

THE STATE OF NEW HAMPSHIRE

BEFORE THE

PUBLIC UTILITIES COMMISSION

DE 11-250

PUBLIC SERVICE COMPANY OF NEW HAMPSHIRE

Investigation of Merrimack Station Scrubber Costs and Cost Recovery

MOTION TO COMPEL
PUBLIC SERVICE COMPANY OF NEW HAMPSHIRE
to ANSWER DATA REQUESTS
of THE OFFICE OF THE CONSUMER ADVOCATE

NOW COMES the Office of Consumer Advocate (OCA) pursuant to Rule Puc 203.09 (i), and respectfully moves this honorable Commission to compel Public Service Company of New Hampshire (PSNH) to Answer OCA Data Requests Nos 1 and 4 of the Sixth Set of Data Requests filed on July 25, 2014.

1. On August 4, 2014 PSNH objected to the following two questions from the OCA and stated its reasons for the objections:

Q-OCA-06-001:

Please explain how legal costs related to PSNH's Scrubber litigation process are being booked. Are the costs being expensed or capitalized? Is there any difference in the treatment of these expenses since Temporary Rates have been in effect? Please provide a schedule detailing outside legal costs related to the scrubber since the inception of the project.

PSNH objects to this request on the following basis: Legal costs were not the subject of any rebuttal testimony filed by PSNH.

Q-OCA-06-004:

Reference Smagula Rebuttal at page 7 of 65 lines 6-9. Is it Mr. Smagula's position that the "requirement" to install the scrubber at Merrimack Station was one that should proceed at any cost? Was there a "price point" beyond which PSNH would have notified regulators that "this is not worth the investment?"

PSNH objects to this request on the following bases:

- i. The question is hypothetical and requires speculation. The actual cost of the Scrubber was less than the \$457 million project estimate known to and accepted by the Legislature.
- ii. In Order No. 25,566, the Commission stated, "PSNH is not responsible for the Legislature's actions, nor for ours."

Bersak, Robert, PSNH Assistant Secretary & Chief Regulatory Counsel, DE 11-250, *Investigation of Merrimack Station Scrubber Costs and Cost Recovery*, Objection (August 4, 2014.)

2. The New Hampshire Public Utilities Commission (PUC or Commission) holds that:

Data requests are a "vehicle for developing factual information." *Freedom Ring Communications, LLC d/b/a Bay Ring Communications*, Order No. 24,760 at 2 (June 7, 2007). The Commission weighs "the effort needed to gather [the requested information], the availability of the information from other sources, and other relevant criteria." *Public Service Co. of N.H.*, Order 25, 595 at 2-3 (Nov. 15, 2013); *City of Nashua*, Order No. 24,485 at 4. The Commission "enjoys 'broad discretion in the management of discovery.'" *Public Service Co. of N.H.*, Order No. 24,342 at 23 (June 29, 2004) (quoting *YYY Corp. v. Gazda*, 145 N.H. 53, 59 (2000)).

DE 11-250, *Investigation of Merrimack Station Scrubber Costs and Cost Recovery*, Order No 25,646 (April 8, 2014)

3. The accounting of legal costs is a factual question relevant to this docket. That PSNH is employing an outside litigation firm to manage this proceeding is a fact underlying all of the extensive testimony, discovery, and pleadings related to this

case. It is a standard practice for utilities to request recovery from ratepayers of all of their legal expenses. Therefore it is relevant for parties and the Commission to know whether ratecase expenses will be part of the scrubber related costs in addition to any cost recovery allowed for the scrubber installation. Such costs could have a significant financial impact on ratepayers.

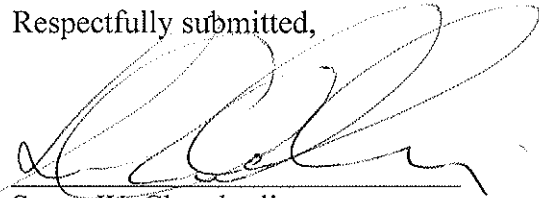
4. Regarding Q-OCA-06-004 the question whether there was a “price point” beyond which PSNH would have notified regulators that “this is not worth the investment” is not a hypothetical question. The answer is either, “No, there was no price point beyond which PSNH would have notified regulators that this is not worth the investment;” or “Yes, the price point beyond which PSNH would have notified regulators that this is not worth the investment was X.”
5. The question Q-OCA-06-004 is not related to legislative action. It is related to what PSNH management knew during the September 2008 – March 2009 timeframe. Did PSNH management have a price figure predetermined, before the project was competed and the actual costs were known, that would trigger communication to the legislature that “this is not worth the investment?” It is a factual, relevant question with a straightforward answer.
6. The answers to both questions are within PSNH’s control. No other party has access to this information. Neither data request requires extensive effort beyond that typically required for data responses.
7. Both questions ask for “facts that are admissible or are reasonably calculated to lead to discovery of admissible evidence. “Order No 25,646 (April 8, 2014) citing *Public Service Co. of N.H.*, Order No. 25,334 at 9 (Mar. 12, 2012); see *City of*

Nashua, Order 24,485 at 4 (July 8, 2005) (“Discovery is not the time to argue policy or advocate for the final result but merely to seek and respond to factual matters that may lead to admissible evidence”).

WHEREFORE, the OCA respectfully requests that this honorable Commission:

- A. Compel PSNH to Answer OCA Data Requests Nos 1 and 4 of the Sixth Set of Data Requests filed on July 25, 2014; and
- B. Grant such other relief as may be just and equitable.

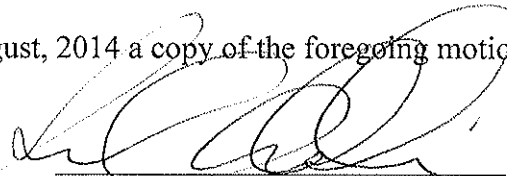
Respectfully submitted,



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Certificate of Service

I hereby certify that on this 7 day of August, 2014 a copy of the foregoing motion was sent by electronic mail to the Service List



Susan W. Chamberlin