

THE STATE OF NEW HAMPSHIRE
BEFORE THE PUBLIC UTILITIES COMMISSION

PUBLIC SERVICE COMPANY OF NEW HAMPSHIRE
PETITION FOR INCREASE IN SHORT TERM DEBT LIMIT AND TO ISSUE
LONG TERM DEBT

DOCKET NO. DE 09-033

CONSERVATION LAW FOUNDATION'S
MOTION TO COMPEL PSNH'S RESPONSES TO DATA REQUESTS

Conservation Law Foundation ("CLF") respectfully requests that the N.H. Public Utilities Commission ("Commission") compel Public Service Company of New Hampshire ("PSNH") to respond to certain data requests. In support, CLF provides the following facts and legal authority.

I. Background

1. On June 19, 2009, the Commission issued a decision, following briefing by the parties, concerning the standard of review applicable to PSNH's proposed financing in this docket. *See Commission Order Defining Scope of Proceeding*, No. 24,979 (June 19, 2009). That order sets forth the procedural history in this docket. *See Order* at 1-2.
2. The Order unequivocally "reject[ed] PSNH's argument that an *Easton* review is not applicable in this case."¹ Order at 18. The Order further provided that:

At the same time, however, we find that the scope of our *Easton* review in this instance is limited by the Legislature's finding that the scrubber is in the public interest. As a result, in this financing docket we will consider the economic impact of the proposed financing, its effect on PSNH's capital structure, and its potential impact on rates but it is not within the scope of our authority to consider whether the use of the financing proceeds for the

¹ *See Appeal of Easton*, 125 N.H. 205 (1984).

scrubber is for the public good or whether there are reasonable alternatives to the scrubber.

Id. Accordingly, the Commission must now review the economic impact of the proposed financing, its effect on PSNH's capital structure, and its potential impact on rates.

3. On July 1, 2009, the parties attended a technical session. By agreement of the parties, a schedule was set for additional discovery by CLF and the Office of Consumer Advocate.
4. CLF timely served its discovery on PSNH; on July 9, 2009, PSNH objected to CLF's Data Requests, Nos. CLF-01, Q-CLF-002; CLF-01, Q-CLF-003; and CLF-01, Q-CLF-004. PSNH alleges, without explanation, that CLF's requests are not relevant or material to this proceeding, and not reasonably calculated to lead to admissible evidence.
5. Pursuant to N.H. Code Admin. Rules PUC 203.09(i)(4), CLF and PSNH made a good faith effort to resolve PSNH's objections during a telephone discussion on July 10, 2009. On that same day, PSNH provided information responsive to CLF-01, Q-CLF-002(a), and CLF will not be seeking in this motion to compel further response to that data request. The parties were not, however, able to resolve PSNH's objections to CLF's remaining requests.
6. Pursuant to N.H. Code Admin. Rules PUC 203.09, CLF moves to compel PSNH's responses to CLF-01, Q-CLF-002(b)&(c); CLF-01, Q-CLF-003; and CLF-01, Q-CLF-004.

II. Discovery—Legal Authorities

7. The discovery rule applied by the Commission in these proceedings is liberal. See Re Public Service of New Hampshire, 86 NH PUC 730, Order No. 23,831 at 7 (2001)(granting City of Berlin’s motion to compel and ordering PSNH to provide requested discovery). The scope of discovery is broad, extending to information that is “relevant to the proceeding or reasonably calculated to lead to the discovery of admissible evidence.” *Id.* at 6; Re Public Service Company of New Hampshire, 89 NH PUC 226, Order No. 24,310 at 5 (2004).
8. The Commission will deny discovery requests only when it “can perceive of no circumstance in which the requested data will be relevant.” Re Public Service of New Hampshire, 86 NH PUC 730; Order No. 23,831 at 6; Re Public Service Company of New Hampshire, 89 NH PUC 226, Order No. 24,310 at 5.
9. The discovery process before the Commission is analogous to that in a civil judicial proceeding, *see* N.H. Code Admin. Rules 203.09(j), and the underlying purpose of discovery in legal proceedings is to reach the truth. See Scontsas v. Citizens Ins. Co. of New Jersey, 109 N.H. 386, 388 (1969), *citing* Hartford Accident &c. Co. v. Cutter, 108 N.H. 112, 113 (1967).
10. A party in a legal proceeding in New Hampshire is entitled to “be fully informed and have access to all evidence favorable to his side of the issue. This is true whether the issue is one which has been raised by him or by his opponent, and whether the evidence is in the possession of his opponent or someone else.” Scontsas v. Citizens Insurance Co. of New Jersey, 109 N.H. at 388.

