11 Temporary Air Permit or when we would apply for  
12 Alteration of Terrain or any Wetlands or any other  
13 local permits. And, so, we had a very thorough plan  
14 involved with the involvement of a lot of key people.  
15 And, I think, at that time, we tried to communicate to  
16 the various groups who we were going to be working with  
17 or applying with that we were going to be coming. So,  
18 we were -- we had early meetings with the Town of Bow,  
19 with -- we had a large meeting in May of last year with  
20 all of the various DES departments, to alert them as to  
21 the fact that we would be coming to them soon with  
22 various permits. We talked about which ones and we  
23 talked about when we would be coming. So, we tried to  
24 inform all of the relevant groups, FAA, Army Corps,

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1 etcetera, that this project was important, and we were  
2 very organized, and we would be coming to them on  
3 certain dates for certain things. So, there was an  
4 awareness of our full -- the full breadth of all the  
5 things we had to do.  
6 Q. Were you likewise involved with decisions related to  
7 permitting for the Schiller Station?

- 8 A. I was, yes.
- 9 Q. Okay. Can you help us understand on what basis PSNH  
10 made the decision then to seek a jurisdictional  
11 determination with respect to the Schiller Station  
12 upgrades with the Site Evaluation Committee, but did  
13 not choose to do so with respect to the Merrimack  
14 Station scrubber matter with the Site Evaluation  
15 Committee?
- 16 A. I'm not sure -- I was involved with all of the process.  
17 With regard to that determination, however, that was --  
18 other people were involved. And, I think Schiller  
19 Station was more the installation of something new that  
20 we were initiating. That was good for the environment  
21 and also good for our customers, and the idea was  
22 developed by us.

23 Whereas, on this project, it was as a  
24 result of legal requirements and a law. So, we were  
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1 told what to do. And, it was determined that it was in  
2 the public interest, and the other specific references  
3 and phrases that have been said by others who perhaps  
4 are more familiar with the law. But -- So, the  
5 projects were different from that developmental stage.  
6 And, I think, for many reasons, those requirements that  
7 were required of us, and we are a regulated utility, we  
8 work very hard to do what's right. And, if a law says  
9 we're going to do something, that's pretty clear to us.  
10 So, I probably should be expanding that further with  
11 more fancy arguments, but I'll let some of my  
12 associates at the table there help me there. But, in

13 my view, as my -- as a contributor, not a driver to  
14 that decision, that's how I looked at it.

15 CHAIRMAN BURACK: Thank you. Are there  
16 other questions from the Committee for Mr. Smagula?

17 (No verbal response)

18 CHAIRMAN BURACK: Okay. Just want to --  
19 I had made certain assumptions here with respect to the  
20 Moving Parties, that you all have divided up your  
21 cross-examination duties, and that you don't have  
22 additional questions for Mr. Smagula at this time?

23 MR. PATCH: That's right.

24 CHAIRMAN BURACK: Okay. Thank you.

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1 Then, we'll turn things to Attorney Needleman.

2 MR. NEEDLEMAN: Just a few quick  
3 questions. Before I forget, I'd like to just make sure  
4 that we mark this chart that we prepared this morning. We  
5 don't have to do it at the moment, but I just want to make  
6 sure, before the hearing closes, that we do that.

7 CHAIRMAN BURACK: Well, why don't we go  
8 ahead and do that right now, if we could. We should  
9 probably mark that -- we'll assign it the next number in  
10 the sequence, which is --

11 MR. IACOPI NO: PSNH number, I think it's  
12 5. I'm not --

13 MR. PATNAUDE: I don't think it's 5. I  
14 have a "5".

15 MR. ALLWARDEN: I think it's 6.

16 CHAIRMAN BURACK: You think it's 6?

17 MR. PATNAUDE: Yes, I think it's 6.

18 CHAIRMAN BURACK: Okay. We will mark  
19 this as "PSNH Exhibit 6".

20 (The chart, as developed by Atty.  
21 Needl eman and Witness Smagula, was  
22 herewith marked as PSNH Exhibit 6 for  
23 identification.)

24 CHAIRMAN BURACK: Excuse me just a  
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1 moment, Attorney Needl eman.

2 MR. HARRINGTON: I just have one more  
3 follow-up question, if it's possible, before you start?

4 CHAIRMAN BURACK: Would you mind,  
5 Attorney Needl eman? Thank you.

6 BY MR. HARRINGTON:

7 Q. It had to do with the discussions by the Chair on the  
8 reports to the Legislature. And, this will be a  
9 multiple part question, I guess. In those reports, I'm  
10 assuming there was no mention that you didn't file with  
11 the -- "you", meaning "Public Service", did not file  
12 with the Site Evaluation Committee?

13 A. I don't recall. I was not at the last briefing. I  
14 don't recall that being the case. And, these reports,  
15 we provide an outline and we provide a summary  
16 discussion about all the topics that we outline. And,  
17 it's not a 20-page written volume. It's an update  
18 based on an outline, and we receive questions, so the  
19 Committee feels fully informed and fully up-to-date,  
20 and asks all the questions they want.

21 Q. So, based on those reports or on anything else, have  
22 members of the Legislature contacted you and asked why

23 that you hadn't filed with the SEC --

24 A. No.

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1 Q. -- or felt that you should have?

2 A. To my knowledge, there's been no other parties that  
3 have asked that question of us.

4 MR. HARRINGTON: Thank you. Sorry to be  
5 out of order there, Mr. Chairman.

6 CHAIRMAN BURACK: Not a problem. Thank  
7 you. Attorney Needleman.

8 MR. NEEDLEMAN: Thank you.

9 REDIRECT EXAMINATION

10 BY MR. NEEDLEMAN:

11 Q. Mr. Smagula, a few minutes ago Mr. Scott was asking you  
12 about the Schiller Project. And, he was drawing some  
13 comparisons between the two. And, he observed that, in  
14 the case of the Schiller Project, this Committee found  
15 it wasn't a sizeable addition. Do you recall that, on  
16 Page 17 of our objection, we actually calculated what  
17 the square footage increase of the Schiller Project  
18 was?

19 A. I recall that you did that, yes.

20 Q. Do you remember what that number was?

21 A. I think I do. But I won't --

22 Q. I can give it to you, if you don't.

23 A. Is it 43? No.

24 CHAIRMAN BURACK: I'm sorry. The

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1 document that you're referring to, Attorney Needleman?  
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2 MR. NEEDLEMAN: I'm referring to the  
3 objection that we filed in this case.

4 CHAIRMAN BURACK: And, the date of that  
5 objection is?

6 MR. IACOPI NO: April 1st.

7 CHAIRMAN BURACK: April 1st.

8 BY MR. NEEDLEMAN:

9 Q. And, on Page 17 of that objection, we did a calculation  
10 on the increase in size at Schiller. And, what was  
11 that increase?

12 A. The increase was 28 percent.

13 Q. Okay. Thank you. Now, when Ms. Hoffer was examining  
14 you, she asked you a question related to PUC Docket  
15 08-145, and to positions that PSNH was taking in that  
16 docket. Do you recall that?

17 A. Yes.

18 Q. I wasn't prepared to do this, so I don't have copies of  
19 this. But what I have in front of me, which I'll give  
20 to you in a moment, is a portion of a January 16th,  
21 2009 transcript before the PUC involving a prehearing  
22 conference in that docket. And, the portion of the  
23 transcript that I want you to look at pertains to  
24 comments from Mr. Bersak.

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1 A. Yes.

2 Q. Who is Mr. Bersak?

3 A. Mr. Bersak is Associate Counsel with our company, and  
4 is responsible for our Legal Department.

5 Q. Okay. And, I want you to read what Mr. Bersak said in  
6 this highlighted section on Page 25 and 26, if you

- 7 would please.
- 8 A. Yes. Sure. "Let me clarify one thing that seems to be  
9 of some confusion today. That is the turbine  
10 replacement part of the Scrubber Project" -- or, I'm  
11 going to restart again.
- 12 "Let me clarify one thing that seems to  
13 be of some confusion today is, is the turbine  
14 replacement part of the scrubber project? The answer  
15 is "no", it is not. We do not need a turbine to put  
16 the scrubber in. The scrubber will work just fine with  
17 old turbine. Are they related? Yes, because they're  
18 both being done at Merrimack Station, and provisions of  
19 the Scrubber Law apply to the installation of the  
20 [new?] turbine, but it's not part of that scrubber  
21 project." You want me to continue?
- 22 Q. Only the highlighted portion.
- 23 A. Well, I'll continue.
- 24 Q. Yes. Please.

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- 1 A. "Mr. Peress is correct that the Legislature did not  
2 mandate the installation of a new turbine. But the  
3 Legislature did give us permission to install or make  
4 capital investments at the station that would reclaim  
5 some of the lost generating capability that will be  
6 caused by the parasitic load of the scrubber. So,  
7 although it is not part of the scrubber project, the  
8 turbine clearly is covered by the Scrubber Law."
- 9 Q. Thank you. During Mr. Moffett's cross-examination of  
10 you, he introduced two new exhibits, Exhibits 8 and 9,  
11 that dealt with the volumetric comparisons between the

12 existing structures at Merrimack and the Scrubber  
13 Project. Do you recall those?  
14 A. I do.  
15 Q. And, you expressed the view at various points that  
16 there were some inaccuracies in those, is that correct?  
17 A. Yes.  
18 Q. Is it your view that there are inaccuracies, errors,  
19 and omissions in those documents?  
20 A. Yes. It is -- I think it was an attempt to try to  
21 create some type of volumetric calculation. Some of  
22 the numbers used in the math I believe were incorrect.  
23 A number of assumptions made there were incorrect. A  
24 number of buildings were omitted from the existing  
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1 facility. And, there were just quite a few different  
2 reasons why the assumptions, and even certain other  
3 listings of factors were missing. Another thing is  
4 there were a lot of buildings that were removed and  
5 they weren't accounted for either -- in any way,  
6 whether they were being removed or whether they were  
7 being replaced. So, I'm an engineer, and I don't have  
8 to have perfection. But this, I believe, does not  
9 stand up, in my mind, to anything that resembles a  
10 reasonable comparison.  
11 Q. Based on your knowledge of Merrimack Station and the  
12 Scrubber Project, do you believe that those exhibits  
13 are factually accurate?  
14 A. No.  
15 Q. You were also asked a question about the replacement  
16 for the -- You were also asked a question about the

17 depreciated value of Merrimack Station. And, an  
18 observation was made, I believe, that the Scrubber  
19 Project is about five times the cost of that  
20 depreciated value. Do you recall that?

