

THE STATE OF NEW HAMPSHIRE
BEFORE THE PUBLIC UTILITIES COMMISSION

Docket No. DE 11-250

PUBLIC SERVICE OF NEW HAMPSHIRE

Investigation of Scrubber Costs and Recovery

**CONSERVATION LAW FOUNDATION'S MOTION TO COMPEL PUBLIC SERVICE
COMPANY OF NEW HAMPSHIRE'S TO FULLY RESPOND TO TECHNICAL
SESSION DATA REQUEST Q-TECH-008**

NOW COMES the Conservation Law Foundation ("CLF"), an intervenor in this docket, and moves this Honorable Commission, pursuant to Admin. Rule Puc 203.09 (i), to compel Public Service Company of New Hampshire ("PSNH") to respond to the data request which CLF submitted to PSNH during the Technical Session conducted on January 23, 2012 described in more detail below. In support of this Motion, CLF states as follows:

1. During the prehearing conference in this proceeding, it was noted by CLF and the Sierra Club that the U.S. Environmental Protection Agency ("EPA") had not issued a permit authorizing the discharge of wastewater from the scrubber and raising the issue regarding whether PSNH had obtained all environmental permits as required by law to construct and operate the scrubber system. See, Prehearing Conference, December 13, 2011, p. 31, line 20-24; p. 32, line 1-6; see also, RSA 125-O:13, I ("The achievement of this [scrubber] requirement is contingent upon obtaining all necessary permits and approvals from federal, state, and local regulatory agencies and bodies[.]")
2. EPA's Determination of Technology-Based Effluent Limits for the Flue Gas Desulfurization Wastewater at Merrimack Station in Bow, New Hampshire (September 23, 2011) ("EPA's FGD Determination") states (at p. 3 of 52) that "discharges of wastewater from a FGD scrubber system to a water of the United States must satisfy federal technology-based treatment

requirements. . . .” See also p. 4 of 52 (“New pollutant discharges to waters of the United States, such as PSNH’s proposed discharges of FGD wastewater to the Merrimack River, are prohibited unless and until authorized by a new NPDES permit” issued by EPA pursuant to the federal Clean Water Act). According to EPA,

PSNH designed, financed and, for the most part, constructed the Merrimack Station FGD WWTS [wastewater treatment system] without first discussing with EPA whether this WWTS would satisfy technology-based and water quality-based standards. To be sure, PSNH was not required by regulation either to consult with EPA or to gain EPA approval before constructing a WWTS for the FGD scrubber system at Merrimack Station. By the same token, however, EPA is not required to determine that the new WWTS satisfies the applicable CWA requirements because PSNH has already built it.

Id. at p. 5 of 52.

3. After reviewing the wastewater treatment facility constructed by PSNH and applicable factors under the Clean Water Act, EPA’s FGD Determination concluded that a more protective system is required under the Clean Water Act than that which was designed and constructed by PSNH. Id. at pp. 30-38 of 52. As a result, EPA has not issued a NPDES permit under the Clean Water Act authorizing the discharge of wastewater produced by the scrubber and PSNH may not lawfully discharge such wastewater as it intended when it designed and constructed a wastewater treatment facility as part of the scrubber project.

4. During the Tech Session, all of the parties present engaged in an extensive and lengthy discussion with PSNH representatives regarding its response to Data Request (“DR”) Q-OCA-002. Said DR, filed by the Office of Consumer Advocate, requested the following:

Please reference RSA 125-O:13, I. “The achievement of this requirement is contingent upon obtaining all necessary permits and approvals from federal, state, and local regulatory agencies and bodies[.]” Please identify and provide the status of “all necessary permits and approvals.”

PSNH’s response, prepared by William Smagula, dated 12/30/2011, stated:

Attached is a list of the permits and approvals obtained for the installation of the wet flue gas desulfurization system (Scrubber) at Merrimack Station. The remaining open item is finalizing receipt of Certificates of Occupancy from the Town of Bow on the itemized structures as shown.

[List intentionally omitted by Movant]

5. The list appended to PSNH's response, did not contain any permit or approval authorizing or otherwise addressing, in any manner, discharge of the scrubber wastewater.
6. During the Tech Session, each of Staff, OCA and CLF inquired as to the omission of any permit or approval authorizing disposal of the scrubber wastewater and the means by which it was being disposed. At the Tech Session, PSNH maintained that its response to Q-OCA-002 was complete and truthful explaining that it was disposing of its scrubber wastewater in accordance with "agreements" with various municipalities and private entities which did not require or amount to "permits and approvals" as the terms are used in RSA 125-O:13, I.
7. Under federal law, PSNH is subject to the Clean Water Act Industrial Pretreatment Program regulations, which require PSNH to meet certain effluent limits and obtain an Indirect Discharge Permit from the State of New Hampshire prior to disposing of its wastewater, even if not directly discharging it and instead sending it to permitted wastewater treatment facilities for disposal. See, Clean Water Act, Section 307(b); see also, 40 CFR Part 403. Understanding the law, CLF repeatedly inquired of PSNH at the Tech Session and subsequently (see below) regarding the necessary permits and approvals for disposing of scrubber wastewater and requested, as a formal data request: copies of all permits and agreements which PSNH has obtained to dispose of scrubber wastewater and the documents / records for disposal of scrubber wastewater under such permits and/or agreements.
8. PSNH responded to CLF's Tech Session Data Request as follows:

This Tech Session question is a merely variation of CLF-NHSC 01, Q-PROD-020, which PSNH timely objected to. PSNH continues to stand by that objection. Notwithstanding that objection, PSNH provides the following information in response:

PSNH is operating Merrimack Station in compliance with its existing NPDES permit. A copy of that permit is attached. Information concerning renewal of the existing NPDES permit is available from the EPA website at:
<http://www.epa.gov/region1/npdes/merrimackstation/>.

PSNH has discharge permits/agreements with local municipal POTWs to dispose of treated scrubber wastewater. Copies of representative permits/agreements are attached.

Of relevance to the instant motion, appended to PSNH's response was: 1) a document entitled, Waste Disposal Agreement with the Town of Hooksett, Revised 9/7/11 (the "Hooksett Agreement"); 2) an Industrial Wastewater Indirect Discharge Request Approval issued by NH Department of Environmental Services ("NHDES"), August 19, 2011 (the "NH Indirect Discharge Permit") and, 3) a City of Concord Permit to Discharge Industrial Wastewater, dated August 31, 2011 (the "Concord Wastewater Permit").

9. Upon information and belief, PSNH has yet to dispose of any scrubber wastewater at the Town of Hooksett or Concord facilities. Notably, the Hooksett Agreement (Special condition #2) requires PSNH to "design and install a discharge station" and obtain a Sewer Connection Permit from NHDES and the Hooksett Sewer Commission, copies of which were not provided. In addition, CLF has confirmed that the City of Concord has yet to receive any wastewater as of February 9, 2012.

10. PSNH's response to Q-Tech-008 was incomplete and not responsive. As CLF explained by electronic mail dated February 1, 2012 (Attached as Exhibit B), the request was far broader than as characterized by PSNH. Without limitation, a complete response must be sufficiently detailed for the parties to ascertain from the foregoing information: 1) the total amount of wastewater PSNH has disposed of; 2) the amounts sent to each disposal facility; 3) the costs

incurred for each such shipment; and, 4) when each such wastewater transfer / disposal occurred. PSNH's claim that the request is a variation of a prior request disregards the facial insufficiency of its response to Q-OCA-002, the clear implication created thereby that PSNH is withholding relevant information, and the extensive discussion regarding same during the Tech Session.

11. The long-standing standard that the Commission uses to evaluate discovery requests is whether the information being requested is relevant to the proceeding or reasonably calculated to lead to the discovery of admissible evidence. *Re Verizon New England, Inc., et al*, 92 NH PUC 234, 236 (2007). The request at issue here clearly passes the first part of this test as it is critical for the Commission and the parties to understand how PSNH is disposing of its scrubber wastewater; whether it has all permits necessary to do so, and thus to operate the scrubber system; and the cost for doing so, prior to the hearing on PSNH's Petition for Temporary Rates. Notably, PSNH is seeking to recover such disposal costs without making an offer of proof regarding how they were incurred and the amounts spent and expected to be incurred in the future.

12. The requested information is directly relevant to whether PSNH is entitled to recover costs for the Scrubber project in the first instance (i.e., whether all necessary approvals and permits have been obtained under RSA 125-O:13, I), the disposal costs for which rate recovery is being sought by PSNH and the amount and extent to which temporary rate recovery for such costs are in the public interest (RSA 378:27).

WHEREFORE, CLF respectfully requests that the Commission:

A. Compel PSNH to provide and complete response to Tech Session Data Request 008, which includes without limitation, all permits, approvals, agreements, transit arrangements, bills of lading, manifests, invoices, and receipts with respect to all publicly or privately owned

wastewater treatment / disposal facilities and/or shippers with whom PSNH has arranged to dispose of scrubber wastewater including records of disposal to date.

B. Grant such further relief as it deems appropriate.

Respectfully submitted,

CONSERVATION LAW FOUNDATION

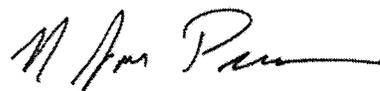
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Dated: February 10, 2012

CERTIFICATE OF SERVICE

I hereby certify that on the 10th day of February 2012, a copy of the foregoing Motion to Compel was sent electronically or by First Class Mail to the service list.



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