11. “If a party is surprised [at trial] by the introduction of evidence or an issue or the presentation of a witness previously unknown to him, the trier of fact is likely to be deprived of having that party's side of the issue fully presented, and the system becomes less effective as a means of discovering the truth.”
Id.

III. CLF's Responses to PSNH's Objections

A. CLF-01,Q-CLF-002 (b)&(c).

12. This request seeks information related to the extent of load departure from PSNH's service territory, what PSNH anticipates the effect of that departure to be on rates, and how the load departure will affect PSNH's ability to complete the planned capital projects, including the Scrubber Project, that will be funded with the proposed financing. As set forth at ¶ 5 above, PSNH provided certain information responsive to part (a) of this request. Those data included sales forecasts updated as recently as June 19, 2009, in connection with pending PUC Docket No. DE 08-113, and show that since December, 2008, 54% of PSNH's industrial sales have been lost to competitive suppliers. Accompanying information provided by PSNH shows that the level of migration for PSNH's large customers increased from twenty-three megawatts as of September 12, 2008, to 102 megawatts as of November 20, 2008, as reported on December 2, 2008—a 343% increase in just two months. *See Re: PSNH Proposed Default Energy Service Rate Charge for 2009*, DE 08-113, Transcript of Proceedings (Dec. 4, 2008) at p. 64, lines 22-24; p. 65, lines 1-12.

13. CLF understands that around 60% of PSNH's service territory is served by its own generation, and that, in the past, it was more expensive for PSNH to purchase power from the market than to generate its own power. As a result, traditionally, the loss of industrial customers could result in reduced costs to PSNH, since more expensive power purchases would be avoided. Now, however, PSNH's current energy service rate is 9.92 cents per kilowatt hour, while ISO New England reports that the average real time locational marginal price for the New Hampshire Zone in June, 2009, was 3.4 cents per kilowatt hour. *See ISO New England, Inc. Monthly Market Operations Report 2009* (July 10, 2009) at § 4.1. PSNH's customers, therefore, can buy power much more cheaply from competitive suppliers, and they have migrated in large numbers as the price of electricity has fallen. A continuation of this pattern will result in increased rates for PSNH's remaining customers that, for practical purposes, can not avail themselves of competitive supply.
14. While it is not possible to predict the economic future with certainty, there is a significant likelihood that the market price of power will remain lower than PSNH's default rate for the foreseeable future. Customers that have migrated could very well enter into long term power purchase agreements with competitive suppliers; those customers would not return to PSNH, and remaining industrial customers will continue to migrate.
15. Information related to how PSNH has taken into account the current very substantial migration of its industrial customers for purposes of this financing docket is highly relevant to the Commission's review of how the proposed

financing will impact rates. The financing, in large part, will be used to fund the Scrubber Project. That project is projected to cost \$457 million, and by law, PSNH's prudently incurred costs must be recovered from its default service charge. *See* RSA 125-O:18. In the event PSNH's current level of load departure does not reverse and / or increases, the costs of the Scrubber Project—and any other generation capital projects proposed to be funded with this financing—will be borne by an increasingly small pool of customers—those that are least able to afford the increase in rates that would be imposed.

16. This information could assist the parties and the Commission to put in place safeguards that would protect customers in the event PSNH continues to suffer substantial industrial sales revenue losses while at the same time incurring significant debt in an uncertain economy.

B. CLF-01, Q-CLF-003

17. This request seeks information related to how decline in electric power demand will impact PSNH's ability to complete the projects to be funded with the proposed financing. The U.S. Energy Information Administration's ("EIA") June 2009 Electric Power Monthly² ("EPM") reports that net generation in the U.S. dropped by 4.3 percent from March 2008 to March 2009, and that "[t]he drop in coal-fired generation was the largest absolute fuel-specific decline from March 2008 to March 2009 as it fell by 24,656 thousand megawatt hours, or 15.3 percent." EPM at 1. Additionally, the EPM reports that, "year-to-date, total net generation was down 4.6 percent

² Available at http://www.eia.doe.gov/cneaf/electricity/epm/epm_sum.html.

from 2008 levels. Net generation attributable to coal-fired plants was down 11.7 percent.” *Id.*

18. PSNH is proposing to take on substantial new borrowings at a time when it is losing high value sales and overall demand for generation is down. How these factors will impact rates in connection with the financing is plainly relevant.