21 A. I do, yes.

22 Q. Do you have any sense, as you sit here today, of what  
23 the replacement cost of all of Merrimack Station would  
24 be if it were built from scratch?

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1 A. Well, if you read trade journals, and you look at other  
2 references, and you talk to various engineering  
3 companies that build power plants, you I think would  
4 have an -- to rebuild a facility that generates the  
5 power that Merrimack does would cost over \$2 billion.  
6 I don't know whether it's 2.4 or 2.3, 2.1, but it's a  
7 huge amount of money.

8 MR. NEEDLEMAN: Thank you. No further  
9 questions.

10 CHAIRMAN BURACK: Thank you very much.  
11 Mr. Moffett.

12 MR. MOFFETT: Mr. Chairman, I would  
13 appreciate a chance for some very brief recross on the  
14 second to the last set of questions that Mr. Needleman  
15 asked.

16 CHAIRMAN BURACK: I will --

17 CMSR. BELOW: I have a question, too,  
18 that occurred to me, that I don't know, but, if I could  
19 ask that now or after the recross?

20 CHAIRMAN BURACK: Why don't you go ahead  
21 and ask your question, and then we'll hear the recross.

22 CMSR. BELOW: Just a moment.

23 BY CMSR. BELOW:

24 Q. Back on the Exhibit 9, Movants Exhibit 9, --

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1 A. I don't know which one that is.

2 MR. IACOPI NO: It's the volumetric.

3 WITNESS SMAGULA: Oh, yes. Okay. Got

4 it. That's for the new scrubber, right?

5 CMSR. BELOW: Yes.

6 WITNESS SMAGULA: Okay. Got it. Yes.

7 BY CMSR. BELOW:

8 Q. Do you know what the diameter of the new chimney is

9 roughly at the base or at the top?

10 A. It's 40 feet at the base and 40 feet at the top.

11 Q. Okay. So, on that Exhibit 9, it indicates the area of  
12 the chimney as "5,573 square feet".

13 A. I think that's looking at the foundation of the  
14 chimney.

15 Q. Right.

16 A. It's not the chimney itself, I think, but that's data  
17 we gave them. So, when we looked at the chimney, we  
18 said that there has to be a very big foundation. It's  
19 actually cement that's about 8 feet thick. And, so  
20 that the chimney is built on it, but it comprises a  
21 space that's bigger than 40 feet.

22 Q. Right. So, when you were measuring the site areas --

23 A. Right. So that, when you do the volume calculation,  
24 the volume here is not of the physical chimney, it's a

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1 multiplication of the base of the chimney, which we  
2 provided as the amount of space that the chimney  
3 consumes. But the actual chimney itself would be  
4 significantly less than the volumetric calculation  
5 here.

6 CMSR. BELOW: Okay. Thank you.

7 CHAIRMAN BURACK: Thank you, Mr. Below.

8 Attorney Moffett, care to recross?

9 MR. MOFFETT: Yes. Just very briefly,  
10 Mr. Smagula.

11 RECROSS-EXAMINATION

12 BY MR. MOFFETT:

13 Q. I want to distinguish between Moving Parties Exhibit 8,  
14 which is the size of the major existing Merrimack  
15 Station structures, --

16 A. Yes. I've got it here. Yes.

17 Q. This one right here.

18 A. Yes.

19 Q. -- and Moving Parties Exhibit 9, which is this one  
20 right here.

21 A. Okay.

22 Q. And, I want to come back in just a moment to talk about  
23 the issue of the new chimney, which Commissioner Below  
24 waged. And, I think I understand what he was asking,

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1 and your answer, and I get that. I understand that  
2 that have may be significantly overstated.

3 CHAIRMAN BURACK: Mr. Moffett, I'm sorry  
4 to interrupt you. I just -- I'm not sure that your

5 reference to exhibit numbers was accurate with respect to  
6 these two documents.

7 MR. MOFFETT: Oh, I'm sorry. Excuse me.  
8 You're right. This is Exhibit -- the graphic depiction is  
9 Stipulated Exhibit B --

10 CHAIRMAN BURACK: Thank you.

11 MR. MOFFETT: -- for the Merrimack  
12 Station 2008. And, the graphic depiction of Merrimack  
13 Station after the Scrubber Project will be completed is  
14 Stipulated Exhibit D. And, I think I may have confused  
15 the issue by referring to our Moving Parties Exhibit 8.

16 CHAIRMAN BURACK: Yes.

17 MR. MOFFETT: Which really relates to  
18 Stipulated Exhibit B, and Moving Parties Exhibit 9, which  
19 relates to Stipulated Exhibit D. Okay?

20 CHAIRMAN BURACK: Thank you.

21 BY MR. MOFFETT:

22 Q. So, I want to come back for a moment, Mr. Smagula, --

23 A. Okay.

24 Q. -- to Moving Parties Exhibit 8, which is the "Size of  
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1 Major Existing Merrimack Station Structures".

2 A. Right.

3 Q. Now, just to be clear, and not to play games about it,  
4 we're perfectly happy acknowledging that there are  
5 going to be some errors and inaccuracies in here. And,  
6 we went through some of them this morning. Okay?

7 A. Uh-huh.

8 Q. But I would like to ask you this question. Am I  
9 correct in understanding, as you go down this list of

10 structures in Moving Parties 8, to the extent that we  
11 have erred, am I inaccurate in understanding from your  
12 testimony this morning that we would have erred on the  
13 side of overstating the size of the existing structures  
14 of Merrimack Station that are shown here on Stipulated  
15 Exhibit B?

16 A. In some cases, yes, I think.

17 Q. In some cases, --

18 A. In some of the ones that -- some of the ones that I've  
19 had time to assess, --

20 Q. Right.

21 A. -- I'd say "yes", such as the boiler island, etcetera.

22 Q. Maybe by quite a bit. I mean, your point about the MK2  
23 structure --

24 A. Yes.

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1 Q. -- and how much of it was at a much lower level, and  
2 that accounts for a large part of this. So, to the  
3 extent that these figures are too high, we've  
4 overstated the volume of existing structures in Moving  
5 Parties 8. Am I correct about that?

6 A. Yes.

7 Q. Okay. Now, I'd like to go back to Moving Parties  
8 Exhibit 9, which relates to Stipulated Exhibit D, which  
9 is a graphic depiction of the new features for the  
10 Scrubber Project.

11 A. Yes.

12 Q. And, I'd just like to -- I'd just like to pursue this a  
13 little bit. Now, we talked this morning about a couple  
14 of items in the FGD system, which is the first

15 component of the Scrubber Project. And, we established  
16 that four, maybe five -- sorry, five of those six  
17 storage tanks were lower than 51 feet.

18 A. Uh-huh. Yes.

19 Q. And, so, to that extent, those figures overstate the  
20 dimensions and the volume of five of the six storage  
21 tanks, for what that's worth. I mean, you know, --

22 A. Yes.

23 Q. -- given the size of those structures in comparison  
24 with the size of some of the other features here, okay?

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1 Now, I think Commissioner's Below's argument -- or, not  
2 "argument", excuse me, Commissioner Below's question is  
3 a more relevant one. And, you know, I have to say,  
4 frankly, that when we asked for the base area of the  
5 new chimney, I thought we were getting the base area of  
6 the new chimney?

7 A. We gave you that, the base area of the new chimney.

8 Q. It wasn't -- okay.

9 A. Okay.

10 Q. But, so I understand that that would have to be  
11 recalculated. And, I'm happy to have that  
12 recalculated, okay? Do you feel that you could do that  
13 right now for us?

14 A. I could, however, you know, I think --

15 Q. I wish you would. Can we give you a calculator?

16 A. Well, I would have to remember some math. But I think  
17 the point that I made is that there are a number of  
18 assumptions here. And, when we provided the data in  
19 response to the question, we were very -- we worked

20 very hard and we tried to be very specific, and we  
21 tried to be very thorough and factual and correct.  
22 And, when we talked about the square footage of these  
23 facilities, we provided it to you. We provided the  
24 height. We gave you the highest facility -- component  
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1 in that complex of structures. I think, knowing what  
2 has been done with that data, of creating a detailed  
3 volumetric assessment, if that was the question, we  
4 would have given additional -- it would have taken more  
5 time, certainly, it would have taken a lot more time,  
6 but we would have then provided all of the pieces so  
7 that a volumetric calculation could be performed. But  
8 that was so far off the understanding of anything  
9 relevant here that we never thought that that would  
10 have any basis, otherwise we would have tried to answer  
11 the -- develop the Stipulation differently. Because we  
12 asked for the footprint and we gave you the footprint,  
13 we asked for the height of the tallest component, we  
14 gave you the height of the component.

