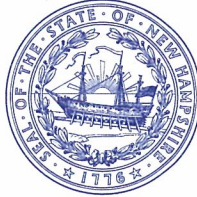


THE STATE OF NEW HAMPSHIRE

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May 28, 2014

Re: DE 11-250, Public Service Company of New Hampshire
Investigation of Scrubber Costs and Cost Recovery
Order After Discovery Disputes Conference

To the Parties:

On May 23, 2014, Commissioner Honigberg and Special Commissioner Iacopino conducted a telephone conference to address disputes between PSNH and CLF concerning three data requests in the above referenced matter. During the conference, the parties resolved their disputes over data requests captioned PSNH-67 and PSNH-69. Unresolved at the close of the telephone conference was the issue of whether CLF must disclose a three page invoice analysis in response to data request PSNH-1, which asked CLF's expert to produce her "entire file pertaining to this matter." CLF argued that the attorney work product doctrine protected disclosure. Accordingly, CLF provided an electronic copy to the Commission for *in camera* review.

"Work product" must be "the result of an attorney's activities." Specifically, the "lawyer's work must have formed an essential step in the procurement of the data which the opponent seeks, and he must have performed duties normally attended to by attorneys." *Riddle Spring Realty Co. v. State*, 107 N.H. 271, 274 (1966) (citations omitted). "The work product of a lawyer consists generally of his 'mental impressions, conclusions, opinions or legal theories.'" *Id.* at 275 (quoting *Hickman v. Taylor*, 329 U.S. 495, 508 (1947)).

Based on its *in camera* review of the invoice analysis, the Commission determined that the work performed by the CLF attorney was to select and convert invoice data provided by PSNH into a graph and, therefore, was not an "essential step in the procurement of the data." The Commission also found that the invoice analysis does not reveal the "mental impressions, conclusions, opinions, or legal theories" of a CLF attorney. As a result, the Commission found that the invoice analysis is not attorney work product.

For the reasons stated in Standard 5, *Public Service Co. of N.H.*, Order No. 25,646 at 7 (April 8, 2014), the Commission orders CLF to produce the invoice analysis in response to PSNH-1.

Sincerely,

A handwritten signature in blue ink, appearing to read "Debra A. Howland".

Debra A. Howland
Executive Director

cc: Docket file
Service List (Electronically)

SERVICE LIST - EMAIL ADDRESSES - DOCKET RELATED

Pursuant to N.H. Admin Rule Puc 203.11 (a) (1): Serve an electronic copy on each person identified on the service list.

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Docket #: 11-250-1 Printed: May 28, 2014

FILING INSTRUCTIONS:

- a) Pursuant to N.H. Admin Rule Puc 203.02 (a), with the exception of Discovery, file 7 copies, as well as an electronic copy, of all documents including cover letter with:**
- DEBRA A HOWLAND
EXEC DIRECTOR
NHPUC
21 S. FRUIT ST, SUITE 10
CONCORD NH 03301-2429
- b) Serve an electronic copy with each person identified on the Commission's service list and with the Office of Consumer Advocate.**
- c) Serve a written copy on each person on the service list not able to receive electronic mail.**