C. CLF-01, Q-CLF-004

19. This request asked PSNH to explain whether, in light of current gas prices, departure of load, decline in electricity demand, and other altered assumptions, PSNH’s September 2, 2008, analysis submitted to the Commission regarding the impact of the Scrubber Project on energy service rates remains accurate. *See* Docket No. DE 08-103, *PSNH Merrimack Station Scrubber Project Request for Information* (Sept. 2, 2008) at §§ III (Effect of Clean Air Project on Energy Service Rates) and IV (Effect on Energy Service Rates if Merrimack Station Is Retired), pp. 14-15.
20. PSNH’s September 2, 2008, analysis stated that “PSNH has assured the cost of energy produced by Merrimack Station will remain lower cost for customers than reasonable potential alternatives, even when the costs of [the scrubber] are included.” *Id.* at 14. PSNH then compared the cost of continued Merrimack Station operation, with the scrubber installation, against three scenarios, the least expensive of which was to retire Merrimack Station and replace its generation with market purchases. For purposes of that analysis, PSNH assumed that forward gas prices would remain strong, using \$11MMbtu as the first year price, and escalating that figure 2.5% per year.

See id. at 15. Based on that assumption, PSNH calculated that that alternative would cost 15% more than continued Merrimack Station operations, with the scrubber installation—about .73 cents per kilowatt hour, as opposed to ½ cent per kilowatt hour for the first year after scrubber installation, and 1/3 cent per kilowatt hour for each year thereafter until fully depreciated. *See id.* at 14;16.

21. PSNH's assumptions about the forward price of gas could not have been more wrong. Current gas prices are \$3.66MMbtu.³ Yet, PSNH has not revised its analysis of the impact of the Scrubber Project on energy service rates as compared to that alternative. Upon information and belief, CLF understands that coal-fired generating units with heat rates similar to that of Merrimack Station that also burn a substantial amount of imported coal, like Merrimack Station, have been displaced in the ISO-New England supply curve—largely by gas-fired generation. We also understand that such units, when dispatched by ISO, have been operating in 2009 at capacity factors below fifty percent.
22. An assessment of the economic and rate impact of the proposed financing, *see Order* at 18, naturally must occur within the context of an understanding of what the rate impact would have been had the project not gone forward and PSNH instead supplied its customers with market power purchases. Presumably, this is precisely why the Commission requested that information from PSNH in the first instance. This is distinct from a consideration of alternatives, which the Commission has declined to review here. Rather, this information is relevant for purposes of providing a basis of comparison

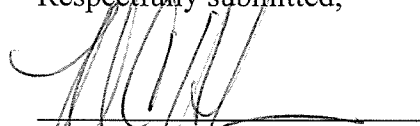
³ See <http://www.bloomberg.com/markets/commodities/energyprices.html>, visited July 24, 2009 (Henry Hub spot).

against which the rate and economic impact of the Scrubber Project, to which the majority of the proposed financing will be directed, can be assessed.

Wherefore, CLF respectfully requests the Commission to provide the following relief:

- A. Compel PSNH's responses to CLF-01, Q-CLF-002(b)&(c); CLF-01, Q-CLF-003; and CLF-01, Q-CLF-004; and
- B. Grant such other relief as justice requires.

Respectfully submitted,

A handwritten signature in dark ink, appearing to read 'MHoffer', is written over a horizontal line.

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CERTIFICATE OF SERVICE

I certify that on this 24th day of July, 2009, a copy of Conservation Law Foundation's Motion To Compel PSNH's Responses to Data Requests was served by electronic and First Class Mail on

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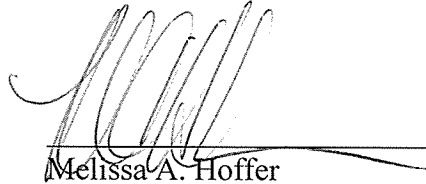
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