15 So, I want to be -- I want to be real  
16 clear that there was no effort on our part to do  
17 anything other than give you very precise answers to  
18 the questions asked. And, I don't want there to be any  
19 feeling as though we were trying to be odd in how we  
20 gave the data. I think the data is being used in an  
21 odd way.

22 Q. Okay. Fine. I understand that's your testimony.

23 A. Yes.

24 Q. Were you here this morning --

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1 A. I was here this morning.

2 Q. -- when Mr. Needleman acknowledged that we -- that the  
3 Moving Parties had asked PSNH for the volumetric  
4 computations on both sets of structures, the sets of  
5 structures for the existing station and the structures  
6 for --

7 A. Would you repeat the question.

8 Q. Were you here this morning when Mr. Needleman  
9 acknowledged that we had asked -- the Moving Parties  
10 had asked PSNH for the cubic feet dimensions of these  
11 various structures?

12 A. No. Well, I was here, but I don't actually recall  
13 hearing that. But I'm assuming he did say it.

14 Q. I'm sure the record will show that he acknowledged  
15 that.

16 A. Okay. I'm sure, if he said it --

17 Q. So, it's not that we didn't try to get this  
18 information, --

19 A. Okay.

20 Q. -- it's that PSNH refused to give it to us, all right?  
21 What we did get from you -- What we did get from you  
22 were square footage computations which --

23 CHAIRMAN BURACK: Attorney Moffett, is  
24 there a particular question here? We're getting pretty

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1 argumentative here. And, I just, if there's a question,  
2 let's ask the question.

3 MR. MOFFETT: All right.  
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4 CHAIRMAN BURACK: But let's get to that  
5 please.

6 MR. MOFFETT: Thank you. I'll take it  
7 down a notch.

8 BY MR. MOFFETT:

9 Q. I guess I'd still like to pursue the question of  
10 whether you can give us a quick calculation of the  
11 actual volume of the new chimney? If that's the  
12 incorrect figure for the base area of the silo, can we  
13 get the base area of the silo from you?

14 A. It's a 40 foot diameter.

15 Q. How much?

16 A. It's a 40 feet diameter.

17 Q. You're going to be better with math than I am, okay?  
18 It was always my weak suit in school. Can you just do  
19 a quick calculation based on the diameter of what the  
20 base area for the chimney would be?

21 A. (Witness calculating).

22 MR. HARRINGTON: It may help, I have a  
23 calculator.

24 WITNESS SMAGULA: Oh. Okay.

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[WITNESS: SMAGULA]

1 MR. HARRINGTON: The square footage, if  
2 you have a 40 foot circle, is 1,256.

3 WITNESS SMAGULA: All right.

4 MR. MOFFETT: 1,256. Okay.

5 WITNESS SMAGULA: Times height.

6 BY MR. MOFFETT:

7 Q. Would you accept then, Mr. Smagula, that the volume of  
8 that structure would be 1,256 feet times 445 in height,

9 or about 558,920 square feet?

10 A. That seems reasonable.

11 Q. Okay.

12 CHAIRMAN BURACK: I'm sorry, what was  
13 the number you came to?

14 MR. MOFFETT: 558,920 square feet. And,  
15 if I may, Mr. Chairman, we would stipulate that that  
16 number should be substituted as the correct number, in  
17 place of the number that's shown on Movants Exhibit 9,  
18 which says "2,479,000". So, it's approximately 20 percent  
19 of the figure that we had calculated as the cubic feet of  
20 the new chimney.

21 BY MR. MOFFETT:

22 Q. Now, Mr. Smagula, let's just pursue this.

23 A. You know, I guess I'll, you know, --

24 Q. I'm sorry.

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1 A. I'll assume that number is right, if the math is  
2 correct, I guess. I didn't do it. But it's a lot  
3 less, so it's moving in the right direction.

4 Q. I'm relying on Mr. Harrington as much as you are.

5 A. Okay. I'm with you.

6 MR. HARRINGTON: Now you're in trouble.

7 BY MR. MOFFETT:

8 Q. Let's pursue a couple of these other things. Now, we  
9 talked about the waste water treatment building, both  
10 the building and the equalization and sludge tanks.  
11 This is Item 4 on Moving Parties 9. And, that would be  
12 down here [indicating], right?

13 A. Yes.

14 Q. Now, I acknowledged when we were talking about it, that  
15 there is a very slight peak in the roof here. I don't  
16 think, frankly, it amounts to much. But, if you think  
17 it does, I'd be happy to take another number that you  
18 might suggest as an average of the height of that  
19 building. Do you want to give it to me?

20 A. Well, I mentioned the peak when we talked earlier in  
21 your morning discussion about the existing warehouses.  
22 I didn't bother to mention the peak in other things,  
23 because I thought it was just understood that you were  
24 making your best effort, even though it was not a

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1 reasonable effort. I don't mean to diminish it, but it  
2 was some reasonable effort, even though it wasn't as  
3 precise as perhaps you were trying to strive to. So,  
4 we can go over a lot of these facts and iterative  
5 comments, if you wish. So, I'm not prepared to provide  
6 you with any other dimensions, other than what we've  
7 provided you.

8 Q. Okay. All right. Then, let me just ask you. Would  
9 you concede that this is a very small peak in this  
10 roof? The roof is almost flat.

11 A. It looks, from this angle, to be almost flat.

12 Q. Okay.

13 A. Yes.

14 Q. And, there's really no question about the volume of the  
15 equalization and sludge tanks here, is there?

16 A. Well, the sludge tank, I'll have to look back at what  
17 we provided you. Well, there is, actually. The  
18 equalization and sludge tanks, there are four tanks.

- 19 And, the area that's provided for them was "3,145".  
20 That's the footprint of the foundation for the tanks.  
21 Q. Okay.  
22 A. It's not the volume of all of them.  
23 Q. All right.  
24 A. So, you know, if we're -- and I didn't comment on your  
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- 1 assessment, because I understood that was your  
2 judgment. But it -- and, that really, the examples  
3 you're continuing to seek to clarify are exactly the  
4 basis upon which earlier this afternoon I made the  
5 comments that I can't agree with your calculations,  
6 because, I understand your assumptions and your  
7 approach, but the math is, if you're calculating  
8 volume, you're calculating volume. There is only one  
9 way to calculate volume, you do it by all of the  
10 geometry. And, from what you had, you did what you  
11 did. But there were a number of assumptions, if we're  
12 going to get into a volume calculation, that --  
13 Q. Uh-huh.  
14 A. -- would require you to make a number of adjustments.  
15 Q. Uh-huh.  
16 A. So, yes. In response to your question, and I'm sorry  
17 to go off track, but I'm trying to explain my thinking.  
18 Q. Uh-huh.  
19 A. There would be a very small adjustment, but I'm not in  
20 a position here to judge what that is.  
21 Q. Okay. Fine. And, I think, and just for the sake of  
22 clarity, I think we can acknowledge that there may be  
23 those kinds of discrepancies throughout here.

24 A. Yes.

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1 Q. But I want to come back and talk about why we did this  
2 for a second, because I think it's important for the  
3 Committee to understand that we didn't get the  
4 information we asked for, we did the best with what we  
5 could. We felt that volume was a significant measure  
6 of size, if you're talking about the size of  
7 three-dimensional structures. And, I'm willing to  
8 concede, for the sake of the argument, that we could  
9 knock off 2 million cubic feet right away on the bottom  
10 line, because of the discrepancy on the new chimney,  
11 and another 500,000 cubic feet. So, I'd settle for,  
12 say, 9 million cubic feet. And, I understand that's --  
13 you're not going to agree to that, and I don't expect  
14 you to.

15 A. Well, I understand you could sell that. But I think  
16 that's concentrating on the scrubber. What I commented  
17 on earlier was that there are a tremendous amount of  
18 omissions with the existing Merrimack Station  
19 calculation, that take, in my view, the calculated  
20 amount, which would be subject to some review of  
21 20 million, --

22 Q. And, you made that --

23 A. -- and I think it's important to recognize that the  
24 coal yard is -- has, from a volumetric basis, at least

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1 double that on top of it.

2 Q. Yes.  
3 A. We have a cooling canal, which has equipment in it. We  
4 have wells.  
5 Q. Yes.  
6 A. We have railroad. We have roadways. We have lay-down  
7 areas.  
8 Q. Yes.  
9 A. We have septic systems, etcetera, etcetera. So, we can  
10 adjust these numbers, and I'm not opposed to that with  
11 you, sir. But the amount of omissions on the other  
12 document is very critical to try to create a  
13 comparative assessment of relative numbers.  
14 Q. Okay. I accept all of that, and you made that point  
15 this morning.  
16 A. Yes.  
17 Q. And, I'm perfectly content to leave it to the Committee  
18 to decide --  
19 A. Good.  
20 Q. -- how it wants to weigh that, you know, that, the  
21 testimony on those different points. I would just say  
22 this. When we did the calculation, based on the  
23 assumptions that we had to work with, which came from  
24 you, we concluded, being generous to PSNH, on the  
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1 dimensions of the existing three-dimensional  
2 structures, on Stipulated Exhibit B, --  
3 A. The coal pile is a three-dimensional structure, sir.  
4 CHAIRMAN BURACK: Attorney Moffett, if I  
5 may, you're giving us a lot of testimony here, we're not  
6 getting a lot of questions.

SEC-0626.txt  
MR. MOFFETT: Okay.

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CHAIRMAN BURACK: Do you have any  
further questions for Mr. Smagula?

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MR. MOFFETT: No, I just want to make  
the point that, if we did that calculation, being generous  
to PSNH on the first exhibit, we show that the Scrubber  
Project would have been about 56 percent of the volume of  
the major existing three-dimensional structures on this  
project. Now, if this is off by a couple of million cubic  
feet, I'm happy to concede that that might come down a  
bit. But I think that, in terms of orders of magnitude,  
it defies imagination that -- that this is not seen as a  
"sizeable addition". That's the only point we were  
making. So, with that, I'll sit down.

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CHAIRMAN BURACK: Attorney Moffett,  
thank you very much. I'm looking at the clock here. And,  
thinking that it probably would be helpful, and I don't  
know if counsel are prepared to do this, if each counsel

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wants to take a few minutes to give some very brief  
closing arguments. And, in fact, Attorney Moffett, I  
think we've already heard from you here some of your  
closing. But, having said that, I think it might be  
helpful to do that. I want to just, before we turn to  
that, get a sense from the parties, and also from the  
members, in terms of what your expectations are, whether  
you were expecting that there was anything else you wanted  
to brief or not. And, you might mull that for a moment.  
And, the question I have for the members of the Committee  
is, do you feel that you are ready to start deliberating

12 or is there any other information that you feel you need  
13 or any particular matters you feel you need to have  
14 addressed in order for us to be able to deliberate here?

15 CSMR. CAMPBELL: I'm ready to  
16 deliberate.

17 CHAIRMAN BURACK: Mr. Scott.

18 DIR. SCOTT: Mr. Chair, just to clarify.  
19 We'd be deliberating on the "sizeable addition" issue? Or  
20 deliberating on the two projects together, are they a  
21 "sizeable addition"? Or are we -- I just want to get a  
22 clarification on what we'd be deliberating on.

23 CHAIRMAN BURACK: I think the challenge,  
24 as Attorney Iacopino has pointed out, is we're waiting for  
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1 a number of exhibits, as well as we indicated we would  
2 take administrative judicial notice of a docket, we  
3 haven't had a chance to receive those documents either.  
4 So, that would probably make it difficult for us to  
5 complete, certainly, deliberations at this particular  
6 moment.

7 I think in terms of how we deliberate,  
8 probably we'd want to start with some, excuse me, some  
9 general discussions of the overall issues that are raised  
10 here. Excuse me. I think that there are two principal  
11 legal issues that need to be addressed. And, we could  
12 take them probably in either order. It may be, given that  
13 we've now heard substantial testimony on this issue of a  
14 -- I'm sorry, I've lost the term here --

15 MR. IACOPI NO: Sizeable addition.

16 CHAIRMAN BURACK: Thank you. Sizeable

17 changes or additions. You can see it is getting late in  
18 the afternoon. It may be that we would want to start by  
19 having some discussion of that topic and see whether,  
20 taken separately or together, that the proposal we've been  
21 talking about here, both the turbine and the scrubber,  
22 whether we can come to some determinations on those  
23 issues. And, depending on how we come together or not on  
24 that issue, we may or may not have to address the other

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1 legal issue that's been raised, which is whether or not  
2 RSA 125-0 and 162-H are complimentary or in some manner  
3 contradict each other, and so how -- how they can be read  
4 together.

5 So, that's my suggestion as to how we  
6 might proceed, once we begin our deliberations.

7 CSMR. CAMPBELL: When I said I was ready  
8 to deliberate, that was on the basis that I thought you  
9 were going to take closing arguments, number one. And,  
10 number two, I consider it a part of deliberations to be a  
11 discussion, I'm not prepared to vote because of those  
12 missing exhibits and so forth. But I am ready, in real  
13 time, to have a discussion about how we feel, you know,  
14 about all the arguments that have been brought forward,  
15 and whether -- how we approach it. And, I, in the  
16 discussion, need some guidance from you, Mr. Chairman, of  
17 how you see significance, you know, around the Site  
18 Evaluation law.

19 CHAIRMAN BURACK: Fair enough. Thank  
20 you. I think we will all hear from each other.  
21 Mr. Dupee.

22 MR. DUPEE: Thank you, Mr. Chairman.  
23 Can I assume that our deliberations will include past  
24 decisions that the SEC has made, so we can notice of our  
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1 own past actions, I guess?

2 CHAIRMAN BURACK: I certainly think that  
3 we can take notice of our own past actions, and certainly  
4 copies of those decisions have been submitted as part of  
5 the record in this matter. Mr. Smagula, you're excused.  
6 Thank you very much. I'm sorry, I should have excused you  
7 earlier.

8 WITNESS SMAGULA: That's all right.

9 CHAIRMAN BURACK: Oh, I'm sorry.

10 DIR. SCOTT: Not yet.

11 CHAIRMAN BURACK: I thought you could  
12 go. Mr. Scott, another question?

13 DIR. SCOTT: Yes, for the witness  
14 please.

15 CHAIRMAN BURACK: For the witness.

16 DIR. SCOTT: Real quick.

17 CHAIRMAN BURACK: Please proceed.

18 DIR. SCOTT: Sorry to interrupt.

19 BY DIR. SCOTT:

20 Q. Mr. Smagula, I just want to make sure I understand,  
21 these two exhibits here, which I can't remember, are A  
22 and B?

23 CHAIRMAN BURACK: I think they're B and  
24 D.

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1 BY DIR. SCOTT:

2 Q. B and D for the record. Is there some representation  
3 anywhere that these are dimensionally accurate? I  
4 always assumed they were depictions for illustration,  
5 but they seem to be taking on a dimensional --

6 A. I think they're reasonable depictions, but they are  
7 developed based on the current status of all the  
8 drawings as being designed. So, there are depictions  
9 that are not dimensions, but they're based on the true  
10 dimensions of what the current design is of the  
11 facility. So, they're an accurate depiction, but  
12 they're not a precision drawing.

13 Q. So, that the scale --

14 A. The scale --

15 Q. So, the scale?

16 A. The scales are reasonable, yes.

17 DIR. SCOTT: Thank you.

18 CHAIRMAN BURACK: Thank you very much,  
19 Mr. Smagula.

20 WITNESS SMAGULA: I'm all set?

21 CHAIRMAN BURACK: Thank you. Attorney  
22 Needleman.

23 MR. NEEDLEMAN: You had asked a moment  
24 ago about briefing and closing statements, and I just

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1 wanted to respond to that quickly. We're not asking for  
2 any additional briefing. But, if the Committee would like  
3 it, we're happy to provide it. And, I think it would be  
4 valuable to hear at least a brief closing statement, and  
5 we'd be happy to provide that after the Moving Parties

6 have gone.

7 CHAIRMAN BURACK: Very well. Is there  
8 any anticipation of additional briefing at this time?

9 MR. PATCH: No, we agree that it's not  
10 necessary.

11 MS. HOFFER: Yes.

12 CHAIRMAN BURACK: Right. Would you care  
13 collectively or however you wish to divide yourselves up  
14 to give a brief summation?

15 MR. MOFFETT: As you indicated, Mr.  
16 Chairman, I made my closing argument. I'd like to have  
17 Ms. Hoffer have a try.

18 CHAIRMAN BURACK: Thank you very much,  
19 Attorney Moffett.

20 MS. HOFFER: Thank you. I will be  
21 brief. There are five key criteria that this Committee  
22 should consider for purposes of the "sizeable addition"  
23 determination that you now must make. First, the cost of  
24 the project here in this example, \$457 million for the FGD

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1 system alone, 468.4 million if you do determine that you  
2 should include the turbine modification. And, the  
3 increase in the net book value here, a five-fold increase  
4 over \$90 million. (2) An increase in the size, in or  
5 around 50 percent in cubic feet. (3) A life extension of  
6 at least 15 years. (4) Again, if you determine to  
7 include the Turbine Project, a capacity increase of over  
8 17 megawatts. And, finally, the change and increase in  
9 the footprint. I'm going to speak a little bit about each  
10 one of these in turn, but wanted to lay out for you what I

11 think are and what the Moving Parties think are the key  
12 criteria for you to focus on.

13 First, the size of the project. There  
14 has been a significant and substantial increase in the  
15 total cubic footage increase here. So, even if the number  
16 is not 56 percent, as set out in Plaintiffs' Exhibit 8 and  
17 9, it is a substantial number. And, I will return to that  
18 point at the end of the closing.

19 Second, there has been a footprint  
20 change. We heard this morning that, and if you do accept  
21 Mr. Smagula's testimony, that we have a proximately 86,000  
22 square foot increase in the facility footprint.

23 Additionally, we know that buildings have been razed, so  
24 the footprint decreased, and new buildings -- structures

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1 are being constructed. So, the footprint has changed in  
2 one way or the other.

3 We also heard today from Mr. Smagula  
4 that the FGD system will use 900 gallons per minute of  
5 water. That's about 1.3 million gallons per day, large on  
6 any scale. We know that PSNH itself has called this a  
7 "massive project", by its own admission. That was the  
8 testimony of Martin Murray that was posted on PSNH's  
9 website and a part of the record this morning. We have  
10 heard from that same document that PSNH maintains "the  
11 Clean Air Project dwarfs all other environmental projects  
12 in size, complexity and cost." PSNH has submitted in  
13 regulatory submissions to the Public Utilities Commission,  
14 specifically its September 2nd response to PUC's request  
15 for information, that "the Clean Air Project is a vast and

16 complex engineering and craft labor challenge that is in  
17 progress and will take another four years to complete. At  
18 its peak, and in addition to the engineering and  
19 management support services, the project will require the  
20 efforts of more than 300 union craft workers, because of  
21 its size and complexity, the Clean Air Project must be an  
22 extremely well managed, carefully orchestrated project,  
23 and must firmly adhere to critical milestones established  
24 in the overarching project schedule, which will control

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1 the work of numerous contractors and subcontractors."  
2 This statement, although we did not hear it as testimony  
3 for today, seems to be collaborated by the statements of  
4 Mr. Foley that we heard this morning, who came to speak on  
5 behalf of his union. It's a huge project. There are  
6 currently 150 workers on site, and several hundred more  
7 will be employed in the future to complete this project.

8 To the cost: This is an expense  
9 totaling almost half a billion dollars. The additional  
10 cost for the Turbine Project, again, if you do consider  
11 it, there will be some accrued this year as a result of  
12 the malfunctioning of the turbine that occurred after its  
13 installation in April and May 2008. We can understand  
14 perhaps, from the planned outage that's coming up, that  
15 it's a significant cost that will be involved, although we  
16 don't know the number yet. Given the fact that that  
17 turbine will be down for 18 weeks starting this  
18 August 1st, 2009 while these repairs are done. So, it's  
19 certainly not insignificant to have it closed for that  
20 period of time while it's repaired. We have heard also

21 that it's going to extend the life of the plant by at  
22 least 15 years, not insubstantial, particularly when one  
23 considers that this Committee's jurisdiction for purpose  
24 of this review includes oversight of continuing

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1 operations. This is a decision that will -- this is  
2 essentially, at bottom, is a complete makeover of this  
3 facility. So, we have had a brand new -- brand new pieces  
4 of equipment brought in in a variety of contexts, not just  
5 a pollution emission control context, that has made it be  
6 essentially a new plant that will continue operating for  
7 at least 15 years. It will have to be at least that long  
8 to recapture the investment that was made into it.

9                   Returning to the Turbine Project itself,  
10 I would like to just start by saying that, even if the  
11 Committee determines that the Turbine Project is not a  
12 part of this project for purposes of your "sizeable  
13 addition" determination, it's still sizeable by any other  
14 measure. The sheer size of it alone, the cost of it  
15 standing alone, are enough to bring it within your  
16 jurisdiction. You don't need the additional capacity  
17 increase or the additional nearly \$12 million that that  
18 project costs. However, you do know, based on the  
19 testimony that you heard today, that PSNH repeatedly, on  
20 multiple occasions, did make the case to DES and other  
21 regulators that the project was related to the FGD system  
22 installation for purposes of obtaining its Clean Air Act  
23 permitting. And, I was pleased that Attorney Needelman  
24 had the transcript excerpt from DE 08-145 today, because I

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1 think it is entirely confirmatory of the point that the  
2 Company has said that the two projects are related, it has  
3 said that the Turbine Project is exempted from review  
4 pursuant to the Scrubber Law, and yet somehow maintains  
5 that they're also different. So, the Committee will have  
6 before it the records and the briefing in that docket and  
7 can think about those representations and how to weigh  
8 that.

9                   Thinking about the legal framework for  
10 this hearing today, I wanted to return briefly to the  
11 overall picture of what this process is supposed to do.  
12 162 requires the Committee to consider the environmental,  
13 economic, and technical issues in an integrative fashion.  
14 This Committee should take into account the totality of  
15 the circumstances. And, what I mean by that is you should  
16 think about the cost and the size and the potential  
17 capacity increase, the change in the book value of the  
18 facility, and also the increased life extension. These  
19 are all significant factors. They'll have an ongoing  
20 impact, both in terms of land use, ratepayer impact,  
21 environmental impact, all the issues that the Committee is  
22 charged with reviewing. So, looking at the totality of  
23 the circumstances, not just with respect to construction,  
24 but also with respect to continuing operation of the

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1 facility, we heard on numerous occasions today the  
2 suggestion that all of the necessary permits have been  
3 obtained. That's not true. I'm not going to repeat the

4 argument that Moving Parties presented to you at the last  
5 hearing on May 8th. But I think you know that there are  
6 several outstanding permitting issues, particularly with  
7 respect to the treatment of the FGD system waste water  
8 that has not yet been addressed or reviewed by any  
9 authority. The Turbine Project itself has not yet been  
10 reviewed by the PUC, largely on the grounds because PSNH  
11 has maintained that it is exempt from such review by  
12 125-0. So, there are significant aspects of this project  
13 that haven't been subject to review, that won't be subject  
14 to review unless this Committee exercises its  
15 jurisdiction.

16 There's also the opportunity for the  
17 Committee to put in place conditions that are more  
18 stringent than existing law. Again, I'm not going to  
19 repeat the argument that I made on May 8th, but that's  
20 certainly a function that this Committee has.

21 And, I think the final point that I  
22 would like to make is that, without this Committee's  
23 review, we'll essentially have a project that it is really  
24 inconceivable to imagine that, if you do not take

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1 jurisdiction of this, what would constitute a "sizeable  
2 addition"? This is a project that costs almost a half a  
3 billion dollars. And, you know, whether we're in  
4 agreement on the precise cubic foot increase, it's  
5 probably somewhere in around a 40 to 50 percent cubic foot  
6 increase, it's an 86,000 increase in the square footage  
7 alone. It's a very significant project, with ongoing  
8 impacts, and something that the Committee should certainly

9 consider.

10 The last point that I would like to  
11 raise is, given some of the disputes around the  
12 calculation of the volumetric measurements of the various  
13 components set out in the Parties Exhibit 8 and 9, we  
14 would request that the Committee order PSNH to provide  
15 volumetric calculations for the components identified in  
16 Moving Parties Exhibit 8 and 9, and any other components  
17 that the Company now believes should have been included.  
18 Thank you.

19 CHAIRMAN BURACK: Thank you very much,  
20 Attorney Hoffer. Attorney Needleman.

21 MR. NEEDLEMAN: Thank you, Mr. Chairman.  
22 With respect to whether these projects need to be looked  
23 at together or separately, let me first start with that.  
24 The testimony that you've heard today has made several

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1 things perfectly clear. Number one, from a technical  
2 standpoint, the Turbine Project and the Scrubber Project  
3 are separate. They're not dependent on each other, and  
4 each can operate without the other. From a timing  
5 standpoint, the two projects were developed independent of  
6 each other. From a budgeting standpoint, there was zero  
7 overlap between the two projects. From a planning  
8 standpoint, there was no overlap between the two projects.  
9 From an engineering standpoint, there was no overlap  
10 between these two projects. And, from an air permitting  
11 standpoint, the projects being treated separately actually  
12 resulted in more stringent air permitting. As a  
13 consequence, these projects bear no relationship to each

14 other for the purposes that you're here today.

15 Now, I would also suggest to you that  
16 you probably don't even need to reach that determination.  
17 And, the reason that I'm saying that is because neither  
18 one of these, either together or alone, are sizeable  
19 additions. And, if you make that determination, you don't  
20 have to spend any time deciding whether to look at the  
21 projects together. And, as far as this notion of how you  
22 go about doing that, I want to suggest to the Committee  
23 that it's not necessary today to invent new standards the  
24 way the Moving Parties are urging you to do to create this

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1 analysis for a "sizeable addition".

2 As I said earlier, there is no point in  
3 the past when this Committee has ever used a volumetric  
4 comparison to make this analysis. And, it would be  
5 arbitrary at this point to do that today. You have all  
6 the standards you need to make this determination. And,  
7 perhaps the best place to look is the decision you issued  
8 on the Schiller Project. That decision captured two  
9 common threads that run through all of your other  
10 decisions about how to make this analysis. Number one, is  
11 the addition within the confines of the existing site?  
12 And, number two, is there an increase in power output?  
13 There have been other things in other decisions that the  
14 Committee has occasionally looked at, but that's the  
15 common thread that runs through all the decisions. And,  
16 when you look at both of these projects from that  
17 perspective, there's no question that it's not a sizeable  
18 addition.

19 As far as the issues that Ms. Hoffer  
20 raised regarding environmental review, and Mr. Harrington  
21 also touched on them, again, there's nothing new here for  
22 the Committee. You've dealt with this before. Mr.  
23 Chairman, you were mentioning before the September letter  
24 that Mr. Allwarden submitted in the Schiller matter. Look

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1 at Page 4 of that letter. There's a heading there called  
2 "Project Permitting Plan". And, it runs through, in the  
3 Schiller Project, all of the environmental permitting that  
4 was going to go on that PSNH represented to the Committee  
5 they would take care of. It's an exhaustive list. It  
6 talks about air permitting, water permitting, wetlands  
7 permitting, coastal zone consistency, on and on and on.  
8 How did the Committee deal with that? They accepted the  
9 representation of PSNH that those permits would be  
10 addressed, just like they dealt with it in similar  
11 contexts. And, they went on and they made a decision that  
12 said "assuming that those things are addressed, we find  
13 this not to be a sizeable addition." That's no different  
14 from this particular proceeding. Had we come here six  
15 months ago, for the sake of argument, we would have made  
16 similar representations. And, if you were deciding this  
17 case consistent with Schiller, you would have accepted the  
18 same sorts of representations. So, again, I suggest to  
19 you, there's no reason here to create new standards. You  
20 have standards in place to make this decision.

21 As far as the Scrubber Project goes,  
22 looking at that independently, that project is not a  
23 sizeable addition. You have a stipulation between the

24 parties that stipulates to the critical point that came  
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1 out of the Schiller decision. It is entirely within the  
2 confines of the existing site. We also know that the  
3 footprint of this facility is -- the expansion of this  
4 project is somewhere between 0.65 percent and 1.8 percent.  
5 That testimony is uncontested. In the Schiller Project,  
6 it's also uncontested that the expansion was 28 percent,  
7 and you still found that wasn't a sizeable addition.  
8 Given that, it strains imagination to find how this could  
9 be a sizeable addition.

10 In addition, the Stipulation also  
11 demonstrates that the net power output, as a consequence  
12 of the Scrubber Project, is going to go down. Again,  
13 that's the other critical criteria outlined in the  
14 Schiller decision. It's actually going to go down, no net  
15 power increase. And, as I mentioned before, with respect  
16 to these environmental issues, there's no reason to except  
17 the notion that somehow things will go unreviewed. You  
18 can deal with this exactly the way you've dealt with this  
19 issue time and time again.

20 And, then, briefly, with respect to the  
21 turbine upgrade, frankly, that one is an easy one.  
22 There's no way the turbine upgrade is a sizeable addition.  
23 That was complete in 2008. It went into precisely the  
24 same footprint. It cost 11.4 million. The net power

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1 increase was up to 17 megawatts. And, the Air Resources  
2 Division determined that there was no permit needed and no

3 emission increase associated with that.

4 So, for all of those reasons, we urge  
5 the Committee to find that these are not sizeable  
6 additions. Thank you.

7 CHAIRMAN BURACK: Thank you very much,  
8 Mr. Needleman. Okay. Mr. Campbell.

9 CSMR. CAMPBELL: Unless you're going to  
10 give us some guidance on what you think on "sizeable", I  
11 just want to give some thoughts on it.

12 CHAIRMAN BURACK: Well, before we do  
13 that, what I'd actually like to do, if we may, is talk  
14 about some process here.

15 CSMR. CAMPBELL: Okay.

16 CHAIRMAN BURACK: My sense is it would  
17 be helpful to the Committee for us actually to have the  
18 transcript from today's hearing for us to be able to  
19 deliberate. And, so, not to put Mr. Patnaude on the spot,  
20 but what's a reasonable time frame within which you think  
21 --

22 MR. PATNAUDE: Middle of the week.

23 CHAIRMAN BURACK: Middle of next week  
24 that we could have a transcript available?

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1 MR. PATNAUDE: Yes.

2 CHAIRMAN BURACK: Okay.

3 MR. PATNAUDE: Just so you know, I'm not  
4 going to be around from the 2nd to the 6th. But that's  
5 Fourth of July, so --

6 CHAIRMAN BURACK: Okay. So, your hope  
7 would be to have it to us --

8 MR. PATNAUDE: Wednesday.  
9 CHAIRMAN BURACK: By Wednesday, the 2nd,  
10 or thereabouts?  
11 MR. PATNAUDE: Yes.  
12 CHAIRMAN BURACK: Okay. Thank you. All  
13 right. Under the agreement that I think we currently have  
14 with the parties, we have extended the date for a decision  
15 by the Committee on the matters as they are before us now  
16 I believe to the 8th of July. And, I think we would be  
17 looking for some understanding and agreement among the  
18 parties that the Committee is going to need additional  
19 time in order to render a decision on this matter. And, I  
20 think probably we would ask, and before I ask for a  
21 specific date, I need to get a sense as to, and we won't  
22 be able to schedule it here and now, but whether there's a  
23 realistic prospect that sometime in the first two weeks of  
24 July, we might be able to bring everybody back together.

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1 What's that?  
2 CMSR. BELOW: I think, for Chairman Getz  
3 and I, the 6th and 7th are the only good possibilities in  
4 that time frame.  
5 MR. HARRINGTON: The 6th and 7th would  
6 work for me. The week after that, I'm basically booked.  
7 CHAIRMAN BURACK: Okay.  
8 MR. DUPEE: Mr. Chairman, I'm gone that  
9 entire week.  
10 CHAIRMAN BURACK: You're gone that  
11 entire week? Okay. As we start looking farther out into  
12 the month of July, I realize I don't have my own calendar

13 here, but I think I'm not gone till the end of the month,  
14 are we going to run into difficulties trying to be in the  
15 second or third week of July? Okay.

16 CMSR. BELOW: I would think we could  
17 make other arrangements to record our deliberations, if we  
18 have to.

19 (Brief off-the-record discussion ensued  
20 with the court reporter regarding  
21 availability.)

22 CHAIRMAN BURACK: You are available on  
23 the 7th?

24 MR. PATNAUDE: Yes.

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1 CHAIRMAN BURACK: Okay. You are not  
2 available, Mr. Dupee, but everybody else at this point  
3 would be available?

4 MR. HARRINGTON: I'm available.

5 CHAIRMAN BURACK: Okay. I think what we  
6 will do is tentatively, again, subject to confirmation  
7 that we will have a quorum for that day, we will  
8 tentatively schedule us to reconvene on July 7th. Do we  
9 need to make that 10:00 a.m. or can earlier work for  
10 people for deliberative purposes?

11 DIR. NORMANDEAU: Be here at 8:00, if  
12 you want?

13 CHAIRMAN BURACK: Can we call it 9:00,

14 --

15 VICE CHAIRMAN GETZ: Yes.

16 CHAIRMAN BURACK: -- July 7th. And,  
17 again, this is tentative only, subject to our being able

18 to confirm availability of a quorum, and that we would  
19 have the transcript prior to that time.

20 CSMR. CAMPBELL: I'm here on the 7th,  
21 but I have a major meeting that's been postponed three  
22 times, that goes from 9:30 or 10:00, until about noon,  
23 then I'm free. Anything else I can change.

24 CHAIRMAN BURACK: Okay.

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1 CSMR. CAMPBELL: But I have a major  
2 committee of people that have been convening across the  
3 state, and, thanks to the Legislature, have had to move  
4 twice.

5 CHAIRMAN BURACK: We understand how that  
6 can work. Why don't we, for the moment, ask everybody to  
7 hold open their calendars for July 7th, if you possibly  
8 can. I'm going to ask Attorney Iacopino to confirm  
9 variable times and see when we can, in fact, have a quorum  
10 on that date.

11 CSMR. CAMPBELL: If we could do it in  
12 the afternoon, --

13 CHAIRMAN BURACK: It sounds like that  
14 may be our best option.

15 CSMR. CAMPBELL: -- like 1:30.

16 CHAIRMAN BURACK: And, we'll see, we  
17 just want to confirm that we can have a quorum then, as  
18 opposed to the morning. I want to be able to include as  
19 many of our members who have sat through this proceeding  
20 as possible.

21 I think, given that the earliest we will  
22 be able to meet is the 7th, and we have the 8th as a

23 current date, I would ask the parties whether they would  
24 agree, because, assuming we deliberate on the 7th, it will

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1 take some time for us then to get something drafted,  
2 reviewed, finalized, and given holiday schedules,  
3 realistically, I think would ask folks to understand that  
4 we're going to need probably another 30 days from the 8th  
5 in order to issue a -- ensure we can issue a decision.  
6 Certainly, if we can do it sooner than that, we will.  
7 Counsel, you have your calendar there handy.

8 MR. IACOPI NO: I do.

9 CHAIRMAN BURACK: What would roughly 30  
10 days out from the 8th of July, where would that put us?

11 MR. IACOPI NO: 7th of August.

12 CHAIRMAN BURACK: 7th of August, which  
13 is what day of the week?

14 MR. IACOPI NO: Friday.

15 MR. HARRINGTON: Friday.

16 CHAIRMAN BURACK: Friday? Okay. Can we  
17 make it the following Monday, just to --

18 MR. IACOPI NO: That would be  
19 August 10th.

20 MR. HARRINGTON: And, what are we  
21 scheduling for August 10th?

22 CHAIRMAN BURACK: Oh. This would simply  
23 be the date by which we would ask everyone to agree that  
24 we would extend our --

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MR. HARRINGTON: Oh.

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CHAIRMAN BURACK: -- the deadline by  
which we have to issue a decision in this matter.

3

4

MR. NEEDLEMAN: No objection.

5

6

CHAIRMAN BURACK: No objection. Any  
objection?

7

8

MS. HOFFER: No objection, Chair Burack.  
But I was wondering if the Committee believes that it  
would be useful, for your own deliberations, to have the  
additional volumetric calculations provided by PSNH?

10

11

MR. NEEDLEMAN: Can I speak to that for  
a moment, Mr. Chairman?

12

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CHAIRMAN BURACK: Would you like to  
speak to that?

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MR. NEEDLEMAN: I would. We made it  
clear that we were opposed to these volumetric  
calculations during a meeting at Mr. Patch's office, I  
believe it was sometime like a month ago. So, our  
position was known. I think that, if the Moving Parties  
disagreed with that, it was their obligation at that time  
to file a motion to compel. I think that that time has  
past. And, at this point, I think, to require us to  
provide new information now that the hearing is closed is  
not appropriate.

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MS. HOFFER: If I might respond briefly?

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CHAIRMAN BURACK: Please.

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MS. HOFFER: It is accurate that we did  
request that information. PSNH did decline to provide it  
to us. We were able to get agreement on PSNH providing to

5

6 us the area and then height, understanding that we would  
7 be able to use that information ourselves. So, we came in  
8 today prepared to present to you the volumetric  
9 calculations that the Moving Parties made based on that  
10 information, and drew significant objections from the  
11 Company. So, I think, in fairness to all the parties, if  
12 we want to have a set of data that we all feel comfortable  
13 about, it would make sense to allow the Company to review,  
14 maybe include some of the items that Mr. Smagula had  
15 identified, and to provide the accurate height information  
16 and final volumetric calculations for all of the  
17 components.

18 CHAIRMAN BURACK: I think it's an  
19 accurate statement of the law that Mr. Needleman made in  
20 terms of the record really being closed at this point to  
21 new factual information. Having said that, I would just  
22 like to get a sense from the Committee members as to  
23 whether there are a significant number that feel that that  
24 -- those data would be helpful to making a decision. Is

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1 there anyone who feels that those data would be helpful?

2 VICE CHAIRMAN GETZ: Well, Mr. Chairman,  
3 I'm not sure that it's really new information. It seems  
4 to me it's reformulation of information that is somewhat  
5 in the record. Now, I understand that there's some  
6 difficulty with the geometry of certain buildings, and  
7 it's not as easy doing heights times length and widths,  
8 and we're running into diameters and radii.

9 But, I think, in a general sense,  
10 looking at the volumetric comparison is a useful

11 comparison. And, I think what we have on the record right  
12 now is an argument by the Moving Parties that, in certain  
13 comparisons, you're looking at about a 56 percent increase  
14 in volume. Again, I recognize all of Mr. Smagula's  
15 arguments, all of PSNH's arguments about buildings,  
16 structures, roads, canals, what you include. But we don't  
17 really have a good number in the record for what is the  
18 kind of volumetric increment of the Clean Air Project.

19 And, I guess I would be concerned, in a  
20 deliberations, we would get to a point where members of  
21 the Committee are not comfortable with the 56 percent  
22 number, because of the testimony of Mr. Smagula, but we  
23 don't have a number. So, I think it would be helpful to  
24 the deliberations to have something from PSNH more than we

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1 have.

2 CHAIRMAN BURACK: Thank you.  
3 Commissioner Campbell.

4 CSMR. CAMPBELL: Well, I respect  
5 Chairman Getz's thoughts and concerns. I guess I just  
6 take -- ask us to think about it under this construct.  
7 Basically, even though we don't have precise guidelines in  
8 our regs or in the law, when you're looking at a site  
9 evaluation or site location, you're really looking at,  
10 when talking about physical size, you're really thinking  
11 about three things: One, you're thinking "is the project  
12 a reuse?" For example, if you've got a paper mill up in  
13 the North Country that people are talking about reusing as  
14 a utility or as a power generating station, that's a  
15 reuse, and it has different effects on and off the site

16 than the mill would. So, reuse is one. Second is, you  
17 think about impermeable acreage or square footage, that's  
18 impervious, that's been created. In this case, on a  
19 stretch, you're looking at 86,000 feet. Then, you get  
20 into the issue of volume, which is really an issue of  
21 useable square footage. For example, if you have an  
22 office building that has a 20,000 square foot footprint,  
23 but it's one story, that's different than an office  
24 building that's got a 20,000 square foot footprint and

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1 it's ten stories, because then you have a 200,000 square  
2 foot office building that you can utilize. You can, if  
3 you have 180 square feet per person, that's how many  
4 people can come to that site and do that. And, these  
5 buildings, for example, or even non-buildings, but you can  
6 look at a building and you can say the turbine building --  
7 the FGD buildings, most of those are, whether they were  
8 20 feet high or 10 feet high or 141 feet high, really  
9 doesn't make a difference, in terms of square footage.  
10 There is no square footage difference. They're housing a  
11 vessel.

12 So, when I look at it, I look at volume  
13 as being irrelevant to the issue. The issue is, "what's  
14 the useable square footage that's being created around a  
15 use?" And, so, if we think that the volume, I mean, as an  
16 exercise, we want PSNH to tell us volume, that's fine.  
17 But I'm just concerned that the Site Evaluation Committee  
18 is going down the road putting criteria in that doesn't  
19 tie back to the environment, to, you know, where square  
20 footage does, impervious land does, and reuse does.

21 And, so, that's my concern, that we're  
22 sending a signal that somehow volume speaks to site  
23 evaluation. And, that's my concern, Mr. Chairman. But I  
24 don't -- if we want to request it, that's fine. But

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1 that's why I'm concerned about the request.

2 CHAIRMAN BURACK: I'm seeing two  
3 comments. First, Mr. Scott, then Mr. Dupee.

4 DIR. SCOTT: If the Committee were to  
5 ask for this information, and my understanding is we have  
6 not, in an explicit form, had this type of volumetric  
7 information available to us before. To me, if we were  
8 going to request that, it would only be -- it would be  
9 much more useful to me if we had a similar calculation  
10 from PSNH from the Northern Wood Project also for  
11 comparison purposes. Lacking that, I'm not sure there's  
12 enough in the prior records to be able to make a  
13 comparison that we made a sizeable -- I think the language  
14 escapes me.

15 CHAIRMAN BURACK: A "sizeable change or  
16 addition".

17 DIR. SCOTT: -- determination there, I'm  
18 not sure that the record explicitly had volumetric data  
19 for the expansion there. If we're going to go down that  
20 road, to me, that would be much more useful than just this  
21 project, with nothing to compare it to explicitly.

22 CHAIRMAN BURACK: Thank you. Mr. Dupee.

23 MR. DUPEE: Thank you, Mr. Chairman. I  
24 was just thinking a little more qualitatively. I think

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1 that it was established amongst the parties that, clearly,  
2 if one used the volumetric measure versus the square  
3 footage measure, there's been a large increase. I think  
4 everybody pretty much has agreed to that. Whether that's  
5 taken out to 9 decimal points, I'm not sure that adds  
6 completely to the Committee's ability to deliberate. So,  
7 I guess my thinking is, what the record currently has  
8 seems to me to be pretty adequate.

9 CHAIRMAN BURACK: Thank you.

10 Mr. Harrington.

11 MR. HARRINGTON: Well, I think the key  
12 word here is, it's going to be qualitative, not  
13 quantitative. We don't have a number, we don't have  
14 anything that says "a sizeable increase is anything that  
15 constitutes a 42 percent increase in volume of the useful  
16 space of the project." So, in lieu of that, we could get  
17 a number and we're going to look at it and go "okay,  
18 that's the number."

19 I think we've been told that these  
20 depictions here are more or less accurate. So, as far as  
21 volume goes, I think it's just as easy to look at these,  
22 and say "okay, that's existing, and that's not", and you  
23 could make a quantitative assessment as to whether you  
24 think that's sizeable or not.

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1 Now, if someone was to tell me it's 38  
2 percent or 62 percent or 11 percent, I don't think that's  
3 going to change my perception one way or the other as to  
4 whether it constitutes "sizeable", unless there happened

5 to be a specific thing like that in the legislation that  
6 said "a 38 percent increase in volume constitutes a  
7 sizeable addition." So, I think we're going to get a  
8 number that's not going to really be useful, at least it  
9 wouldn't be to me.

10 CHAIRMAN BURACK: Mr. Normandeau.

11 DIR. NORMANDEAU: Well, I agree with  
12 Mr. Harrington. I just also, I think that to have that  
13 number generated, I mean, if you were actually going to do  
14 that accurately, with any sense of accuracy, I mean, what  
15 are we talking about, surveying coal piles, so that we get  
16 a truly accurate number? I mean, that's a very complex  
17 plant out there, with lots of vacant spaces under steel  
18 framing. And, I mean, you could conceptually commute --  
19 computer model the whole thing, I guess. But, if you're  
20 really looking for true accuracy, I think you almost have  
21 to survey the site from one end of the other to come up  
22 with it. And, to have PSNH do that by the 7th is probably  
23 not a happening thing, I would bet. And, I can -- I'll  
24 agree with Mr. Harrington. I think, you know, we're

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1 basically looking at an eyeball situation here. You know,  
2 we understand the volume side, sort of in a more global  
3 sense, if you will, and I'd leave it at that.

4 CHAIRMAN BURACK: Mr. Getz.

5 VICE CHAIRMAN GETZ: Yes, I guess my  
6 concern, Mr. Chairman, is how the Supreme Court's going to  
7 look to our eyeballing it and saying "it looks sizeable".  
8 I mean, I understand everybody turns in these situations  
9 to, you know, Justice Potter Stewart's definition of

10 "obscenity", "it's in the eye of the beholder."

11 But I'm just trying to step ahead to,  
12 what if, during deliberations, people think this is  
13 important, and we don't really have good numbers to rely  
14 on. And, I certainly understand the precision problem.  
15 So, I'm really not clear, and we could make certain  
16 calculations based on what's in the record. And, I do  
17 have to differ with Commissioner Campbell, at least to the  
18 extent that I think height is relevant. And, once you  
19 bring -- and volume comes up here, because we're trying to  
20 look at this -- the parties are suggesting we look at it  
21 in three dimensions. And that, I think, leads also to  
22 Mr. Harrington's observation, and others, if you're  
23 eyeballing it, you're looking at it in three dimensions.  
24 But -- and, I still understand the difficulty of trying to

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1 get good solid numbers.

2 CHAIRMAN BURACK: Commissioner Below,  
3 and then Director Normandeau.

4 CMSR. BELOW: I would say, personally, I  
5 don't feel a need for that analysis. However, if others  
6 do, I, you know, respect that that might be helpful in the  
7 discussion. It does strike me that one approach might be,  
8 some software was used to make those images. And, to the  
9 extent that dimensions were provided, I would suspect the  
10 software that generated those could generate volumetric  
11 numbers for geometry that is fully dimensioned.

12 I think there's things, like the  
13 switching yard, which is fairly meaningless, because it's  
14 mostly open air. I mean, there's some steel structure

15 there. And, so, I would, you know, sort of just posit  
16 that, if the solid volumes that are enclosed volumes could  
17 be calculated, and perhaps supplemented by those that  
18 weren't dimensioned, like the coal piles, that that might  
19 be a way to approach it, so that we actually have  
20 something that corresponds to the visual things that we're  
21 seeing, and recognizing those elements that are or aren't  
22 in the images, but may be part of the overall site use.

23 But I guess there's still the concern  
24 is, once you do that, you know, is that evidence that's

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1 subject to cross-examination or not, and, you know, the  
2 question of where we're at in terms of the record.

3 CHAIRMAN BURACK: If I may, Commissioner  
4 Below, I think, if we are to ask for a submittal of  
5 additional data, we would then need to open this up for  
6 additional testimony and, etcetera, cross-examination  
7 related to the data that was submitted. So, I think that  
8 would, if we were to go that route, I think it would  
9 almost surely extend this, our ability to make a decision  
10 in this matter.

11 Director Normandeau, and then I see  
12 counsel.

13 DIR. NORMANDEAU: I just -- I didn't  
14 mean to be flippant about, you know, my comments relative  
15 to the size issue. But, you know, to me, this is -- this  
16 isn't much different than if I'm looking at, you know, the  
17 Historic District Commission in Portsmouth, where they --  
18 it's a commission who regularly gets sued, and their  
19 decisions stand, and they're based on a, you know, is a

20 project large and overbearing? I mean, there is a level  
21 of subjectivity in it. And, you know, and that's the way  
22 land use regulation, not that this is exactly land use  
23 regulation, but, you know, where that is part of it, I  
24 think. And, I don't think you can get it down to the

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1 tenth decimal point. And, at some point, you have to live  
2 with that.

3 CHAIRMAN BURACK: Thank you very much  
4 for that comment. Go to Attorney Needleman, and then to  
5 Attorney Moffett.

6 MR. NEEDLEMAN: Two quick comments  
7 regarding Commissioner Below's comment. It would be more  
8 than just the Scrubber Project. For an accurate  
9 comparison, we would have to do it for everything on the  
10 site. And, I think, if the Committee is inclined to ask  
11 for this information, I would ask that you hear from  
12 Mr. Smagula, since he's going to be responsible for doing  
13 it. And, I don't think this is easy.

14 MR. SMAGULA: Thank you. As this  
15 discussion has gone on, in addition to listening, I'm  
16 trying to figure out what I'm going to have to do to  
17 deliver some type of a product. And, I know the work that  
18 went into providing the information that is currently on  
19 record. That was a very large effort, with a number of  
20 engineers working many days to give us what we have.

21 It would be nice to assume that the  
22 illustrations showing the new equipment, that the software  
23 could translate it into volume. That is a drafting tool,  
24 it is not an engineering tool. We would have to have the

1 engineers on the Project Team divert from their productive  
2 work to go into a very detailed review of the final  
3 drawings, because the engineering company that drew this  
4 drawing isn't designing and building all of these  
5 buildings. Other companies are doing that. We have a  
6 contract for the scrubber, we have a contract for material  
7 handling, for the chimney and so on, and we would have to  
8 go to those design drawings, on every piece of equipment,  
9 on every structure, every vessel, every conveyor. And, if  
10 we're going to do it, we're going to do it thoroughly and  
11 completely, if you're going to do it at all.

12 So, I'm going to have a group of  
13 engineers in New Jersey diverted from the Project's needs  
14 and critical path to do this. And, we'll be prepared to  
15 do it, if that's what's necessary.

16 When I go to the existing plant, that is  
17 a plant that was built in the '60s. And, with a lot of  
18 homes that are older, there are additions and  
19 subtractions, and a lot of elements that are broadly shown  
20 here, but we do not have straight surfaces and square  
21 angles. There's fans and there's platforms and there's  
22 railings, there's additional dog houses that are put over  
23 motors to keep the weather out. That would take  
24 significantly longer than the new facility.

1 And, to think that we're going to  
2 deliver a product with reasonable quality, I don't know

3 how we would ever get, unless we had months and months and  
4 months, precision. But, with reasonable quality, I don't  
5 know how long it would take. I would have to assemble  
6 outside consultants with surveying equipment and some  
7 engineers, I don't have enough resources to make this  
8 happen.

9 So, it's a big task for me. And, I'm  
10 not trying to say this to talk people out of it. I'm just  
11 trying to give you my opinion as to my reaction to this as  
12 I've heard it being discussed. So, we're certainly going  
13 to do whatever is appropriate, and we're going to do the  
14 best we can, as fast as we can. But I can't deliver this  
15 in weeks.

16 CHAIRMAN BURACK: Thank you very much,  
17 Mr. Smagula. I'm seeing Attorney Moffett here, if you  
18 have a quick comment you want to make.

19 MR. MOFFETT: Mr. Chairman, I don't  
20 think the Moving Parties want to be perceived as insisting  
21 that there has to be a specific number down to the last  
22 decimal point that would compare the size of the Scrubber  
23 Project components to the size of the existing  
24 three-dimensional structures at Merrimack Station. We

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1 were simply trying to make the point that, if you are  
2 looking at the question of what constitutes a "sizeable  
3 addition", you can't get away from the fact that the size  
4 of three-dimensional objects is given in three dimensions.

5 Now, having said that, I want to -- I  
6 want to just say briefly that PSNH has concentrated their  
7 argument and their data in Exhibit G on the square footage

8 calculations. And, they have thrown everything into that,  
9 the kitchen sink, it's all there, and that's available to  
10 the Committee. We have not contested that. So, the  
11 Committee is free to look at those square footage figures  
12 and attach whatever weight it wants to them. All we're  
13 saying is, you know, just looking, eyeballing these two  
14 exhibits, there would appear to be a serious question as  
15 to whether or not this is a sizeable addition.

16 Now, we don't want to insist that PSNH  
17 do the kind of analysis that Mr. Smagula was talking  
18 about. And, I'm wondering if it would be helpful if we --  
19 if we tried to stipulate with PSNH as to a range of --  
20 that that, you know, cubic foot -- a range by which the  
21 volume of the Scrubber Project would be compared to the  
22 volume of existing three-dimensional structures at  
23 Merrimack Station.

24 There's going to be an argument about  
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1 the coal pile, okay? You know how PSNH feels about that,  
2 you know how we feel about that. You can decide that.  
3 That's -- And, I'm perfectly happy to have that -- to have  
4 a stipulation that looks at it both ways, with and without  
5 the coal pile. But, if it's helpful to the Committee, to  
6 try to get a narrower range of what this -- what this  
7 addition represents in terms of size, we're prepared to  
8 try to work with PSNH to do that. Again, with and without  
9 the coal pile.

10 CHAIRMAN BURACK: Thank you very much,  
11 Attorney Moffett. Does anybody else have any further  
12 comments, otherwise I'm going to try to sum up where I

13 think we are? Mr. Getz, did you want to --

14 VICE CHAIRMAN GETZ: Well, I guess I  
15 would just say that, you know, it looks like there's not a  
16 large appetite, and certainly there's practical problems  
17 to getting any real definition about the volumetric  
18 increase. So, I don't feel the need to insist that we  
19 require such a number from PSNH. I guess I just get back  
20 to the issue, and I guess, if the parties can come up with  
21 something between themselves, you know, that would be  
22 fine. It just seems that we have before us, and, of  
23 course, this case, in every case, the opposing parties are  
24 regarding the facts in ways most favorable to their theory

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1 of the case. So, we have one party saying "it's  
2 two-thirds of a percent increase in the size of the -- in  
3 the size of the plant." And, we have another party saying  
4 "it looks like to us it's a 56 percent increase in the  
5 size." And, I was hoping to get some -- a better handle  
6 on some of those numbers, if it were practicable.

7 But I would -- to the extent it was a  
8 motion, I withdraw it, because I don't see a lot of  
9 support for it.

10 CHAIRMAN BURACK: I had not taken it as  
11 a motion. I just was trying to get a sense of the  
12 Committee. Commissioner Campbell.

13 CSMR. CAMPBELL: Yes. I just want the  
14 record clear, because Mr. Getz suggested that "height  
15 matters." At 5'5", it's always mattered to me.

16 [Laughter]

17 CSMR. CAMPBELL: The fact of the matter

18 is, height does matter. I even said that. That's  
19 different than saying "height and footprint and volume",  
20 there's a different thing, you know? Air inside of a  
21 building not being utilized might not matter too much in a  
22 site evaluation. But, height, there's no question in my  
23 mind that the height of those buildings is an issue, and  
24 that we have to think about whether or not this is a

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1 sizeable project.

2 CHAIRMAN BURACK: Thank you very much,  
3 Commissioner Campbell. Time is also something we want to  
4 pay attention to as well. I think where we will leave  
5 this is that we are not going to ask for additional data  
6 relating to volumetric calculations on the buildings.  
7 And, we will proceed on the basis that we have -- we have  
8 heard all the testimony that we're going to hear. There  
9 are some additional documents that we are awaiting to have  
10 delivered to us.

11 We will, provided that we have the  
12 transcript in time, we will proceed to deliberate on the  
13 7th of July, again, subject to our confirming availability  
14 of a quorum, and a time of day when we can meet. And, we  
15 will extend out to the 10th of August the date by which we  
16 will issue a decision in this matter. But, certainly, we  
17 will make every effort to issue it sooner than that if we  
18 possibly can.

19 Unless there's anything further at this  
20 time, we will stand adjourned for today. Thank you, all.

21 (Whereupon the hearing was adjourned at  
22 4:41 p.m. and scheduled to reconvene on

23 SEC-0626.txt  
July 7, 2009 at a time to be determined  
24 hereafter.)  
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